

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
NEW BOMBAY BENCH

O.A. No. 403/88 ~~XXXX~~

DATE OF DECISION 28.9.1988

Shri S.Radhakrishnan Nair
Petitioner

Shri G.R.Sharma
Advocate for the Petitioner(s)

Versus
Union of India & Ors.

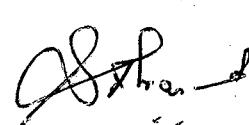
Shri H.R.Bharne for R. Nos. 1 to 5 and
Shri F.Rebello for R-6. Respondent
Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman,

The Hon'ble Mr. S.D.Prasad, 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




(8)

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

Original Application No. 403/88.

Shri S.Radhakrishnan Nair,
C/o. Mr.G.R.Sharma,
210, IInd floor,
Nizari Bhavan,
Panaji - 403 001.

... Applicant

V/s.

1. Union of India through
The Chief Secretary,
Government of Goa,
Secretariat,
Panaji - 403 001.

2. The Government of Goa State,
through The Chief Secretary,
Government of Goa,
Secretariat,
Panaji - 403 001.

3. The Secretary,
Public Health Department,
Govt. of Goa,
Secretariat,
Panaji - 403 001,

4. The Secretary (General
Administration)
Department of Personnel,
Secretariat,
Panaji - 403 001,

5. The Dean Goa Medical College,
Government of Goa,
Panaji - 403 001,

6. Smt. Perpetua Andrade D'souza,
Superintendent, Collectorate of
North Goa District,
Panaji - 403 001,

7. Smt. Mona Bhandare, Senior
Stenographer, Public Works
Department, Government of Goa,
Panaji - 403 001.

... Respondents.

Coram: Hon'ble Chairman, Shri Justice K.Madhava Reddy,
Hon'ble Member(A), Shri S.D.Prasad.

Appearances:

Shri G.R.Sharma,
Advocate for the
applicant.

Shri H.R.Bharne,
Counsel for the
respondents Nos.1 to 5.

Shri F.Rebello,
Advocate for
respondent No.6.

JUDGMENT :

(Per Shri S.D.Prasad, Member(A)) Dated: 28.9.1988

In this application under section 19 of the

Administrative Tribunal's Act, 1985, the applicant, who is Senior Stenographer in the office of the Dean, Goa Medical College, has sought the quashing of two orders, viz., (i) Office Memorandum dated 25th November, 1987 (Exhibit L) issued by the Government of Goa (Department of Personnel) circulating the final seniority list of Senior Stenographers (outside Secretariat) and placing the applicant at Serial No.3 therein; and (ii) Office Order dated 8th March, 1988 (Exhibit M) promoting respondent no.6 on an officiating basis to the post of Superintendent (Outside Secretariat) in the pay-scale of Rs.1600-2660.

2. Facts of the case, stated briefly, are that the applicant was appointed as Lower Division Clerk on 13.6.1966. Thereafter, he was appointed in the Goa Medical College as a Stenographer w.e.f. 10.3.1967 and as a Personal Assistant (P.A., for short) from 20.9.1967 on an ad hoc basis in the pay-scale of Rs.210-425. By a letter issued on 4.6.1970 (vide Exhibit 'D'), the aforesaid appointment was regularised w.e.f. 10.3.1970. Some time later, a proposal to include the post of P.A. in the general pool of P.As/Stenographers seems to have been mooted by the Dean of the College, obviously with a view to provide avenue of promotion to the incumbent of the post which was otherwise isolated. The letter dated 25.8.1975 addressed to the Secretary, Public Health Department by the Dean of the College is evidence of this fact. Incidentally, it also delineates to some extent the main duties and functions attached to the post of P.A. as well as the qualifications and experience of the incumbent. At this stage, it seems necessary to advert also to a letter dated 4.11.1974 addressed to the Dean of the College by the Under Secretary, Public Health Department

which reads as under:

" In continuation of this Department's letter of even number dated 3.10.74, on the subject noted above, I am directed to inform you that the matter was referred to Special Department who have informed that in the Revised Recruitment Rules for posts of Superintendents outside the Secretariat a provision has been made for promotion of Senior Stenographers working in Offices other than Secretariat. Since the post held by Shri Nair is that of Senior Stenographer though designated as P.A. in order to bring it on par with equivalent posts the post may be redesignated as Senior Stenographer(s) so as to bring it within the ambit of Recruitment Rules." (Emphasis supplied).

