

Original Application No. 50/86
Original Application No. 67/86
Original Application No. 69/86
Original Application No. 114/86
Original Application No. 115/86
Original Application No. 116/86

- | | |
|---|----------------------------|
| 1. Shri Kashinath R. Jannu,
L-30, Housing Board Colony,
Alto Betim, Goa. | Applicant in O.A.No.50/86 |
| 2. Shri Nicholas J. Fernandes,
Fontainhas, Mala
House No.99,
Panaji - Goa. | Applicant in O.A.No.67/86 |
| 3. Shri S.S. Patil,
Govt. Quarter C-2-6,
Bhatule, Panaji,
Goa. | Applicant in O.A.No.69/86 |
| 4. Shri S.R. GoVekar,
L-38, Housing Board Colony,
Alto-Betim, Bardez, Goa,
Pin. Code No.40 35 21. | Applicant in O.A.No.114/86 |
| 5. Shri Pandurang Mhalappa
Shet Purushan,
L-43, Housing Board Colony,
At: ALTO BETIM,
Post: ALTO-PORVORIM,
Goa - 40 35 21. | Applicant in O.A.No.115/86 |
| 6. Shri Manuel Fernandes,
House No.448,
"Raicho-Ambo",
Raia, Salcete,
Goa. 40 37 20. | Applicant in O.A.No.116/86 |

V/s.

1. Union of India through
the Administrator for
Goa, Daman & Diu, Panaji,
Goa.
2. Collector of Goa,
Panaji,
Goa.

... Respondents in all
the above
applications.

Coram: Vice-Chairman B.C. Gadgil
Member J.G. Rajadhyaksha.

JUDGMENT: (Per Gadgil, Vice-Chairman).

These six matters can be conveniently decided by
a common judgment. Each of the applicants was initially

appointed as Field Surveyor in the Office of the Director of Land Survey, Government of Goa, Daman & Diu. It would be convenient to give a brief chronology of the services of these applicants. It is as follows:

1. Kashinath Jannu (Applicant in Application No.50):

Appointed as Field Surveyor on	1.9.1967
Confirmed as Field Surveyor on	2/3.8.1979
Promoted as Head Surveyor on	1.5.1971
Promoted as Supervisor on (ad-hoc temporary)	14.3.1983
(declared Surplus as Supervisor)	

2. Nicholas Joaquim Fernandes (Applicant Application No.67):

Appointed as Field Surveyor on	11.9.1967
Confirmed as Field Surveyor	7.4.1983
Promoted as Classer on (Temporary)	20.8.1974
(declared surplus as Classer)	

3. S.S.Patil (Applicant in Application No.69):

Appointed as Field Surveyor on	11.9.1967
Confirmed as Field Surveyor on	2/3.8.1979
Promoted as Classer/Head Surveyor on (Temporary)	1.11.1972
(declared surplus as Head Surveyor).	

4. S.R.Govekar (Applicant in Application No.114):

Appointed as Field Surveyor on	1.9.1967
Confirmed as Field Surveyor	2/3.8.1979
Promoted as Head Surveyor on (Temporary)	1.5.1971
Promoted as Supervisor on (Temporary)	17.6.1974
(declared surplus as Supervisor)	

Bell

3. The salient features of the re-deployment scheme are as follows:

1. Staff inspection units would determine surplus strength in any organisation;
2. Personnel found surplus would normally get transferred to a Central Pool and stay there for not more than 6 months, pending their placement in other organisations;
3. The scheme envisages personnel in the Central Pool to exercise the option to retire voluntarily on fairly generous and attractive terms;
4. Those who do not opt to retire and cannot be placed and are also unwilling to undergo training in fresh skills would be retrenched under normal rules.
5. Surplus personnel can be transferred to other Government Departments and even public Sector undertakings, in equivalent posts or even junior posts with protection of their pay in cases where the post in which they are absorbed at lower pay scale.

