

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 67/97

Date of Decision: 9.12.1997

Smt. Maria L. Duarte & Ors.

Applicant.

Shri Nam Joshi

Advocate for  
Applicant.

Versus

The Administrator, U.T. of Daman & Diu & ors.

Respondent(s)

Shri V.S. Masurkar for 1 to 4 and

Shri Suresh Kumar for R-5.

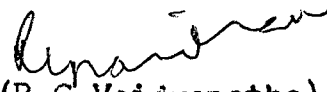
Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice-Chairman,

Hon'ble Shri. P.P. Srivastava, Member(A).

- (1) To be referred to the Reporter or not? *yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*

  
(R.G. Vaidyanatha)  
Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 67/1997.

Tuesday, this the 9th day of December, 1997.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri P.P.Srivastava, Member(A).

1. Smt. Maria L.Duarte,  
APS to Administrator (Ad-hoc),  
Fort Area,  
P.O. : Moti Daman.
2. Smt. Rita Fernandes,  
P.A. to Collector, Daman,  
P.O. : Moti Daman,  
Pin Code : 396 220.
3. Smt. Odette Rosario,  
P.A. to Development Commissioner,  
Secretariat, Fort Area,  
P.O. : MOTI DAMAN.

... Applicants.

(By Advocate Shri Nam Joshi)

V/s.

1. The Administrator,  
Union Territory of Daman & Diu,  
Administrator's Secretariat,  
Fort Area,  
P.O. : Moti Daman - 396 220.
2. The Development Commissioner,  
Administration of Daman and Diu,  
Secretariat, Fort Area,  
P.O. Moti Daman - 396 220.
3. The Union Public Service Commission,  
through : The Secretary,  
'Dholpur House', Shah Jahan Road,  
New Delhi.
4. Union of India, through :  
The Secretary,  
Ministry of Home Affairs,  
Central Secretariat,  
North Block,  
New Delhi.
5. The Private Secretary to  
the Administrator/Asstt.  
Secretary (G.A.),  
Smt.C.A.Kapdi,  
Secretariat, Fort Area,  
Moti Daman.

... Respondents.

(By Advocate Shri V.S.Masurkar/  
Shri Suresh Kumar)

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under Sec. 19 of  
the Administrative Tribunals Act, 1985. The respondents  
have filed their reply. We have heard the learned



advocates.

2. The three applicants are challenging the appointment of Respondent No.5 Smt. C.A.Kapdi as Private Secretary to the Administrator of Daman & Diu.

The applicants say that Respondent No.5 has been promoted/appointed on the basis of the Circular dt. 12.1.1996 under which applications were called for to the post of 'Private Secretary' to the Administrator. It is alleged that though the Circular was sent to many States and Central Government and other Institutions it was not circulated in the Union Territory (hereinafter referred to as U.T.) of Daman & Diu, hence the applicants could not submit their applications for the said post. If the Circular had been circulated in the U.T. of Daman and Diu then the applicants could have applied for the said post. The applicants had better chance of getting that post. The Circular was issued by Respondent No.5 herself, who is herself one of the candidates. It is alleged that Respondent No.5 by mala fide intentions has not sent the Circular to the U.T. of Daman and Diu to deprive the applicants from applying for the said post.

The applicants say that they were eligible to apply for the said post having 8 years regular service in the post having the pay scale of Rs.1400-2600.

Then it is alleged that Respondent No.5 was never an employee of U.T. of Daman & Diu, but she was an employee of U.T. of Dadra and Nagar Haveli. She was brought to the Administration of Daman & Diu on promotion to the post of Private Secretary to the Chief Secretary without giving opportunity to other aspiring candidates.

