

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~NEW BOMBAY~~XXXXXXXX~~

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T.A. No. 30/87

DATE OF DECISION 29/4/1988Shri Hussain Mera Khan, Goa. PetitionerShri S.G. Desai. Advocate for the Petitioner(s)

Versus

The Administrator of Goa, Daman & Diu Respondent  
& 2 OTHERS.Shri M.I. Sethna. Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. B.C. GADGIL, VICE-CHAIRMAN

The Hon'ble Mr. L.H.A. REGO, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? - 43
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? / 10
4. Whether it needs to be circulated to other Benches of the Tribunal?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT SITTINGS AT PANAJI (GOA)

Tr. Application No.30/87

Shri Hussain Mera Khan,  
Valpoi, Satari,  
GOA.

.. Applicant

V/s.

1. The Administrator of Goa,  
Daman & Diu, Secretariat,  
Panaji, Goa.
2. The Inspector General of Police  
with Headquarters at Panaji, Goa.
3. Union of India, through its  
Secretary, Ministry of Home  
Affairs, Central Secretariat,  
New Delhi.

.. Respondents.

Coram: Hon'ble Shri B.C. Gadgil, Vice-Chairman.  
Hon'ble Shri L.H.A.Rego, Member(A).

Appearances:

1. Shri S.G. Desai,  
Advocate for the  
Applicant.
2. Shri M.I. Sethna,  
Advocate for the  
Respondents.

JUDGMENT

DATE : 29/4/1988

(Per : Shri B.C. Gadgil, Vice-Chairman)

Civil Suit No.25/82 of the file of the District Judge, Panaji is transferred to this Tribunal for decision.

2. The applicant is a retired Police Official. He has a grievance about the equation of his post in the Police Department under the Goa, Daman & Diu (Absorbed Employees) Act 1965 (1965 Act, for short). Though various allegations have been made in the plaint, it is not necessary to state all of them. We would only refer to those averments which are relevant for deciding the points that have been urged before us. The applicant initially entered military service under the Portuguese Government in 1939 i.e. at the time when Goa, Daman & Diu were administered by the Portuguese Government.

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Later, he was transferred to the Police Department. At the time of the liberation of Goa, he was holding the post of Chefe de Policia. On liberation he was equated to the post of Police Inspector, Government under the 1965 Act. The grievance of the applicant is that this equation is erroneous and that the post should have been equated to that of Assistant Superintendent of Police or at least of Deputy Superintendent of Police. The applicant retired from service 29.7.1968. He represented to Government about the above alleged erroneous equation but the same was rejected on 29.4.1979. He, therefore, filed the suit in question for a direction to the respondents to equate the plaintiff's post of Chefe de Policia to that of Deputy Superintendent of Police and in consequence to pay him the difference of salary. He has also prayed that his pension be enhanced on the basis of such equation.

3. The respondents have filed their written statement to the suit. In addition they have also filed a reply before the Tribunal after the suit was transferred. The respondents contend that the equation of the post held by the applicant to that of Police Inspector is quite legal and proper and that the applicant has no lawful claim for equation to the post of Assistant Superintendent of Police or Deputy Superintendent of Police. Various allegations made in the application (the plaint) were denied.

4. When the suit was before the Trial Court the plaintiff started leading oral evidence. However, before that evidence was completed, the suit was transferred. During the course of the arguments before us the learned advocate frankly stated that the matter has to be decided not on the basis of oral evidence, but with reference to the various Decrees and Legislative Diplomas issued by the

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erstwhile Portuguese Government from time to time. Accordingly we heard Shri Desai, Counsel for the applicant and Shri Sethna Counsel for the respondents.

5. It is not in dispute that the applicant was holding the post of Chefe de Policia at the time of the liberation. Shri Desai however, relied upon certain Decrees and Legislative Diplomas for the purpose of contending that the post of Chefe de Policia was equivalent to the post of Assistant Superintendent of Police or Deputy Superintendent of Police. During the course of the hearing he produced translations and/or summary of these Decrees and Legislative Diplomas. They are kept on record. In the first place, he relied upon Decree No.35:580 dt. 4.4.1946. The main purpose of this Decree was to create the Police Department as a separate entity. Under Articles '6' and '7' thereof posts of First and Second Commanders, Commissioners and the District Commissioners were created. Besides, these superior personnel there were to be police officials as mentioned Articles '8' and '9'. The category of general body was to consist of Chief, Sub-Chief, Constable and Guard. Article '9' specified the manner as to how these posts were to be filled in. Shri Desai drew our attention to Article '13' of this decree in particular, which reads as follows :

"The Police of the State of India and the fiscal guard, although having civil nature, shall receive the military instruction adequate to its needs of discipline with the armed bodies, and, in case of need, can be put at the disposal of military authority".

6. In our opinion, this Article '13' is not at all relevant, inasmuch as all that it states is, that the Police force shall receive military instructions adequate to its need of discipline and that in case of necessity they could be placed at the disposal of the military authorities.

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7. We will now refer to the Legislative Diploma No. 1249 dt. 20.8.1948. It recapitalates certain provisions of Decree No.35580 about the composition of the Police force. According to Shri Desai, Article No.161 of Legislative Diploma No.1249 is relevant. It reads as follows :

"The categories of the employees of the general cadre and of special cadre of the police services of the State of India, do not have normally any equation with the posts of military services except in the case provided in the last part of Article 30 of Decree No.35580 dt. 4.4.1946 and Article 2 of para 2 of the order No.4329 dt. 26th December of the same year, in which following equations have been established :

Chief	... 1st Sergeant
Sub-Chief	... 2nd Sergeant
Corporal	... 1st Corporal
Constable	... 2nd Corporal or Guard".

