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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CAMP AT PANAJI

Original Application No: 155/93

Transfer Application No:

DATE OF DECISION: 30/6/94 1-7-94

P.C.Mendes

Petitioner

Shri M.S.Sonak

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri M.R.Kolhatkar, Member(A).

1. To be referred to the Reporter or not ? NO
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO


(M.S.DESHPANDE)
VICE-CHAIRMAN

(6)

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

Original Application No.155/93.

Pedro Cassiano Mendes.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri M.S. Deshpande, Vice-Chairman,
Hon'ble Shri M.R. Kolhatkar, Member(A).

Appearances:-

Shri (M.S. Sonak), counsel
for the applicant.
Shri P.M. Pradhan, counsel
for the respondents.

JUDGMENT:-

[Per Shri M.S. Deshpande, Vice-Chairman] Dated: ^{1.7.94}~~3.6.1994~~.

The applicant has made two prayers by this application viz. protection of his pay of the post of 'Operator' as prescribed in the Statute of Overseas Functionaries from the date of appointment of the applicant and to re-fix it in the revised scale of pay with a right to draw the difference of pay and allowances admissible according to the rules from time to time.

2. The applicant came to be appointed on 11.6.1962 in an existing vacant post of Operator of Correios, Telegrafos e Telefones (for short C.T.T.) in terms of Article 63 read with Article 26(a) of the Statute of Overseas Functionaries. The Territories of Goa, Daman and Diu became a part of the Union of India w.e.f. 20.12.1961 by virtue of Article 1(c)(3) of the Constitution of India and were being administered as Union Territories by the President of India through an Administrator. Under the statute the Operadores were entitled to the pay of Esc.1750 corresponding to Rs.291.66 ~~though other employees~~ of the CTT appointed prior to 20.12.1961 were given the pay provided in the statute viz. Rs.291.66, the applicant was paid only Rs.110 + H.R.A. of Rs.15/-. Apart from the

...2.

CTT there were several Corporations or autonomous bodies functioning in Goa, Daman & Diu immediately before 20.12.1961. Some posts in the General Administration and some of the posts in the Corporations which existed prior to 20.12.1961 were absorbed or taken over by the local administration of the Union Territory. Accordingly, posts in the C.T.T. and Radio were taken over or absorbed by the Central Government departments. Under the Goa, Daman & Diu (Absorbed Employees) Act, 1965 and Goa, Daman & Diu (Absorbed Employees Conditions of Service) Rules, 1965 certain provisions were made relating to absorption. Section 2(b) of the Act of 1965 defined "absorbed post" ^{as} meaning a civil service or post which existed under the former Portuguese Administration in Goa, Daman & Diu before 20.12.1961. The post of Operadores existed prior to the liberation of these territories. Those who were appointed as Operadores in the C.T.T. prior to 20.12.1961 were receiving the pay of Rs.291.66, but those who were appointed after 20.12.1961 such as the applicant were paid only Rs.110 + HRA Rs.15/- which resulted in an anomaly. The Law Secretary to the Government of Goa, Daman and Diu in October, 1981 advised the Union Territory of Goa that any one appointed in the absorbed post even after the date of liberation would be entitled to the fixation of pay and benefits which were carried by the absorbed post irrespective of his being an absorbed employee as defined in the Rules.

3. The applicant made a representation on 15.5.1980 for fixing his pay in the manner it was paid to the absorbed posts though he was not an absorbed employee, but that representation was rejected on 10.12.1992. The applicant has therefore approached this Tribunal for the aforesaid reliefs. The contention on behalf of the Respondents was that the expression absorbed post could not be understood

apart from the absorbed employee and since the applicant was ^{appointed} after the liberation and was not an absorbed employee, he would not be entitled to the benefits which were admissible to those who were the holders of the absorbed posts prior to liberation. It is also urged that the application ^{is} ~~is~~ ^{guilty} of laches and in-action, because the applicant's first representation was made on 22.9.1972 and it was rejected on 15.2.1974. He again made a representation on 15.5.1980 which was turned down on 4.12.1981. The third representation dt. 15.8.1989 was rejected on 10.12.1992 and the application was therefore, not within time and no relief can be granted to the applicant on account of his laches.

