

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW BOMBAY BENCH~~

## NEW BOMBAY BENCH

O.A. No. 148 of 1987  
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DATE OF DECISION 23.6.1989

Shri Nandkishor V. Verlekar Petitioner

Shri C.U. Singh Advocate for the Petitioner(s)

Versus

Administrator of Goa, Daman & Diu Respondent  
& Others.

Shri M.I. Sethna. Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member(J)

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY  
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ORIGINAL APPLICATION NO.148 OF 1987.  
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Shri Nandkishor Vassudev Verlekar,  
C/o. Shri Chander Uday Singh,  
Advocate, High Court,  
6th Floor, Savla Chambers,  
40, Cawasji Patel Street, Fort,  
Bombay - 400 001.

... Applicant

V/s.

- 1) Administrator of Goa, Daman  
and Diu, Secretariat,  
Panaji - Goa.
- 2) Director of Fisheries,  
Directorate of Fisheries,  
Government of Goa, Daman & Diu,  
Panaji - Goa.
- 3) The Secretary,  
Union Public Service Commission,  
Dholpur House, Shah Jahan Road,  
New Delhi.

... Respondents

Coram: Hon'ble Member(J), Shri M.B. Mujumdar  
Hon'ble Member(A), Shri M.Y. Priolkar

Appearances:  
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- 1) Mr.C.U.Singh,  
Advocate for the  
applicant.
- 2) Mr.M.I.Sethna, Counsel  
for the Respondents.

ORAL JUDGMENT:

Dated: 23.6.1989.

{Per: Shri M.B.Mujumdar, Member(J)}

The applicant is M.Sc. first class in Chemistry.  
By order dated 12.4.1977 the applicant was appointed as  
Research Assistant in the Directorate of Fisheries of Govt.  
of Goa, Daman & Diu, with effect from 2.4.1977 against the  
vacancy which was caused due to the resignation of one Shri  
Dilkhush F. Desai. On 5.5.1978 the Government advertised  
the post of Senior Research Assistant (Chemistry). It was  
an open selection on all India basis. The Selection Committee  
comprised of Chief Secretary, Government of Goa, Daman & Diu

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Development Commissioner, Government of Goa, Daman & Diu and Director of Fisheries i.e. respondent No.2 and one expert member who was the Professor of Chemistry from the Goa Pharmacy College. The Selection Committee recommended two <sup>persons</sup> ~~names~~ for the post. The first was one Dr.Sajekant and the second was the applicant. Dr.Sajekant joined the post but resigned within a period of three months. Hence the Government offered the post to the applicant by their memorandum dated 3.5.1979 on the terms and conditions mentioned in that memorandum. It is mentioned in the order that the applicant was offered a temporary post of Senior Research Assistant (Chemistry). One of the conditions laid down was that the appointment was on ad hoc basis and would not confer any title to permanent appointment. The second condition was that the appointment might be terminated any time by one months' notice given by either side. The other conditions are not relevant for the purpose of this judgment. As the applicant accepted the offer he was appointed as Senior Research Assistant (Chemistry) by order dated 30.7.1979. For some technical reasons, the applicant was required to resign his post of Research Assistant which he did by his letter dated 3.8.1979. In that letter he clarified that he was tendering resignation of the post of Research Assistant in order to take an appointment to the post of Senior Research Assistant (Chemistry) at Ela Chauji. It was further clarified that the resignation was being submitted as mere technicality. The resignation was accepted by order dated 8.8.1979 and the applicant joined the post of Senior Research Assistant (Chemistry) on 9.8.1979 i.e. the next day.

