

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.92/87.

Shri Ramniklal Mavji Bamania,  
Upper Division Clerk,  
Mamlatdar's Office,  
Diu 362 520.

... Applicant

V/s.

1. Union of India through the  
Ministry of Home Affairs,  
Central Secretariat,  
North Block,  
New Delhi.
2. The Administrator Goa, Daman and Diu,  
Cabo Raj Niwas, P.O. Caranzalem,  
Goa.
3. The Chief Secretary, Goa, Daman &  
Diu, Secretariat, Panjim - Goa.
4. The Civil Administrator at  
Diu-362 520.
5. Shri Veerchand B.Bamania,  
Upper Division Clerk, Office  
of Civil Administrator,  
At Diu - 362 526.

... Respondents.

Coram: Hon'ble Member (J), Shri M.B.Mujumdar,  
Hon'ble Member (A), Shri P.S.Chaudhuri.

Oral Judgment:

(Per Shri M.B.Mujumdar, Member (J)) Dated: 3.4.1989

The applicant's writ petition No.193/85 challenging corrigendum dated 14.12.1984 is transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985.

2. The relevant facts for the purpose of deciding this case are as follows. The applicant Shri Ramniklal Mavji Bamania (hereinafter called Ramniklal) was appointed as a Lower Division Clerk (LDC) in the office of the Block Development Officer, Diu, w.e.f. 1.6.1968. By order dated 22.3.1973 he was promoted and posted as UDC on ad hoc basis on a vacant post of UDC in Mamlatdar's office, w.e.f. 25.3.1973. By subsequent order dated 16.8.1973, he was regularised as ad hoc UDC in the same office, w.e.f. 22.3.1973. He was confirmed as LDC, w.e.f. 19th July, 1974. He was confirmed as UDC w.e.f. 27.10.1979 vide order dt. 13.11.1979.

3. As against this, Respondent No.5 Shri Veerchand B.Bamania (hereinafter called Veerchand) was appointed as LDC in the Election Section of the Office of the Civil Administrator, Diu, w.e.f. 5.3.1968. He was promoted as UDC on ad hoc basis w.e.f. 5.9.1977 by order dated 3.9.1977 and this appointment was regularised by order dated 29/30.11.1979. He was confirmed as LDC by order dt. 20.5.1976 and he was confirmed as UDC w.e.f. 1.6.1980 by order dated 27.3.1984.

4. As the applicant Ramniklal was promoted earlier, Respondent No.5 Veerchand was representing from the beginning. Finally a review departmental promotion committee comprising of the Civil Administrator Diu as Chairman and Mamlatdar of Diu and Chief Inspector, Diu Municipality as Members, was constituted for reconsidering the position of seniority and promotion to the post of UDC. Accordingly, the Review DPC held its meeting on 10.5.1984 in order to decide the question of seniority between the applicant and Respondent No.5. The review DPC considered the relevant CRs for the years 1970-71, 1971-72 and 1972-73. The applicant Ramniklal was given the remarks 'good', 'very good', and 'good' for these years respectively, while Respondent No.5 Veerchand was given the remarks 'very good', 'very good' and 'good' respectively for these years. As Respondent No.5 Veerchand was not lacking in way of seniority or of merit the Review DPC decided to place him senior and at the top of the seniority list and consequently recommended for his promotion to the post of UDC w.e.f. 22.3.1973, i.e. the date on which he should have been promoted. As he was senior to the applicant as LDC, being appointed about 3 months earlier than him, a corrigendum dated 14.5.1984 was issued. By this corrigendum it was directed that in the order dated 13.11.1979 the name of Respondent No.5, Veerchand, should be read in place of the name of the applicant Ramniklal. Similarly, it

was directed that in the order dated 27.3.1984 the name of the applicant Ramniklal be read in place of Veerchand. In short by the corrigendum the representation of Respondent No.5 was favourably considered and he was promoted in place of the applicant Ramniklal.

5. Accordingly the seniority of Respondent No.5 Veerchand, was restored. The applicant, Ramniklal is challenging the said corrigendum by filing the present application.

6. The Respondents No.1 to 4 have filed their written statement. Respondent No.5 has supported the written statement of Respondents No.1 to 4 and prayed that he should be given arrears of pay for the period from 22.3.1973 to 4.9.1977 as well as costs from the applicant.

7. We have heard Mr.I.J.Naik, learned advocate for the applicant, Mr.I.A.Shek (for Mr.R.M.Agarwal), learned advocate for Respondents No.1 to 4 and Respondent No.5 in person. We have also carefully considered the documents on record and it is our view that the application is mis-conceived and devoid of any merit.

8. Indisputably Respondent No.5 Veerchand was appointed as LDC w.e.f. 5.3.1968 while the applicant Ramniklal was appointed as LDC w.e.f. 1.6.1968. The appointment orders in respect of both were passed by the same authority viz. the Civil Administrator, Diu and by the same person, viz. Mr.D.S.Solanki. In 1972 the seniority list of the staff working in the office of the Civil Administrator and other subordinate officers at Diu was circulated. In that seniority list the name of R-5 Veerchand was at Sl.No.10 while the applicant Ramniklal was at Sl.No.11. May it be noted that the seniority list is of

persons who are working as Head Clerks, Aval Karkuns, UDCs, LDCs, Drivers, Bailiff and Talathis. It is therefore, clear that R-5 was treated as senior to the applicant from the beginning..

