

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

W.O.A. NOS. 339/86 AND 343/86

W.O.A. No. 339/86

Mr. Mulchand Jamnadas
C/o. No.127 Bhoiwada
Diu

Applicant

v/s

1. The Administrator
Goa, Daman & Diu
having his office at
Cabo Raj Niwas
Dona-Paula

2. H L Thalamuana
Secretary
General Administration
Secretariat
Panaji

Respondents

W.O.A. No. 343/86

Mr. Juliet Moraes
"Villa Moraes"
Ranoi, Aldona
Bardez, Goa

Applicant

v/s.

1. The Administrator
Goa, Daman and Diu
having his office at
Cabo Raj Niwas
Dona Paula

2. H L Thalamuana
Secretary
General Administration
Secretariat, Panaji

Respondents

Coram : Hon'ble Vice Chairman B C Gadgil
Hon'ble Member(A) J G Rajadhyaksha

Appearance:

Mr. J. Dias
Advocate
for the Applicants

Mr. M I Sethna
Counsel
for the Respondents

JUDGMENT

(FEP: B C Gadgil, Vice Chairman)

DATED : 8.3.1988

These two matters can be conveniently decided
by a common judgment. Initially, we propose to give

the relevant facts in O.A.No. 339/86 and consider the various contentions raised before us during the course of the arguments. The applicant Mulchand Jamnadas (in O.A. No.339/86) was appointed by the Goa Administration as Lower Division Clerk in the "Fazenda" i.e., Revenue Office. On 5.4.1967 he was promoted as Upper Division Clerk. The next promotion as Head Clerk took place on 24.4.1970. Two channels of promotions from the post of Head Clerk were then available viz., he can either become a Superintendent after putting in three years of service as Head Clerk or he can be considered for appointment as Mamlatdar after five years of such service. The feeder post for the Mamlatdar is not restricted to Head Clerk only inasmuch as Inspectors, Aval Karkuns, Extension Officers etc., with five years service are eligible for that promotion. For the post of Superintendent the only feeder post is that of Head Clerk.

2. On 4.7.1980 the applicant was offered the post of Superintendent on ad hoc basis. He gave a reply on 10.7.1980 that he has put in five years of service and that he should be considered for the post of Mamlatdar. On 19.8.1980 the applicant was promoted as a Mamlatdar on ad hoc basis. Exhibit 8 to the application is a copy of that order. It was an order in favour of the applicant and many other persons. The order states that the promotion would not bestow any claim for regular appointment and that the services rendered on ad hoc basis will not count for seniority or for next promotion. On 20.6.1981 the applicant was transferred as Chief Officer, Municipal Council of Diu, vide Exhibit 9 to the application. On 27.9.1983 a DPC held its meeting for selecting the employees for the post of Superintendent and the applicant was so selected and he was asked to take charge on 27.8.1983 vide Exhibit III. However, the applicant desired that he should be continued as Mamlatdar on regular basis. He, therefore, wrote a letter dated 3rd September, 1983 (Exhibit 12) stating therein the fact that he was appointed on regular officiating basis as a Superintendent. He stated that he had already been promoted on ad hoc basis as a Mamlatdar and that as the DPC had considered him for regular officiating appointment as Superintendent he should be

appointed on regular officiating basis as a Mamlatdar. It may be noted that upto this time the post of Head Clerk was one of the feeder posts for promotion as Mamlatdar. But on 5.10.1984 the recruitment rules were amended so as to exclude the post of Head Clerk from the feeder post. On 25.8.1986, the applicant was reverted from the ad hoc post of Mamlatdar to that of Head Clerk and promoted as Superintendent (vide Exhibits 1 and 2). It is this order that is being challenged by the applicant.

