

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH AT BANGALORE**

ORIGINAL APPLICATION NO.170/01812/2018

DATED THIS THE 23RD DAY OF OCTOBER, 2019

**HON'BLE DR K B SURESH....MEMBER (J)
HON'BLE SHRI C V SANKARMEMBER (A)**

N K Mohan Ram,
S/o late N.Krishna Iyengar
Aged about 69 years,
Retired Deputy Director (Programms),
Doordarshan Kendra,
Bengaluru,
R/o GF-8, 'Atria Villa'
Palace Guttahalli Main Road,
Malleshwaram,
Bengaluru-560 003.

...Applicant

(By Party-in-person)

Vs.

1. Union of India,
By its Secretary,
Information and Broadcasting Ministry,
Government of India,
'A' Wing, Shastry Bhavan,
Dr.Rajendra Prasad Road,
New Delhi-110 001.

2. Chief Executive Officer,
Prasar Bharathi (Broadcasting Corporation of India),
PTI Buildings, Sansad Marg,
New Delhi-110 001.

3. The Director General,

Doordharshan,

Mandi House,

Copernicus Marg,

New Delhi-110 001.

4. Govardhan Lal,

S/o Not Known,

Aged about 71 years,

Retired Director (NFSG)

Residential Address not known

C/o.S-III Section,

Directorate General of Doordarshan,

Mandi House,

New Delhi-110001.

5. Shekhar Chaudhary

S/o Not known,

Aged about 66 years,

Retired Director (NFSG)

Residential Address not known

C/o.S-III Section,

Directorate General of Doordarshan,

Mandi House,

New Delhi-110001.

6. The Director General

All India Radio,

Sansad Marg,

New Delhi-110001.

...Respondents

(By Advocate Shri.M V Rao, Senior Panel Counsel & Shri.S M Arif, Counsel for Respondents)

ORDER (ORAL)

HON'BLE DR K B SURESH, MEMBER (J)

Heard the matter. Apparently in paragraph 4.7 onwards respondents explain that the process of holding review DPC is in active consideration but only thing is that they need little bit of more time than usually warranted.

2. Therefore, we do not think that there is any need to keep the matter pending, we will therefore remit the matter back to the concerned authority to decide on the review DPC in any case within the next three months and pass an appropriate order including the Programme Management Cadre of Doordharshan. Apparently the applicant claims that the matter is covered by judgment of the Hon'ble Tribunal at Hyderabad in OA No.806 and 812/2011 dated 30.07.2013 which we quote:

Order

{Per Hon'ble Mr.P.K.Basu, Member (Admn)}

As the facts and points of law in both the OA Nos.806 and 812/2011 are similar, they are being disposed of through this common order.

2. *The applicant in OA NO.806/2011 was appointed as Direct Recruit from UPSC as Programme Executive in All India Radio in 1980 and joined office on 1.10.1980. She was promoted as Assistant Station Direct (Junior Time Scale) in the year 1993, vide order dated 18.1.1995. Later she was promoted on ad hoc basis as Station Director (Senior Time Scale), vide order dated 31.12.1998 at Serial No.36 and thereafter posted as regular Station Director, vide order dated 4.2.2004 at Serial No.30.*

3. *The applicant in OA No.812/2011 was appointed as Direct Recruit from UPSC as Programme Executive in All India Radio in 1979. She was promoted as Assistant Station Director*

(Junior Time Scale) in the year 1993, vide order dated 3.6.1993. Later she was promoted on ad hoc basis as Station Director (Senior Time Scale), vide order dated 31.12.1998 at Serial No.17 and thereafter posted as regular Station Director, vide order dated 4.2.2004 at Serial No.11.

