

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.630/2016**

Date of decision: 16.09.2019

**CORAM:- R. VIJAYKUMAR, MEMBER (A) .  
R.N. SINGH, MEMBER (J) .**

Hemant Hiralal Chudasama,  
son of Hiralala Dahyabhai Chudasama,  
Date of Birth: 19.07.1985, Age: 31 years,  
and residign at: 503-B, Raj Avenue,  
Khariwad, Nani Daman, Union Territory of  
Daman and Diu, State: Daman  
Pin Code: 396210.

... Applicant.

(By Advocate Shri R. G. Walia)

**VERSUS.**

1. Union of India-through  
The Administrator,  
Union Territory of Diu,  
Daman and Dadara & Nagar Haveli,  
Secretariate Moti Daman, Pin Code: 396220.
2. Superintending Engineer  
Public Works Department  
Administration of Daman & Diu,  
Daman, Pin Code-396220.
3. Chief Engineer, (PWD)  
Public Works Department,  
Administration of Daman and Diu,  
Daman, Pin Code-396220.
4. Mamlatdar  
Administration of Daman and Diu,  
New Collectorate Building,  
Dholar, Moti Daman, Pin Code-396220.

... Respondents.

(By Advocate Shri V. S. Masurkar)



O R D E RPer:R. N. SINGH, MEMBER (JUDICIAL)

1. When the case is called out, Shri R. G. Walia, learned counsel appeared for the applicant and Shri V. S. Masurkar, learned counsel appeared for the respondents.

2. The applicant has file this OA on 06.09.2016 under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:

"(a) This Hon'ble Tribunal will be pleased to call for the records and proceedings of the case which led to the passing of the Impugned order dated 10.08.2015, i.e. Annexure A-1 and order dated 04.09.2015 i.e. Annexure A-2, respectively, and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same.

(b) This Hon'ble Tribunal will be pleased to order and direct the Respondents to appoint the Applicant in the post of Junior Engineer (Civil) in SC Category Post from the date the selected candidates were appointed with full consequential benefits.

(c) This Hon'ble Tribunal will be pleased to hold and declare that the Scheduled Caste Certificate as issued on 04.02.2002 is legal and



*proper and the Applicant cannot be treated as a Migrant for the purpose of appointment in the Union Territory of Daman and Diu.*

*(d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.*

*(e) Costs of this Original Application may be provided for."*

3. The applicant's parents belong to the Vankar Harijan community which is declared as Scheduled Caste. The applicant obtained a Community Certificate from the Union Territory of Daman and Diu as Scheduled Caste by reference to the certificate received by his father in Gujrat.

4. The applicant was born and brought up in Daman and Diu and therefore, has acquired domicile in that area. The respondents had published an advertisement on 15.07.2014 for filling up the post of Junior Engineer (Civil) in the PWD with two vacancies reserved for scheduled caste candidates and against his application the applicant was invited for written test and he qualified in the merit list. However, on 10.08.2015, the respondents directed the applicant to obtain a fresh caste certificate



which was submitted by the applicant along with his previous caste certificate dated 04.02.2002 on 02.09.2015 but the same was not accepted by the respondents on the grounds that it was required to be issued in Gujarat. The applicant filed a Writ Petition in the Hon'ble High Court of Mumbai which referred the applicant to this Tribunal and interim orders were granted by the Hon'ble High Court on 09.09.2015 and the same continues till date.

5. The sole issue contained in this OA is that the applicant's father who had migrated to the Union Territory, had obtained the Caste Certificate from his original place of birth in Gujarat and therefore, the respondents insisted that the applicant who was born and brought up in the Union Territory of Daman and Diu should also be considered a migrant to the Union Territory and cannot be considered as belonging to the Scheduled Caste of the Union Territory.

6. The learned counsel for the applicant relies on the decision of the Hon'ble Apex Court in case of Directorate, Transport Department,



Union Territory Administration of Dadra and Nagar Haveli, Silvassa and Others Vs. Abhinav DipakBhai Patel in Civil Appeal No.4665/2019 decided on 07.05.2019, the operative portion of the said judgment reads as under:-

"15. There is no dispute that the Respondent was a resident in the Union Territory of Dadra and Nagar Haveli for six years prior to the date of advertisement. He stated in the Writ Petition that he owns an apartment in which he was residing and he married a woman from "Dhodia" tribe in the Union Territory. He further stated that his name is in the Voter's List in the Union Territory. These facts have not been disputed by the Appellants.

The central issue raised by the Appellants before the High Court was that a person should be a local in the Union Territory which meant that migrant Scheduled Tribes cannot be given the benefit of reservation. The Presidential Notification issued for the Union Territory of Dadra and Nagar Haveli extends the benefit of reservation to the Scheduled Tribes mentioned therein on the basis of residence and not on the basis of origin. We find no force in the point canvassed by the learned counsel for the Appellants that the reservation for Scheduled Tribes in the Union Territory of Dadra and Nagar Haveli is not available to migrant Scheduled Tribes. A feeble attempt was made by the learned counsel for the Appellant that the requirement of residence is



for a period of 10 years for a person to claim the benefit of reservation.

There is no material which was placed on record in the High Court in support of the said submission and there was no such averment in the counter affidavit filed in the Writ Petition. This point was not raised before the High Court and no such ground is taken in the Special Leave Petition for which reason the said contention does not merit any consideration. Other points canvassed by the learned Senior Counsel for the Respondent need not be adverted to in view of the order we propose to pass. Gross injustice is caused to the Respondent by the action of the Appellants in not appointing him in spite of the advice of the Union of India and the direction issued by the National Commission for Scheduled Tribes. The appointment of Respondent as Assistant Motor Vehicle Inspector does not brook any further delay."

7. The learned counsel for the respondents, on the basis of reply filed on behalf of the respondents, vehemently argues that the applicant is not entitled for any relief including the claim in the present OA. However, the learned counsel for the respondents has not been able to show anything which may indicate that the applicant's claim is not squarely covered by the judgment of the Hon'ble Apex Court in **Abhinav DipakBhai Patel (supra)**.



8. In the facts and circumstances and more particularly, in view of the law laid down by the Hon'ble Apex Court in case of **Abhinav DipakBhai Patel (supra)**, the OA deserves to be allowed and the same is allowed with following directions:

(i)The respondents are directed to consider the appointment of the applicant on the post of Junior Engineer (Civil) under PWD without insisting on a fresh caste certificate for the one already submitted by the applicant.

(ii)The applicant shall be entitled for fixation of seniority keeping in view his merit position in the selection process and he will also be entitled for fixation of pay keeping in view the date on which the other selected candidates have been appointed. However, the applicant is not entitled for any arrears of pay.

9. In the above terms, the OA is disposed of. No order as to costs.

(R. N. Singh)  
Member (J)

(R. Vijaykumar)  
Member (A)

V.

JD  
11/9



