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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH  
CAMP AT PANAJI (GOA)

O.A. No. 185 of 1987

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DATE OF DECISION 25.8.1989

Shri Viterino De Souza Petitioner

1. Shri N.D.Sapeco  
2. Shri R.B.Usgaonkar Advocate for the Petitioner(s)

Versus

Union of India & 2 Others. Respondent

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

CORAM :

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

The Hon'ble Mr.

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,  
CIRCUIT SITTINGS AT PANAJI (GOA)

Original Application No.185/87

Shri Viterino De Souza,  
C/o Cosmas D'Souza,  
Advocate,  
129-B, Bazar Road,  
Bandra,  
Bombay-400 050.

.. Applicant

V/s.

1. Union of India  
through Secretary  
to the Govt. Of India,  
Ministry of Information  
and Broadcasting,  
Parliament House,  
New Delhi-110 001.

2. The Director General,  
All India Radio,  
Akashwani Bhavan,  
Parliament Street,  
New Delhi-110 001.

3. The Station Director,  
All India Radio,  
Altinho,  
Panaji(Goa)

.. Respondents.

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

Appearance:

1. Shri N.D.Sapeco  
and Shri R.B.  
Usgaonkar,  
Advocates  
for the applicant.

2. Shri M.I.Sethna,  
Counsel,  
for the respondents.

ORAL JUDGMENT:-

Dated: 25.8.1989

(Per: Shri M.Y.Priolkar, Member(A))

The applicant in this case is a former employee of Ex-Portuguese Emissora de Goa (Goa Radio Station). According to the applicant, he was serving at the time of liberation of Goa on 19.12.1961 as "Operator de Controle Gravacao do 2nd Classe" and the pay of this post was revised under "Portaria" (Gazette notification)

dated 6.2.1961 to Rs. 600/- per month in Grade-L. The applicant also states that although the actual pay drawn by him was only Rs. 333.33 per month, the pay that was admissible to him under that Portaria was Rs. 600/- per month, but this higher pay was not being paid to him only because of paucity of funds and would have been payable to him under the Portuguese accounting system from 1.1.1962, that is just a couple of weeks after liberation.

2. After liberation, the Goa Radio was taken over by the All India Radio in 1966. Under the Goa, Daman and Diu Absorbed Employees Act, 1965, a Committee was constituted for absorption of the former employees under the Portuguese regime into the appropriate pay scales under the Indian Government. This Committee recommended the pay scale of Engineering Assistant, i.e. Rs. 210-470 to the applicant. It is the applicant's grievance that while recommending this pay scale, the Committee had taken into account the lower pay actually drawn by him at the time of liberation and not the higher pay which would have been admissible under Portaria dated 6.2.1961. Subsequently, the post of Radio Technician Grade-III in the Ex-Portuguese Emission de Goa held by one Shri L.D. Dhaimodkar has been equated to the post of Assistant Engineer in the grade of Rs. 350-900 under Ministry of Information and Broadcasting order dated 21.3.1983. The applicant, therefore, alleges that there is a discrimination against him inasmuch as Shri Dhaimodkar who was junior to him while in the service of the

Portuguese regime and also in the lower Grade M against Grade L of the applicant, has been equated to a much higher post. As there was no reply to the applicant's representation dated 11.6.1986 for equating his post also to that of Assistant Engineer with effect from 1.4.1963, he approached the Tribunal on 12.3.1987 praying for directions to the respondents for re-classifying his post of Engineering Assistant to the post of Assistant Engineer with effect from 1.4.1963 and for giving him benefits of the said post from that date.