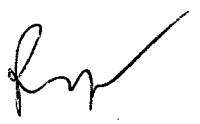
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She is an outsider so far as U.T. of Daman & Diu is concerned. The very initial appointment or promotion of Respondent No.5 in the Administration of Daman & Diu is itself illegal. It is also alleged that the Advertisement as per Circular dt. 12.1.1996 was issued even prior to the 1996 Recruitment Rules came into force by publication in the Gazette dt. 25.1.1996. Since the appointment of Respondent No.5 as Private Secretary to Chief Secretary was itself illegal she could not have been considered for the present impugned appointment of Private Secretary to the Administrator. There is no common cadre of employees for the two U.Ts. of Daman & Diu and Dadra & Nagar Haveli. The Recruitment Rules of 1990 are not valid. On these allegations the applicants pray that the appointment of Respondent No.5 as Private Secretary to the Administrator be quashed as being illegal and for other consequential reliefs.

3. The Respondents No.1 to 4 have filed their reply opposing the application. They have asserted that the appointment of Respondent No.5 is perfectly valid and justified and according to Rules. The allegation that the Circular calling for applications dt. 12.1.1996 was not circulated in the U.T. of Daman and Diu is denied. It is stated that the Circular was sent to all the States, Central Government and all the U.Ts. including Daman & Diu. That the applicants were ineligible for applying to the post of Private Secretary to the Administrator. It is therefore prayed that the application be dismissed with costs.

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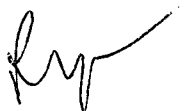


The Respondent No.5 has also filed a reply denying various allegations of mala fides. She has also asserted that her appointment was perfectly valid and according to Rules. She has also denied the allegation that the Circular was <sup>not</sup> sent to Administration of Daman & Diu.

In both the written statements details are given as to how Respondent No.5 came to be appointed after following the Rules and the U.P.S.C. has selected her and on that basis order of appointment was issued.

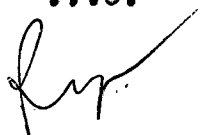
4. Though number of contentions are taken in the OA and number of prayers are included in the O.A., the learned counsel for the applicants, Shri Nam Joshi, raised only few points in support of his application. His main contention is that the appointment of R-5 is vitiated due to mala fides on her part in not circulating the Advertisement in the U.T. of Daman & Diu. The next submission is that R-5 did not have the required eligibility for being appointed to the present post. That the Circular has been issued on 12.1.1996 even before the Rules were Gazetted on 25.1.1996 and therefore, any appointment on the basis of that Circular is bad in law. On the other hand, Shri V.S.Masurkar counsel for R-1 to R-4 and Shri Suresh Kumar counsel for R-5 have controverted these contentions and urged that the appointment of R-5 is perfectly valid, justified and according to law. They also contended that applicants themselves being not eligible for the post in question, they have no right to challenge the appointment of R-5.

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5. We are not impressed with the argument on behalf of the applicants about there being any illegality in the advertisement being earlier than the Gazette Notification. It is true that the 1996 Rules came into force only by publication in the Gazette dt. 25.1.1996. ~~XXXX~~ We have seen the records made available by the Respondents and also allegations made in the pleadings. Respondent No.5 has done three things on 12.1.1996 viz. issuing a Circular of that date calling for applications to the post in question, sending a letter to the Printing Press for publishing the 1996 Rules in the Gazette and sending a copy of the Circular to the Editor of the Employment News at Delhi for publication. It may be that due to procedural delay the 1996 Rules came to be published in the Gazette on 25.1.1996. Let us accept for a moment that the Circular should have been issued only on or after 25.1.1996, it ~~can~~ help the case of the applicants in any way. Merely because the Circular is few days earlier than the Gazette Notification, the appointments made in pursuance of the Circular cannot be said to be illegal, no rule was brought to our notice providing for such a situation. At best it could be said that there was some irregularity in the Circular being issued earlier i.e. before the Rules came into force. As already stated simultaneous action is taken to issue the Circular and publish the Rules in the Gazette, but unfortunately there was some delay in the Rules being published in the Gazette. But, in our view, it will not affect the validity of any appointment made in pursuance of the said circular.

