

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 258/86.

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DATE OF DECISION 8-3-1990.

Shri Sahestiao U.V. Coerio & Ors. Petitioner

Shri G.K.Masand & S.R. Atre. Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Shri M.I.Sethna & C.U.Singh. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE-CHAIRMAN (JUDL.)

The Hon'ble Mr. M.Y. PRIOLKAR, 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*

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTING, PANAJI, GOA.

Regn.No.OA-258/86.

Date : 8-3-1990

Shri Sahestiao U.V. Coerio & Ors. Applicants

Versus

Union of India & Others Respondents

For the Applicants Shri G.K.Masand and
Shri S.R.Atre, Counsel

For the Respondents Nos.1 to 3 Shri M.I.Sethna,
For Respondent No.22 Shri C.U.Singh, Counsel

CORAM Hon'ble Shri P.K. KARTHA, Vice-Chairman (Judl.)
Hon'ble Shri M.Y. Priolkar, Administrative Member.

(Judgment of the Bench delivered by Hon'ble
Shri P.K.Kartha, Vice-Chairman)

The applicants, who are working as Sub-Inspectors of Police in the Government of Goa, Daman & Diu, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To declare the impugned orders at Exhibits 'I', 'M' and 'N' to the application illegal and bad in law and direct respondents 1-3 to revise the seniority list impugned by showing the applicants senior to the Police Officers appearing in the seniority list at various places as mentioned in para.8 of the application and to direct the respondents to grant them all consequential reliefs with retrospective effect, including promotions to the higher posts from the date the same became vacant, which may accrue to them by virtue of the revision of the impugned seniority list; and

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(ii) to quash and set aside the orders at Exhibits 'H', 'M' and 'N' and direct respondent Nos.1-3 to revise the seniority list impugned in the application by showing them senior to the Police Officers appearing in the impugned seniority list, as mentioned in para.8 of the application.

2. The Union of India is the first respondent, the Chief Secretary, Govt. of Goa, Daman & Diu the second respondent, and the Inspector General of Police, Goa, Daman & Diu, is the third respondent. Respondent Nos.4-40 are the colleagues of the applicants who are likely to be affected if the applicants are given the reliefs sought by them.

3. The applicants are promotee officers while respondent Nos.4-40 belong to the category of direct recruits. The basic issue involved relates to the determination of inter se seniority between these two groups of officers.

4. There are four applicants. Shri Coerio is applicant No.1. He was appointed as a Head Constable by direct recruitment on 8.10.1962. He was promoted as Assistant Sub-Inspector (ASI) on 1.5.1970 and as Sub-Inspector(SI) on 15.5.1970. On 23.11.1973, he was appointed on a regular basis as Sub-Inspector and on 23.11.1975, he was confirmed in the said post. On 29.5.1987, he was promoted as Police Inspector.

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5. Shri Coutinho is the second applicant. He was recruited as Police Constable on 24.4.1961. He was promoted as Head Constable on 1.6.1965, as Assistant Sub-Inspector on 18.1.1972, and as Sub-Inspector on 18.3.1972. On 23.11.1973, he was appointed on regular basis as Sub-Inspector and on 23.11.1975, he was confirmed in the said post.

6. Shri Abdulla Aga is the third applicant. He was recruited as a Police Constable on 24.1.1961. He was promoted as Head Constable on 1.6.1965, as Assistant Sub-Inspector on 18.1.1972, and as Sub-Inspector on 4.5.1972. On 23.11.1973, he was appointed on regular basis as Sub-Inspector and on 8.1.1979, he was confirmed in the said post.

7. Shri Pawar, is the fourth applicant. He was recruited as Police Constable on 1.5.1964. He was promoted as Head Constable on 1.6.1965, as Assistant Sub-Inspector on 25.1.1974, and Sub-Inspector on 4.4.1975. On 5.10.1977, he was appointed on regular basis as Sub-Inspector and on 22.6.1984, he was confirmed in the said post.