3. The Respondents have filed written replies opposing the application. I also heard today Mr. N.D.Sapco and Mr.R.B.Usgaonkar, learned advocates for the applicant and Mr. M.I.Sethna, learned counsel for the respondents. The respondents have opposed the application primarily on the ground of limitation. Mr.Sethna argued that the cause of action in this case arose on 20.9.1966 when the Government of India, Ministry of Information and Broadcasting issued formal orders equating the various posts of Ex-Portuguese Emission of Goa with corresponding posts in the All India Radio. The impugned order is thus almost 23 years old now and the applicant prays for quashing and setting it aside after a lapse of 20 years when his first representation to his Department was made against this order in 1986. This was again almost two years after his retirement on 31.3.1984. Mr.Sethna argued that this application was thus hopelessly time barred.

4. The contention of Mr. Sapeco is that the cause of action in this case arose only on 5.11.1985 when in partial modification of order dated 20.9.1966 and the further order dated 21.3.1983, Mr. Dhaimodkar was permitted to draw arrears of pay from 1st February, 1966. According to Mr. Sapeco this is a clear case of discrimination against the applicant, <sup>since</sup> Shri Dhaimodkar was much junior to him and was also in lower Grade M under the Portuguese regime.

5. To appreciate the rival contentions, it will be necessary to broadly know the procedure under which the equation of the various posts under the Emissora-de Goa was ordered. The Committee of seniors officers had been constituted to go into the record of each employee and to recommend appropriate scale in which he was to be fitted in the revised set up. The Committee, according to the respondents, has taken into account not only the pay drawn by the various employees on the date of absorption but it has also taken into account the nature of duties and responsibilities attached to these posts, the academic qualifications and also the confidential reports of the various employees. From the extract of the Committee's recommendation attached to the respondents' reply it is clear that while the applicant has studied upto standard VI English in addition to Portuguese Primary Standard IV, Mr. Dhaimodkar had studied upto S.S.L.C. apart from Portuguese standard IV and he was also Rashtrabhasha (Praveen) and had a diploma in Radio Servicing awarded by the

Maharashtra Government. The Committee cannot, therefore, be considered to have been unfair to the applicant. Admittedly, the applicant had also been given personal hearing by this Committee before finalising its recommendations. Although it is the applicant's claim that Mr. Dhaimodkar was very much junior to him and actually on daily wages at the time of liberation, still the committee thought it fit to place him in the higher scale of Senior Engineering Assistant (Rs. 325-575) as against the scale of Engineering Assistant (Rs. 210-470) recommended for the applicant. The applicant chose not to represent or protest against this equation which was ordered in 1966 itself by order dated 20.9.1966 of the Ministry of Information and Broadcasting, Government of India. It will, therefore, be futile to contend now that because Mr. Dhaimodkar on the basis of his representations from 1966 onwards has now been placed still one grade higher, that is, in the grade of Assistant Engineer (Rs. 350-900), therefore there is discrimination against the applicant only now.

6. This application, therefore, can be disposed of on the short point of limitation. Neither the applicant has requested for condonation of delay in filing this application nor do I find any reasonable explanation or justification for this delay of more than 23 years in approaching any Competent Court earlier and now this Tribunal. Mr. Sapeco, learned advocate for the applicant referred in this connection

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to a judgment dated 1.12.1978 of the Judicial Commissioner, Panaji, in Writ Petition No.9/74 in which it was held that "...the right that the petitioner had by virtue of Portaria No.7980 can be enforced by them at any time not-with-standing any delay on their part because the right is of a recurring nature. This finding, however, does not include the bar of limitation which may apply to any claim of arrears of pay which the petitioner may make." Evidently, the Judicial Commissioner was not bound unlike this Tribunal by the specific provisions regarding limitation incorporated in Section 21 of the Administrative Tribunals Act, 1985. The prayer of the applicant in the present case is for setting aside the Government of India order dated 20.9.1966 and giving him the benefits of higher pay scale right from 1963, for which he ~~has~~ approached this Tribunal on 12.3.1987 i.e. almost 3 years even after his retirement on 31.3.1984. The application has, therefore, to be held as hopelessly time barred.

7. On the foregoing discussion, I see no merit in this application which is accordingly rejected but with no order as to costs.

  
(M.Y. Priolkar)  
Member (A)