

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 724/98

Date of Decision: 11-11-98

M.D. Patil

.. Applicant

Shri G.K. Masand

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K. Shetty.

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble Shri D.S. Baweja, 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
(R.G. VAIDYANATHA)
VICE - CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 724 OF 98.

Proounced, this the 11th day of NOVEMBER 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman
Hon'ble Shri D.S.Baweja, Member(A).

M.D.Patil,
C-2/C, Government Quarters,
Bitwadi, Moti, Daman,
Daman - 396 220.

... Applicant.

(By Advocate Shri G.K.Masand)

V/s.

1. Union of India through the Secretary in the Ministry of Home Affairs, North Block, New Delhi.
2. Union Public Service Commission, Dholpur House, Shah Jahan Road, New Delhi.
3. The Administrator, Administration of Union Territory of Daman and Diu, Administrator's Secretariat, Moti Daman, Daman - 396 220.
4. Principal, Government College, Daman.
5. Dr. Sudhir Hindwan, working as Lecturer in Political Science, Government College, Daman.

... Respondents.

(By Advocate Shri R.K.Shetty)

ORDER

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

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The official respondents have filed their reply. Even the Private Respondent viz. R-5 has sent his reply. We have

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for

heard the learned counsel appearing on both sides regarding admission and grant of interim relief.

2. The applicant has approached this Tribunal asking for certain reliefs by making a number of grounds in the application.

3. The first prayer is that appointment of R-5 is illegal and contrary to the directions given by this Tribunal in the order dt. 15.1.1997 in O.A. No.115/93. The grievance is that the applicant has not been called for interview by the UPSC, inspite of the direction given by this Tribunal.

A perusal of the interim order dt. 27.10.1993 in O.A. 115/93 shows that a direction was given to the respondents to call the applicant for interview "if he is otherwise eligible". Therefore, there is no mandatory directions to the respondents that the applicant should be called for interview. But the direction is only if he is eligible he must be called for interview. Now the respondents have taken the stand that the applicant does not possess the essential qualification as per the Recruitment Rules and therefore he was not called for interview. Hence it cannot be said that the respondents have dis-obeyed the order of this Tribunal.

4. Admittedly, the applicant does not possess the essential qualification as per the Recruitment Rules. It may be that the applicant possesses the academic qualification of a Degree in M.A. and a Degree in M.Phil as required by Recruitment Rules. But he does not have

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another essential requirement of the Recruitment Rules viz. that he must have good academic record viz. having obtained more than 50% of marks in the previous two final examinations viz. B.A. and P.U.C. As could be seen from the materials on record, the applicant does not have more than 50% in the average of the B.A. examination and IInd P.U.C. Therefore, the applicant does not possess the required essential academic record and hence if he is not called for the interview, it cannot be said that there is any illegality.

5. It was argued that the administration had admitted that applicant had requisite ~~q~~ualification in the previous written statement. Even granting there was such admission, ^{JK}which is not binding on the UPSC who is the selecting authority. From the perusal of the Rules we also find that applicant does not have a good academic record as per Rules. Hence he does not have the required essential qualification and academic record as per the Recruitment Rules. That is why he was not called for interview by UPSC.

But, however, the learned counsel for the applicant placed before us a letter dt. 28.10.1991 of the University Grants Commission along with amended Recruitment Rules of 1991 and submits that the UGC Rules do not prescribe the good academic record as qualification for the post of Lecturer. It may be so. But we are concerned with the 1983 Recruitment Rules of the Goa and Diu Administration. What UGC prescribes is the minimum requirement. This is clear from the

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letter dt. 28.10.1991 of the Under Secretary of UGC which clearly says that UGC is prescribing minimum qualification. It does not forbid an University or an Administration prescribing little higher qualification than the minimum. Further, dis-obeying the directions of the UGC may force the UGC to stop grants to University but it does not invalidate the appointments. Hence taking any view of the matter we find that the applicant does not have the prescribed essential qualification and academic record as per the Recruitment Rules and therefore he cannot challenge the action of the UPSC in not calling for ^{him} interview.

