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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: (G) 480/87

Transfer Application No:

DATE OF DECISION

2/3/83

T C Noronha & 6 ors.

Petitioner

Mr. F Rebellow

Advocate for the Petitioners

Versus

Union of India & 2 ors.

Respondent

Mr. G R Sharma

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S K Dhaon, Vice Chairman

The Hon'ble Shri Ms. Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
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

Sd/-
V.C.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

OA NO.(G) 480/87

Shri Tiago Carmo Noronha & 6 ors.

Applicants

V/s

Union of India
through the Secretary
Ministry of Information
and Broadcasting,
Parliament House
New Delhi & 2 ors.

Respondents

Coram: Hon.Shri Justice S.K.Dhaon, Vice Chairman
Hon. Ms. Usha Savara, Member (A)

APPEARANCE:

Mr. F. Rebellow
Counsel
for the applicants

Mr. G R Sharma
Counsel
for the respondents

JUDGMENT:
(Per: S.K. Dhaon, Vice Chairman)

DATED: 2/3/83

The applicants were employed in the ex-Portuguese Emissora de Goa as Operator Gr.III. In that capacity they were paid Escudos 2000.00 equivalent to Rs. 333.33 per month. The salary payable to the applicants was revised in the Emissora de Goa to Escudos 3200.00 equivalent to Rs.533.33. However, on account of paucity of funds they were not paid the revised salary. On 20.12.1961, the date on which Goa was liberated they were actually being paid Rs.333.33 instead of Rs.533.33.

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Emissora de Goa under the Portuguese regime was an organisation what is like the All India Radio. The same was taken over by the All India Radio on 1.10.1963 and the relevant authorities of All India Radio equated the post of the applicant to the post of Engineering Assistant instead of Assistant Engineers. Their pay was fixed at Rs.335 per month. Their prayer in substance is that direction may be issued to the respondents to treat the applicants as Assistant Engineers and pay arrears of difference of pay on the footing that the applicants had been appointed as Assistant Engineers.

2. A reply has been filed on behalf of the respondents. Counsel for the parties have been heard.

3. The primary question to be considered is whether the applicants had a right to receive a sum of Rs.533.33 per month from the ex-Portuguese regime and the said right had been recognised by this country after the annexation of Goa. Before we examine the facts it will be convenient to understand the legal position: When a new territory is acquired in any manner - be it by conquest, annexation or cession following upon a treaty - the new "sovereign" is not bound by the rights which the residents of the conquered territory had against their sovereign or by the obligations of the old sovereign towards its subjects. The rights of the residents of a territory against their state or sovereign come to an end with the conquest, annexation or cession of that territory and do not pass on to the new environment. The inhabitants of the acquired territory bring with them no rights which they can enforce against the new state of which they become inhabitants. The new state is not required, by any positive assertion or declaration, to repudiate its obligation by disowning such rights. The new state may recognise the old rights by granting them which, in the majority of cases, would be a matter of contract or of executive action; or alternatively, the recognition of old rights may be made by an appropriate statutory provision whereby rights which were in force immediately before an appointed date are saved. Whether the new state has accepted new obligations by recognising the old rights, is a question of fact depending upon whether one or the other course

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has been adopted by it. And, whenever it is alleged that old rights are saved by a statutory provision, it becomes necessary to determine the kind of rights which are saved and the extent to which they are saved. (See VINODKUMAR SHANTILAL GOSALIA Vs. GANGADHAR NARSINGDAS AGARWAL & ORS. AIR 1981, SC 1946.

4. The applicants have produced a sort of a recommendation like that of pay commission which goes to show that a proposal was made to enhance the pay of the various categories of employees of ex-Portuguese regime including those of the applicants and the like. We may also assume for the purpose of this case that in the budget proposals prepared for the ex-Portuguese regime provisions were made for the payment of salaries at the enhanced rates. But it is the applicants' own case that neither the recommendation of the body akin to the pay commission was implemented nor the proposal as contained in the budget were given effect to in so far as payments at the enhanced rate were not made to them.

5. The Goa, Daman Diu (Administration) Ordinance 1962 [no.2 of 1962] was promulgated to provide for the administration of the Union Territory of Goa, Daman and Diu and the matters connected therewith. An appointed day was defined to be the twentieth day of December 1961 (the date on which Goa was liberated). S.4(1) provided that all laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority. Under S.8 power was conferred upon the Central Government to remove difficulties. The said ordinance was replaced by the Goa, Daman and Diu (Administration) Act 1962. Section 4(1) of the ordinance was reproduced as Section 5(1) of the Act. We may indicate that no law in force immediately before the appointed day in Goa, Daman and Diu has been brought to our notice by which the pay of the applicants had been enhanced. At best, the applicants can term the proposal of the pay commission as evidence in the budget proposal as an executive act. The expressed law in force, used in the Ordinance as well as in the Act, is clearly referable to a legislative act.