4. The first question which requires to be considered is whether the applicant ^{who} was obviously employed after the liberation and was not in service of the earlier Goa Administration before the liberation of Goa - ^{✓ would be entitled to the} ~~viz.~~ benefits under the Goa, Daman and Diu (Absorbed Employees) Act, 1965. Section 2(a) defines 'absorbed employee' as a person who immediately before the 20th day of December, 1961, was holding an absorbed post and who on and after that date either served or has been serving in that or any other post in connection with the administration of the Union territory of Goa, Daman and Diu or in any of the Department of the Central Government. Under clause (b) 'absorbed post' means a civil service or post which existed under the former Portuguese Administration in Goa, Daman and Diu immediately before the 20.12.1961. The distinction between absorbed employee and an absorbed post is therefore clear. The absorbed post may exist and be continued without any one holding it, while an absorbed employee must be ^{one} who was holding an absorbed post. In exercise of the powers

conferred under section 3 of the Goa, Daman & Diu (Absorbed Employees) Act, 1965, the Central Government framed the Rules known as Goa, Daman & Diu (Absorbed Employees Conditions of Service) Rules, 1965. Under clause (f) of Rule 2 'absorbed employee' means an absorbed employee as defined in clause (a) of section 2 of the Act and who on the appointed day is serving either in connection with the administration of the Union Territory or in any department of the Central Government.

5. Under Rule 3 as from the appointed day, every absorbed post shall be brought on such revised scale of pay as the Central Government, or the Administrator with the prior approval of the Central Government, may by order determine.

6. Rule 4: the initial pay of an absorbed employee holding an absorbed post on the appointed day shall, as from that day, be fixed in the revised scale of pay of that post at a stage next higher to his existing pay. The other provisions deal with the fixation of the pay of the absorbed employees. It is Rule 3 which we have extracted above which is material. There is no dispute about the fact that the posts of Operadore existed prior to and after liberation of the Territory of Goa, Daman and Diu and the applicant came to be appointed to that post though after the liberation. The applicant's entitlement therefore would be to the pay and other emoluments which were prescribed by the revised scale of pay as the Central Government or the Administrator with the prior approval of the Central Government may by order determine.

7. According Shri Pradhan by virtue of Section 4 of the Act on making of any Rule under Section 3 of the Act, the corresponding law, if any, in respect of any matter for which provision is made in that Rule shall stand repealed

w.e.f. the date on the coming into force of that Rule. However, under Sub-section 2, the provisions of Section 6 and 24 of the General Clauses Act, 1897 shall apply to such repeal as if the rule and the corresponding law referred to in Sub-section 1 were Central Acts. It is therefore necessary to find out whether any provisions had been made in the Rules which would be applicable to the categories of persons to which the applicant belongs and who came to be appointed after the liberation and no such provisions are to be found which would enable the Respondents to treat the applicant separately, the only enabling provision regarding the revision of rates of pay being in respect of the absorbed posts which have to be brought on such revised scale of pay as the Central Government may determine. On behalf of the Respondents reference was made to the Office Memorandum No. F/11/1/62-Goa(1) dt. 27.8.1962 from the Ministry of External Affairs to the Ministry of Transport and Communications on the subject of Integration of ex-Goa P & T system with that of the Indian Union - Continuance of ex-Goa P & T staff on their existing terms and conditions of services. It says that in pursuance of the financial integration of the ex-Goa Posts and Telegraphs system with that of the India P&T Department w.e.f. 1.9.1962, the President has been pleased to decide:

- (i) Pending assessment of the strength of the cadre in each arm of P & T services, all the existing posts on the Goa P & T system shall be deemed to have been created in the respective arm of the P & T Department by the competent authority on the existing terms and conditions, unless in any particular case specified orders are issued abolishing the post or revising the terms, and
- (ii) Pending further orders, the existing personnel shall be deemed to have been appointed under proper authority, unless in any particular case the services of any person are dispensed with in accordance with the procedure that may be laid down in this regard."