We are also not impressed by the argment of the learned counsel for the applicant that the UPSC has powers to relax the qualifications. It is open to the applicant to make a request to the UPSC or the Government to relax the qualification etc. But it is not for the Court or Tribunal to give a direction to the Government or the UPSC to relax the qualifications.

6. Then it was submitted that in the previous O.A. the UPSC had selected only two candidates of whom one did not join and that list did not show the name of R-5. We can take a judicial notice that UPSC always selects the required number of candidates and also a waiting list or a stand by list which contains names of some candidates who will be appointed if a candidate or candidates in the main list do not turn up. In the main list no doubt two names were shown and since one of them

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did not join, the 5th respondent who was in the stand by list has been appointed. He has already taken charge. There is no dispute that he has all the qualifications and academic record as per the Recruitment Rules. Further, if the applicant himself has no eligibility he cannot question the appointment of R-5. We are satisfied that the appointment of R-5 is as per the Recruitment Rules.

7. Then it was contended that the termination of the services of the applicant is bad since he has not been given one month's salary in ^{lieu} view of the notice along with the Notice. It is true that along with the termination notice salary for one month in ^{lieu} view of notice is not tendered to the applicant. Reliance was placed on a decision of the Apex Court reported in AIR 1972 SC 1487 (Senior Superintendent, R.M.S., Cochin and Anr. V/s. K.V.Gopinath, Sorter). No doubt the Supreme Court has observed in that case that if an order of termination is issued without tendering one month's salary in ^{lieu} view of notice period then the termination is bad. The Supreme Court was interpreting the terms of Rule 5 of Central Civil Services (Temporary Services) Rules, 1965. In our view, this argument has no merit since the Rule has been subsequently amended. Now as per the amended Rule the amount need not be tendered along with ^{the} notice but the Rule says that on such termination, the government servant shall be entitled to claim a sum equal to a month's salary in lieu of the notice period. Therefore, the amended Rule now makes

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the government servant a right to claim the amount, but there is no condition in the amended rule that the amount should be tendered along with the notice. Therefore, the decision of the Supreme Court is not now applicable in view of the amendment of Rule 5 subsequently.

8. The other contention of the applicant is that his services must be regularised since he is working as a Lecturer for the last 7 years. The Respondents contention is two fold. One is that his prayer is barred by res-judicata, the other is that there is no provision for regularisation.

We have already seen that the applicant had filed previous O.A. challenging the selection process by UPSC and also wanted regularisation of his ad hoc services in O.A. 115/93. That O.A. was disposed of at the admission stage only with a direction that the applicant is entitled to continue in the ad hoc appointment till a newly selected candidate by UPSC joins the post. When the applicant had asked identical prayer of regularisation of his services in the previous O.A. and no such prayer was granted in the previous O.A., the applicant cannot agitate the same relief in the new O.A. filed now. Hence principles of constructive res-judicata are attracted.

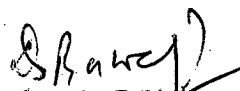
Even on merits there is no provision in the Recruitment Rules or in any other Rule for regularisation of an ad hoc Lecturer. The only method of appointment is by UPSC.. Admittedly, the applicant has not been appointed by the UPSC. Therefore, his local ad hoc appointment by the administration will not confer him any right unless

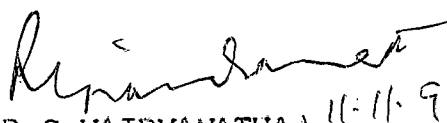
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his name is cleared and he is selected by the UPSC as per the Recruitment Rules. Hence taking any view of the matter, the applicant's claim for regularisation is not tenable.

9. In our view, none of the arguments addressed by the learned counsel for the applicant have any merit. Therefore, the application is liable to be rejected.