3. The contention of the respondents is that the applicant's promotion as Mamlatdar in 1980 was on ad hoc basis, and that it did not confer any right on the applicant to the post of Mamlatdar. During the course of the arguments we had asked the respondents to produce the relevant record as to how the promotions of applicant and other persons were made in 1980 and why he was not considered for promotion by the DPC at an appropriate time. Mr. Sethna for the respondents produced a noting by the Chief Minister dated 16.8.1980. He also produced a copy of the said noting. It pertains to the filling up of the posts of Mamltdars and other posts in that cadre. The Chief Minister found that on account of the peculiar circumstances then existing, it would be better if ad hoc promotions were made of four Head Clerks/Tax Inspectors, four Aval Karkuns and three Extension Officers as Mamlatdars. This was accepted by the Lt. Governor. The name of the applicant is amongst these eleven persons. It appears that on the basis of this noting the applicant and other ten persons were promoted to the posts of Mamlatdar on ad hoc basis. We had also asked Mr. Sethna to produce the minutes of the DPC which had considered the filling up of the posts of Mamlatdars on regular basis. He had shown the relevant minutes and produced a copy thereof. The DPC was held on 12.5.1986 for considering the various posts of Mamlatdars that had fallen vacant from year to year. In the year 1980 there was one post while in the next four years i.e., 1982, 1983, 1984 and 1985 the posts were 2, 1, 5 and 4 respectively. There is no dispute that the zone of consideration for filling these posts is five candidates for one post; 8 candidates for 2 posts; 10 candidates for 3 posts; 12 candidates for

4 posts; and 15 candidates for 5 posts. The DPC proceedings show that the candidates as per the eligibility zone had been considered by it. For example, five candidates were considered for one vacancy in 1980. Eight candidates were considered for two posts in 1982 etc. After considering the relevant eligible candidates, the DPC found certain persons fit. It is material to note that the applicant was not at all considered till 1984. Mr. Sethna has submitted that the applicant's placement in the composite seniority list of the feeder post was far below and he was not in the eligibility zone for any of these posts. We are satisfied that the statement of Mr. Sethna is according to the actual position. The respondents, therefore, contend that the ad hoc promotion of the applicant in 1980 as a Mamlatdar would not confer any right on the applicant and that he was not in the eligibility zone for any appointment to the posts till 1984. As far as 1985 posts are concerned, he contended that the applicant was not at all eligible in view of the amendment to the recruitment rules in 1984.

4. Mr. Dias submitted that it would not be permissible for the respondents to disown the claim of the applicant to the post of Mamlatdar particularly when the applicant had put in such service for five years. According to him, in 1983 he had written to the Government (vide Exhibit 12) that he may be considered for regularisation as a Mamlatdar. The Government had not sent a reply. The argument of Mr. Dias is that this silence of the Government would constitute a sort of acquiescence suggesting that the Government accepted the position that the applicant was entitled to regularisation as Mamlatdar as of that year. We are afraid it would be very difficult for us to accept the contention of Mr. Dias. All that the applicant has stated in his letter of 3.9.1983 is about his appointment on regular officiating basis as a Superintendent. Thereafter, he states that he was promoted on ad hoc basis as Mamlatdar and that, therefore, he should be considered for appointment on regular officiating basis as a Mamlatdar. In our opinion such a claim would be

permissible, if the applicant is eligible for consideration for appointment by DPC. Omission to give a reply on the part of Government does not give any right to the applicant. The applicant has not changed his position simply because the Government did not consider the applicant for regular promotion to the post of Mamlatdar. Another contention of Mr. Dias is that the applicant continued as Mamlatdar or as Chief Officer for a period of five years and that it would be an indication that he was appointed on regular basis. Mr. Sethna is right when he contends that this submission is not well founded.

5. We have already observed that in 1984 the recruitment rules were amended so as to exclude the post of Head Clerk from the feeder post for promotion as a Mamlatdar. In 1985, the applicant was brought back from the post of Chief Officer to that of Mamlatdar. It was contended that in 1985 the applicant ought to have been brought back not in the post of Mamlatdar but in the grade of Head Clerk and it is a circumstance suggesting that the applicant was working as Mamlatdar on regular basis. In our opinion, it will not be possible to accept these contentions inasmuch as though in 1985 the applicant was brought back as Mamlatdar still the DPC was not held for promotions to the posts of Mamlatdars till 1986.

