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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH  
CIRCUIT SITTING AT PANAJI, GOA.

~~Q.A. No.~~  
T.A. No. 115/87

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DATE OF DECISION 24/4/90

Dr. Vassanta Xencora Xete Ryoncar Petitioner

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

Versus

Union of India & Ors. Respondent .

Mr. H. R. Bharne for respondents Advocate for the Respondent (s)  
1 to 4. Respondent No. 7 in person.

## CORAM

The Hon'ble Mr. P. K. Kartha, Vice-Chairman

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 ? Yes
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

[Signature]  
24.4.90



officers of the Directorate of Health Services was issued on 19-5-1971 in which the applicant was shown at Sr.No.54. The applicant states that he represented against this seniority on the ground that though he had assumed charge of the post of Rural Medical Officer on 16-8-1963, the date of his regular appointment was wrongly shown in the seniority list as 15-7-1968 and his seniority fixed on that basis. After circulating a tentative seniority list on 10-10-1978, a final seniority list dated 26-5-1979 was notified where the applicant was shown at Sr.No.46 with the date of regular appointment still shown as 15-7-1968.

2. The grievance of the applicant is that Respondents No.5 to 40 were promoted on ad hoc basis, ignoring the applicant's representation that all of them were junior to him, and many of them have had one or two, and in one case even three further promotions, again on ad hoc basis. His appeal to the President of India having been rejected on 27-7-1984, the applicant filed a Writ Petition before the Bombay High Court on 17-1-1986 which has since been transferred to this Tribunal by order dated 29-9-1986 and numbered as Transferred Application No.TR 115/87. The applicant's prayers are for fixing his seniority at Sr.No.21 in the seniority list dated 26-5-1979 and for considering him for promotion before Respondents No.5 to 40 after

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quashing their appointments, and also for direction to the respondents for filling all higher posts in the Directorate of Health Services on regular basis in accordance with rules. The applicant has since retired from service on superannuation on 31-1-1987.

3. Apart from the Under Secretary(Health), Government of Goa, who has filed a reply on behalf of the official respondents No.1 to 4, Respondents No. 6 and 7 have also filed their counters. While Respondent No.15 has since expired, 14 respondents namely Nos.6,7, 8,10,12,13,14,17,25,27,28,29,32 and 34 have also since retired on superannuation.

4. A preliminary objection raised on behalf of the respondents was that the application was not maintainable on account of the applicant's retirement and the gross delay in filing the application. It is stated that the first seniority list, on the basis of which promotions to many of the respondents were recommended by various Departmental Promotion Committees before 1971 and 1979 on the principle of merit-cum-seniority, was published on 3-6-1971 but has remained unchallenged. Even his seniority in the seniority list dated 26-5-1979 was challenged by the applicant only in January,1986 by a Writ Petition,even though his statutory appeal to the President of India had been rejected on 27-7-1984. The learned advocate for the applicant, however, contended that though there was considerable delay in filing the Statutory appeal under Rule 24(1) of the CCS(CCA)Rules,1965,against

(24)

his supersession in the matter of promotion, that delay should be deemed to have been condoned in terms of Rule 25 of those Rules, the President having considered the appeal and rejected it on 27-7-1984. The grievance thus arose on the date of rejection of the statutory appeal, viz. 27-7-1984 and an application in respect of such grievance is maintainable under Section 21(2) of the Administrative Tribunals Act, 1985. We find considerable merit in this contention. The respondents, however, brought to our notice that a similar prayer for quashing the same seniority list dated 26-5-1979 made in another application (O.A. 63/89) filed by Dr. N.S. Dumo had been summarily rejected by the New Bombay Bench (in which one of us Shri M.Y. Priolkar was a member) at its Goa sitting on 12-4-1989, as hopelessly barred by limitation. In that case, however, which was filed in 1989, there had been no statutory appeal, which came to be considered and rejected as in the instant case before us: Besides, <sup>case</sup> this is within the time limit specified in Section 21(2) of the Administrative Tribunals Act, 1985. The present application, though unreasonably delayed, is thus saved from limitation by a legal quirk of fate, and we proceed to examine it on merits.

5. The grievance of the applicant against the seniority assigned to him in the seniority list dated 26-5-1979 is based on his assertion that the date of his regular appointment has been wrongly shown as

15-7-1968, that is, the date of its ratification by U.P.S.C, whereas it should have been 16.8.1963, that is, the date of his initial appointment. The applicant was initially appointed as a Rural Medical Officer, a class II post, along with 11 other doctors, by a common order dated 7-8-1963(Exh.A). The order states that these doctors are appointed "temporarily" in the 12 posts of Rural Medical Officers created by order dated 24-6-1963. The order dated 7-8-1963 does not indicate that the appointments are on ad hoc basis, which would have been the case if the posts were created for a specified period or the appointments were intended as a stop gap arrangement. The order does not also mention that the appointments are subject to ratification by UPSC. Even if such ratification by UPSC was necessary, the applicant contends that it should have been with effect from the date of initial appointment. The applicant has also produced a circular(Exh.E) issued by Government of Goa, Daman and Diu on 21-11-1974 to all its Secretariat Departments asking for relevant particulars so that cases of back dating the regularisation already approved could be taken up with UPSC. The learned counsel appearing for the official respondents No.1 to 4 could not tell us whether UPSC had been approached for regularising the applicant as Rural Medical Officer from the date of his initial appointment to that post. His only justification was that under Para XIII of Appendix 29 to the Civil Service Regulations, Vol. II, the date of regular promotion of any one included in

a panel would be the date of actual promotion or the date of UPSC's letter communicating their approval, whichever is later. On the contrary, the records produced before us show that Secretary(Health) in his note dated 8-2-1974 had admitted that appointments of certain doctors were ratified with effect from their first selection on ad hoc basis whereas in many other cases, the appointments were made with effect from the date of UPSC's letters conveying their approval.

