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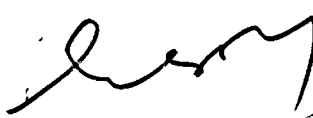
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH : PANAJI.

O.A.456/89.

From : Hon'ble Shri G.Sreedharan Nair,  
Vice Chairman.

To

The Hon'ble Shri M.Y.Priolkar,  
Member, (Admn) for consideration and  
return.

  
( G.Sreedharan Nair )  
Vice Chairman.

For Reporting/Not for ~~reporting~~.

S.P.Singh/ 11.7.90.

See. Mark.

I entirely agree



11-7-90

vc

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH : PANAJI : GOA.  
O.A. 458/89.

Shri P.V.Salekar ... Applicant.  
versus  
State of Goa and  
8thers ... Respondents.

P R E S E N T :

The Hon'ble Sri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y.Priolkar, Member(Admn).

For the applicant- Shri S.D.Lotlikar, Advocate.

For the respondents-

Dates of hearing - 9.7.90 and 10.7.90.

Date of Judgment and Order - 12.7.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

The applicant joined service under the respondents as Teacher at the Government Higher Secondary School. He was promoted to the cadre of Headmaster and thereafter to the post of Deputy Education Officer. By the order dated 15.7.1976, he was promoted to the post of Inspector of Schools which post was later redesignated as Assistant Director of Education. Though promotion of the applicant to that post was on ad hoc basis, it was regularised with effect from 14.11.1984 by the order dated 5.2.1985.

2. The respondents 4 to 6 are also in the cadre of Assistant Director of Education.

3. The grievance of the applicant is that in the tentative seniority list of Assistant Directors, he has been shown below the respondents 5 and 6. Though it is alleged in the application that in the seniority list the applicant should have been shown above the respondents 5 and 6, at the time of hearing, the counsel of the applicant confined the objection only as regards the 6th respondent, the 5th respondent having been promoted to the next higher post of Director of State Institute of Education.

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4. The crux of the attack of the applicant against the tentative seniority list is that in preparing the same the adhoc services rendered by the applicant as Assistant Director during the period 1976-1984 has not been taken into account. It is urged that since the adhoc appointment of the applicant to the post of Assistant Director was followed by regular appointment, the latter would relate back as the applicant was fully qualified and eligible to be promoted to the post of Assistant Director in the year 1976.

5. The applicant prays for a direction to the respondents 1 to 3 to finalise the seniority list of Assistant Directors giving appropriate rank to him taking into account the total services rendered by him in the grade from 23.7.1976.

6. In the reply filed on behalf of the respondents 1 to 3, it is stated that the seniority of the applicant shown in the Select List is on the basis of the order of merit as decided by the Departmental Promotion Committee(D.P.C.). It is pointed out that the adhoc promotion allowed to the applicant to the cadre of Deputy Inspector <sup>in 1973</sup> was challenged by the 6th respondent in Writ Petition No.116 of 1975 in the Court of the Judicial Commissioner, Panaji, wherein the selection was set aside and *for holding a fresh selection, and* a direction was given <sup>fresh</sup> that in case in the first selection the 6th respondent is selected and promoted to the post of Deputy Inspector, his promotion shall be with effect from 12.10.1973.

*It is contended that*

In the selection that was conducted thereafter, the order of merit recommended by the DPC placed the applicant below the 6th respondent and hence by the order dated 27.1.1981, they were promoted on adhoc basis in the said order of merit, and in the seniority list of Deputy Inspectors the 6th respondent was shown above the applicant. It is stated that thereafter on the recommendation of the DPC that met on 14.11.1984, the applicant and the respondents 4 to 6 were promoted to the ~~post~~

post of Assistant Director on regular basis in the order of merit as recommended by the DPC. The 5th respondent was placed at serial No.1, the 4th respondent at serial No.2, the 6th respondent at serial No.3 and the applicant at serial No.4. The seniority list of Assistant Directors has been prepared on that basis and, as such, it is not open to challenge. It is contended that in view of the decision in the Writ Petition the earlier adhoc promotion allowed to the applicant to the post of Assistant Director<sup>in 1976</sup>, based on the promotion allowed to him to the grade of Deputy Inspector<sup>in 1973</sup> became ineffective, and hence the applicant cannot claim the benefit of the adhoc service from 23.7.1976 in the matter of seniority.

7. The respondents 5 and 6 have also filed separate replies on the same lines.

8. We have heard the counsel of the applicant and the counsel of the respondents 1 to 3 as well as the 6th respondent who appeared in person.

