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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:24/95
DATED THE 4TH DAY OF JULY, 2000.

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN
HON'BLE SHRI GOVINDAN.S.THAMPI, MEMBER(A)

Shri Jivanlal Dayalji Patel,
At Village: PATLARA
P.O.: MOTI DAMAN-396 220.

... Applicant

By Advocate Shri I.J.Naik

V/s.

1. The Development Commissioner,
Administration of Daman and Diu,
Secretariat, Daman,
P.O.: MOTI DAMAN - 396 220.
2. The Asstt. Director of Education,
Administration of Daman and Diu,
P.O.: MOTI DAMAN - 396 210.
3. The Administrator,
Administration of Union
Territory of Daman & Diu,
Fort Area, MOTI DAMAN - 396 220.
4. Union of India, through:
The Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block,
NEW DELHI.

... Respondents

By Advocate Shri R.K.Shetty

(ORDER) (ORAL)

Per Shri R.G.Vaidyanatha, Vice Chairman

This is an application filed under section 19 of the Administrative Tribunals Act 1985. Respondents have filed reply. We have heard Shri I.J.Naik, Learned Counsel for Applicant and Shri R.K.Shetty, Learned Counsel for Respondents.

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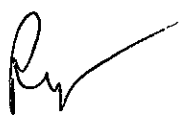
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2. The Applicant was earlier appointed as Assistant Teacher in the Daman and Diu Administration on adhoc basis for a short time. On the expiry of the period, the applicant's services were not continued. Subsequently, the Administration called for fresh selection to which the applicant also responded. After due selection, the applicant was not selected. The applicant being aggrieved by the action taken by respondents in terminating his services and in not appointing him again, has come up with the present application challenging the termination of services and also challenging the non selection of the applicant in the second selection process by taking number of grounds.

3. It is alleged that applicant had already been selected and appointed in the earlier selection in 1993, the respondents should not have again called for fresh selection in 1994. It is further alleged that even though the period expired in April,94, the Government had sanctioned the post for another one year and the applicant's services should have been continued and his services should not have been brought to an end by April,94. Hence, the applicant has made number of allegations and alleged certain officials of corrupt practices in making appointments. Therefore, the applicant has come up with the present application.

4. The respondents in their reply have stated that the applicant was issued appointment letter appointing the applicant on adhoc basis in January,94 where it is stated that the appointment was for a short period upto April,94. As directed the by the in the Appointment letter, the short period came to an

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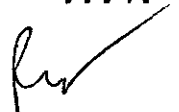
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end by efflux of time. Then, it is further stated that when regular selection was made, many candidates were called including the applicant, but the applicant did not make the grade and therefore other candidates were found fit by the Selection Committee and they came to be appointed. The allegation of corrupt practices are denied.

5. At the time of argument, the learned counsel for mapplicant made a strong plea that since applicant had already been selected in 1993 and appointed, his services should have been continued from April,94 when administration had received sanction of post for a further period till February,95. This is not a case of terminating the services of the applicant. The Appointment order of the applicant is dated 27/1/94 , which is at page-19 of the paperbook. It clearly says that the appointment of the applicant is purely on adhoc basis and it does not confer any right of permanent employment or regular employment. Then, what is more, the appointment on adhoc basis is only up to April,94. It is admitted that there is no order of termination as such by end of April,94 but the applicant is not in service from 1/5/94. It may be that if Administration wanted, it could have continued the Applicant till regular selection was made when particularly, the Government sanctioned the post by order dated 19/4/94. In this case the applicant's appointment came to an end by efflux of time and the Administration wanted to go in for regular selection instead of continuing the adhoc teachers.

6. As far as Regular selection is concerned, it is clearly stated that though the applicant was age barred, he was still called for interview in view of his past service, but in the interview he did not make the grade.

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This Tribunal cannot sit in appeal over the Regular Selection conducted by the Administration in not selecting the Applicant for the post in question. The Learned Counsel for Applicant contended that once Applicant had been found suitable in 1993, he should not have been subject to a second test or second interview in 1994.