In another letter dated 4.11.1975 the Dean of the College informed the Secretary, Public Health Department as under:

"No separate recruitment rules exist for the post of P.A. to Dean of this College. The rules applicable to the post of Senior Stenographers under the Govt. of Goa, Daman & Diu were made applicable to the post of P.A. to Dean". (Emphasis supplied)

3. The controversy in the present case arises from the fact that notwithstanding the position as indicated above, a formal decision to re-designate the aforesaid post of P.A. to that of Senior Stenographer was taken only on 1.11.1976 "with immediate effect": Pursuant to the Government of Goa, Daman and Diu, Group C & D Non-gazetted Ministerial & Non-Ministerial Common Posts (Outside the Secretariat) Recruitment Rules, 1986 promulgated on 20.5.1986 (vide Annexure R-2), a tentative seniority list of Senior Stenographers (Outside Secretariat) was prepared and circulated on 17.9.1986 (Exhibit 'F'). In this, the applicant was placed at the top and his date of regular appointment was shown therein as the 1st of November, 1976. The applicant submitted a representation (Exhibit G) on 30.9.1986 itself in which he submitted that the date of his regular appointment be shown as 10.3.1970. This representation was, however, turned down by the Department on the ground that the re-designation of the post of P.A. to that of Senior Stenographer was made effective only from 10.3.1970 and,

therefore, it could not have any retrospective effect. In the "final" seniority list Circulated on 21.11.1986 (Vide Exhibit-I), however, the applicant was still shown at the top of the list, though the date of his regular appointment was again indicated as 1.11.1976. Respondents Nos.6 and 7 were, however, placed therein at Serial Nos.5 and 6 respectively, their date of regular appointment being shown as 27.8.1981.

4. Another tentative seniority list of the Senior Stenographers (Outside Secretariat) was circulated with Office Memorandum dated 30.7.1987 (Exhibit 'J'). The precise reason for putting the previously "finalised" seniority list into the melting pot once again has not been brought out before us. The preamble to the aforesaid memo (Exhibit 'J') simply stated thus: "In order to bring the seniority list of Senior Stenographers (Outside Secretariat) upto date, a tentative seniority list of the Senior Stenographers (Outside Secretariat) is circulated herewith". In the list enclosed therewith, however, the date of regular appointments of respondents nos. 6 and 7 was pushed back ~~dated~~ to 17.1.1975, whereas the applicant's corresponding date, 1.11.1976, remained unchanged. As a sequel to this, the applicant was relegated to a lower position and placed at Serial No.3 in the seniority list. Though the applicant represented, once again, against such lowering of his position, there was no change in his position vis-a-vis respondents nos.6 and 7 in the finalised list circulated on 25.11.1987, vide Exhibit 'L'. For the purpose of the present case, we do not consider it necessary to go into the reasons or justification for ante-dating of the date of regular appointment of

respondent Nos. 6 and 7. However, based apparently on the seniority list as finalised on 25.11.1987 (vide Exhibit 'L') read with Cols. 10 and 11 of the Schedule to the Recruitment Rules 1986 insofar as it related to the post of Superintendent (Outside Secretariat), respondent No. 6 was promoted "on officiating basis^{and} until further orders" to the post of Superintendent (Outside Secretariat) in the pay-scale of Rs.1600-2660 (vide Exhibit 'M') and this order is also in challenge before us.

5. A written statement filed on behalf of the official respondents Nos. 1 to 5 contests the claim of the applicant mainly on the grounds that the Government Order dated 1.11.1976 could not be given any retrospective effect; that the post of P.A. held by the applicant was not governed by any of the applicable recruitment rules at the relevant time; and that, therefore, the applicant could not lay claim to his seniority being reckoned from any date earlier than 1.11.1976. Respondent No.6, who was represented by Shri F.Rebelo, Learned Counsel, at the time of hearing, had sent an application dated 1.7.1988 by registered post to say that she had "No views to offer since (my) appointment was made by the Government. It is for the Government to defend their actions".