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6. It is not shown as to how the applicants are prejudiced by this act. It is not their case that if the Circular had been issued on 25.1.1996 they could have applied for the job. It is brought to our notice that the applicants did not have the eligibility at all to apply for the post in question. They should have put in 8 years service in that particular grade to get the eligibility. It was conceded at the time of arguments that the applicants did not have 8 years service and they were short by three or four months and therefore, they could not have applied to the post in question. Hence no prejudice is caused to the applicants by the Circular being issued earlier than the Gazette Notification. As already stated, at worst, if in the case of an irregularity, it should not affect any appointment made in pursuance of the Circular dt. 12.1.1996.

7. As far as the question of mala fides on the part of R-5 is concerned, we do not find any merit. The only ground made out is that the Circular was not published in the U.T. of Daman and Diu and this has deprived the applicants from applying for the post in question. The argument proceeds on the basis that R-5 being herself a candidate and the author of the Circular, due to mala fide intentions did not publish the Circular in the U.T. of Daman & Diu to prevent the applicants and other officials of that U.T. from applying for the post.

It is significant to notice that in the O.A. the applicants allege that they were prevented from applying for the post since there were no notification in their administration. When the applicants were admittedly not qualified being less than 8 years

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service in the particular grade, there is no question of applicants having a chance to apply if the Circular had been published in the U.T. of Daman & Diu. There is no affidavit by ~~any~~ Officer or Official of Daman & Diu that he was prevented from filing an application for the post since the Circular was not published in Daman & Diu.

Apart from this, the respondents have placed materials on record to show that this Circular dt. 12.1.1996 have been sent to all the States and all U.Ts., Central Government Departments and other Autonomous Bodies. Therefore, there is no question of the Circular being not sent to Daman & Diu. The materials produced by the Respondents clearly show that the Circular was sent to U.T. of Daman & Diu in addition to other States and U.Ts.

8. In addition to this the advertisement has appeared in the Employment News a paper published from Delhi in three languages viz. English, Hindi and Urdu. Hence when the matter is published in News Paper, there is no question of R-5 deliberately and with a mala fide intention suppressing the Circular.

Then we come to the most important point viz. the applicants' own representation dt. 8.3.1996 where they have referred to this Circular dt. 12.1.1996 calling for applications of the post in question. Therefore, even applicants had become aware of the Circular on 8.3.1996. The last date was 12.3.1996, nothing prevented the applicants to apply for the post if they really wanted and they had still four days time. Therefore, the allegation in the application that the applicants had no chance of applying for

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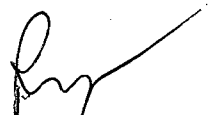


this post for want of knowledge of this Circular falls to the ground in view of their own admission in the representation dt. 8.3.1996 which is referred to in the O.A. and annexed to the O.A. The applicants though had the knowledge could not obviously apply since admittedly they did not have the minimum 8 years service in that particular grade.

It is not as if the whole thing is done in a hurry and R-5 has taken undue advantage of her position in the Secretariat. The advertisement was issued on 12.1.1996, the selection is made one year later in January, 1997; this is not something which is done clandestinely and overnight. There is a time gap of one year between the advertisement and the actual selection.

Further we must note that the selection is made by a Constitutional Functionary like the U.P.S.C. It has considered four candidates and found that R-5 was suitable and had the requisite qualification. It is interesting to notice that the other three candidates who had applied for the post have not challenged the appointment of R-5. The persons who are challenging the appointment of R-5 are the applicants who did not have the minimum eligibility of 8 years service for applying to the post. This itself shows mala fides on the part of the applicants in challenging the appointment of R-5 when they had no right at all to apply for the post and this argument of mala fides on the part of R-5 has no merit and is accordingly rejected.

