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

Original Application No.357/89

Dr. N.G.K.Sharma

... Applicant

vs

Union of India and Ors.

... Respondents

CORAM : Hon'ble Vice Chairman, Shri G.Sreedharan Nair
Hon'ble Member (A), Shri M.Y. Priolkar

Appearances:

Mr.G.R.Sharma, counsel,
for the applicant.

Mr. F.Rebello for private
respondents, Mr.G.U. Bhobe,
counsel for Govt. respondents.

JUDGEMENT:

Dated : 13 - 7 - 1990

(Per. Shri M.Y. Priolkar, Member (A))

The applicant in this case has the grievance that though, according to him, he was holding the post of Professor of Medicine in Goa Medical College on substantive basis with effect from 30.8.1971, this post was again advertised and offered to the applicant on temporary basis on 5.9.1980. The applicant states that by order dated 21.10.1980 of the Government of Goa, Daman and Diu, he was again appointed to the same post as Professor of Medicine. The applicant also states that he had represented against the various tentative seniority lists of Professors in the Goa Medical College circulated from time to time showing the date of his regular appointment in that grade as 1.11.1980, the last such tentative seniority list being dated 4.10.1988 against which he submitted his representation on 1.11.1988, but he was orally informed that all his representations

were rejected. Although there is no precise narration in the application of the specific reliefs prayed for therein, the learned counsel for the applicant stated during the hearing that the applicant prays primarily for setting aside the tentative seniority lists, the last one being of 4.10.1988 and for a direction that the date of appointment of the applicant as Professor should be reckoned from the date of his continuous service, including that on ad-hoc basis, if any, in that grade.

2. In the written reply filed on behalf of the Government of Goa, it has been stated that the substantive appointment of the applicant with effect from 30.8.1971 was to the specialist's grade of the Central Health Service and not to the post of Professor of Medicine. They have also stated that the applicant was holding the post of Professor of Medicine purely on ad-hoc basis and, therefore, by order dated 21.10.1980 he was appointed on regular basis to the post of Professor of Medicine after the offer dated 5.9.1980 for temporary regular appointment as Professor of Medicine was accepted by him. It has also been stated that the inter-se seniority of the applicant and respondents Nos. 9 and 10 has been fixed ^{from} _{their} respective dates of regular appointments as Professors in Goa Medical College.

3. In his written reply, Respondent No.10 has stated that though posts in Goa Medical College had initially a separate cadre, these posts were absorbed in the Central Health Service from 30.8.1969. These posts were again

delinked from the Central Health Services from 25.11.1978, when both he and the applicant opted to remain in Goa Medical College. Therefore, ^{after} Respondent No.10's post was advertised to be filled in by direct recruitment and he was selected by UPSC for the post of Professor of Microbiology on 8.7.1980. Similarly, the post of Professor of Medicine was also advertised to be filled in by direct recruitment and the applicant was selected by UPSC for that post on 1.11.1980. He is, therefore, correctly shown as senior to the applicant in the seniority lists of Professors.

4. We have given careful consideration to these rival contentions. We are satisfied that the applicant cannot claim the benefit of seniority in respect of his ad-hoc service as Professor since he was not eligible earlier for appointment to the post of Professor in the Central Health Service where this was a promotion post and being 14th in ~~their~~ seniority list he could not be in the zone of consideration. As far as Goa Medical College is concerned, he was appointed as Professor after the post was advertised and filled in by direct recruitment. The letter of the applicant himself dated 16.12.1980 (Exhibit R1) clearly shows that the applicant was aware of the position that although he was a substantive officer in the Specialist grade of the Central Health Service, he was holding the post of Professor of Medicine on temporary basis pursuant to the order dated 21st October 1980. We are, therefore, unable to accept the applicant's contention that in arriving at the date of regular appointment for the purpose of seniority, there has been a violation of the Goa, Daman

and Diu Medical Education Service Rules, 1979. It is only in the absence of such specific rules that the length of continuous service could have been a relevant consideration for fixing the seniority.

5. We have mentioned earlier that the main relief sought by the applicant is for setting aside the tentative seniority lists, the last one being dated 4.10.1988. The respondents brought to our notice that a revised seniority list was finalised and circulated in March 1990. The applicant has, however, chosen not to amend the application to include a prayer for setting aside ~~of~~ this revised list. The relief asked for is, therefore, liable to be rejected on this ground alone.

6. The respondents have also strongly opposed this application on the ground of limitation. They have contended that the seniority of the applicant vis-a-vis Respondents 9 and 10 was fixed by memorandum dated 30.7.1982 and subsequent memos have not altered this position. The applicant's grievance, if any, therefore started from 30-7-1982 whereas the application is filed after a period of about 7 years from ^{that} date. Even omission to give replies to his representations would not justify such long delay of 7 years. They have also argued that the alleged discrimination against the applicant by way of delay in filling up his post by direct recruitment in 1980 cannot be challenged in the year 1989, all the more so, when third party rights of respondents Nos. 9 and 10 have been created during the

intervening period. We hold that there is force in the plea of limitation.

7. The application is, accordingly, dismissed with no order as to costs.

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13-7-90

(M.Y.PRIOLKAR)
MEMBER(A)

Dr. S. Nair
13.7.1990

(G.SREEDHARAN NAIR)
VICE-CHAIRMAN.