6. The main, and perhaps the only, point that arises for adjudication in this case is whether the claim of the applicant for pushing back the date of his regular appointment from 1.11.1976 to 29.9.1969, the date on which he was promoted on an ad hoc basis, or to 10.3.1970, the date on which his promotion as P.A. was regularised, is justified or not. There is no dispute on the point that the posts of P.A. as well as Senior Stenographer carried the same scale of pay, viz., Rs.210-425 (pre-revised) and Rs.425-700 (revised). It is also borne out by the letter dated the 26th August, 1975 from the Dean of the College

to the Secretary, Public Health Department that the applicant possessed the necessary qualifications and experience required of a stenographer. His promotion to P.A. was also regularised by the D.P.C. "with prior approval of the Government". It is true that as P.A. to the Dean, the applicant was also performing certain duties and functions not within the domain of a Stenographer's work in the ordinary course. But that cannot be treated as a factor against his claim. Any doubt on this point is, however, set at rest completely by the excerpt from the Government letter dated 4.11.1974

~~under para 2 above, in which it was clearly stated that~~
"the post held by Shri Nair is that of Senior Stenographer, though designated as P.A.". Significantly enough, there was a direction also in that very letter to the effect that "in order to bring it on par with equivalent posts, the post may be redesignated as Senior Stenographer so as to bring it within the ambit of Recruitment Rules".

7. It is nobody's case that there was any change in the duties and functions attached to the post held by the applicant during the period between 4.11.1974 and 1.11.1976, the date on which formal order of Government in this regard was issued. The short point for determination, therefore, boils down to whether or not the applicant should suffer a loss in seniority due to administrative delay in the issuance of a formal order concerning re-designation of the post. In other words, should the applicant's services during the aforesaid period be discounted and he be subjected to a loss of seniority, purely on the technical ground that it took almost two years to issue a formal order in this regard and that this order was made to have prospective effect only? Such a view, to our mind, would be patently unfair and unjust.

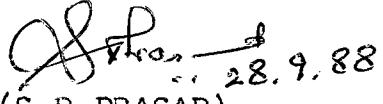
8. The view that we are taking is further strengthened by the averment made in letter dated 4.11.1975 of the Dean of the College in which it was clearly indicated that the rules applicable to the post of Senior Stenographers were made applicable to the post of P.A. to Dean as well.

9. The applicant has no doubt laid claim to the date of his regular appointment as senior stenographer being reckoned from 29.9.1969, or at least from 10.3.1970. We are not inclined to accept this claim for two reasons. Firstly, even with 4.11.1974 as the date of his regular appointment, the applicant will get in substance the relief that he is seeking. Secondly, the letter of the Under Secretary (Health) dated 4.11.1974 provides, in a way, a firm and reliable basis to reckon the date from which due recognition was accorded to the services of the applicant as P.A. having been equivalent to that of Senior Stenographer. As for the period before that, we have only the applicant's claim but no tangible material or evidence to substantiate it. Shri H.R.Bharne, Learned Counsel for Respondents Nos. 1 to 5, did contend that the aforesaid letter dt. 4.11.1974 could not be relied upon because it merely contained the personal views of the then Under Secretary. We are unable to accept this contention. The letter is couched in the form and manner in which Government decisions/instructions are generally conveyed. Therefore, it must be held that the letter is an acknowledgement and expression of government's position on the subject.

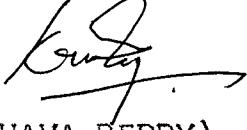
10. In view of the foregoing discussion and consideration, the impugned seniority list dated 25.11.1987 (Exhibit 'L') is liable to be set aside. Accordingly,

it is quashed in so far as it relates to the applicant and respondents Nos. 6 and 7. Respondents Nos. 1 to 5 are, therefore, directed to prepare a fresh seniority list within two months from the date of receipt of this order, keeping in view the observations made in the foregoing paragraphs. The impugned order dated 8.3.1988, by which respondent No.6 was promoted 'on officiating basis and until further orders' to the post of Superintendent, is also set aside on the ground that it was based on the seniority list which has been struck down by us. Consequently, the case of promotion of the applicant vis-a-vis others will have to be considered by a Review D.P.C. in accordance with the rules after a fresh seniority list is prepared in accordance with our directions as above. Since government work must continue and the post cannot be allowed to remain vacant, there may be no objection to respondent No.6 continuing in the said post on a purely temporary and ad-hoc basis, until the review D.P.C. has considered the matter and recommended regular promotion in accordance with the rules, within a period of two months after the preparation of the revised seniority list.

11. Subject to the observations made in the foregoing paragraph, the application is allowed, but without any order as to costs.


28.9.88
(S.D. PRASAD)

MEMBER (A)


(K. MADHAVA REDDY)
CHAIRMAN.

Contempt Petition

No. 15/89, Cat

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