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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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 NEW BOMBAY BENCH
NEW BOMBAY

O.A. No. 153. 1986
~~XXXXXX~~

DATE OF DECISION 10.11.1987

Shri P.D.Kalambker

Petitioner

- Advocate for the Petitioner(s)

Versus

Dy. Director of Education, Govt. of Goa & 12 Ors.
 Respondent

Mr. M. I. Sethna for Rs-1, 2, 3 & 4.

Mr. C. Nathan for Rs-6, 8, 9, 10, Advocate for the Respondent(s)
 11 and 13. R-12 in Person.

CORAM :

The Hon'ble Mr. J.G. Rajadhyaksha, Member (A).

The Hon'ble Mr. M.B. Mujumdar, Member (J).

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? Yes

(10)

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

Original Application No.153/86.

Shri P.D.Kalambker,
Deputy Educational Officer,
North Education Zone,
MAPUSA - GOA

... Applicant

v/s.

1. Deputy Director of Education,
Govt. of Goa, Daman & Diu,
Panaji-GOA.
2. Director of Education,
Govt. of Goa, Daman & Diu,
Directorate of Education,
Panaji-Goa.
3. Union Territory of Goa,
Daman & Diu, through the
Chief Secretary, with office
At Secretariate, Panaji-Goa.
4. Union of India,
through Home Secretary,
Ministry of Education,
with Office at Central
Secretariate, New-Delhi.
5. Smt.Sudha Lawande,
Principal, Govt. Teachers'
Training College,
Alto-Betim, Goa.
6. Shri.Girish G.Karandikar,
Deputy Educational Officer,
South Educational Zone,
Margao-Goa.
7. Smt. Suman Pednekar,
Principal, Govt. Higher
Secondary School, Kandola,
Marcela, Ponda-Goa.
8. Smt. Sushma Bumb,
Vice-Principal, Govt.
Higher Secondary School,
Altinho, Panaji-Goa.
9. Smt. Leela Sajane,
Head Mistress, State
Institute of Education,
Alto-Betim, Goa.
10. Smt.Suman Gaonkar,
Teacher - Grade I, Govt.
Higher Secondary School Altinho,
Panaji-Goa.
11. Shri J.J.Pacheco,
Teacher Grade-I, Govt.
Higher Secondary School,
Canacona-Goa.

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12. Shri K.A.Upadhyaya,
ADEI, ADEI Office,
Ponda-Goa.
13. Shri A.R.Naik,
Teacher Grade-I,
State Institute of Education,
Alto-Betim, Goa. ... Respondents.

Coram: Hon'ble Member(A), Shri J.G.Rajadhyaksha,
Hon'ble Member(j), Shri M.B.Mujumdar.

Appearances:

- 1) Applicant in person.
- 2) Mr.M.I.Sethna for
Respondents Nos. 1, 2, 3 & 4.
- 3) Mr.C.Nathan for Respondents
Nos.6, 8, 9, 10, 11 and 13.
- 4) Respondent No.12 in person.

JUDGMENT:

¶ Per J.G.Rajadhyaksha, Member (A) ¶ Dated: 10.11.1987

This application under section 19 of the Administrative Tribunals Act has been filed on 21.5.1986 by the applicant who was working as Deputy Educational Officer in Goa. The application is against the impugned combined seniority list of Teachers Grade-I/ Sr.Instructors/A.D.E.Is prepared and circulated by the Government of Goa on 11.4.1986 over the signature of the Deputy Director of Education (Admn.) Goa.

2. The applicant's grievance is that though he joined service as Assistant District Educational Inspector on 18.9.1965, came to be promoted in due course as Headmaster of High School on 15.4.1974 and was regularised on 10.3.1978, and further was appointed on ad hoc basis to the post of Deputy Educational Officer on 31.8.1979 and regularised as such on 29.10.1985, he has been sent down in ~~the~~ seniority in the list published on 26.11.1985. A tentative common seniority list of

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Teachers Grade-I/Sr.Instructors/A.D.E.Is dt. 14.5.1976 was published by Government, objections to the said tentative seniority list were invited and after considering all such objections the final common seniority list was prepared by the Government of Goa, and circulated on 13.8.1976. Thereafter, there were occasions for the Government to circulate seniority lists with changes on 2.4.1979 and finally on 25.5.1979. The Government again circulated on 4.2.1981 a tentative common seniority list and after considering the objections, finally published the seniority list dt. 29.8.1981. The preparation of such tentative lists and publication thereof on 26.11.1985 is described by the applicant as illegal and violative of principles of natural justice, as well as in violation of law, rules and regulations in the matter of preparation of seniority lists. His representations dt. 5.12.1985 and 9.12.1986 did not meet with success and, therefore, he filed this application.