It is difficult to see how this could help the Respondents. The rights of the applicant would be governed by the statute and the Rules and the OM dt. 27.8.1962 cannot partake of such a character and it cannot supersede the statutory provisions.

8. Though at one stage it was urged on behalf of the Respondents that the old posts were under the Corporation and they came within the Posts and Telegraphs Department under the Memorandum dt. 27.8.1962 and therefore constituted a new service, that line was not pursued and it is clear that whether the earlier posts were under the Corporation or not they were for the purposes of the Act and the Rules existing posts. The entitlement of the applicant would be on the basis of his holding an existing post though he may have been appointed after the liberation and he will therefore, be entitled to fixation of pay which was fixed for the existing post. There could not have been different scales of pay for persons doing the same type of work based upon whether he was an absorbed employee or came to be appointed later to the absorbed post. In the absence of clear statutory provisions lending support to this view it must follow that all the benefits which were admissible to the absorbed employees in respect of absorbed post would also be available to the applicant who came to be appointed after the liberation in the existing posts. This view which we are taking is supported by the decision of the Bombay High Court in Writ Petition No.146/91 decided on 31.8.1993 - Shri Blasio R.P.M. de Costa V/s. The Government of Goa. After referring to the definition of absorbed employee and absorbed post under section 2(a) and (b) of the Goa, Daman & Diu (Absorbed Employees) Act, 1965, the learned Judges observed that there were 16 posts created in respect of 16 Judicial Offices and the petitioner was appointed

subsequent to December 20, 1961, as the post was also existing prior to December 20, 1961, it must be concluded that the petitioner was appointed to the absorbed post and was entitled to the advantage of equation of the post and fixation of pay in the absorbed post.

9. The next question is about laches. Assuming that the applicant had made representations thrice and they came to be rejected, the applicant's petition to us is under Article 16(1) of the Constitution of India. In *Ramchandra Shankar Deodhar and Others V/s. The State of Maharashtra and Others* (A.I.R. 1974 SC 259) it was observed that the principle on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Article 32 (and) this Court which has been assigned the role of a sentinel on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches. The contention that the applicant's claim should not be entertained on the ground of laches cannot therefore, be accepted.

10. The difficulty in the applicant's way, however, is the time limit placed under Section 21 of the Administrative Tribunals Act. Section 21 of the Administrative Tribunals Act which prescribes the period of one year from the date on which the final order has been made. The first representation of the applicant was rejected on



15.2.1974, the second on 4.12.1981 and the third on 10.12.1992. It is well settled that repeated representations will not enable the applicant to bring his claim within time if the time has started running, it cannot be stopped and therefore the rejection of the third representation on 10.12.1992 cannot afford any cause of action to the applicant. A three Judge Bench of the Supreme Court observed in BALKRISHNA SAVALRAM PUJARI WAGHMARE & ORS. V/s. SHREE DHYANESHWAR MAHARAJ SANSTHAN & ORS., AIR 1959 SC 798 that Section 23 of the Limitation Act refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked. In the present case the injury caused to the applicant was due to the refusal of the Respondents to give him the benefits which would have flowed from his being fixed in the absorbed post. The injury was complete when his first representation was turned down and he should have approached the proper forum within the time prescribed. The present application would therefore be woefully beyond time and is rejected.


(M.S. DESHPANDE)
VICE-CHAIRMAN

(14)

I have gone through the Judgment of my learned brother in which while accepting the claim of the applicant to protect his pay of the post of 'Operador' as prescribed in the Statute of Overseas Functionaries from 11.6.1962 being the date of appointment and to refix the revised scale of pay and also rejecting the objection about the laches being jejune it is proposed to reject the same as being barred by time under Section 21 of the Administrative Tribunals Act. I agree with the result arrived at as well as the ground to reject the claim as being barred by time, but I do not agree with the earlier reasoning accepting the merit of the claim in principle. I therefore, feel compelled to write this partly differing Judgment for the reasons which would be apparent.

