

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTINGS AT PANAJI-GOA

Original Application Nos. 170/87 & 179/87.

Shri R.S. Gramopadhyा,
Opposite Post Office,
Porvorim Bazar,
PORVORIM,
GOA - 403 501.

.. Applicant in
O.A. No. 170/87.

v/s

- 1) Union of India,
Through Secretary,
Ministry of Home Affairs,
New Delhi.
- 2) The Administrator
of Goa, Daman & Diu,
having his Office at Cabo Raj Nivas,
Dona Paula,
Goa.
- 3) The Chief Secretary,
Government of Goa, Daman & Diu,
having his Office at Secretariat,
Panaji,
Goa.
- 4) The Secretary Education,
Government of Goa, Daman & Diu,
having his Office at Secretariat
Panaji,
Goa.
- 5) The Under Secretary Education,
Government of Goa, Daman & Diu,
having his Office at Panaji,
Goa.
- 6) The Director of Education,
Government of Goa, Daman & Diu,
having his Office at Panaji,
Goa.
- 7) The Chairman,
Union Public Service Commission,
having his Office at Dholpur House,
Shahajan Road,
New Delhi - 110 011.
- 8) Shri J.A. Varela,
Director of State Institute of Education,
Alto Betim,
Goa.

9) Shri V.M. Dessai,
Deputy Director of Education,
Directorate of Education,
Panaji,
Goa.

10) Shri M.V. Joshi,
Assistant Director of Education,
Directorate of Education, Panaji,
Goa.

11) Smt. Suman Pednekar,
Assistant Director of Education,
Directorate of Education, Panaji,
Goa.

.. Respondents in
O.A. No. 170/87.

Shri N.J. Shriniwas,
Deputy Education Officer,
North Education Zone,
Mapusa,
Goa - 403 507.

.. Applicant in
O.A. No. 179/87.

V/S

1) Administrator,
Secretariat,
Government of Goa, Daman & Diu,
Panaji,
Goa.

2) Chief Secretary,
Secretariat,
Government of Goa, Daman & Diu.
Panaji,
Goa.

3) The Director of Education,
Government of Goa, Daman & Diu,
Panaji,
Goa.

4) Shri M.V. Joshi,
Assistant Director of Education,
Panaji,
Goa.

5) Smt. Suman Pednekar,
Assistant Director of Education,
Panaji,
Goa.

.. Respondents in
O.A. No. 179/87.

Coram: Hon'ble Chairman Shri K. Madhava Reddy.

Hon'ble Member(A) Shri S.D. Prasad.

Appearance:

The applicant
in person.

Shri M.I. Sethna
Counsel
for the respondents.

ORAL JUDGMENT:

Date: 27.9.1988.

(Per K. Madhava Reddy, Chairman)

This is an application under Section 19 of the Administrative Tribunals Act 1985 of a Deputy Education Officer. His grievance is that he was not regularised as DEO when he was due for such regularisation and that he was not considered for promotion, to the post of Assistant Director Education when respondents Nos. 10 and 11 were promoted on ad-hoc basis.

2. Facts leading to the filing of this application are not in dispute. Fifty percent of the posts of Deputy Educational Officer were to be filled up by promotion and 50 % by way of direct recruitment. The petitioner who was fully eligible for promotion was promoted as DEO on ad-hoc basis in August 1976. He made a representation that he should be regularised on 2nd March, 1978. He made a further representation on 4.9.1979, to the Chief Secretary. On 30th October 1979 he received a communication with reference to his representation dated 4.9.1979 to the effect that " the ad-hoc promotion does not bestow on the incumbent the right for regular promotion and seniority. Moreover all the regular vacancies cannot be filled by regular promotions as Recruitment Rules provide for 50% promotion and 50% direct recruitment.

Proposal to fill three regular vacancies by promotion is being sent to U.P.S.C." Since no response was received thereafter on 28.1.1983 he submitted a memorandum to the Lt. Governor and a further memorandum on 4.9.1983. To the subsequent two representations, made by him no reply was sent even till the date of filing this petition. However, in the meanwhile respondents Nos. 10 and 11 were respectively appointed as DEOs against quota of direct recruits on 11.7.1983 and 5.8.1983. They were promoted to the post of Assistant Director of Education. But the petitioner was not considered for promotion for that post on the ground that under the recruitment rules of 1978 unless a D.E.O. has put in two years regular service, he is not eligible to be considered for promotion to the post of Assistant Director Education. As the petitioner has not put in two years of regular service as DEO by 11.2.1987 he was not considered for promotion.

3. The petitioner in O.A. No. 179/87 is also a Deputy Education Officer who ranks two places below the petitioner in O.A. No. 170/87, in the seniority list of DEOs. Both the applicants are working in the same organisation and the points that arise for consideration in both these applications are the same and hence they could be conveniently be disposed of byaa common judgment.