8. The grievance of all the applicants is that many of their juniors have superseded them on account of wrong fixation of inter se seniority between the direct recruits and the promotees.

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9. The respective contentions of both the parties could be considered in the context of the relevant recruitment rules which may be briefly mentioned at the outset.

10. The first Recruitment Rules for recruitment to the post of Police Sub-Inspectors came into force w.e.f. 5th September, 1966 and were known as 'Goa Government Police Department (Non-Gazetted posts) Recruitment Rules, 1966' (hereinafter referred to as 'the 1966 Rules' - vide Exh.'A' at pages 55-82 of the paper-book). The said Rules made provision for appointment by promotion and by direct recruitment to the posts of (a) Police Sub-Inspector (Armed), and (b) Police Sub-Inspector (Executive). In the case of both the cadres, promotions were from the lower ranks, i.e., the rank of Head Constable (Armed) and Assistant Sub-Inspectors (Executive). In these applications, we are concerned with Sub-Inspectors (Executive). The method of recruitment to the said post was "promotion 50 per cent; direct recruitment 50 per cent; promotion, failing which, direct recruitment". Assistant Sub-Inspectors/Head Constables with at least five years' and 8 years' standing in the grade, respectively, are eligible for promotion as Sub-Inspectors. The post is a selection post.

11. The seniority among the officers is to be determined in accordance with the "Goa, Government (Seniority) Rules, 1967" which were brought into force on 21st February, 1969 (vide Exh. 'B', pages 83-93 of the paper-book) (hereinafter referred to as, 'the 1967 Rules').

12. The 1966 Rules were replaced insofar as Police Constables were concerned by the Goa, Daman & Diu, Office of the Inspector General of Police, Group 'D' posts Recruitment Rules, 1976 which provided for recruitment to Group 'D' posts.

13. In 1978, the distinction between Armed and Unarmed in the rank of Police Constable was extinguished.

14. On 1.1.1978, the Goa, Daman & Diu Office of the Inspector General of Police, Group 'C' Posts Recruitment Rules, 1977 were made (hereinafter referred to as 'the 1978 Rules - vide Exh. 'F', pages 111 to 117 of the paperbook). The 1978 Rules stipulated that they will come into effect from the date of the notification and will relate to appointments to the various posts made on or after the said date. According to the said Rules, the post of Police Sub-Inspector is a selection post for which the method of recruitment was "50% by promotion, failing which, by direct recruitment 50%." Assistant Sub-Inspectors with five years' service in the grade were eligible for promotion, subject to their passing the promotion examination prescribed by the department.

15. According to the applicants, in the case of appointments to the posts before the coming into force of the 1978 Rules, the 1967 Rules relating to seniority continued to be applicable.

16. The relevant provisions of the 1967 Rules to the instant case are Rules ^{or 4,} 5, 6 and 7 which are as under:-

"4 PERMANENT OFFICERS TO RANK SENIOR TO OFFICIATING OFFICERS:

Subject to the provisions of Rule 5 permanent officers of each grade shall rank senior to officers who are officiating in that grade.

5. DIRECT RECRUITS :

Notwithstanding the provisions of Rule 4, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the Union Public Service Commission or other selection authority, persons appointed as a result of earlier selection being senior to those appointed as a result of a subsequent selection.

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, Seniority shall follow the order of confirmation and not the original order of merit.

6. PROMOTEES:

(i) The relative seniority of persons promoted various grades shall be determined in the order of their selection for such promotion.

Provided that where persons promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of promotion, seniority shall follow the order of confirmation and not the original order of merit.

(ii) Where promotions to a grade are made from more than one grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grades and the selecting authority shall select persons for promotion from each list upto the prescribed percentage, if any, and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade.

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EXPLANATION : Where promotions are made on the basis of selection by a selecting authority, the seniority of such promotees shall be in the order of merit in which they were recommended for such promotion by the authority. Where promotions are made on the basis of seniority subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior, such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over a junior who had superseded him.