2. The relevant dates may be recapitulated briefly as below:

- 1) 20.12.1961 - Goa became part of Union of India prior to which date the services of posts, telegraphs & telephones were rendered by an autonomous ~~body~~ corporation known as C.T.T. and the service conditions were governed by Portuguese Statute of Overseas Functionaries (E.F.U.)
- 2) 11.06.1962 - Applicant was appointed to the post of Operador, which post in the Portuguese time carried pay corresponding to Rs.291.66 as against the Indian pay scale of Rs.110 + HRA of Rs.15 in which the applicant was fixed.
- 3) 01.09.1962 - The C.T.T. was merged with the Indian Posts & Telegraphs Department.
- 4) 22.12.1965 - Goa, Daman & Diu (Absorbed Employees) Act, 1965 comes into force.
- 5) 01.02.1966 - Appointed day in terms of Goa, Daman & Diu (Absorbed Employees) Act, 1965 from which day every absorbed post shall be brought on revised scale of pay determined by Central Government.
- 6) 29.11.1988 - Government of Goa protects the pay of absorbed posts from the date of appointment and re-fixed the pay w.e.f. 1.2.1966.

7) 31.8.1993 - Date of decision of the Panaji Bench of High Court of Judicature at Bombay in the Writ Petition 77/91 in a related matter.

3. The first reason ^{is} for acceptance of the claim is alleged discrimination. This discrimination appears to pertain to differentiation in the pay of the persons appointed to various posts prior to 20.12.1961 viz. the date of liberation and subsequent to the date of liberation. The discrimination arises when unequals are treated equally ^{or} when equals are treated unequally without any intelligible differentia relatable to objective sought to be achieved. In my view the date viz. 20.12.1961 was an important event with great Constitutional significance, inasmuch as, it involved a change ^{is} of regime. The date ~~is~~ in relation to Goa as Constitutionally significant as the date of 15th August, 1947 is in relation to India. In my view, therefore, on abstract grounds there is no reason to hold that there ~~has been~~ any discrimination.

4. The second ground is stated to be legislative vacuum, this vacuum is alleged to arise from the fact that territories of Goa, Daman and Diu became a part of Union of India w.e.f. 20.12.1961 by virtue of Article 1(c)(3) of the Constitution of India and were being administered ^{as} Union Territories by President of India through an Administrator. Although this has not been spelt out in the Judgment it can be gathered from the Judgment of the Bombay High Court that on 5.3.1962 the provisions of Indian Constitution were made applicable to Union Territory of Goa, Daman and Diu and the Goa, Daman & Diu Administrative Act, 1962 came into force ~~under~~ Section 5 of the Act provided that all previous posts under the Portuguese Administration should continue. On 1.2.1966 Goa, Daman

& Diu (Absorbed Employees) Act, 1965 came into operation and that provided for equation of posts and fixation of pay of Absorbed Employees. The applicant was appointed to the post on 11.6.1962 before Goa, Daman & Diu (Repeal of Posts and Telegraphs Laws) Regulation Act, 1962 came into force on 1.9.1962 and this Act while repealing the various decrees saved the right, privilege, obligation or liability acquired accrued or incurred under such law. It is suggested that in the absence of any Rules or Regulations under Article 309 of the Constitution the post of Operator was protected. Reference is made to Ministry of External Affairs O.M. dt. 27.8.1962 which stated that all the existing posts on the Goa P & T system shall be deemed to have been created in the respective arm of the P & T Department by the competent authority on the existing terms and conditions, unless in any particular case specified orders are issued abolishing the post or revising the terms. However, the Respondents had brought to our attention the order of the Military Government Goa, Daman & Diu dt. 17.1.1962 in which the Director of G.T.T. was given full powers ^{appointment of} for staff other than those whose appointment was vested in the erstwhile overseas Minister. There is nothing to show that the Director G.T.T. did not have power to make appointments to the posts of Operator. The power to make appointments implies power to make appointment with a particular scale. Attention does not appear to have been invited to Exhibit 2 in which the Government Gazette dt. 13.9.1962 reproduced order dt. 20.8.1962 appointing several people to the post of Operator including the present applicant viz. Pedro Cassiano Mendes temporarily to the post of Operators of the P & T

Department, in accordance with Article 63, and with reference to a note a) of article 26 of the Civil Service Regulations, with the right for payment corresponding to their posts, according to pay scales in force in India.

