

Central Administrative Tribunal, Principal Bench

O.A. No. 1626/95

New Delhi this the 16th day of May, 2000

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Mrs. Shanta Shatry, Member (A)

Mr. R.K. Sinha
R/o Q.No.153, Sector-3,
R.K. Puram,
New Delhi.

..Applicant

By Advocates: Shri R. Venkatramani, Sr. Counsel with Sh. S.Y. Khan.

Versus

1. Union of India
through the Secretary,
Ministry of Information and Broadcasting.
Shastri Bhavan,
New Delhi.
2. Director General,
Doordarshan, Mandi House,
New Delhi.
3. Director General,
All India Radio,
Akashvani Bhavan,
Parliament Street,
New Delhi.
4. Smt. Lalita S. Bhoj,
Controller of Programme,
Mandi House,
New Delhi.
5. Smt. Vimla Milla,
Director, Doordarshan Kendra,
Jaipur, Rajasthan.
6. Mr. S.C. Aggarwal,
Controller of Programme,
Directorate General: Doordarshan,
Mandi House, New Delhi.
7. Mr. M.P. Suri
Director, Doordarshan Kendra,
Hyderabad, Andhra Pradesh.
8. Dr. J.B. Gupta,
Controller of Programmes,
Directorate General, Doordarshan,
Mandi House, New Delhi.
9. Mr. P.L. Chawla
Controller of Programme,
Directorate General: Doordarshan,
Mandi House, New Delhi. .. Respondents

By Advocate Shri S.M. Arif.

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Order

By Hon'ble Shri Kuldip Singh, Member (J)

The applicant has filed this O.A. assailing the impugned order of promotion made by respondent No.1 against which a representation had been made by the applicant, which too had been rejected vide Annexure A-1.

2. It is pleaded that the applicant's representation for his claim to promotion to the Junior Administrative Grade has been rejected arbitrarily, illegally, wilfully without application of mind and as such the same should be quashed.

3. It is further pleaded that the applicant had joined the service of All India Radio as Transmission Executive Class-III post. Thereafter he was promoted to the Grade-III Gazetted Post of Programme Executive in November, 1973. Then he was promoted as Assistant Station Director on 6.11.1981. From there he was promoted as Station Director on 21.01.1985.

4. It is further alleged that Shri M.P. Verma and others who were ad hoc Programme Executives filed an O.A. bearing No.663/88 in the Principal Bench claiming counting of their ad hoc service in the grade of Programme Executives from their initial ad hoc appointment. The applicant was impleaded as respondent to the said OA and the same was allowed. Subsequent to that, respondent Nos. 1 and 2 had extended the benefit of judgment in OA 663/86 to about 100 other Programme Executives, who were alleged to be similarly placed.

5. The applicant further claimed that he has also filed an OA about the wrongful implementation of the order passed in OA 663/86, which was registered as OA 441/90.

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6. ✓ It is further pleaded that Government of India had constituted a service known as Indian Broadcasting Programme Service (hereinafter referred to as 'IBPS') and the applicant had also opted for the Management cadre of Doordarshan. A seniority list was also prepared of the Management cadre of Doordarshan and was circulated on 26.3.92 which is annexed as Annexure A-3. On the basis of the said seniority list, respondents convened a meeting of the DPC for promotion of about 15 officers of the Senior Time Scale of IBPS in the pay scale of Rs.3000-4500 for the post of Junior Administrative Grade in the scale of Rs.3700-5000. The name of Smt. Lalitha S. Bhoj who was at S.No.29 of the seniority list figured in the list in supersession of the applicant who was senior to Smt. Lalitha S. Bhoj being at S.No.28.

7. Apart from this, one Shri Jai Pal Sharma was placed at S.No.25 of the aforesaid list who had retired on 31.3.93 was also given promotion to Junior Administrative Grade but the same remained unfilled as on the day the promotion list was issued. Shri Jai Pal Sharma had already retired.

8. It is further pleaded that promotion to the Junior Administrative Grade is based on selection method and the benchmark for such a promotion is three years 'very good' ACR out of 5 years qualifying service but this criteria had not been adhered to as the same can be verified by calling the record of the DPC proceedings.