7. The answer to this contention may be found in the decision of the Apex Court in **Madan Lal & Ors. The State of Jammu and Kashmir and Ors.** reported at 1995(1)SCSLJ 369, where the Supreme Court has ruled that when the candidate appears for selection and takes a chance, he cannot subsequently challenge the validity of the selection process. Similarly, rightly or wrongly the Administration called the Applicant for selection in 1994. The applicant did attend the interview on 14/10/94. Maybe on merits, the Selection Committee did not select him. Now the applicant cannot turn round and say that he should not have been subjected to second interview when he had already been selected in 1993. Therefore, in view of the law laid down by Apex Court, the Applicant cannot be allowed to question the legality and validity of the second selection.

8. Now the Learned Counsel for Applicant states that some other candidates who had been appointed on adhoc basis in earlier years were regularly appointed without fresh selection. This is a contention which is now pressed into service at the time of arguments. This is purely a question of fact and can not be raised for the first time at the time of arguments, without proper pleadings and documents. The respondents have no chance to controvert this fact and to produce necessary documents.

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Even otherwise, he cannot question the selection as he had participated in the selection process, as already pointed out.


9. Another contention of the Applicant's counsel is that when applicant has been previously selection, he need not even be called for selection by placing reliance on three decisions which are reported in

- (i) 1988(1)G.L.H.(U.J.)14 Chaudhari Govabhai Nathubhai and others v/s. Banaskantha Jilla Panchayat Seva Pasand Samiti and Anr.
- (ii) A.T.R. 1987(1) C.A.T.502 Shri Ishwar Singh Khatri & Ors. V/s. Union of India & Ors.
- (iii) (1990)12 ATC 125 Smt.Nirmal Kumari and Anr. V/s. Delhi Administration and Anr.

We have perused all the the three decision, In all the three cases, there was a select panel in operation and it was not exhausted and fresh selection was sought to be held and in those circumstances, it was held that till the previous panel is exhausted fresh selection should not be done. None of the above decisions have any bearing on the facts of the present case.

However, in the present case, the appointment of the applicant was only for a short period on adhoc basis and the panel got exhausted when applicant was appointed. It is nobody's case that the earlier panel is still in force. That panel got exhausted with the appointment of the applicant in pursuance of 1993 select panel, and the panel has come to end so far as applicant is concerned, and his services came to

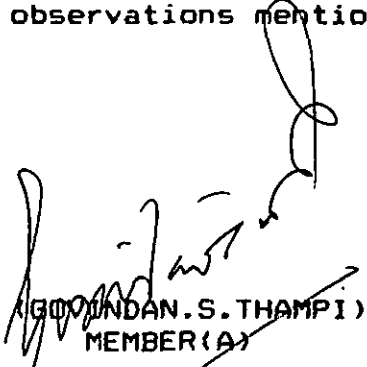
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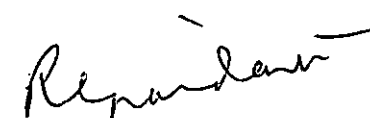


an end by efflux of time. Now, fresh selection is held for regular recruitment, but the earlier one was for adhoc recruitment. In the circumstances, those decisions are not applicable to the facts of the present case.

10. Since the applicant's appointment came to an end by efflux of time and since he has participated in the selection process and was not found suitable, no relief can be given in the present DA. However, if and when new recruitment takes place for post of Assistant Teacher by Daman and Diu Administration and if the applicant responds to that selection process, the Administration should consider him for the post of Assistant Teacher subject to his qualification and eligibility by relaxation of age limit to the extent of the short period of service from January, 94 to 30/4/94.

11. In the result, the application is dismissed subject to observations mentioned above. No orders as to costs.


(GOVINDAN.S.THAMPI)
MEMBER(A)
abp.


(R.G.VAIDYANATHA)
VICE CHAIRMAN