6. It was then urged that two persons viz., G. Ramesh and R.J. Kamat were taken up on regular basis though they belonged to the cadre which ceased to be the feeder post after the amendment of 1984. However, the DPC proceedings show that G.Ramesh was selected by DPC in 1980 and the selection of Kamat was in 1983. The selection is, therefore, legal and proper.

7. It was next urged that Mr. M.S. Chari who was a Head Clerk was continued on ad hoc basis even after the DPC proceedings of 1986. This appears to be so. But Mr. Sethna contended that such continuance on ad hoc basis was adopted as Chari was to retire on super-annuation in January, 1987. Apart from this fact we do not find that the applicant can claim any right to

the post of Mamlatdar simply because Chari was continued on an ad hoc basis.

8. Though in the application the applicant has raised a number of contentions, it is not necessary to consider all of them as Mr. Dias has argued only the above points.

9. Thus the application for quashing the impugned order (reverting the applicant to the post of Head Clerk and then appointing him to the post of Superintendent) is liable to be dismissed.

10. There is a further point which Mr. Dias has argued though not raised in the application. We have permitted him to take up this point as we feel that in the interest of justice it is necessary to do so. We have already observed that the applicant was selected by DPC for a regular appointment as Superintendent in 1983. The applicant did not join that post as he was continued as Mamlatdar. By the impugned order dated 19.6.1986 the applicant was reverted to his substantive post of Head Clerk and then appointed as Superintendent. The applicant's seniority as a Superintendent is being counted by the Department with effect from 19.6.1986. The grievance of Mr. Dias is that the applicant should get the seniority in the cadre of Superintendent from 27.8.1983 i.e., ~~then~~ from the date on which he was first appointed on regular basis as Superintendent. According to him the continuance of the applicant on ad hoc basis as Mamlatdar (it is a post said to be higher than Superintendent) should not be interpreted as a circumstance adverse or prejudicial to the applicant when his seniority as a Superintendent is to be considered. Mr. Sethna for the respondents contended that the applicant is himself to blame as he did not join as a Superintendent in 1983. However, we cannot forget that the applicant was continued on ad hoc basis even after 1983 as Mamlatdar. In our opinion in this peculiar circumstance it is necessary to direct the respondents to fix the seniority of the applicant as Superintendent by treating him to be in that cadre from 27.8.1983.

11. We now give a few facts pertaining to the claim made by the applicant in O.A. No. 343/86. Kum. Juliet Moraes, the applicant, was appointed as Junior Stenographer on 1.4.1963 and was promoted as Head Clerk on 1.9.1972. In May 1984, she was promoted on ad hoc basis as Mamlatdar and on 25.8.86 she was reverted from that post and was promoted as Superintendent on regular basis. The grievance of the applicant is that this reversion and consequent promotion to another post of Superintendent is bad. We have already considered in the above paragraphs as to how the appointments to the posts of Mamlatdars were required to be made on ad hoc basis in 1980. It appears that such ad hoc appointments were made even after the DPC was held till 1986. The DPC proceedings show that the applicant was not in the eligibility zone till 1984 for being considered for the post of Mamlatdar. Thus she cannot claim any legal title to the post of Mamlatdar simply because she was appointed on ad hoc basis as Mamlatdar. After the DPC meetings were held she was reverted as regular appointments of some other persons were made to the posts of Mamlatdars. There is nothing illegal and wrong with the procedure adopted by the Department. Thus the application No. 343/86 is also liable to be dismissed. Hence we pass the following order:

ORDER

The prayers of the applicant in Original Application No. 339/86 including the prayer for quashing the impugned order dated 25.8.1986 (Exhibit 2) is dismissed.

However, we direct the respondents to fix the seniority of the applicant in the cadre of Superintendent by treating him as being in that post with effect from 27.8.1983 with all consequential benefits.

Parties to bear their own costs.