3. Briefly, his case was that his seniority of 10 years' standing has been suddenly disturbed by the 26.11.1985 seniority list finally published on 11.4.1986. In 1976, he was Sl. No.22 in the seniority list; in 1979 he came to Sl.No.16, though his position inter se was not disturbed. Again in 1981, his position was not disturbed in inter se seniority. Respondents Nos. 5 to 13 came to be recruited to different posts in the transitory period. Those posts were not necessarily equivalent to Asstt. Deputy Educational Inspectors. In the final seniority list circulated on 26.11.1985 and published finally on 11.4.1986 applicant is suddenly shown to be at Sl.No.33 and Respondents Nos. 5 to 13 and others have been shown to be senior to him. The applicant relied upon sets of *rules* - - - - -

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which are (i) Goa Government (Seniority) Rules, 1967, (ii) Goa Govt. Education Department (Non-Gazetted, Non-Ministerial) Recruitment Rules, 1966 and (iii) Goa, Daman & Diu Govt. Directorate of Education (Non-Ministerial, Non-Gazetted) Recruitment Rules, 1977. Applicant alleged that he was not given a hearing before disturbing his seniority and pushing him down to the 33rd position in the seniority list of 1986. He alleges that there was favouritism towards Respondents and particularly towards Respondent No.8 whose husband held a position in the Goa Civil Service, and that position was misused. He also alleges that favourable opinions were obtained from ~~of~~ the Secretary to the Govt. of Goa in the Law Department, again on the basis of personal friendship, by the Deputy Director of Education, a personal friend of the husband of Respondent No.8 who made a direct reference to the Law Secretary in violation of the rules. Yet such opinion was relied upon, and applicant's seniority was disturbed without giving him a personal hearing in the matter. Therefore, the relief that he prayed for was that the seniority list circulated by Circular No.74 under No.18-20-85/ADMN.-I/86 dt. 11.4.1986 be declared illegal, arbitrary and violative of principles of natural justice, and the seniority of the applicant should be maintained at Sl. No.19 of this particular common seniority of Teachers Grade.I/Sr. Instructors/A.D.E.Is on the basis of his seniority in the earlier seniority lists prepared and circulated on 13.8.1976, 25.5.1979, and 29.8.1981. He also sought other consequential reliefs.

4. The application was resisted by the Respondents, and particularly Respondent No.8, who filed a written statement on 27.10.1986 for opposing the prayer for interim relief as also the main application. Other

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respondents viz. Respondent No.6 submitted a reply
Respondent No.9 on 20.11.1986
dt. nil - 11.1986, Respondents Nos.10, 11 and 13 on
20.11.1986, Respondent No.12 on 21.11.1986, and on behalf
of the Respondents Nos. 1 to 4 the written reply was
filed by Mr.J.A.Varela, Assistant Director of Education
on 15th December, 1986. The applicant also filed a
rejoinder on the 16th February, 1987. The reply of
Respondents Nos. 1 to 4 gives chronological history of
certain relevant facts about applicant and the various
rules and in effect states that the reply of Respondent
No.8 can be adopted as reply for Respondent Nos. 1 to 4
also. The reply further goes on to say that though
pay scales of Assistant Deputy Educational Inspectors
were brought on par with those of Teachers Grade.I and
Senior Instructors w.e.f.21.12.1967, what mattered was
not pay but the action to be taken by the Government of
Goa on the basis of certain orders issued by the Government
of India on 12.12.1973 according to which seniority was
to be considered only on the basis of recruitment rules.
It is also added that rulings of the Law Department of the
Government of Goa were obtained and based on those ^{rules and} the ^{seniority}
seniority list was finalised giving seniority to Respondent
No.8 and others over the applicant. Earlier seniority
lists of 1976, 1979 and 1981 which had been finalised had
to be ruled out and a fresh seniority list prepared based
on the Recruitment Rules of 1977 by which the three
categories of Teachers Gr.I/ Sr.Instructors and A.D.E.Is
were brought on par.