9. The thrust of the submission by the counsel of the applicant was that as it is not disputed that the applicant was rendering adhoc service in the grade of Assistant Director from 23.7.1976, which was followed by regular appointment to that post with effect from 14.11.1984, the entire service rendered by him in the grade has to be reckoned for the purpose of determining seniority in the grade. It was stated that it is a settled proposition of law that if an adhoc promotion in a post is followed by a regular appointment, the entire period of service should be counted for the purpose of seniority and qualifying service for future promotions. In support of this proposition, reliance was placed on the decision of the Supreme Court in Narendra Chadha's case

(AIR 1986 SC 49). The decision is of no assistance to the applicant, having regard to the facts of this case. In Narendra Chadha's case, the issue related to the preparation of seniority list of Grade-IV employees of the Indian Economic Service and the Indian Statistical Service and the dispute arose between the direct recruits and the promotees. The situation there was that some of the promotees ~~of the year 1965~~ were to become junior to direct recruits appointed to the post many years later, as the departmental candidates were appointed on adhoc basis even against the quota intended for direct recruits in violation of the Rules and they were allowed to continue to officiate on adhoc basis in those posts for a fairly long period of 15-20 years.

00. In the instant case, it is evident that the applicant secured adhoc promotion to the grade of Assistant Director in the year 1976 over the 6th respondent by sheer chance or accident as at that time the name of the 6th respondent was not there amongst the Deputy Inspectors. It is on record that while the 6th respondent was appointed as ~~the~~ Headmaster in August, 1966, the applicant was appointed to that grade only a year later, in August, 1967, and that in the final seniority list of Headmasters, the 6th respondent figures above the applicant. It was on account of the fact that there were certain adverse entries in the Confidential Reports of the 6th respondent, that in the year 1973, the applicant was able to secure promotion to the grade of Deputy Inspector over the 6th respondent. The adverse entries were expunged on the representation of the 6th respondent. However, as he was not allowed retrospective promotion to the cadre of Deputy Inspector, he had to approach the Court of the Judicial Commissioner, Panaji, with Writ Petition No. 116/75 wherein the selection made by

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the DPC for appointment to the post of Deputy Inspector was set aside and a new selection was directed to be conducted. It was further held that in the event, <sup>the</sup> 6th respondent being selected and promoted to the post of Deputy Inspector, his promotion shall be made effective as from 12.10.1972. Accordingly, the <sup>fresh</sup> ~~first~~ selection was conducted by the respondents 1 and 2, and the 6th respondent was promoted to the grade of Deputy Inspector with retrospective effect from 1973, and his seniority was restored. The final Seniority List in the cadre of Deputy Inspectors placed the 6th respondent above the applicant.


11. From the foregoing it is evident that the adhoc promotion allowed to the applicant to the cadre of Assistant Director in the year 1976 based on his relative position vis-a-vis the 6th respondent in the grade of Deputy Inspector cannot be pressed into service as against the 6th respondent in view of the judgment in the Writ Petition which was delivered on 24.1.1980. The applicant was a party to the said Writ Petition and ~~his~~ bound by the judgment therein.

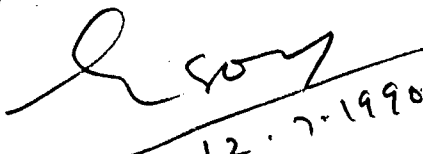
12. In the year 1984, a regular DPC was constituted for appointment to the post of Assistant Director, and based on its recommendations 5(five) Deputy Inspectors were promoted as Assistant Directors with effect from 14.11.1984. From the order dated 5.2.1985, it is clear that the five officers are mentioned therein in the respective order of merit as per the recommendations of the DPC. The 5th respondent is placed at serial No.1, the 4th respondent at serial No.2, the 6th respondent at serial No.3 and the applicant is at serial No.4. The seniority list in the grade of Assistant Director has been prepared accordingly. In this context, reference may be made to Goa Government (Seniority) Rules, 1967, Rule 6 of which

provides that in case of promotees the relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion.

13. It follows from the discussion<sup>s</sup> above that there is no foundation for the grievance of the applicant. He was junior to the 6th respondent in the cadre of Headmaster; again he was junior in the cadre of Deputy Inspector; and now he is rightly shown as junior in the grade of Assistant Director. True, he was able to secure adhoc promotion to the grade of Assistant Director over the 6th respondent; but after the judgment in the Writ Petition No.116/75 it cannot be relied upon against the 6th respondent to claim seniority over him. It is to be emphasised that the said adhoc promotion was secured based on the earlier promotion to the cadre of Deputy Inspector which <sup>was</sup> declared by the Court of <sup>the</sup> Judicial Commissioner as illegal, and set aside.

14. The application is dismissed.

  
12.7.1990  
( M.Y.Priolkar )  
Member(Admn)

  
12.7.1990  
( G.Sreedharan Nair )  
Vice Chairman.

SP Singh/  
11.7.90.