6. The Goa Government(Directorate of Health Services Class II Gazetted Posts)Recruitment Rules, 1967 were notified on 2-8-1967. The Goa Government Seniority Rules,1967 came into force with effect from 21-2-1969. In the case of Baleshwar Dass v. State of U.P. and others ((1980)4 SCC 226)the Supreme Court has observed as under:-

"Officiating service in a post is for all practical purposes of seniority as good as service on a regular basis. The normal rule consistent with equity is that officiating service, even before confirmation in service, has relevancy to seniority if eventually no infirmities in the way of confirmation exist. However, it may be permissible, within limits, for government to ignore officiating service and count only regular service when claims of seniority came before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity, and cruelly arbitrary cut off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts."

7. In the case of E.V.K.Naidu & Others v. Union of India and others(ATR 1989(2)CAT 467) a Full Bench of <sup>this</sup> Tribunal has held that the principle of length of continuous officiation in a post, including ad hoc service, cannot be the sole guiding principle in determining seniority, which has to be regulated only in accordance with the relevant seniority rules, framed under the proviso to Article 309 of the Constitution of India.

8. In the light of these judicial pronouncement, and in the absence of any relevant recruitment rules or seniority rules at the time of the applicant's initial appointment, which was, admittedly, ~~to~~ a regularly created post, and also in the absence of any convincing explanation from the official respondents as to why UPSC was not approached for backdating the applicant's regularisation from that date, we find some merit in the applicant's contention that the date of his regular appointment should have been taken as 16-8-1963 i.e. the date on which he first assumed charge of the post of Rural Medical Officer, and not 15-7-1968 which was the date of its ratification by UPSC.

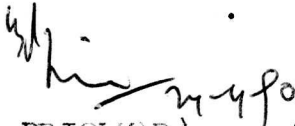
9. The applicant claims that on the basis of such antedating of his regular appointment, to which he is legally entitled, his appropriate place in the impugned seniority list dated 26-5-1979(Ex.G) would be at Sr.No.21. Many of the respondents over whom he claims

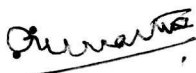
seniority have, however, since retired, and so has the applicant. One respondent has also expired. The counsel for the official respondents submitted that subsequent to the seniority list dated 26-5-1979, the applicant was considered by the Departmental Promotion Committee(D.P.C.)for promotion on 31-5-1979 and also many times thereafter but he was not found to be fit for promotion. We have perused the record relating to the DPC meeting held on 31-5-1979. Thirty candidates were considered, the applicant being at Sr.No.11, and after seeing their confidential reports from 1974-75 to 1978-79, they were graded as Very Good, Good, Fair or adverse. Six were graded Very Good, five of them being junior to the applicant. In all 10 candidates were selected and placed on the panel, six of whom were graded as Very Good and placed on top of the panel and the remaining four graded as Good, the last being Sr.No.10, that is, just one place above the applicant. The applicant was also graded as Good by the DPC. This shows that the applicant was found fit for promotion by the DPC and would have been placed in the panel if only one more vacancy was available, or if he had been assigned his due place in the seniority list.

10. Keeping in view the aforesaid facts and circumstances and the legal position, we are satisfied that this is a case in which some monetary compensation would be adequate without quashing the impugned seniority list, since the applicant has claimed

reliefs after a considerable delay and if the entire dispute of seniority is reopened at this stage, serious prejudice may be caused to some of the officers who have been promoted on the basis of the assigned seniority. Although in the written reply on behalf of the respondents No. 1 to 4 it was stated that all the officers who were referred to by the petitioner were absorbed under the Absorbed Employees Act who joined the services prior to liberation, it was conceded during the hearing that some of them were in fact appointed after liberation and were not, therefore, covered under the Goa, Daman and Diu (Absorbed Employees) Act, 1965 which defined "absorbed employee" as a person who was holding an absorbed post immediately before 20th December, 1961. The applicant had joined Government service as a Rural Medical Officer, a Class II post, on 13-9-1963 and retired on superannuation from an equivalent post in the <sup>corresponding revised</sup> ~~same~~ pay scale, on 31-1-1987. Admittedly, during his 24 years of service, no adverse remarks were communicated to him nor any vigilance enquiry or disciplinary proceedings initiated. Still, the applicant was not given any promotion during his entire service, even on ad hoc basis. As observed by the Supreme Court in the case of R.P. Singh v. State of Bihar and others (AIR 1988 SC 1033), reasonable promotional opportunities should be available in every wing of the public service, since stagnation kills the desire to serve properly.

11. On the basis of the foregoing discussions and taking into account the totality of the circumstances in this case, we direct that the applicant shall be deemed to have been notionally promoted on ad hoc basis to the next grade of Health Officer(Class I scale)and his pay fixed at the maximum of that scale with effect from 1-2-1986, i.e. one year prior to his date of retirement. The actual payment on the basis of such refixed pay, of the difference between the due and drawn amounts of pay and allowances, shall also be made from 1-2-1986. The retirement benefits of the applicant shall also be reworked on the basis of the refixed pay and the difference between the due and drawn amounts paid to him. These payments may be made, as far as possible, within a period of three months from the date of receipt of a copy of this order. The parties will bear their respective costs.

  
(M.Y. PRIOLKAR)  
Member(A)

  
(P.K. KARTHA)  
Vice-Chairman