

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH
CAMP AT PANAJIO.A. No. 868/89
Exxxx No. 198

DATE OF DECISION 14.9.1990

Shri G.G.Dias Sapeco & 2 ors. Petitioner

Shri G.R.Sharma Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri H.R.Bharne. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER(A),

The Hon'ble Mr. N.DHARMADAN, 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? NO
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

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(N.DHARMADAN)
MEMBER(J).

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT PANAJI.

ORIGINAL APPLICATION NO.868/89.

Shri G.G.Dias Sapeco, and ~~2~~ others. ... Applicants.

V/s.

Union of India & Others. ... Respondents.

CORAM: HON'BLE MEMBER(A), SHRI M.Y.PRIOLKAR,
HON'BLE MEMBER(J), SHRI N.DHARMADAN.

Appearances:-

Applicant by Shri G.R.Sharma.
Respondents by Shri H.R.Bharne.

JUDGMENT:-

(1) Per Shri N.Dharmadan, Member(J)

Dated: 14.9.1990

The applicants were appointed as Assistant Engineers after selection through U.P.S.C. in Irrigation Department under the Goa Government, Department of Public Works (Non-Ministerial) Recruitment Rules, 1966. The government under Notification No.7/71/1/80 dated 25.6.1981 created a new Department ~~under~~ ^{with} the name and style 'Irrigation Department' to look after the Irrigation Works and applicants were regularly working as Assistant Engineers with effect from 25.6.1981.

2. The 12th respondent who was appointed as Assistant Engineer (Civil) 'Soil Conservation Division' in the Directorate of Agriculture on 17.4.1978, was transferred along with all incumbents in the Soil Conservation Division of the Directorate of Agriculture to the Public Works Department as per the government order dated 17.2.1983. Thereafter the government by a Circular No.7/17-1/80-WET dated 12.10.1984 sought option from the incumbents holding technical posts in the Soil Conservation Division after bifurcation of Public Works Department into P.W.D. and Irrigation Department. ^{According to the applicants to} ~~all~~ the incumbents except respondent No.12 exercised option for going to Soil Conservation Division.

3. Thereafter the Government circulated a tentative seniority list of Assistant Engineers in the Irrigation Department as per letter dated 4.10.1985 in which respondent 12 is shown at serial No.26 whereas applicants are shown at serial No.31, 38 and 33 respectively.

4. By order No. 5/UVP/87 dated 22.12.1987 the government again decided that Soil Conservation Division will continue to be an absolute constituent of the Agricultural Department with effect from 22.12.1987. But the government passed order No.3/25-20/85/Irrigation dated 8.2.1988 promoted 12th respondent to the post of Executive Engineer in Soil Conservation Division of the Directorate of Agriculture itself. The government in the meanwhile again issued notification No.7/17-3/86 PW&UD(Part) dated 22.2.1988 allotting officers to the PWD and Irrigation Department wherein the applicants are shown at serial Nos. 11, 35 and 13 respectively. The 12th respondent was shown at serial No.40 inspite of the fact that he is no longer either in PWD or Irrigation Department. Since the government have illegally maintained the respondent No.12 in this list the applicants filed repeated representations challenging the continuance of the 12th respondent in the Irrigation Department. But the representations were rejected as per order Government letter No.3/22-1/89 IRRG dated 28.7.1989. According to the applicants all these government orders are illegal, irregular and arbitrary. Hence they have filed this original application for setting aside all the orders and government letters referred to above.

5. The respondents 2 to 9 and respondent No.12 have filed separate detailed counter affidavits, they have specifically stated that the applicants are not really aggrieved persons, they had not ^{challenged} ~~changed~~ the orders within the stipulated period of limitation. The 12th respondents seniority when finalised no objections were raised by the applicants. They also did not challenged the promotion

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of the 12th respondent as Executive Engineer at the appropriate time. Now since the applicants are only juniors to the 12th respondent they cannot attack his continuance in the Irrigation Department.