ILLUSTRATION : Where 75% of the vacancies in the grade of Head Clerk are reserved for promotion from the grade of upper Division Clerk and 25% from the grade of Store-Keepers, the eligible Upper Division Clerks and Store-Keepers shall be arranged in the separate lists with reference to their relative seniority in those grades. The selection authority will make selection of three candidates from the list of U.D.C.s and one from the list of Store-Keepers. Thereafter the selected person from each list shall be arranged in a single list in a consolidated order of merit assessed by the selecting authority, which will determine the seniority of the persons on promotion to the higher Grade.

7. RELATIVE SENIORITY OF DIRECT RECRUITS AND PROMOTEES :

The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the percentage of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules.

NOTE(1) A register should be maintained based on the reservation of vacancies for direct recruitment and for promotion in the Recruitment rules. Where 75% of the vacancies are reserved for promotion and 25% for direct recruitment, each direct recruit shall be ranked in seniority below three promotees. Where the percentage is 50% each, every direct recruit shall be ranked below a promotee and the roster shall run as follows :-

- (1) Promotion.
- (2) Direct Recruitment,
- (3) Promotion,
- (4) Direct Recruitment, and so on.

Appointment shall be made in accordance with this roster and seniority determined accordingly. If for any reason a direct recruit, or a promotee ceases to hold the appointments in the grade, the seniority list shall not be re-arranged merely for the purpose of ensuring the proportion concerned.

NOTE(2) A promotee shall not necessarily be placed over a direct recruit. The relative seniority of a departmental promotee vis-a-vis a direct recruit depends on the starting point in the roster as determined by the appointing authority. If the first point in the roster starts with a direct recruit, the relative order of seniority against the departmental promotees and direct recruits will be first direct recruit followed by a departmental promotee and vice-versa."

17. It will be seen from the foregoing provisions that seniority would be determined on the basis of rota-quota system, i.e., one promotion and one direct recruit, and one promotion, and so on. According to the applicants, without adhering to the aforesaid Rules, the respondents prepared an inter-se seniority list of Police Sub-Inspectors dated 12.1.1983. Aggrieved by the said seniority list, two Police Sub-Inspectors filed writ petitions in the Panaji Bench of the Bombay High Court (Writ Petition Nos.164/83 and 185/83) which were disposed of by a common judgement dated 1.9.1984. The applicants were not parties to the said writ petitions. The Bombay High Court quashed and set aside the impugned seniority list dated 12.1.1983 and held that except the seniority of persons appearing at Sl.Nos.1-13, the seniority of others should be revised as per the guidelines contained in the judgement. During the hearing of the instant case, the learned counsel for both the parties relied upon the said judgement in support of their respective contentions.

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18. The respondents, subsequently published on 1.8.1985, a seniority list purported to have been prepared on the basis of the guidelines indicated in the judgement of the Bombay High Court, mentioned above (Exhibit 'H' at page 137 of the paper-book). The applicants preferred their representations to respondent No.2 pointing out as to how several officers had been shown as senior to them erroneously. Their contention is that the accident of confirmation cannot be an intelligible criterion for determining seniority between direct recruits and promotees and all other factors being equal, continuous officiation ought to receive due recognition in determining rules of seniority as between persons recruited from different sources so long as they belong to the same cadre, discharge similar functions and bear similar responsibilities. They also contended that continuous officiation of promotees confers seniority over the later recruits and if the quota rule is not adhered to, rota rule for inter se seniority cannot be given effect to. According to them, in the instant case, there was departure from the rota-quota system laid down in 1967 Rules and the impugned seniority list of 1983, which has been prepared on the basis of the rota-quota system, is not legally sustainable. They have also called in question the further promotions made to the posts of Police Inspector on the basis of the impugned seniority list.

