

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1054/1998

Date of Decision: 27.11.2002

Uttambhai J.Dhodia.

Applicant(s)

Shri I.J. Naik.

Advocate for Applicants

Versus

The Administrator of UT
of Dadra and Nagar Haveli.

Respondents

Shri V.S. Masurkar

Advocate for Respondents 1 & 2

Shri S.P. Inamdar

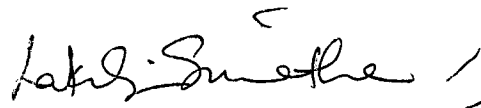
Advocate for Respondent No.3

CORAM:

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)

HON'BLE SMT. SHANTA SHASTRY. .. 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
3. Library.


(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAIA BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1054/1998

WEDNESDAY, THE 27TH DAY OF NOVEMBER, 2002

CORAM:

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

Uttambhai J. Dhodia,
Wireman, PWD,
Division No.III
Dadra & Nagar Haveli,
Silvassa-396 230.

.. Applicant

By Advocate Shri I.J. Naik

Versus

1. The Administrator of
U.T. of Dadra and
Nagar Haveli,
Secretariat,
P.O. Silvassa,
Pin Code 396 230.
2. Union of India, through
the Secretary, Ministry of
Home Affairs,
Central Secretariat,
North Block, New Delhi.
3. Shri A.R. Atara,
Line Inspector,
C/o Executive Engineer,
Electricity Dept.,
P.O. Silvassa.

.. Respondents

By Advocates Shri V.S. Masurkar for Respondents 1 & 2.
and Shri S.P. Inamdar for Respondent No.3.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

This application has been filed by the applicant impugning the order dated 09.12.1997 issued by Respondent No.1, promoting Respondent No.3, Shri S.R. Atara as Line Inspector.

- 18/ 2. The brief relevant facts of the case are, that

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the applicant was appointed as Lineman/ Wireman on 17.3.1980 and belongs to ST community. Respondent No.3 was appointed as Lineman on 05.01.1980 who also belongs to ST community. Admittedly, Respondent No.3 was born in District Valsad in the State of Gujarat and later migrated to Union Territory of Dadra & Nagar Haveli (UT of D&NH). The applicant does not dispute the fact that in the feeder grade of Lineman/ Wireman, Respondent No.3 was senior to him. However, the applicant's grievance is that the respondents could not have promoted Respondent No.3 by the impugned order treating him as ST candidate in the UT of D&NH, being a migrant.

3. One of the main grounds taken by Shri I.J. Naik, learned counsel is that while passing the promotion order, the respondents have failed to apply their mind with respect to ^{the law} law by granting the benefit of reservation to SC/ST candidates in Government service i.e.. to those who have migrated from one State to another. His contention is that Respondent No.3 was not an original native of UT of D&NH but was born in another State of the country, namely State of Gujarat. He has relied on the judgment of the Hon'ble Supreme Court in **Action Committee on Issue of Caste Certificate to SC/ST in the State of Maharashtra & another Vs. Union of India & another (1994 (2) ATJ 660)**. The learned counsel has also submitted that the order dated 10.7.1995 had not been issued by the competent authority as, according

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to him, the clarification/ modification of an order issued by Respondent No.2 i.e. Union of India should be done only by Respondent No.2 and not by Respondent No.1.

4. The above contentions have been controverted by the respondents. Shri V.S. Masurkar, learned counsel has submitted that circular dated 10.7.1995 issued from the office of the Respondent No.1 is in pursuance of the letter of ^{the R.} Government of India, Ministry of Home Affairs dated 05.8.1994, wherein certain clarifications had been issued. He has also submitted that this circular has not, in any way, been challenged by the applicant in this OA. A decision had been taken by Respondent No.1, inter alia, that from the year 1990, the UT of D&NH had stopped allowing benefits of the reservation in service to SC/ST candidates who ^{R.} have migrated from other parts of India. He has submitted that the decision would, therefore, not apply to the cases, like the applicant and Respondent No.3 who have been appointed in UT of D&NH prior to the year 1990 i.e. 17.3.1980 and 05.01.1980, respectively. He has also drawn our attention to the contents of para.3 of this circular, wherein the position has been clarified. It has ~~not~~ ^{R.} been ordered by the Administrator of UT of D&NH that the migrant SC/ST ^{employees R.} who have already been appointed prior to 01.01.1990 will continue to enjoy all the benefits of reservation as provided in the Rules. In the circumstances, learned counsel has submitted that there

is no illegality in the impugned order and has prayed that the OA may be dismissed.