6. The Goa, Daman and Diu (Absorbed employees) Act, 1965 (Act 15 of 1965) [herein after referred to as 1965 Act] was enforced with effect from 24.12.1965. It was passed to provide for the regulation of the conditions of service of persons absorbed for service in connection with the administration of the Union Territory of Goa, Daman and Diu and matters connected there with. In S.(2)(a) "absorbed employees" is defined to mean a person who immediately before the 20th day of December 1961 was holding an absorbed post and who on and after that date either served or ;has been serving in that or any other post in connection with the administration of the Union Territory of Goa, Daman and Diu or in any of the Departments of the Central Government. In S.(2)(b) "absorbed post" is defined to mean a civil service or post which existed under the former Portuguese Administration in Goa, Daman and Diu immediately before the 20th day of December 1961. According to the applicants they were the employees of Emissora de Goa.

7. Section(3) of the Act clarifies the position. It provides inter alia that the Central Government may make rules -

(a) for the regulation of recruitment to absorbed posts and the conditions of service of absorbed employees;

(b) for the regulation of the conditions of service of persons who were in the service of a Corporation (whether known as a junta or otherwise) immediately before the 20th day of December, 1961, and who on or after that date either served or have been serving in connection with the administration of the Union territory of Goa, Daman and Diu or in any of the Departments of the Central Government.

The applicants squarely fall in S(3)(b), for they were in the service of Emissora de Goa immediately before 20th day of December 1964. S.3(2) provides that any rule made under sub-section(1) may be made so as to be retrospective to any date not earlier than the 20th day of December, 1961. The proviso is important. It ordains, that no person shall, by virtue of such retrospective effect, be liable to refund any amount

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paid to him by way of salary or allowances or pension before the making of any such rule. The Central Government is, therefore, vested with the power to reduce the pay of an erstwhile employee of ex-Portuguese regime. There is nothing in the Act to indicate that the Government of India admitted its liability either expressly or impliedly to pay the same emoluments which were being paid by the ex-Portuguese regime to its employees. Further, there is not even a whisper that the Government of India has recognised the right of the employees of the ex-Portuguese regime to be paid the emoluments which were payable to them under the Portuguese regime. No rule or law is brought to our notice on behalf of the applicants which may have any relevance to the controversy before us.

8. On 27.12.1965 the Goa, Daman and Diu (Absorbed Employees Conditions of Service) Rule 1965 was enforced. In Rule 2(c) "appointed day" is defined as First day of February 1966. Rule 2(e) inter alia defines existing pay to mean the pay admissible to an absorbed employee immediately before the appointed day by way of basic pay. We need not refer to the definition of absorbed employee as there is no material change with the definition as contained in S.(2)(a) of the Act of 1965. Rule 3 states that as from the appointed day, every absorbed post shall be brought on such revised scale of pay as the Central Government, or the Administrator with the prior approval of the Central Government, may by order determine. Rule 4(1) provides that the initial pay of an absorbed employee holding an absorbed post on the appointed day shall, as from that day, be fixed in the revised scale of pay of that post at a stage next higher to his existing pay. (This was done in the case of the applicants as their pay was fixed at Rs.335). Rule 18 provides that the provisions of these rules shall apply to persons who were in the service of the Corporation specified below immediately before the 20th December, 1961 and are serving on the appointed day either in connection with the administration of the Union territory or in any of the Departments of the

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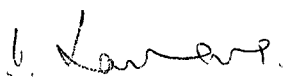
Central Government. Under item no.4 Emissora de Goa (Radio) is mentioned. It is the case of the applicants that on or before 20.12.1961 they were employed in the Emisora de Goa. It is also their case that on the appointed day viz., 1.2.1966 [Rule 2(c)] they were employed with the All India Radio.


9. By virtue of rule 18 aforementioned rule 2(a) (existing pay) would be relevant to determine the controversy. It emphasises on the pay admissible to an absorbed employee immediately before the appointed day by way of basic pay. On account of the operation of Rule 18 let us assume that the applicants were absorbed employees. Then the question would be what was the pay admissible to them immediately before 1.2.1966. We have already indicated that for the purpose of service condition and pay etc., the applicants had to start on a clean slate as a result of the annexation of Goa. No contract either express or implied was ever entered into by the Government of India where under it is agreed to pay to the applicants a sum of Rs.533.33 per month as salary. No law was passed by the Government of India after the annexation accepting the liability to pay to the applicants salary at the aforesaid rate. No executive order too had been issued accepting such a liability. On the contrary, the fact that the applicants were absorbed in the All India Radio and were paid the salary of Rs.335 per month indicates that the Government of India recognised the right of the applicants to receive a salary of Rs.335 per month alone. In the light of the general principles as indicated above in the case of annexation or conquest and in the background of the terms of Ordinance and the provisions of Act of 1965 and in the context of the rules, the expression 'admissible' in the definition of "existing pay" should be given a meaning of allowable in law.

10. We have already indicated that by conduct the Government of India recognised the right of the applicants to the pay of a sum of Rs.335 per month only. This payment began before 1.2.1966 and in view of the law of the land, the applicants are entitled to claim only that amount and no more.

11. There is some force in the contention advanced on behalf of respondents that this application having been filed in the year 1987 is patently barred by time. However, we did not consider it necessary to give judgment on this point as we are dismissing the application on merits.

12. This application has no force. It is dismissed, but without any order as to costs.


(Usha Savara)
Member(A)


(S.K. Dhaon)
Vice Chairman