19. Respondent Nos.1-3 have filed counter-affidavit on behalf of the respondents. Respondent No.22 has also filed a separate counter-affidavit. The stand of the respondents as set out in the counter-affidavits, may be summed up as follows:-

- (i) The impugned seniority list has been prepared in conformity with the directions contained in the judgement of the Bombay High Court, mentioned above;
- (ii) the further promotions were made on the basis of the seniority list prepared by them and on the recommendations of a duly constituted D.P.C.; and
- (iii) the respondents have denied that there has been any break down of the 'rota-quota' system embodied in the 1967 Rules.

20. The question for consideration is whether the seniority list revised by the respondents in accordance with the directions contained in the judgement of the Bombay High Court dated 1.9.1984, suffers from any legal or constitutional infirmity. The impugned seniority list was published on 21.1.1986. Before doing so, the respondents had circulated a tentative seniority list and invited representations from all concerned and had considered the representations received from them. The respondents had confirmed eligible

Police Sub-Inspectors vide their order dated 24.7.1985 as per the recommendations of the Departmental Promotion Committee. These officers belonged to the categories of promotees and direct recruits. According to the order and 2 were ~~and 2 were~~ dated 24.7.1985, applicant No.1/~~was~~ shown as having been confirmed w.e.f. 23.11.1975 while applicant No.3 was shown to have been confirmed w.e.f. 8.1.1979 and the fourth applicant, w.e.f. 22.6.1984. It was thereafter that the impugned seniority list was published on 21.1.86.

21. During the hearing, the learned counsel for the applicants contended that there was a break-down of the 'rota-quota' system as there was no direct recruitment between 1974 and 1979 in accordance with the recruitment rules. Accordingly, it was contended that ^{the 2} ~~only~~ reasonable criterion for determining inter se seniority between the direct recruits and the promotees would be continuous officiation in a post. In this context, he relied upon the judgement of this Tribunal in K.N. Mishra & Others Vs. Union of India & Others, A.T.R. 1986 (2) CAT 270; and S.C. Jain Vs. Union of India & Others, A.T.R. 1986 (2) CAT 346. In the said two cases, the Tribunal has discussed the various rulings of the Supreme Court, including Narendra Chadha Vs. Union of India & Ors., AIR 1986 S.C. 638, ^{and Or} ~~and Or~~ G.S. Lamba Vs. Union of India & Ors., 1985 (1) SCALE 563.

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22. The learned counsel for respondent No.22 relied upon the decision of the Supreme Court in Baleshwar Dass & Others Vs. State of U.P. & Others, 1980 (4) S.C.C. 226, wherein the Supreme Court referred to its earlier decision in S.B. Patwardhan Vs. State of Maharashtra, 1977 (3) SCC 399 in which it had been observed that confirmation cannot be the sole touchstone of seniority. The Supreme Court had observed thus:-

"Confirmation is one of the inglorious uncertainties of Government service depending neither on the efficiency of the ^{incumbent} ~~xxxxxxx~~ nor on the availability of substantive vacancies ~~xxx~~.....It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not, depends on the sweet will and pleasure of the Government."

23. We have carefully gone through the records and considered the rival contentions of both the parties. The seniority list which was impugned in writ petition Nos. 164/83 and 135/83 before the Panaji Bench of the Bombay High Court, has been revised by the respondents in accordance with the guidelines contained in the judgement. It is that seniority list which is under attack in the present proceedings. The judgement of the Bombay High Court has become final as the matter was not taken to the Supreme Court in appeal. It is true that the applicants were not parties before the Bombay High Court in those

writ petitions but the judgement of the High Court has a persuasive value. In our opinion, the shortfall in the direct recruitment in the years 1974 to 1979 in itself will not ^{be a} conclusive proof that there has been a break-down of the 'rota-quota' system envisaged by the recruitment rules. We are of the view that there has been no ~~wild~~ ^{violent} departure from the 'rota-quota' system in the instant case.

