

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated Monday the 1st day of June Two Thousand And Twenty

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)

THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/1060/2015

S. Sriraman, UDC,
Doordarshan Kendra,
Swami Sivananda Salai,
Chennai-5.

.....Applicant

(By Advocate: M/s. J. Srinivasa Mohan)

Vs.

1. The Director General,
All India Radio,
Akashvani Bhavan,
New Delhi-110 001;
2. R. Navaneetha Krishnan,
Head Clerk/Accountant,
Commercial Broad Casting Service,
All India Radio,
Mylapore,
Chennai-4.

...Respondents.

(By Advocate: Mr. Su. Srinivasan (R1)
Mr. M.Ravi Bharathi (R2))

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is an OA filed seeking the following reliefs:-

- "i) To call for the records of the 1st respondent in No.A-34014/1/2014-S.II/1278 dated 26.06.2015 and to set aside the same;
- ii) Consequently, direct the 1st respondent to promote the applicant to the post of Head Clerk/Assistant pursuant to LDCE held in January and February 2014 with effect from the date the 2nd respondent was originally promoted and with service seniority and all monetary and consequential benefits.
- iii) pass such other order as this Hon'ble Tribunal may deem fit and proper to the circumstances of the case and thus render justice."

2. The facts leading to this case can be summarized as follows:-

The applicant herein is Upper Division Clerk in Doordarsan Kendra, Chennai. The respondent for the purposes of filling up the post of Head Clerks/Assistants 2010-11 had conducted a Limited Departmental Competitive Examination(LDCE). The applicant as well as the 2nd respondent secured 285 marks each. Both applicant as well as 2nd respondent belonged to Unreserved Category. The respondent gave appointment taking into

consideration of seniority of Respondent No.2. According to Respondent No.1, the tie was broken issuing guidelines contained in the circular of Ministry of Railways where in seniority was considered to break the tie. The applicant challenges the said selection of Respondent No.2 alleging unreasonableness, arbitrary and violative of Articles 14 and 16 of the Constitution. The respondents ought to have given importance to merit rather than seniority. By giving importance to seniority, the respondents had given a go bye to the very purpose of competitive examination. The 1st respondent ought to have followed the procedure prescribed by UPSC and age should have been considered for selection. The Ministry of Railways circular ought not to have been used by the 1st respondent. Respondent No.1 is bound by DOP&T instructions.

3. The 1st respondent filed detailed reply admitting the selection process undertaken and the marks obtained by the applicant and Respondent No.2. According to the Respondent No.1, the marks obtained in examination, interview and that provided for ACR were taken together and the applicant as well as Respondent No.2 get 285 marks each. It is the sum total of merits that can be given for applicant as well as Respondent No.2 in this case. Prasar Bharathi rules does not provide a means to

resolve if a tie between two candidate arises in an examination. As such, they adopted the procedure which is followed in Railways (E(GP)2001/2/69 dated 17.10.2001 (Annexure R1).

"13.2.3. In the case of two or more candidates securing equal marks in the aggregate (written test + viva voce + record of service) in 30% LDCE, their relative merit position for the purpose of their empanelment may be determined on the basis of their relative seniority in the feeder grade(s). The candidate who is senior shall rank higher. The same criteria shall be applied for determining who will be empaneled against the last vacancy from amongst those who secure equal marks in the aggregate."

According to the Respondent No.1, there is no arbitrariness or illegality in the selection procedure adopted. The Private Respondent also filed statement separately and contended that there is nothing illegal in the procedure adopted by Respondent No.1 in selecting him.

4. We had perused the pleadings and various annexures produced by both sides.

5. The counsel for the applicant would contend that if seniority is considered in resolving the ties, then the very purpose of LDCE is defeated. The applicant who has got more marks in the written test ought to have been selected. The UPSC & SSC while resolving tie adopt age as the criteria for resolving the tie. The respondents had given a go-bye to the said principle and

imported a procedure followed in the Railways which is a separate Ministry. The applicant would contend that earlier the All India Radio while holding examination to the post of Clerks from Group D employees, had given importance to the age in resolving a tie of equal marks. So the 1st respondent ought to have followed the same (Annexure A6 to rejoinder O.M.No. 5(15/89-S.II(Pt.II) dated 4.3.1991).

