

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.494/2002

New Delhi, this the 3rd day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Kanwar Sain
T-281, Near Jain Sthanak
Uttam Nagar
New Delhi-110 056 .. Applicant

(Shri S.Y. Khan, Advocate)

versus

Union of India, through

- 1. Secretary
Ministry of Information & Broadcasting
Shastri Bhavan, New Delhi
- 2. Director General
All India Radio
Akashvani Bhavan
Sansad Marg, New Delhi
- 3. Chief Executive Officer
Prasar Bharati
Akashvani Bhavan
New Delhi .. Respondents

(Shri Rajinder Nischal, Advocate)

ORDER

Shri S.K. Naik

By virtue of the present application, the applicant Shri Kanwar Sain seeks quashing of order dated 20.7.2001 issued on behalf of Respondent No.3 on the subject of determination of seniority/eligibility on inter-zonal transfer in respect of Announcers and further direction to the respondents to assign him proper seniority based on his initial date of joining as Announcer by extending the benefit of the judgement in case of Abhay Kumar Dash Vs. UOI (OA 68/1999) decided by the Cuttack Bench of the Tribunal, along with consequential benefits.

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2. The relevant facts for the purpose of adjudication of this case are that the applicant joined service as Announcer-cum-Translator in AIR, Najibabad on 23.6.1980 and later on transferred to AIR, Delhi on 18.8.1988 at his own request. According to the applicant, there is a common panel for common zone in respect of all the Transmission Executives (TRES for short) relating to a particular zone and the seniority of TRES is decided in the manner of placement in the panel as per existing Rules issued by the DoPT and as such they were required to lose their seniority/eligibility on inter-zonal transfer. Though the respondents vide their order dated 9.6.1999 restored the seniority of TRES as per their placement in the panel, the said benefit was denied to the applicant. Thus in the process of applicant's transfer to AIR, Delhi, he was made to lose his seniority over his juniors resulting in his juniors getting promoted ignoring his superior claim. His grievance is that one Shri Bhim Sain who joined as Announcer, AIR, Rohtak on 27.9.84 has been shown at Sl.No.17 in the seniority list of Announcers while his name figured at Sl.No.25 in the said list though he joined service on 23.6.80. He made several representations without any success.

3. Applicant would further contend that the case of Announcer is quite different from that of the TRES as the seniority of Announcer is decided by the date of joining/date of birth and not in the manner of placement in the panel and that the DoPT instructions referred to

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above are not applicable in his case. Respondent No.2 should have determined the seniority/eligibility position in terms of the Rules contained in OM dated 9.6.99 issued by Prasar Bharati. Drawing our attention to the judgements of the Supreme Court in the case of Scientific Advisor to Raksha Mantri Vs. V.M.Joseph 1998 SCC(L&S) 1362 and UOI Vs. C.N.Ponnappan SCC(L&S) 831, applicant has contended that he has been transferred on compassionate ground and as such he should not have been deprived of his seniority/eligibility based on his initial date of joining the post of Announcer.

4. Respondents in their reply have contested the application and have stated that in cases of inter-zonal transfers Announcers cannot claim their seniority from the date of their joining the post of Junior Grade Announcer at their new place of posting. In other words, they are to be treated as junior-most and placed at the bottom of the seniority list in the zone where they are transferred. In a similar case, the Chandigarh Bench of the Tribunal in OA 1088/CH/94 decided on 20.7.2001 had upheld this contention of the respondents and dismissed the said OA. The applicant was transferred from AIR, Mathura to AIR, Delhi during 1988 on his own request, vide order dated 9.8.88. While transferring him it was made clear in the said order that he would be treated as the junior-most in Delhi Zone. In so far as Bhim Sain is concerned, respondents contend that he had been working in Delhi & Haryana Zone since 1984, whereas applicant was transferred from UP Zone to Delhi & Haryana Zone during 1988 and he was placed junior to Bhim Sain.

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5. Respondents have further contended in their reply that in terms of OM dated 9.6.99(supra) TREX in AIR though recruited zone-wise, their promotion to next higher grade i.e. Programme Executive (PEX) is considered on the basis of all-India eligibility list. Therefore, it has been decided that the qualifying service in the feeder grade for preparation of eligibility lists shall reckon from the date of their regular appointment in the grade although TREX on transfer from one zone to another will continue to lose zonal seniority. Unlike TREXs there are four grades of Announcers in AIR namely Grade IV, III, II and I. While Grade IV is the entry grade and is recruited 100% by direct recruitment, the other three grades of Announcers are promotional grades. Seniority/promotion upto Announcer Grade II is zonalised. Therefore, transfer of an Announcer from one zone to another would definitely block the promotional chances of Announcers already working in the zone where an Announcer is transferred. In view of this, Announcers at the time of their inter-zonal transfer are placed as junior-most in their new places/zones of posting.