2. We may point out that there were no recruitment rules when the applicant was selected and appointed to the

post of Senior Research Assistant (Chemistry). The recruitment rules were promulgated in the Government Gazette on 21.7.1983. The applicant thereafter submitted representation dated 24.12.1985 for regularising him in the post of Senior Assistant as a special case and subsequently sending a proposal to the Government to amend the recruitment rules for the post of Senior Research Assistant by making it a promotional post for Research Assistant. The Government replied to his representation by memo dated 10.1.1986 informing him that his case for regularisation for the post of Senior Research Assistant (Chemistry) had been referred to the Government for consideration and decision in the matter would be communicated to him when received. As he did not receive any further communication he made next representation dated 4.11.1986. Therein he requested to consider his case sympathetically and regularise his appointment as a Senior Research Assistant (Chemistry) at the earliest. It may be noted that in the first representation dated 24.12.1985 his request was for regularising him as Research Assistant but as he had resigned from that post he corrected the mistake and in the representation dated 4.11.86 he ~~has~~ requested for regularising him as Senior Research Assistant (Chemsitry). The Government replied to that representation by memo dated 10.11.1986 informing that his application had been forwarded to the Government for consideration and decision would be communicated to him when received.

3. But before the representation of the applicant was decided the post of Senior Research Assistant (Chemistry) was advertised by the Union Public Service Commission on 17.1.1987. By way of caution he applied for that post in pursuance of that advertisement but as he thought it risky to wait further for the decision on his represntation, he

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has filed the present application on 25.2.1987 under Section 19 of the Administrative Tribunals Act, 1985.

4. The main prayer of the applicant is for directing the respondents to regularise his ad hoc services in the post of Senior Research Assistant (Chemistry) with effect from initial date of his appointment on 9.8.1979 and to treat him as substantive appointee for all purposes with effect from that date. The applicant has also prayed for quashing the advertisement of the U.P.S.C. dated 17.1.1987 relating to the post of Senior Research Assistant (Chemistry) and for restraining respondent No.3 from trying to fill the said post by direct recruitment.

5. The applicant had also prayed for some interim relief but while admitting the application on 10.3.1987 we had directed that any recruitment/selection which would be made in pursuance of the advertisement of the U.P.S.C. dated 17.1.1987 for the post of Senior Research Assistant (Chemistry) would be subject to the result of this application. By order dated 29.4.1987 the said order was modified and the respondents were directed that no persons should be appointed in terms of the advertisement without permission of this Tribunal, in case such an appointment would result in termination of the services of the applicant. We are told on behalf of the respondents that the respondents have not held any selection in pursuance of the advertisement dated 17.1.1987.

6. Respondents have not filed any reply before us. However, the applicant's advocate was given a copy of the reply and Mr.Sethna showed us a copy of the reply from the file with him. We have gone through the said reply and on our direction Mr.Sethna produced a copy of the reply from his file today.

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7. The entire facts narrated by us earlier were not seriously disputed by the respondents. In fact in para 6(k) of the application the applicant has specifically averred that respondent No.2 has recommended that the long services of the applicant be regularised as the applicant's work has been found extremely satisfactory. Though this was denied in para 7 of the reply we are told on behalf of the respondents that the representation of the applicant for regularisation was forwarded for favourable consideration. Be as it may the Government has not taken any decision on the representation of the applicant. As already pointed out the respondents have also not taken any steps for selecting any person<sup>s</sup> for the post Senior Research Assistant in pursuance of the advertisement dated 17.1.1987. Hence we find it unnecessary to decide the legal points which arise in this case. In our opinion interest of justice would be met by passing the following order:-

O R D E R

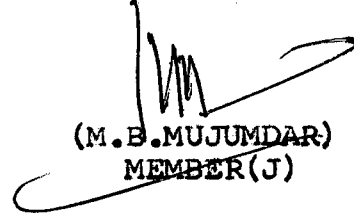
- (i) The respondents shall take some decision on the representation of the applicant dated 4.11.1986 (Exhibit-H at page 51 to the application) within four months from the date of receipt of a copy of this order.
- (ii) In case the applicant's representation is rejected by the respondents, then respondents may start the process for selection to the post of Senior Research Assistant (Chemistry). The respondents shall not reject the application of the applicant for that post on the ground that he would be age barred at the time of consideration.

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(iii) In case the respondents select any other person other than the applicant for the post of Senior Research Assistant (Chemistry), then they shall intimate that decision to the applicant and shall not terminate the services of the applicant and shall not implement that decision for a period of one month from the date of intimation to the applicant.

(iv) The application is disposed of on the above lines, with no order as to costs.

  
(M.Y. PRIOLKAR)  
MEMBER (A)

  
(M.B. MUJUMDAR)  
MEMBER (J)