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9. The third and the most important contention urged on behalf of the applicants is that the R-5 had no eligibility to apply for the post in question. It was argued that R-5 hails from U.T. of Dadra and Nagar Haveli, but the present post is in the Administration of U.T. of Daman and Diu and therefore, she had no right to be brought into the service of Daman and Diu and her very initial appointment in the Secretariat of U.T. of Daman and Diu is illegal and therefore she had no right to apply for the post in question. The learned counsel Shri Nam Joshi contended that the two U.Ts. of Daman and Diu on the one hand and Dadra and Nagar Haveli on the other are independent and distinct and separate entities and further there <sup>were</sup> were no common cadre between the employees of both the U.Ts. He also relied upon the statement of the Home Minister before the Parliament that the proposal to have a common cadre for both the U.Ts. was not acceptable to Government of India. There is no dispute in these contentions urged by the learned counsel for the applicants. It is nobody's case that R-5 was in the common cadre of the employees of the two U.Ts.

Though the two U.Ts. are distinct and separate entities, they have admittedly a common Administrator and now a <sup>common</sup> Lieutenant Governor. The Headquarters of the common Administrator/Lieutenant Governor is at Silvassa. It is also brought to our notice that though there is no common cadre for all the employees of both the U.Ts., there is only common Secretariat

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for the Administrator/Lieut. Governor of the two U.Ts. Therefore, common cadre is for limited purpose and in a limited area viz. for the purpose of common Secretariat under a common Administrator/Lieut. Governor for both the U.Ts.

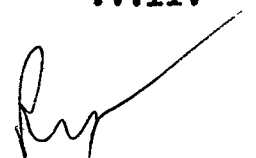
10. In this connection, we may refer to the letter of the Secretary to the Government of India addressed to the Chief Secretary/Administrator of the two U.Ts. dt. 28.4.1988. It is stated in this letter that "now it is proposed to set up a common Secretariat for both the U.Ts." Then we have a Government of India letter dt. 20.5.1988 which shows that the President has sanctioned the creation of one post of Lieut. Governor common to both the U.Ts.

11. Now we may refer to the most important document viz. the Notification dt. 19.8.1989 issued by the Administrator of Goa where there is a clear mention that Government of India has conveyed sanction for the creation of 112 posts for the Secretariat to be set up. It is clearly mentioned that the new Secretariat shall be common to both U.Ts.

It is, therefore, clear that though the U.Ts. are distinct and separate, they have a common Administrator/Lieut. Governor with a common Secretariat.

12. Under the 1990 Rules the Fifth Respondent who was a Stenographer of Dadra and Nagar Haveli was appointed as Private Secretary to the Chief Secretary. Subsequently, there is a Notification ~~under~~ which the post is re-designated as Private Secretary to the Development Commissioner. If the Fifth Respondent had 3 years service in this capacity she will be entitled

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to be promoted to the present post of Private Secretary to the Administrator. But the argument on behalf of the applicants is that though R-5 has been appointed under the 1990 Rules, the said Rules are invalid since there <sup>was</sup> were no approval from the U.P.S.C. and one of the letters produced shows that the U.P.S.C. had not approved the 1990 Rules and accordingly ■ fresh Rules were framed in 1996. In our view, the argument has no merit for more than one reason.

Firstly, the concurrence or approval of the U.P.S.C. is not mandatory for Recruitment Rules under Article 320 of the Constitution of India. Under that Article U.P.S.C. has only advisory capacity, the opinion or advise given by the U.P.S.C. is not binding on the Government. Further, consultation with the UPSC under Article 320 has been held to be directory and not mandatory. Therefore, if something is done contrary to the UPSC <sup>advise</sup> or without consulting UPSC, the appointment or the Rules do not become illegal or void (vide A.I.R. 1957 S.C. 912 in the case of State of U.P. V/s. Manbodhan Lal Srivastava and 1988(5) SLR 771 in the case of Dr.M.C.Bindal V/s. R.C.Singh and Others).

