

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr. Application No.516/86

Shri Bhim Singh Panwar,
Assistant Superintendent of
Sub Jail Reis Magos,
Betim-Verem-Goa.

... Applicant

vs.

1. Administrator of Goa,
Daman & Diu.
2. Union of India & 71
Others.
3. Collector of Daman
Respondent No.74

... Respondents

Coram:Hon'ble Vice-Chairman B.C.Gadgil

Hon'ble Member(A)P.Srinivasan.

Appearances:

1. Shri G.R.Sharma,
Advocate for the
applicant.
2. Shri J.D.Desai(for
Shri M.I.Sethna)
Advocate for the
respondents.

ORAL JUDGMENT

Date: 13-10-1987

(Per P.Srinivasan, Member(A))

This is a transferred application which originated as Writ Petition No.2391/85 before the High Court of Bombay, Panaji Bench.

The applicant entered service of the erstwhile Govt. of Goa, Daman and Diu in 1968 as an Assistant Superintendent of Jails. He was confirmed in that post with effect from 26-4-1972. We need not dwell on the career of the applicant from this point till 1983 when, after being selected along with others. *H*

P.S. S

....2/-

by a duly constituted Selection Committee he and 42 others were promoted to officiate as Grade II Officers of the Goa, Daman and Diu Civil Service by order dated 19-7-1983 (Ex. P-11, Page 99). He was also allowed to cross the Efficiency Bar of Grade II in 1984. However, in 1985, a fresh list of persons selected to officiate in Grade II of the Civil Service was announced and, in this list, the applicant's name did not figure. Thereafter the applicant was reverted from Grade II to his original post. His grievance in this application is against the order dtd. 16-5-1985 (Ex. P-13, page 107) selecting 71 persons for promotion and reverting him.

3. Replies have been filed on behalf of the Respondent Nos. 1, 2 and 74 i.e. Govt. of Goa, Daman and Diu, Union of India and the Collector of Daman. The others are private parties of whom seven have filed replies. All these respondents 3 to 73 have been served with notices but they have chosen to remain absent.

4. Shri G.R. Sharma learned counsel for the applicant and Shri J.D. Desai (for Shri M.I. Sethna) appearing for Respondents Nos. 1, 2 and 74 have been heard.

5. The question that arises for determination in this application is whether having once been selected by a duly constituted Selection Committee held in 1983 for promotion to Grade II in an officiating capacity, the applicant could have again been subjected to a similar process of selection through a Selection Committee all over again in 1985 and, as a result, reverted from the post to which he was earlier promoted. It has been urged on behalf of the applicant that once a Selection Committee has selected a person for promotion,



whether in a substantive capacity or in an officiating capacity, to a higher post, he cannot again be subjected to the same process of selection once again. Learned Counsel for the respondents, relying on Rule 15(4) of the Goa, Daman and Diu Civil Service Rules, 1967 ("the Rules", for short) contends that a fresh consideration for promotion is permissible. We do not agree with this latter view. Rules 13, 14 and 15 of the Rules deal with the method of recruitment by selection. Rule 13 sets out the Constitution of the Selection Committee ("the Committee", for short), Rule 14, the conditions of eligibility and manner of preparation of selected list. Rule 14(2) states that the names of the persons included in the list shall be arranged in order of merit. Rule 14(3) lays down that the list shall be forwarded by the Committee to the Administrator. The Administrator finally approves the list in terms of Rule 15(3) after consultation with the Union Public Service Commission. Thereafter Rule 15(4) provides that the list thus finally approved shall ordinarily be in force until a fresh list is prepared for the purpose in accordance with these rules. We may here also mention that Rule 14(1) provides for consideration of officers eligible for promotion by the Committee "from time to time", because stress was laid by counsel for the respondents on these words. In order to understand the meaning of Rule 15(4) we have gone through Appendix 29 to Choudhry's Civil Service Regulations dealing generally with the procedure of departmental promotion committees. The list prepared by the Committee gets gradually depleted as and when persons in that list are promoted and only what remains of the list after such promotions when the next Selection Committee meets again will stand scrapped: this is what Rule 15(4) means to say.