5. It will also be interesting to take note of the
reply of Respondent No.8 who seems to be the main
contestant to the claim of the applicant for seniority.
The Respondent No.8 has resisted the application by
stating that she was promoted to the post of Vice-Principal/
Head Master High School on 9.1.1982 having ^{been} appointed to the
post of Teacher Gr.I on 20.7.1972 and confirmed as such

i.e. as Teacher Gr.I/Senior Instructor on 26.6.1976. According to her, the posts of A.D.E.I./ Assistant Inspectors, and the posts of Teachers/Sr.Instructors were two different categories. The educational qualification for the post of Assistant Inspector were B.A. or B.Sc with teaching experience, whereas, those for the posts of ~~A.D.E.I.~~ *Teacher/Senior Instructor* were Post Graduate degree i.e. Masters' degree plus teaching experience etc. The post of Teacher/Sr.Instructor was also the promotional avenue for A.D.E.I. and, therefore, the post of A.D.E.I. was in a lower scale as well as lower in status and though in 1977 by the recruitment rules these were brought on par, it could not possibly mean that the applicant had a case for claiming seniority over Respondent No.8 and other respondents who were impleaded in the application. She maintains that the earlier seniority lists were illegal, not having been based on proper authority and, therefore, the seniority list published in 1986 after the promulgation of the recruitment rules of 1977 in which the three posts were brought on par with each other was the only legal and proper seniority list against which the applicant could have no grievance as he never was senior to the respondents in any common seniority list based on the proper authority viz. the recruitment rules. It is also the respondents' claim that only after the recruitment rules, the applicant achieved the status on par with Teachers Gr.I and Senior Instructors and not before, and, therefore, his seniority can count only after the merger of the three cadres in 1977. Respondent No.8 has given an additional argument after the hearing was over pleading that posts of A.D.E.Is were junior in status to those of Teachers Gr.I and

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Sr. Instructors. The latter were teaching posts while the former was not and therefore before 1977 they were not equal in status. Applicant^{has} submitted a reply thereto.

⁶ We have heard the applicant in person & Mr. C. Nathan ~~the learned advocate~~ for Respondents Nos. 6, 8, 9, 10, 11 and 13. We have also heard Respondent No. 12 in person. He also submitted a resume of his arguments. We have heard Mr. M. I. Sethna the learned counsel for Respondents Nos. 1 to 4.

7. Before proceeding to discuss the merits and the contentions of the various parties, it will be useful to reproduce certain rules on which the entire question will revolve. First of all the Goa Government (Seniority) Rules, 1967 must be mentioned as being perhaps the most relevant. In these rules ^{we have} the definition of "Grade" ~~is~~ given in Rule. 2, the principles governing seniority of persons appointed before the reinforcement of these rules; (Rule. 3), and Rule 4 about permanent officers to rank senior to officiating officers ^{These} are the most important rules. They read as follows:

"Rule. 2(2):- "grade" means a post or a group of posts created for work of the same nature in a department or office.

Provided that where posts have been created for work of the same nature in different departments or offices, the competent authority may, by order, declare any or all such posts to be in a single grade for the purposes of these rules.

Rule. 3 :- Seniority of persons appointed before the reinforcement of these rules. - Subject to the provisions of rule. 4, persons appointed in a substantive or officiating capacity to a grade prior to the enforcement of these rules shall retain the relative seniority already assigned to them under the existing orders applicable to their cases and shall en block be senior to all others in that grade.

EXPLANATION. - For purposes of these rules (a) persons who are confirmed retrospectively w.e.f. a date earlier than the enforcement of these rules, and (b) persons who are appointed on probation to a permanent post substantively vacant in a grade prior to the enforcement of these rules shall