

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO. 726/98 & 727/98.

Shri S.C. Hiremath

...Applicants

Shri R.P. Vadhel

V/s

Admn. of U.T. of Daman & Diu

...Respondents.

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, V.C.  
Hon'ble Shri D.S. Baweja, Member(A)

DATE: 9.11.98

TRIBUNAL'S ORDER :

Shri I.J. Naik, and Shri D.V. Gangal counsel for the applicant. Shri V.S. Masurkar counsel for respondent No. 1 and 2. Shri Vadhavkar, counsel for respondent No.3.

Heard the learned counsel for both sides regarding admission and interim relief.

Both the O.A.s are admitted.

As far as interim relief is concerned, the two applicants have contended that they are having qualified service for the purpose of promotion to the post of Superintending Engineer and therefore the official respondents cannot proceed with the impugned notification dated 1.7.98 under which they have called for applications to the post of Superintending Engineer by Deputation. It is true that as per the recruitment rules, first is by promotion failing which by transfer on deputation. The learned counsel for the official respondents has pointed out that none of the applicants have qualifying service for being considered to be promoted for the post of Superintending Engineer. Therefore the administration was forced to go for taking the officials by transfer on deputation.

There are only three posts of Executive Engineers under the Administration of Daman and Diu. Two of the applicants are holding two posts of Executive Engineer and another applicant Shri Bharat Gupta has recently been promoted and therefore he is not having the qualifying service.

As far as Hiremath, applicant in O.A. 726/98, is concerned, *prima facie* his promotion as Executive Engineer was on adhoc basis but as per the recruitment rules one should have minimum 5 years of regular service as Executive Engineer. Now the contention of the applicant is that since he is continuing for the last 12 years it must be treated as regular promotion. This is a matter which cannot be decided at the admission stage. Since admittedly his promotion is adhoc in all these years and there is no material at this stage to point out that it was a case of regular promotion by regular DPC.

As far as R.P. Vadhel, applicant in O.A. 727/98, is concerned, he has admitted in the O.A. that he has put in 4 years and 4 months as on the date of impugned notification dated 1.7.98. Therefore *prima facie* he also does not have minimum qualifying service of 5 years as Executive Engineer. However the learned counsel for the applicant contended that earlier the said applicant has been promoted in 1990 and continued till November 1991 and earlier period of promotion of one year and 10 months as regular Executive Engineer is taken into consideration then he will be having more than 5 years as on the date of the impugned notification. It is now admitted that the earlier regular promotion of this applicant was quashed by this Tribunal in 1991 on the ground that his promotion was not by regularly constituted DPC. Since the recruitment Rules provides regular service of Executive Engineer, it is a moot point whether the earlier irregular appointment by a irregular DPC can be rendered as regular service as Executive Engineer. Therefore *prima facie* all the three Executive Engineers who are in the feeder post in the Administration of

Daman and Diu are not having minimum 5 years regular service. The Administration now want to go for filling up the post of **Superintending Engineer** by deputation. We cannot stay the process. The post of Superintending Engineer cannot be kept vacant for years till the disposal of the O.As. Therefore we do not want to come in the way of selection process initiated by the notification dated 1.7.98. Even if some candidate is selected and brought on deputation as Superintending Engineer, his appointment will be subject to final order that may be passed in these two O.As, if either of the applicants succeeds then we can quash the deputation and then direct the Administration to consider the case of the applicants for promotion to the post of Superintending Engineer. Therefore in the circumstances we are not inclined to stay the selection process in pursuance of the notification dated 1.7.98.

2. There is one more prayer in the O.A. 727/98, that the appointment of respondent No.3 Shri D.K. Vaghela as Superintending Engineer on adhoc basis is illegal and his appointment should be quashed. The applicant wants interim relief that respondent No.3 should be restrained from working in that post. Now admittedly respondent No.3 has taken charge and is already working as Superintending Engineer since 23.4.98. There is serious dispute on the question whether there can be common **Superintending Engineer** for both Daman and Diu and Dadra & Nagar Haveli. There is some material on record which supports the stand of respondent No.3 that Superintending Engineer is common for both the Administration and therefore nothing illegal when the Executive Engineer from Dadra & Nagar Haveli is brought as Superintending Engineer to work at Daman and Diu. No doubt the the question of law

cannot be decided at this stage. Therefore since respondent No.3 is already working for the last six months we do not want to interfere <sup>with</sup> his working as Superintending Engineer. But however we make it clear that the additional charge of Superintending Engineer in addition to his post of Executive Engineer, we do not want to distract. But however any such continuation of any charge to the post of Superintending Engineer is subject to the final order that may be passed in this O.A.

3. It is made clear that all the questions ~~alleged~~ urged both on facts and regarding the claims of the applicant and the claim of respondent No.3 are left open to be decided at the time of final hearing of the O.As. Whatever observation we have made is prima facie observation for the limited question for admission and grant of interim relief.

4. For the above reasons both the O.As are admitted. Interim relief prayed for to stay the selection process as per the impugned notification dated 1.7.98 is hereby declined. Ad-interim ex parte order dated 21.8.98 and continued from time to time is hereby vacated. However we make it clear that appointment or promotion in pursuance of impugned notification dated 1.7.98 shall be subject to the further order that may be passed in these O.As. Place all other M.Ps which are on record for orders on 4.12.98.

NO.CAT/BOM/2001/0.A.726 & 727/98/ DATE: /11/98

Copy to:

1. Shri I.J. Naik, Counsel for the applicant.
2. Shri D.V. Gangal, Counsel for the applicant.
3. Shri V.S. Masurkar, Counsel for Respondent 1 and 2.
4. Shri V.D. Vadhavkar, Counsel for Respondent No.3.

O.A. 727/98 .. (38) 04.12.1998.

None for the applicant.

Shri V.S. Masurkar for Respondent Nos. 1 and 2. Shri V.D. Vadhavkar appears on behalf of Respondent No. 3.

In future, the name of Shri V.D. Vadhavkar be shown for R-3.

Reply to M.Ps. by the official respondents by 08.01.1999.

(D.S.) *Bawej* (R.G. Vaidyanatha)  
Member *(A)* Vice-Chairman.  
os\*

PT - 08.1.99

As no DB is available the matter is adjourned to 26/2/99

*for M.S  
for O.P. registration*

Affidavit in Reply  
filed by R.N.O.3 through  
Mr. V.D. Vadhavkar  
S.R. Reply filed by  
Mr. Masurkar

Per Tribunal Date 26/2/99  
Applicant in person by *D.V. Gajjar*  
Advocate / Respondent by *V.J. Maniwar*  
Counsel. *T. N. M*  
The matter adjourned to 12-3-99  
for orders.

No 25/2

26/2/99

*26/2/99  
By Registrar*

Appeal against (A) O.P.  
on 9/11/98, dispose of the petition.  
To be completed, preferably,  
within a period of three months  
from today by the High Court  
on or 21/1/99, is permitted  
for hearing.  
(w.p. 353/99)

26/2/99