24. The principle of determining inter se seniority between the direct recruits and the promotees on the basis of their continuous officiation would be relevant only in a case where there is no service rule for determining the seniority between them. In the instant case, the 1967 Rules lay down the 'rota-quota' system for determining inter se seniority between the two categories of officers. Therefore, it will not be appropriate to determine their inter se seniority on the basis of the general principle of continuous officiation by relying upon the rulings of the Supreme Court cited before us.

25. The Bombay High Court has dwelt at length on the Rules 5 and 7 of the 1967 Rules and has observed that the initial seniority list at the time of the recruitment is liable to be disturbed if a junior member is confirmed earlier to the senior one. This is the effect of the proviso to Rule 5. Accordingly, the High Court observed that the seniority list should be prepared on the basis of the date of confirmation. Whenever more than one officers are confirmed w.e.f. the one and the same date, their initial seniority on the date of appointment would be the governing factor to decide their inter se seniority after

confirmation. The Bombay High Court had also observed that Rule 7 of the 1967 Rules prescribes a 'rota' system and "the Government is bound to observe that rule". The High Court also relied upon the decision of the Supreme Court in Paramjit Singh Vs. Ram Rakha, A.I.R. 1973 S.C. 1073, wherein it was observed as follows:-

"If the quota rule is strictly adhered to, there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation. A roster is introduced while giving confirmation ascertaining every time which post has fallen vacant and the recruit from that source has to be confirmed in the post available to the source."

26. In view of the above, the Bombay High Court has held that the "rota" system at the time of confirmation has to be followed whenever fixing a fixation of seniority is based upon the confirmation". The High Court observed that the impugned seniority list of 1983 did not conform to these principles. The Court noticed that by an order dated 23.8.1979, 15 officers were confirmed and out of them the first 12 were ^{on} ~~the~~ promotees, while the next three persons were the direct recruits and the serial numbers in that very fashion had been taken while fixing the seniority list. As the percentage of the promotees and the direct recruits is 50 : 50, it was observed that it would be necessary to effect the confirmation of that category of Police Officers whose turn was there, according to the 'rota' system. The rules provided that there should be a direct recruitment if at a given time, the appointment by promotion is not feasible.

27. The Bombay High Court also considered the question as to what ^{should} ~~happen~~ if the prescribed percentage is not maintained. either by the Government not taking steps to have the recruitment from the direct category or the Government failing in its attempt to get competent officers from the direct category. In this context, a reference was made to the decision of the Supreme Court in N.K. Chauhan Vs. State of Gujarat, A.I.R. 1977 S.C. 251, wherein it was observed that if the efforts made by the Government to recruit candidates from the open market do not succeed, it qualifies for departure from the rule. In such an eventuality, it will be free to fill the posts by promotion of suitable hands if the filling up of the vacancies was administratively necessary and could not wait. In that case, the Supreme Court came to the conclusion that the Government did not make any serious attempt to fill in direct recruits by nomination. Consequently, it was held that the promotees who were occupying the posts in the quota of direct recruits for the relevant years, should be pushed down.

28. The Bombay High Court observed that the aforesaid principle would be relevant. In addition, it was observed that confirmation should be made with regard to the category to which the vacant post belongs, viz., whether as per the 'quota-rota', that post belongs to promotee, or to the direct recruits.

29. It is the case of the respondents that they have prepared the impugned seniority list in the light of the aforesaid directions. In our opinion, as the 1967 Rules govern the determination of the inter se seniority between the direct recruits and the promotees, it will not be

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appropriate to apply the general principle of continuous officiation in a post for determining seniority. We are also not convinced that there has been any violent departure from the 'rota-quota' rule in the instant case. In view of this, we see no merit in the present application and the same is dismissed. The parties will bear their own costs.

M.Y. Priolkar
8.2.90
(M.Y. Priolkar)
Administrative Member.

P.K. Kartha
8/3/90
(P.K. Kartha)
Vice-Chairman(Judl.)

Judgement dt 8.3.90
Served on R.No 2 & 3
on dt 14.4.90
12/4/90