4. The respondents in the tentative seniority list of Deputy Education Officers (Deputy Inspector of Schools)/ Principal, Government Higher Secondary Schools and Government Teachers' Training College in the Directorate of Education drawn on 7th April 1986 have shown the petitioner in O.A. No. 170/87 as the senior most Deputy Education Officer and the

petitioner in O.A. 179/87 was shown at Serial No. 3, while respondents Nos. 10 and 11 are shown at Serial No. 6 and 7 respectively. Thus if the ad-hoc promotions were sought to be made there was no justifiable reason shown and the two applicants herein should have been promoted earlier than respondents Nos. 10 and 11 or at least on the day when they were promoted. However, the case of the respondents is that although the petitioners were senior to respondents Nos. 10 and 11 since they had not put in two years regular service they could not be considered for promotion. However, in paragraph 3 of their reply the respondents stated that "the cases for regularisation were referred to by the then Departmental Agencies to the UPSC on or about 8.2.1979" and matters were subsequently referred to the UPSC once again on 18.9.1979 and 15.11.1979." It is admitted that the services of both the petitioners were regularised by order dated 29.10.1985 and although 3 vacancies were available even in 1979 they were not regularised with effect from that date. The UPSC has not turned down the proposals. Since the two petitioners were in fact regularised subsequently, there is no reason why they should not have been regularised with effect from the date when the vacancies were available. We, therefore, declare that the petitioners are deemed to have been regularised with effect from 8.2.1979. In that view of the matter the petitioners would have put in more than two years of service by the date the respondents Nos. 10 and 11 were considered and promoted as Assistant Directors of Education and, therefore, they were eligible to be considered for promotion to the post of Assistant Director. The petitioners cannot be deprived of their rights on account of the inaction of any of the authorities or on account of administrative

delays. The respondents are, therefore, directed to issue orders regularising the applicants with effect from the date the vacancies against the promotion quota were available in 1979 and to treat them as having been regularised with effect from that date. The respondents are also directed to consider the applicants for promotion to the post of Assistant Directors of Education with effect from the date Respondents Nos. 10 and 11 were considered for promotion to that post and promoted.

5. Shri M.I. Sethna, Learned Counsel for the respondents, however, contended that the petitioner's claim for regularisation and consideration for promotion to the post of Assistant Director Education is belated and time barred. According to him, since the petitioners claim that they should have been regularised as early as in 1979, they ought to have approached the High Court for appropriate relief. In any event their grievance relates to a date more than three years prior to the constitution of this Tribunal and in view of Section 21 of Administrative Tribunals Act, this Tribunal has no jurisdiction to entertain their grievance. In the facts and circumstances of these cases we are unable to agree with this contentions. Admittedly the petitioner in O.A. 170/87 has made first representation on 2.3.1978 and in continuation of that representation he made three other representations last of which was on 4.9.83. These representations were never rejected. On the other hand the petitioner was informed that proposal for filling up three regular vacancies by promotion is being sent to UPSC. Thereafter he was informed that his services cannot be regularised against the post of DEO. Since his representations were pending disposal the period of limitation prescribed for filing an application did not at all begin

to run. Under the Administrative Tribunals Act "service rules as to redressal of grievances," in relation to any matter, means the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act, of any grievances in relation to such matters. Standing instructions contained in the Office Memoranda governing representations provide for entertaining representations by the immediate superior officer of an aggrieved public servant. If the immediate superior officer does not redress the grievance the aggrieved public servant is vested with the right to represent to the higher authorities including the President of India. So long as the representations made by the applicant were not disposed of, the applicant would reasonably expect that his representation is being considered and favourable orders would be issued. The time, therefore, for filing the present application did not begin to run. Merely because a period of four or five years has elapsed between the filing of the representations and under Section 19 of the Act cannot be deemed as barred by time. Even under the CCS (CCA) Rules any person aggrieved by order may prefer an appeal, review or revision as the case may be and so long as such appeal review or revision is pending the application filed under section 19 cannot be said to be barred by time. Respondents 10 and 11 are promoted only by order dated 11.7.87. Even by that date the applicant's representations regarding regularisation were not disposed of. Obviously because the respondents 10 and 11 were promoted the applicants could not have waited any longer and moved the Tribunal within one month thereafter, these application are, therefore, within the jurisdiction of this Tribunal and are not barred by time.

Once the application are found to be in time, in view of the above discussions, directions as indicated in para 3 above must be issued and the same shall be implemented within three months from the date of receipt of a copy of this judgment.

6. These applications are accordingly allowed. There would, however, be no order as to costs.

Sd/-

(K. MADHAVA REDDY)
CHAIRMAN.
27.9.1988.

Sd/-

(S.D. PRASAD)
MEMBER(A).
27.9.1988.