

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT Sittings AT PANAJI-GOA.

Tr. Application No. 91 of 1987

Justino Filipe Noronha,
Residing at Assolna,
Salcete,
Goa.

.. Applicant

V/s.

1. Union of India,
through the Secretary,
Ministry of Home Affairs,
New Delhi.
2. Government of Goa, Daman & Diu,
through the Chief Secretary,
Govt. Of Goa, Daman & Diu, Panaji,
Goa.
3. Director of Accounts,
Govt. Of Goa, Daman & Diu,
At: Panaji-Goa
4. Director of Health Services,
Govt. Of Goa, Daman & Diu,
Panaji-Goa. .. Respondents

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

Appreance:

1. Shri J.E.C.Pereira,
Advocate for the
applicant.
2. Shri H.R.Bharne,
Advocate
for the respondents.

ORAL JUDGMENT:-

Dated: 12.4.1989

(Per: Shri M.B.Mujumdar, Member(J))

Writ Petition No.189 of 1985 filed by the
applicant in Panaji Bench of the Bombay High Court
regarding his pension has transferred to this Tribunal
under Section 29 of the Administrative Tribunals Act,
1985.

Contd... 2/-

2. Some facts which are necessary for the purpose of this judgment may be stated as follows: On 25.9.1948 the applicant joined service with the erst-while Portuguese regime in Goa. He was working as Head Clerk in the Collectorate of Customs at Panaji on the date when Goa was liberated from the Portuguese regime, i.e. on 19.12.1961. In October, 1963 he was transferred to the Department of Excise. In 1966 he was absorbed as Head Clerk in the Excise Department under the Absorbed Employees Act, 1965. Thereafter options were called for from the officials who were working under the Portuguese regime prior to liberation as to whether they wanted to opt in favour of pension rules as applicable before liberation or whether they wanted to opt in favour of pension rules which were applicable elsewhere, i.e., CSR(Pension) Rules. The applicant admittedly opted in favour of the pension rules as they were in force prior to liberation.

3. By order dated 8.2.1978, the applicant was promoted to the post of Superintendent(outside the Secretariat) on ad hoc basis in the pay scale of Rs. 550-750 against an existing vacancy in the Directorate of Health Services, Panaji and posted in that office until further orders. By order dated 23.2.1978 the pay of the applicant was fixed at Rs. 725/- in the scale of Rs. 550-750, with effect from 10.2.1978 i.e. the date on which he was joined the post as Superintendent.

4. By order dated 20.7.1981 the applicant and two other persons were promoted to the post of Superintendents (Outside the Secretariat) on officiating basis with immediate effect. As the ^{in this case} order is material case we quote it below:-

"...The following persons who were promoted on ad hoc basis as Superintendents (outside the Secretariat), on the basis of recommendation of a duly constituted Departmental Promotion Committee, vide orders cited above, are promoted to the same post on officiating basis, with immediate effect.

- a) Shri R.S.S. Shirodkar
- b) Shri F.P.J.F. Noronha
- c) Shri Justino F. de Noronha.

They shall be on probation for a period of 2 years from the date of issue of this order.

They shall be entitled to pay and allowances as admissible under the rules."

5. May it be noted that the applicant was promoted as Superintendent on ad hoc basis on the recommendation of a Departmental Promotion Committee and he was promoted on officiating basis by the order dated 20.7.1981 also on the basis of recommendation of a duly constituted Departmental Promotion Committee (DPC). The applicant retired on 30.4.1982 on superannuation as Superintendent.

6. After his retirement his pension was fixed on the basis of his pay which he was drawing as Head Clerk. The scale of the post of Head Clerk then was Rs. 425-700 and his pension was fixed on the basis of his basic pay of Rs. 700/-.

7. While doing so the respondents have relied on Article 445(3) of Estatuto do Funcionalismo Ultramarino (EFU). In their affidavit in reply filed on 4.7.1988, the respondents have given english translation of that Article. The EFU contains articles regarding appointment, retirement, pension, etc. The applicant has given english translation of the relevant rules and the respondents have also given english translation of the relevant Article 445(3). That translation reads as under:-

"The two years of service in the last post shall comprise the period of service rendered temporarily by appointment, by force of substitution imposed by law or by other means of legal recruitment if the official later on obtains permanent appointment for the said post, in conditions prescribed by law"

In this case we are concerned with the interpretation of the above Article.