9. It does not appear that the applicant had challenged the said seniority list at any time. But it was submitted by Mr.Naik, the learned advocate for the applicant, that the applicant and R-5 were working in different establishments. It is true that R-5 was working in the Election Branch, while the applicant was working under the Civil Administrator. But these were not two separate cadres for the purposes of seniority or promotion. This position was made clear by the letter dated 10.10.1969 from the Civil Administrator, addressed to the Chief Electoral Officer. The position was reiterated by the Deputy Secretary to the Government of Goa, Daman and Diu, General Administration Department in his letter dt. 29.1.1974. It is made clear in this letter addressed to the Civil Administrator, Diu that though the post of LDC (Election) which R-5 was holding was physically for the office of the Chief Electoral Office for all other purposes it belongs to the office of the Civil Administrator, Diu. Hence, in our view, the respondents rightly took into consideration the repeated representations of R-5 Veerchand and held the Review DPC on 10.5.1984 for considering his seniority and promotion vis-a-vis that of the applicant. The review DPC rightly took the view that R-5 Veerchand was not lacking in way of seniority as well as of merit to be considered for promotion in preference to others for the post of UDC in 1973, and hence decided to place him senior and recommended him for promotion to that post w.e.f. 22.3.1973. We do not find anything wrong in the decision of the Review DFC/<sup>and</sup> in fact what it did should have been done earlier.

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10. We therefore, find nothing wrong in the impugned corrigendum dt. 14.5.1984 which was issued on the basis of the decision of the Review DPC.

11. Turning to the points urged before us by Mr. Naik, learned advocate for the applicant, his first point was that the corrigendum was issued to revise the seniority of the applicant vis-a-vis R-5 eleven years after the initial promotion of the applicant in 1973. But unlike this Tribunal and the Courts, the Department is not bound by the Law of Limitation so far as doing justice to its employees is concerned. As already pointed out Respondent No.5 Veerchand was representing persistently for setting aside the wrong done to him by promoting the applicant as UDC on ad hoc basis on 22.3.1973. If the respondents thought it fit to hold a Review DPC for considering the question of seniority and promotion of the applicant and R-5 we find nothing wrong or illegal in it.

12. Then Mr. Naik relied on three judgments of this Tribunal. These are (i) S. Rajgopalan v. Union of India 1987(2)SLJ(CAT) 363, (ii) Laxman N. Naik v. Dy. Director(E), ATR 1987(1) CAT 323, and (iii) P.D. Kalambkar v. Dy. Director Education Government of Goa, Daman & Diu and 9 others (unreported) O.A. 153/86 decided by this New Bombay Bench on 10.11.1987.

In the first case it is held by the Madras Bench of this Tribunal that in case of joining a new cadre one gets the seniority from the date of his joining the new cadre on his option. Mr. Naik has relied on this decision on the assumption that the applicant and R-5 belong to different cadres. This assumption in our view is wrong. Though

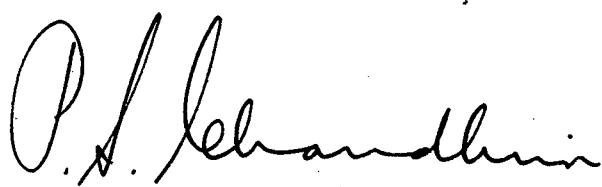
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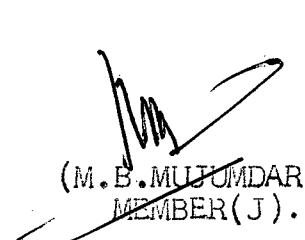
R-5 was working under the Chief Electoral Officer, Panaji, that cadre was not at all different. That is clear from the common seniority lists circulated in 1972, 1973 and 1974. In the second case it is held that an employee of a department can ask for counting his service for the purpose of seniority only if he belongs to that department. Again Mr. Naik has relied on this judgment on the assumption that the applicant and R-5 belong to different departments. It is clear that this assumption is not correct. Lastly, P.D. Kalambkar's case was decided by a Bench of which one of us (M.B. Mujumdar) ~~Member~~ was a Member. After going through that judgment we do not find that the facts of that case are similar to this case. It should be remembered that the applicant and R-5 were appointed by the same Civil Administrator. Though they were working in different branches their cadre was the same, department was the same and seniority list was also common.

13. In result, we find that the present application is filed on some wrong assumptions. We do not find any merit in the same and hence dismiss the application, with no order as to costs.

14. We may point out that Respondent No.5 in his written statement has claimed some arrears which have become due to him due to the corrigendum, which we have held to be legal and proper. But he has claimed arrears from 22.3.1973 to 4.9.1977. This Tribunal cannot legally direct Respondents No.1 to 4 to grant these arrears because Respondent No.5 has not filed a separate application before us.



(P.S.CHAUDHURI)  
MEMBER(A)



(M.B. MUJUMDAR)  
MEMBER(J).