4. Later in compliance of the orders of the Hon'ble Jammu & Kashmir High Court in the case of Mohd. Ashraf Lone Vs. Union of India & Others for promotion of Programme Executives to the grade of Assistant Station Director (Group-A), the UPSC has conducted a review DPC on 10.6.2002 for the vacancy years 1982-1990 and recommended revised year-wise panels for these years in supersession of the panels drawn up earlier. The applicant's name was shown as Assistant Station Director (JTS) in the panel year 1990 and 1989 respectively. On 19.8.2010 in the meeting held by the UPSC, the department has also informed as follows:

"The Ministry representative stated that the recommendations of the Review DPC held in pursuance of the orders of the J&K High Court have since been implemented vide order of the Ministry of Information & Broadcasting dated 28.4.2010. After the acceptance of the recommendation of Review DPC held in 2001-2002 for the period 1982-1990 by the competent authority in the Ministry of I&B vide order dated 28.4.2010 all the seniority lists for the subsequent period will have to be revised."

5. The grievance of the applicants is that till date, the Ministry has not implemented the UPSC recommendations and not extended the consequential benefits to the applicants such as promotion to the post of Assistant Station Director, Station Direction, Sel Gr.SD and DDG.

6. Heard both parties.

7. Applicants points out that on a petition by the applicants to the department, the department has replied that the review DPC 1982-1989 is pending in sealed cover. The applicants state that as per rule, even if they were in sealed cover, they should have been reviewed every six months, but, for the last 21 years, this has been kept pending. The applicants have drawn our attention to the order of the Hon'ble Supreme Court in the case of Union of India & Others Vs. R.Balasubramanian in Case No.13619/2009 (Shri R.Balasubramanian was in the same panel as the applicants and hence similarly situated), in which the Court held as follows:

"It is neither the pleaded case of the petitioners nor the learned counsel could show that the vacancy in the Senior Time Scale was not available at the time of ad-hoc promotion. It is also not the pleaded case of the petitioners that any person senior to respondent No.1 had been ignored at the time of his ad-hoc promotion in 1998. The mere fact that meeting of the DPC was delayed is not sufficient to deny the benefit of regular promotion to respondent no.1 with retrospective effect and the Tribunal did not commit any error by directing the petitioners to promote respondent no.1 with effect from 31.12.1998."

The Madras Bench of this Tribunal (R.Balasubramanian Vs.Union of India order dated 12.10.2007) had observed as follows:

"Promotion of STS is hermetically linked with promotion to JAG as the failure to hold JAG DPC first will not let the STS Officers to move upwards as these posts are required to be relevant for being filled up by their juniors awaiting promotion to STS. The respondents further stated that the UPSC had disassociated itself from promotion/appointment in Prasar Bharati when it became an autonomous body in 1987 and only after the Hon'ble Courts directions, the UPSC agreed to hold DPC for Prasar Bharathi posts and accordingly DPC was convened for promotions to JAG in 2003. Thereafter, the process for convening the DPCs for promotion to STS started and were held in 2004. The explanation given is absolutely plausible and acceptable from the point of view of holding the said DPCs belatedly but it does not answer the question as to why retrospective promotions, were not ordered in respect of the STS promotes. In our considered view, the respondents are required to go through the ratio laid down by the Constitution Bench of the Hon'ble Supreme Court in the case cited supra and take a view on the issue of accordinng retrospective promotion to the applicant and persons similarly placed like him."

Further, in para 19 the Tribunal observed as follows:

"Thus, the distinction tried to be made by the respondents in their impugned order to deny the application of Para 47B of Hon'ble Supreme Court's order in Direct Recruit Class II Engineering Officer's case has no legal basis and we are of the considered view that after this Tribunal Order in OA No.403/2005

wherein all aspects of the applicant's case has been examined on merits, the applicant's promotion with effect from 31.12.1998 should have been considered by the respondents for regularisation from that date. In fact, the order of this Tribunal has also observed giving such a benefit not only to the applicant but also to persons similarly placed like him. The respondents paid no heed to these observations of the Tribunal, thus resulting in the applicant having to come in the second round of litigation which is an avoidable one."