6. The learned counsel for the applicants argued the matter at length, but he was not able to establish that he is really an aggrieved person for attacking the promotion of the 12th respondent as Executive Engineer. In the course of the arguments he answered in the negative the queries as to whether the applicants are seniors to the 12th respondent. It is clear from the seniority list of Assistant Engineers published as per memorandum dated 20th August, 1985 that the serial number of 12th respondent is ^{26th (See 4)} while that of the applicants are ^{31, 38th 4} and ^{33th 4} respectively. This seniority list was subsequently finalised with effect from the above date as per Circular memorandum dated 13th March, 1986 after circulating the same among all the officers including the applicants. No body raised any objections to the finalisation of this seniority list.

7. The learned counsel for the applicants also submitted that the applicants have no objections to the promotion of the 12th respondent as Executive Engineer. They never objected the promotion at any point of time. A post of Executive Engineer was created prescribing the qualifications for the promotion as eight years of service as Civil Engineer. After the selection by the DPC the 12th respondent was promoted and posted as Executive Engineer as per order dated 8.2.1988. The order reads as follows:

"

O R D E R

Government is pleased to order the promotion of Shri R.R.Shani presently working as Assistant Engineer in the Soil Conservation Division of the

Directorate of Agriculture, Panaji, to the post of Executive Engineer in the Soil Conservation Division of the Directorate of Agriculture, Panaji ~~xxxxxx~~ with immediate effect.

The appointment is purely on ad hoc basis and will not bestow any claim for regular appointment and service rendered on ad hoc basis in the grade will not count for the purpose of seniority in the grade and for eligibility for promotion to the next higher grade.

Shri O.R.Bagali, Executive Engineer, Works Division VII, Irrigation Department, Bicholim-Goa, who is holding the additional charge of the post of Executive Engineer in the Soil Conservation Division of the Directorate of Agriculture, Panaji vide Government Order No.3/25-6/86/IRRG dated 14.8.1986, shall stand relieved of the additional charge of the post of Executive Engineer in the Soil Conservation Division of the Directorate of Agriculture, Panaji with effect from the date Shri R.R.Sohani takes over the charge of the post of Executive Engineer in the Soil Conservation Division of the Directorate of Agriculture, Panaji.

By order and in the name of the Governor of Goa

Sd/-

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8. At the time when the 12th respondent's claim for promotion as Executive Engineer was considered by the DPC the applicants were not qualified. So they cannot raise any claim for consideration of their case and that may be the reason why they are not attacking the promotion of the 12 th respondent.

9. The only ground of attack remaining for consideration is that since the government have passed an order on 22.12.1987 cancelling the order dated 17.2.1983, the 12th respondent should be sent back to the Department of Soil Conservation Division in an unceremonious manner without any benefit which he acquired during the period between 17.2.1983 to 22.12.1987. The ~~circulation~~ order reads as follows:

" O R D E R

Under Govt. order No.4-1-83-FA dt. 17th February, 1983 the technical posts under Soil Conservation Division of the Directorate of Agriculture along with their incumbents as shown in the Annexure attached thereto were transferred to the Public Works Department for functional purpose.

On reconsideration the Government has decided that the order No.4-1-83-FA dated 17th February, 1983 may be treated as cancelled. Soil Conservation Division therefore will continue to be an absolute constituent of the Agriculture Department.

By order and in the name of the Governor of Goa.
Sd/-

"

10. After this order option was called for from the 12th respondent and others in the department. It is produced as Ex. R-1 dated 22.6.1988 along with the counter affidavit of the 12th respondent. The relevant portion reads as follows:-

" I am directed to state that vide Government order No.4-81-FAD-WET dated 1.12.1984, the technical staff of the Soil Conservation Division of the Directorate of Agriculture was merged with the Irrigation Department. Subsequently, vide Government order No.5/2/FVP/87 dated 22.12.1987, the technical staff of the Soil Conservation Division has now been reverted back to the cadre of the Directorate of Agriculture.

It is now requested that the technical staff belonging to the Soil Conservation Division be asked to give an option indicating whether they would opt for the cadre of Irrigation Department or the cadre of the Directorate of Agriculture."