In any case, one important principle which has been spelt out here is that the junior-most temporary persons should be surrendered against reduced cadre strength followed, if necessary, by junior-most, quasi-permanent and then permanent staff. The rule of junior-most should be insisted upon and the Central Cell in the Home Ministry would have authority to see to the strict and prompt observance of the rules. There shall however, be no bar to other persons higher in the seniority ladder volunteering for the purpose, particularly if they wish to avail of the voluntary retirement benefit which would be available in the Central Pool.

Disposal of surplus personnel will be governed by the following principles.

1. The first objective would be to place personnel in the Government Organisations.
2. The Central Cell will operate the scheme.
3. There shall be no direct recruitment.
4. Recipient organisations' views would also matter.

5. Pandurang Mhalappa Shet Purushan (Applicant in Application No.115):

Appointed as Field Surveyor on 11.9.1967
Promoted as Head Surveyor on 1.11.1972
(Temporary)
(declared surplus as Head Surveyor)
(Not confirmed as Field Surveyor)

6. Manuel Fernandes (Applicant in Application No.116):

Appointed as Field Surveyor on 15.6.1968
(Temporary)
Promoted as Head Surveyor on 1.11.1972
(Temporary)
(declared surplus as Head Surveyor)

2. In accordance with directives of the Government of India, the Government of Goa, Daman & Diu undertook a study in order to find out as to whether any department was over-staffed. The said study revealed that there was some over-staffing in certain departments. One such department was the Directorate of Land Survey. There was no surplus in the cadre of Field Surveyors. It was found that 58 Head Surveyors were surplus. 17 posts in that cadre were vacant and consequently 41 person working in the cadre of Head Surveyor were found actually surplus. Some posts of Supervisors were also found surplus. The Government of India had prepared a scheme for the redeployment of this surplus staff which Government of Goa, Daman & Diu, was to implement. Those persons who were found to be surplus were given an option of voluntary retirement on certain terms. If anybody would not have opted for such retirement, the surplus staff would be redeployed on equivalent posts in other departments, where there would be need for additional staff. There are certain other terms and conditions incorporated in the scheme.

Bel

applicants in application Nos. 50 & 114 is that if they are surplus as Supervisors, they should be sent back to the original cadre i.e. their posts in the immediate lower cadre namely Head Surveyors, and that if they were also found to be surplus in the cadre of Head Surveyors, they should be reverted to the lower posts of the Field Surveyors which they were holding earlier.

6. The case of the other applicants is that they should have been reverted to the immediate lower posts of Field Surveyor when they were found to be surplus in the promotional cadre of Head Surveyors. The applicants, however, contended that after such reversion of theirs, there would be surplus in the cadre of Field Surveyors and that, the junior-most Field Surveyors should be redeployed to other departments.

7. Mr. Sawant for the respondents contended that the scheme did not envisage the reversion of any of the Supervisors or ^{Head}~~Field~~ Surveyors to a lower cadre in the same Department, inasmuch as by issuing redeployment orders, these Supervisors and ^{Head}~~Field~~ Surveyors would be getting equivalent posts in other departments, and thus they would be benefitted.

8. Mr. Sayed for the applicants contended that on the face of it, this submission of Mr. Sawant may appear to be good. He contended that further promotional chances of the applicants in the departments to which they would be redeployed would depend upon various factors particularly when the applicants and other persons to be redeployed would be placed at the bottom of the seniority lists in these other departments.

He further submitted that in a given case, such redeployment of the applicants in other departments

- 5 -
5. The attempt in individual placements should be to match the pay scale of the individuals with the pay scale of the recipient post, as far as possible. The Central Cell should have authority to put through placement even where exact matching is not possible. In that event if the pay scale of the recipient post is lower the individual should be allowed the facility of carrying his previous pay scale along with him even if he was only officiating in it. Decisions of the Central Cell should be binding on the recipient organisations.
 6. Personnel in the Central Pool shall be trained in new skills, thus improving their chances for satisfactory placement.
 7. There shall be a scheme for voluntary retirement.
 8. Those who do not opt to retire and cannot be placed and are also unwilling to undergo training in fresh skills, shall be retrenched. The procedure would also be adopted where an individual refuses a placement ordered by the Central Cell".