R. J. - 1/2

In other words, if in the list prepared by one Committee, some persons at the bottom still remain to be promoted when the next Selection Committee meets, only those persons are liable to be considered for selection afresh with other officers who come into the field of selection by that time.

As regards the officials in the first select list who stand promoted to ~~higher~~ posts before the next meeting of the Committee is held, they cannot be put through the selection process once again as they are no longer in the list as it exists at the time, having been removed from it by promotion. The expression "from time to time" in Rule 14 merely means that the Selection Committee has to meet periodically and consider officials for promotion to higher posts and this does not mean that the same officials should be considered everytime. What we have stated is fully supported by the instructions issued by the Govt. from time to time and extracted in Appendix 29 to Chodhry's compilation of CSR 13th Edition Vol.III. In this view we hold that the exclusion of the applicant's name from the list of persons selected for promotion on officiating basis brought out on 16-5-1985 (Ex. 'P' 13 page 107) and his consequent reversion from Grade II is bad in law.

6. We should not here be understood to say that a person who is promoted ^M on an officiating basis cannot be reverted at all. His suitability for continuance can certainly be considered by the authorities and if he is found to be unsuitable he can be reverted by a simple order. What we mean to say is that the process by which a person's suitability for continuance in the post to which he has been promoted is to be considered is materially different from the process by which his suitability for promotion to that post in the first instance is considered. When considering a person

for promotion to a higher post - particularly when such promotion is to be based on merit as in this case - a comparative assessment of all the persons in the field of choice has to be made and persons more meritorious are selected for promotion and those less meritorious left out. On the other hand, continuing a person in the post to which he has been promoted does not involve a comparative assessment of his merit with those of others but only an assessment of his performance standing by itself with a view to see whether such performance justifies his continuance: at this point of time, he should not be asked to stand in competition with other persons who are junior to him and who are still to be promoted to that post. It is in this context that we have observed that it was bad in law to have considered the case of the applicant for promotion a second time in 1985 along with those of his juniors who had not yet been promoted but had come into the zone of selection for the first time and after such consideration to ~~hold~~ have held that he was not fit for promotion. We have perused the record of the Selection Committee ^{held} in 1985 and we find that the Committee did indeed assess the comparative merit of the applicant and others including many who came into the field for the first time and on such comparative assessment selected others and left ~~out~~ the applicant. This was certainly not the proper procedure for determining the suitability of the applicant of being continued in the post.

7. Learned Counsel for the respondents contended that after a person is promoted in an officiating capacity, his performance in the higher post had to be kept under ^M ^{it was} observation and if it ~~is~~ found to be unsatisfactory he had to be reverted. We have no quarrel with this proposition, but what happened here was quite different as

we have already explained. It was further urged that that reviewing earlier officiating promotions made on the recommendations of one Selection Committee by another Committee held after an interval of time is the usual practice with the respondents. We cannot uphold the action of the respondents merely on this ground if otherwise it suffers from ^{MA} legal infirmity and we have shown above how it is so.

^{view}

8. In the ~~trend~~ that we have taken of the scope and meaning of the Rules, the objections taken by learned counsel for the respondents that the applicant should have challenged the validity of the Rules themselves does not survive. For the same reason, it is not necessary to refer to various decisions of the Supreme Court cited by learned counsel for the applicant to show that officiating promotion also ^{MA} ~~confined~~ conferred the right of continuance in that post as well as of seniority in that post from the date of actual promotion.

9. We, therefore, quash the order dtd. 16-5-85 Ex.P.13 page 107, to the extent ^{MA that} it excludes the applicant's name and orders his reversion to the lower post. The respondents will restore the applicant to Grade II in an officiating capacity retrospectively from 1985 and give him all consequential financial benefits from 1985 onwards.

10. In the result, the application is allowed.

Parties to bear their own costs.

11. After the order was dictated, Shri J. D. Desai prayed ^{MA for} stay of operation of this order for

- : 7 :-

four weeks as his client intends to move a Special
Leave Application before the Supreme Court. In view
of this we stay the operation of this order till 13-11-1987.



(B.C.GADGIL)
Vice-Chairman



(P.SRINIVASAN)
Member(A)