As per Ex.R-2 the option was given by the 12th respondent and it was accepted by the government as indicated in Ex.R-3 dated 13th July, 1988. Moreover, the order dated 22.12.1987 is modified with an ADDENDUM which reads as follows:-

" In Government order referred to above the para indicated in the endorsement against the designation of Directorate of Agriculture and Chief Engineer P.W.D. may be substituted to read as:-

"Wherever the approval of the authority higher than the one available in the Soil Conservation Division, Panaji is required the officers of appropriate levels from the office of the Chief Engineer Irrigation Department will exercise the technical powers. "

By order and in the name of the Governor of Goa.

"

11. The position was further clarified by the government by passing a further order dated 20th June, 1989 which reads as follows:-

"

O R D E R

WHEREAS under Government order No.4-1-83-FA dated 17.2.1983, the technical posts in the Soil Conservation Division of the Directorate of Agriculture, Panaji along with the incumbents were transferred to the Public Works Department.

AND WHEREAS subsequently vide Government Order No.4-4-81-FA-VET dated 1.12.1984, these technical posts along with the incumbent were transferred to cadre of the Irrigation Department.

AND WHEREAS in pursuance of the Government Order No.5/2/FVP/87 dated 22.12.1987, these technical posts along with the incumbents were reverted back to the cadre of the Soil Conservation Division of the Directorate of Agriculture.

AND WHEREAS options were called from the technical staff of the Soil Conservation Division of the Directorate of Agriculture as to whether they would opt for the cadre of the Irrigation Department or to the cadre of the Soil Conservation Division of the Directorate of Agriculture.

AND WHEREAS on scrutiny of options received from the technical staff it was found that they preferred to absorb in the cadre of Soil Conservation Division of the Directorate of Agriculture.

NOW THEREFORE, Government of Goa, after considering the options given by the technical staff of the Soil Conservation Division of the Directorate of Agriculture, is pleased to treat the technical staff as has been shown in the Annexure attached as transferred to the Soil Conservation Division of the Directorate of Agriculture with the exception of Shri R.R.Sohani, the then "ssistant Engineer, now Executive Engineer, Shri R.R.Sohani, shall be retained in the Irrigation Department and shall be treated as on deputation to the Soil Conservation Division of the Directorate of Agriculture with effect from 23.12.1987 till 31.5.1989 i.e. the date of his relief from the Soil Conservation Division of the Directorate of Agriculture.

By order and in the name of the Governor of Goa."

From the acceptance of the option of 12th respondent and the ^{above by} ~~eventually~~ ^{eventually} orders it is clear that ~~eventually~~ there is an order dated 22.12.1987 cancelling the earlier order dated 17.2.1983 the allotment of the 12th respondent to the cadre of the Irrigation Department was effect^u under a special circumstance and it would not in any manner prejudicially affect the interest and service benefits of

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the applicant. The government have made this very claim to the applicants while disposing of their representation in the order dated 28th July, 1989. The relevant portion is extracted below:-

"Further, the name of Shri Sohani has been shown in the cadre of the Irrigation Department in the tentative/final seniority lists which have been circulated vide memorandum No.3/12/85/IRRG dated 20.8.1985 and 13.3.1986 respectively. Besides, in the process of bifurcation of the P.W.D. cadre vide Notification No.7/17-1/80-WET(I) dated 8.4.1985 and Notification No.7/17-3-/86-PW&UD(Part) dated 22.2.1988, Shri Sohani has been allotted to the cadre of the Irrigation Department.

In view of the above, the contention of the applicants that the absorption of Shri Sohani will hamper the promotional avenue of the cadre of Assistant Engineers in the Irrigation Department is not relevant."

12. Having considered the facts and circumstances of the case carefully we are fully satisfied there is no substance in the contentions raised by the applicants and the application is only to be dismissed as devoid of any merits.

13. In fine this application is dismissed. There will be no order as to costs.

N.Dharmadan
14.9.90.

(N.DHARMADAN)
MEMBER(J)

M.Y.Priolkar
14.9.90

(M.Y.PRIOLKAR)
MEMBER(A)