4. It, therefore, became necessary for the Government to declare certain Supervisors and Head ^{Surveyors} ~~Supervisors~~ as surplus. The applicants in Application No.50 and 114 were holding the promotional posts of Supervisors and these two applicants were declared as surplus. We have already observed that the posts held by 41 persons as Head Surveyors were found surplus. The applicants in application Nos.67(Classer) & 69; 115 and 116 who are Head Surveyors were declared surplus. We are told that the Government has already started the process of issuing re-deployment orders under which these six applicants and certain other employees are to be redeployed in other departments, in equivalent posts.

5. The grievance of the applicants is that they should not be declared as surplus even though certain posts of Supervisors and Head Surveyors are in fact surplus, specially, when their juniors are being retained in the Organisation. The contention of the

the interest of justice requires that a person holding a surplus post should be given an option as to whether he would like to go to some other department by way of redeployment or would prefer to continue in the same department but in the lower post which he had held earlier. The surplus employee can, therefore, exercise the option after taking into account the pros and cons of both the factors namely the redeployment to the other department and the reduction to the immediate lower post in the same department.

10. We therefore, pass the following orders:

"Application Nos.50/86, 67/86, 69/86, 114/86, 115/86 and 116/86 are partly allowed. The Respondents are directed that while issuing re-deployment orders in respect of applicants (and if be necessary other employees), care should be taken to ensure that the junior-most persons in the cadre should be re-deployed first, subject to the following conditions:

The said re-deployment orders should contain a provision that the concerned employee should exercise option within one month of the receipt of the re-deployment order, as to whether he wants reversion to his immediate lower post or he would like to accept the re-deployment order and go to another department. If the option is exercised the respondents would act upon it and pass further appropriate orders of reversion to the immediate lower post, after such exercise of option if there is surplus staff in such lower cadre, then the junior-most members in that cadre should be re-deployed first. If such option is not exercised within the

may not be beneficial and it would be very advantageous if the applicants and other surplus persons are given an option to revert to the lower posts. It was submitted before us that such an option would be necessary, otherwise the applicants and other surplus persons are likely to suffer on account of lower seniority in the departments to which they would be ultimately redeployed. Of course, he further stated that a particular surplus person may not like to get himself reverted if the redeployment is beneficial to him.

9. In our opinion, certain reasonable procedure has to be followed in implementing the policy when some posts are declared surplus. The surplus persons should be entitled to be reverted to the immediate lower cadre and they should not, without being given any option, be redeployed into other departments. What should happen when the posts are found surplus, is considered by the Supreme Court in the case of Suraj Prakash versus the Union of India reported in 1986 (Supreme Court - Page 958). In that case a person was promoted to a higher post and later on the said higher post was found to be surplus. The service of that person was terminated. It was held that such a procedure would not be correct. The following is the relevant Head Note:

"The easiest course for a reasonable management to adopt in such cases would have been to revert the employee to the place wherefrom he was promoted and give him the emoluments which he was drawing before such promotion".

In view of the above mentioned decision, it would be necessary that a person holding a surplus post may be reverted to the lower post which he had earlier held. Mr. Sawant contended that such reversion may or may not be beneficial to the employee. We think that
...8.

prescribed time, the re-deployment orders should be given effect to. The personnel is of course free to opt for voluntary retirement according to the scheme or face retrenchment.

Parties should bear their own costs in all these applications.

B.C. Gadgil

(B.C. GADGIL)
VICE - CHAIRMAN

3-7-98
(J.G. RAJADHYAKSHA)
MEMBER.