8. The above article does not really help the applicant. To begin with, it states that the posts in the Police force would not bear equation with the posts in the military services, except as provided in Decree No.35580. We have already mentioned that the equation contemplated by this Decree No.35580 (vide Clause '13') is only with respect to imparting military instructions so that the Police force could be placed under the disposal of the military authority. Article '161' of Legislative Diploma No.1249 is equated to the post of 1st Sergeant. There are two Decrees bearing Nos. 40705 and 40709 dt. 31.7.1956. Decree No.40709 is a complementary to Decree No.40705. The English translation of the summary of these decrees is given to us. It is seen therefrom categories of all servants in the overseas colonies of Portugal, were alphabetically categorised as 'A' to 'Z'. The Chief of the Police was concerned was categorised by the letter 'O'. This categorisation however, is not relevant for the purpose of deciding the claim of the applicant that the

post of Chefe de Policia should be equated to that of Assistant Superintendent of Police or Deputy Superintendent of Police. Shri Desai then relied upon Legislative Diploma No.2112 dt. 21.1.1969. He mainly relied upon Article '9' of this Diploma, which reads as follows :

"Article: 9 - For the purposes of the last post of article 13 of the Decree No.35580, dated 4th April, 1946 and for the purposes of carimonials and honour to give by the staff of the Police, the following equivalent are established.

1. Commissaries - Chiefs, Commissaries, Sub-inspector, assistant and chiefs \_\_\_\_\_ Subaltern Officer.
2. Sub-Chiefs, Assistants \_\_\_\_\_ First Sergeant
3. First Subchiefs \_\_\_\_\_ Second Sergeant
4. Second Subchiefs \_\_\_\_\_ Quartermaster Guard.
5. Guards of 1st Class, Guards - First Head Constable.
6. Guards of 2nd Class, Guards - of Third Class and Assistant Guards \_\_\_\_\_ Soldier."

It is not necessary to iterate that this Article '9' has a reference to Article '13' of Decree No.35580. All has been done by Article '9' is equation of police officials with certain military officers for the purpose of ceremonials and honours to be accorded to the Police staff. The 5 categories of personnel of the Police Department viz. Commissaries-Chiefs, Commissaries, Sub-Inspectors, Assistants and Chiefs were equated as Subaltern Officers. It was contended by Shri Desai that the fact that Commissaries and the Chiefs were bracketed together for the purpose of these equation, revealed that the Chief was equivalent to a higher post. What is important however is, that this equation is mainly for the purpose of meriting military training as also for ceremonials and honours. In this background it would be inapt to equate the post of Chief with the higher echelons of Police officers such as: Commissaries-Chiefs, Commissaries, Sub-Inspectors etc. Article 14 provides for salaries, and remuneration to the police officers. We are told that the alphabetical categorisation of the various officers as A to D in the

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various Departments of the erstwhile Portuguese Government was primarily for the purpose of fixation of pay. We were also given to understand, that the pay of various officers was governed by such gradation or categorisation though the officers belonged to different departments. The gradation was based according to Maps I and II attached to Legislative Diploma No.2112. The post of Chief was categorised by the letter 'M', while Commissaries Chief was graded by the letter 'K' and the Commissaries by the letter 'L'. This gradation however, does not take the case of the applicant any further. All that can be said is, that the applicant was entitled to the grade pay, that was marked against the letter 'M'. The nub of the matter however is, about the equation of the post of Chief. Obviously the Chief would be subordinate to the Commissaries and the Commissaries Chiefs. No doubt it was argued, that as stipulated in Article 9 of Diploma No.2112, the applicant along with certain other police officers were equated as subalterns in the Military Department. It appears that on the basis of this equation the applicant claims that he should be equated as Sub-altern in the Military Department. We have already observed that the equation is only for the limited purpose and that it is not relevant for the purpose of deciding the equation of various employees after the liberation of Goa. It would thus be clear that the various decrees and diplomas referred to above are scarcely of any avail to the plaintiff to claim equation of his post to that of Assistant Superintendent of Police or Deputy Superintendent of Police.

9. Another contention of the applicant was that one Shri Bras Rodrigues was holding the same rank as that of Chief and that he was promoted as a Deputy Superintendent of Police and retired in that capacity. It was contended that Shri Bras Rodrigues was promoted to the post of Deputy Superintendent of Police <sup>retrospectively</sup> with effect from 6.9.1963 and that

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the plaintiff was legally entitled to such promotion and such eqqation. The respondents confirmed that Shri Rodrigues was not given any retrospective promotion, but was promoted as Deputy Superintendent of Police in the year 1963. The respondents further contended that the very fact that the applicant has claimed promotion to the post of Deputy Superintendent of Police in itself bewrays that the applicant was aware of and in fact acquiesced with the position that the post of Chief was not equivalent to that of Deputy Superintendent of Police. There seems to be substance in this contention of the respondents.

10. After taking into account the above facts, we find that the contentions raised by the applicant are bereft of merit and the application therefore is liable to be dismissed.

11. Before closing we would like to observe that the respondents raised the plea that this application (suit) was barred by limitation, as also by laches and delay. The applicant retired as Police Inspector in 1968 and filed the suit in question in 1982. It is true that the Government informed the applicant in 1979 that his claim for equation of his post as requested by him was not tenable. However, Shri Sethna contended that a communication of the like would not enable the applicant to surmount the bar of limitation inasmuch as the applicant should have filed a suit within 3 years from the date of equation of the posts. There is substance in this contention of Shri Sethna. However, as stated above, even on merits, it is difficult to consider the plea of limitation.

12. The net result therefore is that the application fails and is dismissed. There would however be no order as to costs.

  
(L.H.A. REGO) 29.4.88  
MEMBER(A)

  
(B.C. GADGIL)  
VICE-CHAIRMAN