10. In the result, the application is rejected at the admission stage. The ex-parte interim order dt.19.8.98/ which was continued from time to time, is hereby vacated. No costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA) 11.11.98
VICE - CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO.01 OF 1999
IN
ORIGINAL APPLICATION NO. 724/98.

THURSDAY, THIS THE 14TH DAY OF JANUARY, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

M.D.Patil.

...Applicant.

V/s.

Union of India & Ors.

...Respondents.

: ORDER ON REVIEW PETITION BY CIRCULATION :

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

This is a Review Petition against our Judgment dt. 11.11.1998. We have perused the Review Petition and the case file.

2. By a Judgment dt. 11.11.1998 we have considered all the contentions of the applicant's counsel and rejected the application at the admission stage. Now in the present Review Petition, the applicant has raised number of grounds. In our view, there is no merit in any of the grounds so as to call for a review of our Judgment dt. 11.11.1998.

3. The first point taken in the Review Petition is ^{about binding that} ~~that~~ the present prayer for regularisation is barred by principles of res-judicata in view of identical relief having been asked and not granted in OA 115/93, which was an earlier application filed by the applicant. The contention now pressed is that there was no arguments and no finding was given on the question of regularisation in the previous OA and therefore there is no bar for the applicant to press that relief again in the present OA. This contention has no merit since principles of constructive res-judicata is a public policy which is evolved to avoid and to discourage multiplicity of proceedings. The Explanation - V to Section 11 of the Code of Civil Procedure, 1908 clearly provides that any relief claimed in the plaint and if not expressly granted it

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must be deemed to have been refused. In our view, this principle applies to the present case. When there was a specific prayer for regularisation in the previous O.A. and since admittedly it is not granted, the principles of constructive res-judicata engrafted in Explanation-V of Section 11 of C.P.C. is attracted and the applicant cannot re-agitate the same matter again in a fresh case.

4. The next point taken is that though the applicant is not possessing the required qualification, he must be given the relief since two other Lecturers have been regularised by orders of the Tribunal. We do not know under what circumstances two other Lecturers were regularised. Here the selection has to be made by the UPSC. It is for the UPSC to decide whether the candidate has the required qualification for the purpose of calling for interview or not. If the UPSC has applied the Rule and if according to the Rule the applicant cannot be called for interview, this Tribunal cannot issue any direction to UPSC to call the applicant for interview. This Tribunal cannot give any direction or mandate to UPSC to do a thing contrary to law. Even if it is accepted that two other candidates have been regularised as per orders of the Tribunal, that is no ground for this Tribunal to issue a mandate to UPSC to do something which is contrary to the Recruitment Rules. Any how, this point has not been pressed when we heard the present application and therefore a new point cannot be raised or urged through the Review Petition. All the concerned documents pertaining to those two Lecturers were not placed before us and were not pressed before us and therefore this matter cannot be raised after the OA has been rejected on merits.

5. As far as, the applicant not possessing the required qualification, we have already given our reasons in our Judgment and same matter cannot be re-agitated again.

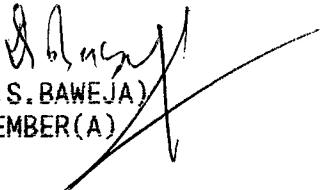
6. Another ground taken is that if a person is working in the post, then

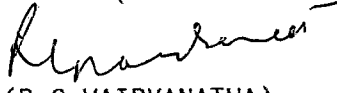


he should be called for interview, even though he does not possess the qualification. In our view, there is no merit in the contention since this Tribunal cannot give any direction to the UPSC to make appointments contrary to the Recruitment Rules.

In our view, none of the grounds mentioned in the Review Petition have any merit. The matter cannot be re-opened and re-agitated under Order 47 Rule 1 CPC. The scope of review under Order 47 Rule 1 CPC is very limited. There is no apparent error on record and there is no discovery of any new facts within the meaning of Order 47 Rule 1 CPC, so as to call for review of our Judgment. We find no merit in the Review Petition.

6. In the result, the Review Petition 1/99 in O.A. 724/98 is rejected by way of Circulation.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.