Thus the Government Notification itself contemplated that the applicant was to be appointed in the pay scale in force in India and not the pre-liberation^{pay}/scale.

No doubt all these notifications do not recite that they have been issued under Article 309, but the Constitution having been brought into force in the territory of Goa, Daman and Diu from 6.3.1962 and the appointment having been made from 11.6.1962 and it having been clarified that the appointment^{was} in the pay scales prevalent in India it cannot be stated that the applicant is entitled to protection of the pay scale under E.F.U.

5. The third ground relates to the interpretation of the term "absorbed posts" in the Goa, Daman and Diu (Absorbed Employees) Act, 1965 and the rules thereunder. This matter has come in for interpretation by the High Court in its order dt. 31.8.1993 in the case of Renato Maria Mercedes Rego Fernandes V/s. Government of Goa and it may be convenient to refer to the same. In that case the applicant came to be appointed w.e.f. 8.7.1963 and the appointment was in the Portuguese pay scale of Rs.291.66. The petitioner was given the benefit of protection of holding absorbed post³ by the orders dt. 20.8.1989 but the fixation of the pay was disturbed by a subsequent order dt. 27.12.1990 in which it was held that as the petitioner was appointed after 15.9.1962 when the Financial Adviser to the Government of Goa had fixed the wages of the employees in the pay scale of Rs.130-256, the petitioner cannot claim protection of pay of Rs.291.66. The contention that the post held by the petitioner was not an absorbed post

was repelled by the High Court in following terms:

"We are unable to find any merit in this contention also. Section 2 of the Act which is the definition Section, inter alia provides that "absorbed employees" means a person who immediately before December 20, 1961, was holding an absorbed post and who on or after that date, has served in that or any other post in connection with the administration of the Union Territory. The expression "absorbed post" is defined in Section 2(b) and means a civil service or post which existed under the former Portuguese Administration in Goa, Daman and Diu immediately before December 20, 1961, and the said post has continued even after Liberation. As mentioned hereinabove, there were 16 posts created in respect of 16 judicial officers and the petitioner was appointed to one of such posts. Even though the petitioner was appointed subsequent to December 20, 1961, it must be concluded that the petitioner was appointed to the absorbed post. The petitioner was therefore entitled to the advantage of equation of the post and fixation of pay in the absorbed post".

6. The Judgment of the High Court appears to identify the post and its designation. However, there cannot be an absorbed post independent of an absorbed employee i.e. to say an employee who was holding absorbed post prior to 20.12.1961. The post does not merely mean a title or designation but the conscious decision to create a post along with ~~the~~ a particular scale and a financial commitment to bear the costs involved in making the payment of that scale to those employees. Therefore, in ~~our~~^{my} view, a person who was appointed after liberation to hold the post of Operator in an Indian Pay Scale cannot be said to be holding an absorbed post. The present case is on a much weaker ground than the case decided by the Bombay High Court because in that case the initial pay of the applicant was fixed at Portuguese pay scale and it was only a subsequent decision over turning protection of that pay scale and benefits flowing therefrom that was challenged. In the present case, however, from the

very beginning while filling up the post a decision was taken to attach an Indian pay scale to the post and therefore, the question of protection does not arise.

7. The fourth question is that of laches. Since I hold that the applicant did not have a fundamental right to hold the post of Operator carrying a particular pay scale, the question of violation of the same and the further question of protection thereof does not arise.

8. I, therefore, hold that the application deserves to be dismissed on merits, as well as on laches in addition to deserving to be dismissed on the ground of violation of Section 21 of the Administrative Tribunals Act.

M R Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

In the result the application is dismissed.

No order as to costs.

M R Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

M S Deshpande

(M.S.DESHPANDE)
VICE-CHAIRMAN