8. The applicants submitted that as per the Tribunal judgment, the promotion to the applicants and the persons similarly placed like them should be given from retrospective effect. The applicant's name was included in the revised panel for the year 1990 and 1989 respectively for Programme Executive to ASD and placed at Serial No.30 and 37, and hence they are entitled for consequential benefits.

9. It has also been pointed that though the department claims that the review DPC has been implemented as per the directions of the Hon'ble High Court of Jammu & Kashmir, one Smt.Deepachandra, who has not been included in the panel for Assistant Station Director, who is junior to the applicant, was promoted to the post of DDG, whereas the applicants cases have not been considered till date and they have to retire as STS official. Therefore, the applicants prayer is to promote them retrospectively from the date of ad hoc promotion as Assistant Station Director with effect from 1990 and 1989 respectively as per the judgment of the Hon'ble Supreme Court in the case of Union of India & Others Vs. R.Balasubramanian in Case No.13619/2009, as the applicants herein are also similarly situated, and to extend all consequential benefits to the applicant such as promotion to the post of ASD, SD, Sel Gr.SD and DDG retrospectively with effect from the date on which the applicant's immediate junior was promoted.

10. The case of the respondents is that regular promotions are always prospective and never retrospective. In support, they have cited the judgments of the Hon'ble Supreme Court.

- (1) *Union of India Vs. K.K.Vadhera & Others (Suppl 20SCC 625),*
- (2) *Union of India & Others Vs. Majri Jeenannayyer & Others (1997 SCJ(SC) and*
- (3) *K.Madhavan Vs. Union of India, All India Radio (AIR 1987, SC 2291)*

It is stated by the respondents that lot of steps have been taken by the Ministry of Information and Broadcasting to implement the result of the review DPC in the grade of Junior Time Scale. It is also clarified that the applicant's name (in OA No.806/2011)

was not even kept in a sealed cover. But, it is argued that whenever an appointment is made on adhoc basis, it will not bestow on the person a right for regular appointment. However, the names of the retired officers/officials should be included in the panel as per the DOP&T's O.M.No.22011/14/98-Estt.(DS), dated 12.10.1998. But such retired officers/officials would, however, have no right for actual promotion. It is further argued that the direction of the Court in the case of *R.Balasubramanian* was **in personem** and not **in rem**. The respondents also relied on judgment of the Apex Court in the case of *Union of India & Others Vs. Satish Chandra Mathur* in Civil Appeal No.12801/1996, dated 1.5.2001.

11. In *R. Balasubramanian* case the facts are clearly stated in paras 2 and 3, which are quoted below:

“2. The applicant who joined the service initially in Doordarshan Kendra as Script Writer on 1.7.1975 was recruited through Union Public Service Commission as Programme Executive vide order dated 28.8.1980. He was later promoted to Junior Time Scale (JTS for short) on ad hoc basis by order dated 14.6.1993 which was subsequently regularized by order dated 15.2.1999 with retrospective effect from the date of ad hoc promotion namely June, 1993.

3. Thereafter, the applicant was promoted to Senior Time Scale (STS for short) on ad hoc basis along with many others vide order dated 31.12.1998. According to the applicant, he expected that the promotion to STS would be regularized with effect from initial date of ad hoc promotion as several vacancies were available. However, the respondents issued order dated 17.3.2004 in which the applicant's promotion to STS was regularized with effect from 28.1.2004 instead of from the initial date of officiating in STS. Thus the applicant had to virtually forego six years of continuous service in STS. On his representation dated 7.4.2004 and 15.2.2005 they were disposed of by order dated 28.2.2005 by the respondents who rejected them on the ground that a similar matter in O.A. No. 3107/03 filed by Programme Staff Association had been dismissed by the Principal Bench of this Tribunal and hence the applicant's claim cannot be entertained.”

As stated by the applicants, the Madras Bench not only upheld the retrospective promotion of Shri R.Balasubramanian with effect from 31.12.1998, but also observed that such a benefit be not only given to the applicant but also to the persons similarly placed like him and the Hon'ble Supreme Court also upheld the decision.

