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# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 863/89

198

~~XXXXXXXXXX~~

DATE OF DECISION

12-4-1991

Mr. Joseph Andrade Petitioner

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

Versus

Union of India & Ors. Respondent

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

**CORAM**

The Hon'ble Mr. P.S.Chaudhuri, Member (A)

The Hon'ble Mr. T.C.Reddy, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Yes

Yes

Yes

Yes

*P.S. Chaudhuri*

( P.S.Chaudhuri )  
Member (A)

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

\* \* \* \*

Original Application No.863/89

Joseph Andrade,  
Upper Division Clerk,  
S.D.P.O.,  
Vasco-da-Gama, Goa

... Applicant

V/s

1. Union of India  
through the Secretary,  
Ministry of Home Affairs,  
New Delhi.
2. The Governor of Goa State  
having his office at Cabo Raj  
Niwas, Dona Paula, Goa.
3. The Chief Secretary,  
Government of Goa,  
Secretariat, Panaji, Goa.
4. The Inspector General of Police,  
Police Headquarters,  
Panaji, Goa.
5. Mr. Jeronimo D'Souza,  
Upper Division Clerk,  
Now Head Clerk,  
Police Headquarters,  
Panaji, Goa.
6. Mr. K.Chandrasekharan,  
Upper Division Clerk,  
Now Statistical Assistant,  
Police Headquarters,  
Panaji, Goa.

... Respondents

CORAM : Hon'ble Member (A), Shri P.S.Chaudhuri  
Hon'ble Member (J), Shri T.C.Reddy

Appearances:

Mr. G.R.Sharma, Advocate,  
for the applicant and  
Mr. H.R.Bharne, Additional  
Standing Counsel for the  
respondents.

JUDGEMENT:

{Per. P.S.Chaudhuri, Member (A)}

Dated :

12-4-1991

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 8.12.1989.

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In it the applicant who is working as Upper Division Clerk in the Police at Vasco-da-Gama is challenging his supersession by the 5th and 6th respondents in the matter of promotion to the post of Head Clerk/Statistical Assistant. He is also challenging the failure of the respondents to expunge certain adverse remarks, communicated to him, in his annual confidential report for the period 26.10.1987 to 31.3.1988.

2. The applicant was appointed as Policeman on 8.8.1961. Thereafter he was promoted as Lower Division Clerk on 2.4.1962 and as Upper Division Clerk on 5.7.1969. It is the admitted position that respondents 5 & 6 were junior to him in the post of Upper Division Clerk.

3. By order dated 11.3.1988 the 5th respondent was promoted to the post of Head Clerk. Being aggrieved the applicant submitted a representation dated 23.3.1988. He followed up this with further representations and was eventually allowed to appear in orderly room before the 4th respondent on 27.1.1989 but was not given any written speaking order and, instead, Superintendent of Police (Headquarters) was directed by the 4th respondent to study and report on the applicant's grievance. Thereafter the applicant eventually submitted a representation dated 17.10.1989 to the 3rd respondent which remains unreplied. By order dated 29.9.1989 the 6th respondent was promoted to the post of Statistical Assistant. Being aggrieved again the applicant submitted a representation also dated 17.10.1989 to the 3rd respondent against this supersession and this representation remains unreplied.

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4. In the mean time, on 4.8.1988 the applicant was communicated some adverse remarks in his annual confidential report for the period 26.10.1987 to 31.3.1988. On 31.8.88 he submitted a representation against these remarks but this was rejected by letter dated 13.1.1989.

5. Being aggrieved, the applicant filed the present application. The respondents have opposed it by filing their written reply. We have heard Mr. G.R.Sharma, learned counsel for the applicant and Mr. H.R.Bharne, learned counsel for the respondents.

6. Mr. Sharma sought to establish the applicant's claim for deletion of the above mentioned adverse remarks on a number of grounds. It was his case that the confidential report was required to be written within a week of the completion of the financial year and ~~adverse~~ <sup>if any,</sup> remarks were required to be communicated within a month thereafter. He sought to contend that the respondents had not done so and hence these were fatal <sup>flaws</sup> which vitiated the remarks. We are unable to go along with Mr. Sharma in this regard. The instructions referred to by him are guidelines and not mandatory instructions. We are unable to hold that there has been any abnormal delay in either writing the report or communicating the adverse remarks or in passing final orders in respect of the representation made by the applicant. The need for promptness in writing confidential reports and communicating adverse remarks recorded therein are primarily to enable the official concerned to fully remember the events which

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lead to the adverse remarks and to give him adequate opportunity to improve himself before the next report is written. Neither of these considerations are applicable in this case as no further adverse remarks has been communicated to the applicant. In this view of the matter we see no merit in the prayer of the applicant regarding deletion of the above mentioned adverse remarks and hence dismiss this prayer.