8. The Writ Petition was filed in the Panaji Bench of the Bombay High Court on 31.8.1985. In that petition the main prayer is for directing the respondents to fix his pension on the basis of the pay drawn by him in the post of Superintendent at the time of his retirement. We may point out that in the main prayer in Clause(b) of para 33 of the petition, the applicant has erroneously mentioned that pension be fixed on the basis of the pay drawn by him in the ~~the~~ said post, which in the context means the post of Head Clerk. We asked Mr. Pereira, learned advocate for the applicant to suitably correct clause(b) and he has agreed to do so. On 6.7.1988 the applicant

had filed an application for amending the petition. We have allowed that application. By that amendment the applicant has added one more clause (b-1) in para 33 of the petition. By that clause the applicant has prayed for a declaration that he should be deemed to have been promoted with effect from 10.2.1978 to the post of Superintendent on regular basis.

9. Respondents have resisted the petition by filing replies. Their main contention is that as the applicant was working as Superintendent on officiating basis his pay in that post was not taken into consideration for the purpose of determining pension, but his pay of the post of Head Clerk which he was holding substantively was taken into consideration while determining his pension. It is their case that while doing so they have relied on Article 445(3) of EFU which we have quoted earlier.

10. We have heard Mr.J.E.C.Pereira, learned advocate for the applicant and Mr.H.R.Bharne, learned advocate for the respondents.

11. As already pointed out by order dated 8.2.1978 the applicant was promoted to the post of Superintendent (outside the Secretariat) on ad hoc basis against the existing vacancy in the Directorate of Health Services. Again, though it is not mentioned in the order, the applicant was promoted on ad hoc basis to the post of Superintendent on the recommendation of a DPC which was held earlier. Again by order dated 20.7.1981 the applicant was promoted to the post of Superintendent with immediate effect along with two others on the basis of recommendation

of a duly constituted DPC. The confusion has arisen because of the use of the work "Officiating" in the order dated 20.7.1981 and direction in clause-2 of the order that the applicant and two others would be on probation for a period of two years from the date of issue of the order. To our query as to why the second DPC was held in 1981, we were informed that it was held in view of the instructions given in the office Memorandum dated 24.12.1980 which lays down the principles for promotions to selection posts. It is obvious from the principles laid down in the Office Memorandum that three vacancies for the post of Superintendent (outside the Secretariat) must have been available when the DPC met in 1981. In the previous order dated 8.2.1978 it was made clear that the applicant was promoted to the post of Superintendent on ad hoc basis against an existing vacancy in the Directorate of Health Services. Hence in our view the word "Officiating" must have been used in a loose manner in the order dated 20.7.1981. In fact the order should have stated that the applicant and two others were promoted to the post of Superintendent (outside the Secretariat) on regular basis. Clause-2 in the order which states that the persons would be on probation for a period of two years from the date of issue of the order also seems to have been routinely inserted because the applicant was already working as Superintendent on a hoc basis from 10.2.1978 and he was to retire on superannuation on 30.4.1982.

12. Mr. Bharne, learned advocate for the respondents supported use of the word "Officiating" in the order

dated 20.7.1981 by relying on the definition of "Officiating" in F.R.9(19). But in view of the background of this case, we have no doubt that the words 'on officiating basis' in the order dated 20.7.1981 were wrongly added.

13. Coming to Article 445(3) of EFU, we feel that it shall have to be interpreted in the present context. The words 'ad hoc', 'officiating', etc., (or their equivalents) might not be there in the EFU. ~~At least~~ Article 445(3) contained two important words, namely, 'temporarily' and 'permanent'. In our view when the applicant was regularised in the post of Superintendent by order dated 20.7.1981 he should be deemed to have obtained permanent appointment to that post as per requirement of Article 445(3) of EFU. In view of this interpretation, the two years of service in the last post of Superintendent held by him should comprise the period of service rendered by him on ad hoc basis for the purpose of determining his pension.

14. In result, we pass the following order:-

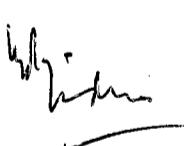
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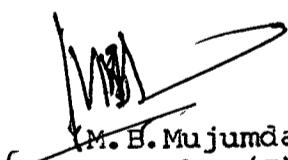
(i) The order dated 20.7.1981 (at Exhibit-C) to the application) is modified by substituting the word 'regular' in place of 'officiating' so far as it relates to the applicant. Similarly Clause-2 in that order should be deemed to have been not applicable to the applicant.

(ii) The respondents shall re-fix the pension of the applicant by taking into consideration his pay in the last post, namely, that of Superintendent held by him from 8.2.1978. To be more specific so far as Article 445(3) of EFU is concerned, the two years of service in the last post held by the applicant, namely, that of Superintendent should comprise the period of service rendered by him from 8.2.1978 on ad hoc basis.also.

(iii) The above directions should be complied with and arrears due to the applicant due to re-fixation of his pension should be paid to him within three months from the date of receipt of a copy of this order.

(iv) The application is partly allowed to the above extend, with no order as to costs.


(M.Y.Priolkar)
Member(A)


(M.B.Mujumdar)
Member(J)