6. It has been further averred by the respondents that the seniority of Announcers recruited through a common recruitment process is determined by their relative merit in the merit list prepared by the recruiting authorities. The instructions contained in DoPT OM dated 9.6.99 are not applicable to Announcers. The interest of Announcers

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in a particular zone will suffer if another Announcer from a different zone is placed above them in the seniority list after his inter-zonal transfer. Thus there is adequate justification in placing Announcers on inter-zonal transfer on their own request as junior most in the zone where they are transferred. In view of the fact that language is the basis on deciding the zone of an Announcer, the claim of the applicant that his seniority/eligibility should be fixed in accordance with his date of birth and date of joining vis-a-vis other Announcers in the zone is absolutely baseless and therefore not correct. The judgements(supra) referred by the applicant are not applicable in applicant's case.

7. As regards applicant's claim for promotion, it is averred by the respondents that the demands of Announcers in AIR for their promotion to PEX has been examined in the light of the judgement dated 2.3.1994 in OA 751/93 decided by the Hyderabad Bench of the Tribunal and a similar judgement passed by the Chandigarh Bench of the Tribunal and it has been decided that Announcers will not be made a feeder cadre to the post of PEX in view of the fact that the duties, responsibilities, mode of recruitment etc. of Announcers are different from those of TREX in AIR. However, Announcers in AIR have not been debarred from being considered for appointment to the post of PEX through direct recruitment Regulations. Therefore the demand for parity of Announcers with TREX as claimed by the applicant is not acceptable. In view of this position, the applicant is not entitled for any relief and the OA be dismissed.

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8. We have heard the learned counsel for the parties and carefully gone through the material available on record.

9. The order dated 9.8.1988 by which the applicant was transferred from AIR, Mathura to AIR, Delhi had made it clear that he would be treated junior most in the Delhi Zone of AIR. Presumably this condition was part of the order in terms of the instructions/rules prevalent at the time of its issue. Having accepted the same and joined service in Delhi, the applicant cannot claim seniority over the other Announcers already working in Delhi Zone. That apart, Bhim Sain was already working in Delhi & Haryana Zone since 1984 while the applicant came to that zone on transfer at his own request in 1988. Therefore he cannot claim seniority over Bhim Sain also, as has been rightly pointed by the respondents, that too at this belated stage.

10. The impugned order dated 20.7.2001 issued by R-3 makes the position clear regarding determination of seniority/eligibility of Announcers in the following terms:

"Inter-zonal transfers of Announcers are not ordered in public interest. Therefore the transferred Announcers will be placed below all other Announcers already appointed in a zone in the event of inter-zonal transfer on their own request. The promotion prospects of such Announcers joining on inter-zonal transfer basis has already been taken care of by the Assured Career Progression Scheme introduced in the recent past."

11. It is not in dispute on either end that the applicant came on transfer to Delhi at his own request on

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compassionate ground. That being so, it would not be in the interest of service jurisprudence to quash this order to the disadvantage of Announcers working in various zones and therefore applicant's prayer in this respect needs to be rejected.

12. In so far applicant's reliance on the decision of the Supreme Court in the case of Scientific Advisor (supra) is concerned, the decision arrived at was relating to determination of eligibility for promotion and not seniority, wherein it has been further held that 'eligibility for promotion cannot be confused with seniority as they are two different and distinct factors'. Thus, this judgement would not come to the rescue of the applicant to stake claim for seniority and score a march over the other Announcers.


13. Again, the judgement of the Cuttack Bench in the case of Abhaya Kumar Dash referred to by the applicant relates to the promotion of TREX to that of PREX in which a direction was given by the Tribunal to consider the case of applicant for the purpose of eligibility for promotion. This decision also will not render any assistance to the applicant.


14. We also find from the order dated 29.6.2001 issued by Respondent No.3 on the subject of 'Promotion of Announcers to the post of Programme Executive', it has been made clear therein that "Announcers in AIR will not be debarred from being considered for appointment to the

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post of PEX through direct recruitment quota subject to their fulfilling the requisite eligibility conditions in terms of the proposed Recruitment Regulations for PEX". Therefore, if the applicant feels that he fulfils the eligibility conditions in terms of the proposed Recruitment Regulations, it is open to him to apply for the same under direct recruitment quota when vacancy circulars/notifications are issued.

15. In view of the detailed discussions aforesaid, we find no merit in the present OA and the same is accordingly dismissed. No costs.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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