7. Coming then to the supersession of the applicant, Mr. Sharma sought to contend that, first, the admitted fact that the applicant had been allowed to cross the Efficiency Bar with effect from 1.7.1986 by order dated 20.1.1987 wiped out all adverse remarks that there might be in his confidential roll prior to that date. He sought to rely <sup>on</sup> State of Punjab v. <sup>Dewan</sup> Chuni Lal - AIR 1970 SC 2086 - in this regard. His second line of attack was that DPCs had been held in 1987 and 1989 whereas the 5th respondent had been promoted against the vacancy which arose in 1988. It was his submission that the DPC which met in 1987 could not have known about and could not have considered the vacancy which arose in 1988. A separate DPC should have been conducted in 1988 for the vacancy which arose in that year. It was, therefore, incorrect on the part of the respondents to place the 5th respondent in the select list on the basis of the 1987 DPC and, thereafter, to promote him against the vacancy which arose in 1988. It was necessary for us to see the records of the DPC for 1987 and 1989 to study the applicant's contentions

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and, with his characteristic fairness, Mr. Bharne made the complete record available to us. We find that the applicant was considered in his proper place in the seniority list in both the DPCs but did not find a place in the select list not because he was held to be unfit but only because he was not graded as highly as those who did find a place in the select list. Thus, there is no force in Mr. Sharma's contention that the applicant had suffered because of assessment made in confidential reports written prior to his crossing the Efficiency Bar with effect from 1.7.1986 in terms of order dated 20.1.1987. In any case the contention sought to be established by Mr. Sharma by relying on Dewan Chuni Lal's case (supra) is not at all well founded. That case can be readily distinguished. In it it has been held "It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for ~~to~~ crossing the efficiency bar in 1944." In the present case, however, it is not as if the applicant was not found fit for promotion. He did not find a place in the select list only because he was not graded as highly as those who did. This position is quite distinct from that <sup>in</sup> Dewan Chuni Lal's case (supra).

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It is also not as if any adverse remarks in respect of which representations were pending were taken into account by the DPC. The adverse remarks in question pertain to the year ending 31.3.1988 and hence are obviously not applicable for the 1987 DPC which met on 18.9.1987. Final orders in respect of <sup>the</sup> representation made were passed on 13.1.1989, i.e. well before 1989 DPC which met on 22.9.1989.

8. Coming now to Mr. Sharma's second line of attack, the 1987 DPC was required to submit recommendations in respect of four posts, one of which was reserved for a ST candidate. In terms of the administrative instructions, the zone of consideration was required to cover three times the number of vacancies i.e. 12 persons. As there was no ST candidate within this normal field of choice <sup>may be</sup> extended to five times the number of vacancies i.e. upto 20 places in the seniority list to see whether a ST candidate was available. A ST candidate was not so available but a SC candidate was considered in lieu of the ST candidate. The 5th respondent was certainly graded higher than the applicant but was the 4th <sup>candidate</sup> candidate in his grade. He was, therefore, not high enough for inclusion in the list in respect of the number of vacancies for which the DPC had been convened. Had the DPC been convened to consider four vacancies for general candidates over and above one vacancy for a reserved candidate the zone of consideration would have extended to 15 persons and they would have to go down position No.25 in the seniority list to see if there was any ST candidate or

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find a SC candidate in lieu. This they did not do. Instead, they recommended that the 5th respondent be placed on the waiting list. Nothing in the rules was shown to us which provides for the preparation of a waiting list, let alone placing a candidate on such a list. In this view of the matter we are unable to sustain the action of the respondents in placing the 5th respondent on a waiting list in 1987 and promoting him against a vacancy which arose in 1988 and which was not considered by the DPC which met in 1987 purely on the basis of his placement on a waiting list as a result of the 1987 DPC. It was incumbent on the respondents to hold a fresh DPC in 1988 and to make promotions on the basis of the recommendations of such a DPC. It is of course necessary for us to mention here that as the 5th respondent had been incorrectly placed on a waiting list by the 1987 DPC and promoted thereafter his case was not considered by the 1989 DPC. It is necessary for us to take cognisance of this position <sup>view of</sup> in the final order that we propose passing. In this view of the matter the application partly succeeds only to the extent of the recommendations of the 1987 DPC and consequential actions.

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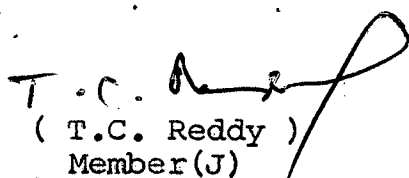
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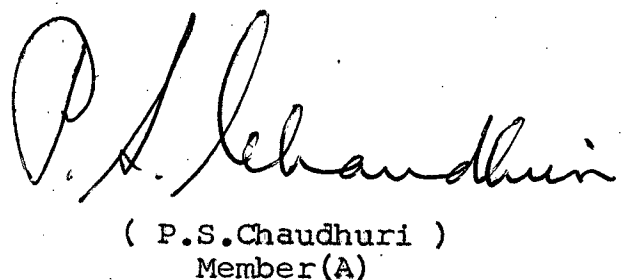
9. We accordingly pass the following order:-

- i) We quash and set aside the action of the respondents in placing the 5th respondent on a waiting list as a result of the 1987 DPC.

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- ii) We direct the respondents to hold a review DPC for 1988 in accordance with the rules in respect of the vacancy which arose in that year. This shall be completed within a period of two months from the date of communication of this order.
- iii) If the 5th respondent does not find a place in the select list as a result of such review DPC, we direct the respondents to hold a review DPC for 1989 in which the candidature of the 5th respondent shall also be considered. This shall be completed within a period of two months from the date of communication of this order.
- iv) The impugned promotion order dated 11.3.1988 shall stand quashed after three months from the date of communication of this order in case a revised order is not already issued prior to that date in pursuance of clause (ii) above.
- v) In the circumstances of the case there will be no order as to costs.

  
( T.C. Reddy )  
Member(J)

  
( P.S. Chaudhuri )  
Member(A)