6. The Counsel for the respondents would contend that Prasar Bharathi has no instructions as to resolving a tie in case two candidates get same marks. Since the test being a test conducted for promotion to the post of the Head Clerks by Competitive Examination, they had followed a rule which is followed in the Railways (Produced as Annexure R1). The said rule relates to cases where candidates appearing in an LDCE examination for promotion to Group B post gets same marks. The procedure adopted by the selection committee cannot be considered as arbitrary or against the principles of natural justice or fair play. According to Respondent No.1, the letter produced as Annexure A6 is an OM issued by erstwhile AIR for the purpose of resolving a tie between Roll No. 193 & 194 in the selection of clerks from group D employees. It relates to a particular case

and it is not a general circular issued for following by the Department.

7. The Counsel for the respondent No.2 had also argued in line with the counsel for Respondent No.1.

8. The counsel for the applicant has cited the case of ***Maharashtra Forest Guards & Foresters Union v. State of Maharashtra & Ors. reported in (2018) 1 SCC 149*** wherein the purpose of conducting LDCE is stated in para 17

“17. The challenge is on the further rigor put on the eligibility to appear in the LDCE. The whole purpose of the LDCE is to encourage and facilitate the Forest Guards to get accelerated promotion on the basis of merit. Since seniority is the criterion for promotion to three-fourth of the posts, one-fourth is given a chance to compete in a competitive examination.”

9. There is no dispute here that LDCE is conducted to encourage and provide accelerated promotion. Going through the pleadings and annexures, we find that the respondents had given appointment to Respondent No.2 giving importance to seniority. Whether the said act of the respondent no.1 to call for a judicial review on grounds of arbitrariness, illegality or malafides. The scope of judicial review in these matters is narrow. Ongoing through the procedure adopted, it can be seen that at first, the 1st respondent had considered merit of the

applicant and 2nd respondent for selection. Since both of them got 285 marks, the said tie has to be resolved. Since Prasara Bharathi has no guidelines or instructions on the point, the selection committee adopted the procedure followed by the Railways (Annexure R1-13.2.3 page 16) and took seniority to resolve the tie. According to the counsel for the applicant, the age of the applicant ought to have been given importance as UPSC & SSC follow such a procedure. Here it has to be noted that when direct recruitment to a post is conducted, age is given importance to break the tie between two candidates. This is mainly because a person cannot compete for a post after he becomes age barred. But the present case is different. The selection is conducted for giving promotion from feeder categories. It is a way for getting accelerated promotion. The ordinary rule or criteria is seniority for getting promotion. Here two persons had come up in merit and they got equal marks in merit. Then how tie has to be resolved. Then the next best option available is to look into the seniority of the candidates. So far as LDCE is concerned, the best method to resolve a tie is to take seniority as a criteria. There is no basis to the contention that it will negative the very purpose for which LDCE is conducted. Here also a meritorious person is promoted.

Seniority is used as a tool to resolve the tie in marks obtained by two candidates. When viewed from this angle, there is no merit in the contention of the applicant that respondent No.1 had acted arbitrarily and in violation of Articles 14 and 16 of the Constitution.

10. The next contention of the applicant is that earlier (Where Respondent No1 was part of AIR) for breaking a tie between two Roll Nos. 193 & 194 of Tamilnadu Zone, the AIR had adopted the age as a criteria to resolve the tie (Annexure-A6). The 1st respondent could have followed the same. On a reading of Annexue A6, it can be seen that the said OM giving preference to age was not based on any earlier guidelines or instructions. The OM addresses the case of tie reported from Chennai Zone in the year 1991 in a selection conducted for clerks grade examination. So it cannot be considered as a guidelines applicable to all types of examination.

11. In view of the above discussion, we find that there is no reason to interfere in the selection done in this case. Accordingly, we find no merit in the OA.

12. Hence OA will stand dismissed. No costs.

(T. JACOB)
MEMBER(A)

Asvs

(P. MADHAVAN)
MEMBER(J)

01.06.2020