

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(53)

O. A. NO. 1680/1998

New Delhi this the 3rd day of January, 2003.

HON'BLE SHRI JUSTICE V. S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V. SRIKANTAN, MEMBER (A)

Shri B. S. Joshal
S/O Shri M. S. Joshal
Station Engineer
DMS
Nainital. Applicant

(By Shri B. S. Jain, Advocate)

-versus-

1. Union of India through
Secretary
Ministry of I & B
Shastri Bhawan
New Delhi.
2. Director General
All India Radio
Akashwani Bhawan
Parliament Street
New Delhi. Respondents

(By Shri S. M. Arif, Advocate)

O R D E R

JUSTICE V. S. AGGARWAL:-

The applicant Shri B. S. Joshal seeks a direction to consider him for promotion to the post of Senior Time Scale and if found fit, he should be deemed to be promoted from the date his juniors had been promoted. Consequential benefits including arrears with interest are also being claimed.

2. Some of the relevant facts are that the applicant joined as a direct recruit Junior Time

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Scale Group 'A' officer and presently is a member of the Indian Broadcasting (Engineers) Service. As per the seniority list issued on 15.7.1991, he was placed at S1.No.828. In terms of the recruitment rules, if an officer appointed to any post in the service is considered for promotion to a higher post, all persons senior to him in the grade have also to be considered notwithstanding that they have not the requisite number of years of service. The grievance of the applicant is that he was not considered for promotion despite the said rule, while his juniors had been considered for the said promotion. It has been asserted that the applicant has a right to be considered as per the recruitment rules and the executive instructions laying down that the applicant could not be promoted being on probation cannot override the recruitment rules. On these broad facts, the abovesaid reliefs have been claimed.

3. In the reply filed, the application has been contested. The respondents contend that the applicant wants his promotion for the vacancies that occurred in the year 1988-89 in which Shri T. Sannapa who is junior to him had been considered and was promoted. As per the respondents, the confidential reports in All India Radio and Doordarshan are being written on financial year basis i.e. from April to March of the following

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year. The crucial date for determining the eligibility for promotion was 1.10.1988 for the vacancies of the year 1988-89. The applicant had joined only on 10.7.1989 while Shri T.Sannapa who is junior to the applicant was a departmental candidate and had joined as Junior Time Scale officer on 4.6.1984. The applicant got his seniority in the revised seniority list prepared on 15.7.1991 above Shri T.Sannapa by virtue of slots kept vacant for direct recruits through the Union Public Service Commission. He was placed at S1.No.828 being a direct recruit candidate. The appointment to Junior Time Scale is made 50% by direct recruitment and 50% by promotion. On 1.10.1988 which was the crucial date for the Departmental Promotion Committee meeting, the applicant was not in service. Therefore, he was not considered for promotion. As per the eligibility conditions laid down for holding the Departmental Promotion Committee meetings, all officers who were in service as on 1.10.1988 were eligible for promotion to the Senior Time Scale. When the applicant on that date was not in service, he could not be so considered.

4. The learned counsel for the applicant highlighted the fact that a result flowing from a statutory provision is never an evil. He relied upon a decision of the Supreme Court in the case of

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the Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529 to contend that a Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not. Almost identical has been the observation made by the Apex Court in the case of Indian Council of Agricultural Research and Another v. T.K. Suryanarayan and Others, 1998 SCC (L&S) 359 that the statutory rules must be applied strictly. The said proposition in law indeed cannot be disputed and, therefore, we dwell into the rules on the subject.

5. The Indian Broadcasting (Engineers) Service Rules, 1981 had been framed in exercise of the powers under Article 309 of the Constitution. Rule 3 provides for constitution of the Indian Broadcasting (Engineers) Service and under Rule 9, every officer on appointment to the service either by direct recruitment or by promotion in Junior Time Scale shall be on probation for a period of two years. The said Rule reads:-

"Probation :

(1) Every officer on appointment to the Service either by direct recruitment or by promotion in Junior Scale shall be on probation for a period of two years;

Provided that the Controlling Authority may extend or curtail the period of

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probation in accordance with the instructions issued by Government from time to time;

Provided further that any decision for extension of a probation period shall be taken within eight weeks after the expiry of the previous probationary period and communicated in writing to the concerned officer together with the reasons for so doing within the said period.

- (2) On completion of the period of probation or any extension thereof, officers shall, if considered fit for permanent appointment, be retained in their appointments on regular basis and be confirmed in due course against the available substantive vacancies, as the case may be.
- (3) If, during the period of probation or any extension thereof, as the case may be, Government is of the opinion that an officer is not fit for permanent appointment, Government may discharge or revert the candidate to the post held by him prior to his appointment in the Service, as the case may be, or pass such orders as they deem fit.
- (4) During the period of probation or any extension thereof, candidates may be required by Government to undergo such course of training and instructions and to pass such examinations and tests (including examination in Hindi) as Government may deem fit, as a condition to satisfactory completion of the probation."

Schedule-IV further prescribes about the composition of the Departmental Promotion Committee meetings and Note 3 in this regard runs as under:-

"Note 3: If an officer appointed to any post in the service is considered for the purpose of promotion to a higher post, all persons senior to him in the grade shall also be considered notwithstanding that they may not have rendered the requisite number of years of service."

It is on the strength of these rules that the learned counsel for the applicant contends that

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even if when Shri T. Sannapa was promoted, the applicant was on probation. He has a right to be considered because there is no bar in this regard in the recruitment rules. In support of this argument, the learned counsel relied upon a decision of this Tribunal in the case of Narendra Singh v. Union of India and Anr. in OA No. 462/1992 rendered on 7.5.1997. This Tribunal had held that if a junior person is appointed, then in terms of Note 3 referred to above, all persons senior to him on probation have a right to be considered. It was held that there is no provision in the rules that completion of probationary period is a pre-condition for consideration for promotion to the post of Senior Time Scale.

6. We deem it unnecessary to enter into the arena of this controversy or express any opinion in this regard. Reasons are obvious. What has transpired in the present case is that for promotion as per the recruitment rules, 50% of the posts have to be filled from direct recruitment and 50% by promotion. Shri T. Sannapa is a promotee. The applicant had joined the service on 10.7.1989. The Departmental Promotion Committee meeting in this regard had been held with respect to officers who were in service as on 1.10.1988. We were informed that the meeting took place on 14.6.1989. In other words, when the Department Promotion

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Committee meeting took place, all the concerned persons who were to be considered were to be in service. The applicant on that date was not in service. Therefore, the applicant cannot contend and urge that because he was senior to Shri T. Sannapa irrespective of his being on probation, he should be considered. The very thrust and scope of the argument, keeping in view these facts, loses its significance. On the crucial date, the applicant being not in service could not be so considered for promotion even if Shri T. Sannapa joined a little later. Consequently, it must be held that the application is devoid of any merit.

7. Resultantly, the application being without merit must fail and is dismissed. No costs.


(V. Srikantan)
Member (A)


(V.S. Aggarwal)
Chairman

/sns/