Secondly, the applicants have kept quite for the last 7 years and now when R-5 has been appointed to the new post are challenging the initial appointment of 1990 in the year 1997. This claim of the applicants, in our view, is not only barred by limitation, but also suffers from delay and laches.

Thirdly, even if R- 5 has been appointed under an order which was not perfectly valid,

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her appointment cannot be said to be illegal when she has worked for all these 7 years without challenge by anybody.

13. Even agreeing for a moment that the initial appointment of R-5 as Private Secretary to the Chief Secretary or subsequently as Private Secretary to the Development Commissioner was not valid, the question still is whether she did not have the requisite qualification for being promoted to the present post of Private Secretary to the Administrator.

Under the 1996 Rules the eligibility for candidates to apply for the post of Private Secretary to Administrator is as follows :

"(1) Officers under the Central/State Govts./UTs.

(a) (i) Holding analogous posts on a regular basis; or

(ii) with 3 years regular service in posts in the scale of pay of Rs.1640-2900 or equivalent or

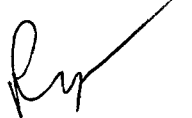
(iii) with 8 years regular service in posts in the scale of pay of Rs.1400-2300/2600 or equivalent ; and

(b) possessing 5 years experience in stenographic work (English/Hindi)

(2) The departmental Private Secretary to the Development Commissioner with 3 years regular service in the grade will also be considered along with outsiders and in case he is selected the post shall be deemed to have been filled by promotion."

Among other criteria for eligibility, one of them is (1)(a) (iii) is 8 years regular service in the grade of Rs.1400-2300/2600. There is no dispute that the Respondent No.5 had  $9\frac{1}{2}$  years service in that grade as on the last day for filing the application. Even granting that R-5 did not have the criteria as per clause (2), there can be no dispute that she had more than 8 years service in that particular grade

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mentioned above and this itself is sufficient to give her eligibility to apply for the post in question. Therefore, the question whether the appointment of R-5 to the post of Private Secretary to the Chief Secretary under the 1990 Rules is valid or not is wholly irrelevant since even if we ignore that qualification, she also comes under the category of having 8 years regular service in the grade of pay mentioned above. Admittedly, the applicants are also in the same scale of pay, but they had not completed 8 years service and they were short by three or four months. Since R-5 has this alternate qualification under the eligibility criteria her appointment cannot be challenged by the applicants even if 1990 rules are held to be invalid or her initial appointment to the post of Private Secretary to the Chief Secretary was invalid.

Hence taking any view of the matter R-5 was fully qualified for being selected to the post in question.

14. In our view, none of the contentions urged by the learned counsel for the applicants have any merit. The applicants, admittedly, did not have the eligibility criteria and therefore their application to challenge the appointment of R-5 is mala fide and has to be rejected.

In our view, R-5 was fully qualified for the post in question either under the 3 years service in the post of Private Secretary to the Chief Secretary/Development Commissioner or alternatively having 8 years experience in the particular scale of pay

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mentioned in the Rules. A high Constitutional functionary like the U.P.S.C. has considered the case of all the candidates and have selected R-5 as fully qualified for the post in question. We do not find any illegality or infirmity in the Selection and appointment of R-5 to the post in question.

In our view, her appointment is perfectly valid and according to law.

14. M.P. 213/97 is filed for production of some documents. Some of the documents are already on record. Since we are disposing of the O.A. on the available materials on record, no further order is necessary and the M.P. has now become infructuous.

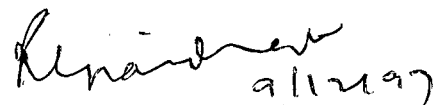
15. In the result, the application fails and is dismissed.

M.P. 213/97 is disposed of for the reasons mentioned in para 14 above.

In the circumstances of the case, no order as to costs.



(P.P. SRIVASTAVA)  
MEMBER (A)



(R.G. VAIDYANATHA)  
VICE-CHAIRMAN

B.