12. We feel that the question of whether a vacancy is available or not is not relevant. What the Supreme Court has held is that the mere fact that

the meeting of the DPC was delayed was not sufficient to deny the benefit of regular promotion to the respondent no. 1 with retrospective effect and the Tribunal did not commit any error by directing the respondents to promote the respondent no. 1 with effect from 31.12.1998.

13. In the present case also, the delay by the department for the DPC will not come in the way. The applicants have also produced a copy of the panel for years 1989 and 1990, which shows that Shri Palaka Raja Rao and Kum./Smt. Vedavathi are at serial nos. 30 (1990 panel) and 37 (1989 panel) respectively. In our view, the Order of the Apex Court in Union of India & Others Vs. Satish Chandra Mathur does not apply to this case. In that case, the only issue was that the Programme Executives, who were appointed on adhoc basis, had claimed that their seniority should be counted from the date they were appointed as adhoc, but the Hon'ble Apex Court held that the seniority in the cadre of Programme Executives should be counted only from 1.1.1979, which was the date of regularization and not for the adhoc period. The present case, however, arises out of a review DPC conducted by the UPSC in which the DPC put the applicants in the panel year 1990 and 1989 respectively and therefore there was a process followed and it was the recommendation of the DPC, which was also affirmed in the meeting on 19.8.2010 by the Ministry officials that these recommendations have been implemented. Moreover, the junior Smt. Deepachandra has been promoted right up to DDG level. Therefore, based on these facts and Hon'ble Supreme Court judgment in R. Balasubramanian's case (supra), the respondents are directed to give effect to the UPSC recommendations in the DPC held on 6.2.2002 in which the applicants herein are included in the revised year-wise panels for promotion to the grade of Assistant Station Director for the year 1989 and 1990 and to extend all the consequential benefits to the applicants such as promotion to the post of ASD, SD Sel Gr. SD and DDG retrospectively with effect from the date on which applicants' immediate junior was promoted subject to they otherwise being eligible.

14. The OAs are disposed of accordingly. No costs.

3. The respondents may consider this also and pass an appropriate order within the next three months. At this point of time, applicant claims that he is only claiming parity with the Programme Management Cadre of Dooradarshan and Shri.S.M.Arif, learned counsel for the respondents wants it to be recorded. It is recorded. OA is disposed of as above. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR K B SURESH)
MEMBER (J)

/rsh/

Annexures referred to by the Applicant in OA No.170/01812/2018

Annexure A1: Copy of the Order dated 22.2.1999

Annexure A2: Copy of the OM dated 23.7.2007

Annexure A3: Copy of the Seniority list dated 10.7.2014

Annexure A4: Copy of the Gazette Notification dated 5.11.1990

Annexure A5: Copy of the order dated 26.3.2004

Annexure A6: Copy of the Review DPC dated 28.10.2016

Annexure A7: Copy of the Seniority list of STS officers of Doordarshan Management Cadre in IP(P) S as on 1.11.1998

Annexure A8: Copy of the order dated 14.7.2008

Annexure A9: Copy of the representation dated 10.11.2016

Annexure A10: Copy of the reminder dated 18.9.2018

Annexure A11: Copy of the order dated 11.11.2010 in OA No.322/2008.

Annexure A12: Copy of the review DPC

Annexure A13: Copy of the Notification dated 19.12.1991

Annexure A14: Copy of the copy of UPSC minutes of the meeting dated 18.7.1986, 21 to 25.7.1986 and 28 to 31.7.1986

Annexure A15: Copy of the additional affidavit dated 21.3.2012

Annexure A16: Copy of the letter dated 15.05.2019

Annexure A17: Copy of the letter dated 30.05.2019

Annexure A18: Copy of the letter dated 08.07.2019

Annexure A19: Copy of the letter dated 30.05.2019.