5. Learned counsel for Respondent No.3, Shri S.P. Inamdar, has more or less adopted the submissions made by Shri V.S. Masurkar, learned counsel for Respondents No.2 and 3. In addition, he has referred to the caste certificate issued by ^{the} office of Mamladar, D&NH dated 03.9.1997 in which it has been stated that Respondent No.3 belongs to Hindu Dhodia which is recognised as ST.

6. We have carefully considered the pleadings, records and submissions made by the learned counsel for parties.

7. The post of Line Inspector against which the impugned promotion order dated 09.12.1997 is made, is admittedly a non-selection post under the relevant Recruitment Rules. It is not disputed that both the applicant and Respondent No.3 have been appointed in the year 1980. It is also not disputed that Respondent No.3 was senior in the feeder grade of Wireman/ Lineman for being considered for the post of Line Inspector. The main contention of the learned counsel for the applicant is that Respondent No.3 being a migrant from the State of Gujarat, could not have been given any benefit of reservation as given to persons belonging to the ST

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community in the UT of DN&H. The relevant portions of the circular issued by Respondent No.1 dated 10.7.1995 read as follows:

"Attention is invited to para 2 of the Government of India, Ministry of Home Affairs, New Delhi's letter No.BC/16014/1/82-SC&BCD-I, dated the 5th August, 1984 wherein it is clarified that the Scheduled Castes/Scheduled Tribe persons on migration from the State of his origin to another State will not lose his status as Scheduled Caste/Scheduled Tribe but he will be entitled to the concessions/benefits admissible to the Scheduled Castes/Scheduled Tribes from the State of his origin and not from the State where he has migrated.

This Administration had adopted the Central procedure of preservation of vacancies in Govt. Offices for SC/ST candidates under which the Scheduled Castes and Scheduled Tribes from any part of India who has migrated to U.T. of Dadra and Nagar Havel could derive the benefits. However, from the year 1990 the U.T. of Dadra and Nagar Haveli Administration has stopped allowing benefits of reservations in service to the SCs/STs who have migrated from other parts of India.

Now, after careful consideration, a policy on the lines of Goa Government, to allow all the benefits of reservations to those SC/ST employees who migrated from other States/U.Ts of India has been formulated and it has been now ordered by the Administrator, Daman & Diu and Dadra & Nagar Haveli that the migrant SC/ST employees who have already been appointed prior to 01.01.1990 will continue to enjoy all the benefits of the reservations as provided in the Rules."

(emphasis added).

9. In the light of the clarification given by Respondents No.1 and 2, as referred to in the aforesaid circular dated 10.7.1995, the action of the respondents cannot be faulted. A conscious decision has been taken by the Administrator of the UT of D&NH with regard to

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the migrant SC/ST employees who have already been appointed prior to 01.01.1990 that they will continue to enjoy all the benefits of reservation, as provided in the Rules. In the present case, admittedly, Respondent No.3 having been appointed in the year 1980 and also declared as ST candidate will, therefore, ^{be} be entitled to the benefits of reservation, as provided in the Rules. The Circular dated 10.7.1995 has been issued by the competent authority. The judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the applicant would not be applicable to the facts of the present case, in view of the specific clarifications referred to in the aforesaid Circular dated 10.7.1995. Apart from this fact, it is also relevant to note that the post of Line Inspector is a non-selection post for which seniority would also count, as it would be on the basis of seniority-cum-fitness.

10. In the result, for the reasons given above, as we find no merit in this application, the OA fails and is accordingly dismissed. No order as to costs.

Shanta Shastri

(SMT. SHANTA SHASTRY)
MEMBER (A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)