9. It is further pleaded that some of the officers who do not fulfil the qualifying period of 5 years of service were given the benefit because of the judgment in OA 663/1986.

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10. ✓ It is further pleaded that at the time of convening of the DPC in April, 1993, the ACRs of other officers of the cadre of Station Directors for the years 1991 and 1992 - only two reports pertaining to class II Gazetted post of Programme Executive were available. Practically as well as factually they were working in lower grade than the feeder grade of Station Director in which the applicant had been working since January, 1995. Therefore, the experience of the lower grade cannot be equated with the experience of higher and supervisory grade. Thus, it is stated that the DPC had equated incomparables in comparison of work and experience since the applicant was working in a higher grade from the previous 5 years than the others who were working in a lower grade. Thus this comparison is violative of Article 14 of the Constitution.

11. It is further stated that some of the respondents had only 2 1/2 years of completed service in the feeder cadre and they do not even fulfil the eligibility condition of qualifying service of 5 years in the feeder cadre on the date of DPC because the mere fact that the respondents were given promotion with retrospective effect from 1985 does not enable them to actually acquire the period of 5 years of qualifying service as laid down in the promotion rules for promotion to Junior Administrative Grade. Hence it is prayed that the promotion list should be quashed whereby respondent Nos. 4 to 9 had been illegally promoted in violation of Recruitment Rules and respondents be directed to conduct a review DPC to reconsider the case of the applicant for promotion to Junior Administrative Grade. *km*

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12. Application is contested by the respondents. Respondents have pleaded that the application is an abuse of process of law and the same is liable to be dismissed.

13. It is further pleaded that the representation of the applicant was rejected and the same was communicated to him vide memo dated 24.8.94 and the O.A. filed by the applicant is barred by time.

14. The respondents further pleaded that the court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post.

15. It is further stated that an officer in the Senior Time Scale with 5 years of regular service will be eligible to be considered for the J.A. Grade and the DPC had followed the prescribed procedure and all eligible officers were considered for promotion to the Junior Administrative Grade and since promotion to the Junior Administrative Grade, which is a selection post, no official can claim to the same as a matter of right.

16. Respondents also pleaded that Shri M.P. Verma and Others had filed a petition before the Principal Bench of the Central Administrative Tribunal and the applicant was also impleaded as one of the respondents but the application was allowed against the respondents and the applicants were given seniority over respondents by giving them the benefits of continuous service as Programme Executives from various dates set out in Annexure-I to the application and to consider the case of the applicants for promotion on the aforesaid basis with all consequential benefits and it is in compliance of the said

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judgment the respondents drew up a draft seniority list placing all the applicants of the OA 663/86 senior to the respondents in the said OA (663/86).

17. Further in the meantime certain other persons who were similarly placed like the applicants in OA 663/86 also approached the Tribunal and filed an application bearing No. 1484/88 but the issue of extending the benefits of judgment of OA 663/86 was examined and Government had taken a decision to extend the benefits of the judgment of OA 663/86 to all such persons who were similarly placed persons in order to be fair and just to them. A written undertaking was given before the Tribunal for extending the benefit of the judgment in OA 663/86 to all similarly placed persons were also given seniority against the respective grades from which they were continuously officiating as Programme Executives.

18. As far as the consideration of promotion to the JAG by the DPC is concerned, it is stated that the UPSC was associated and after considering the case in detail, the DPC had evaluated each candidate and after giving due consideration to all the candidates, DPC had given its recommendations and it is stated that the case of the applicant was also considered but the applicant could not be given promotion against the available number of vacancies.

19. We have heard the learned counsel for the parties and have gone through the records. We have also called for the records of the DPC and have seen the same.

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20. The main contention of the learned counsel for the applicant is that since he had been promoted earlier in the year 1985 and was working as Station Director, a post which was a higher post in comparison to the post held by the respondents, so the grading given to the applicant should have been upgraded by one level further and the DPC should have given one step higher grading to the applicant. In support of his contention the learned counsel for the applicant relied upon a judgment reported in 1998 (1) ATJ page 532 - Shiv Kumar Sharma and Another Vs. U.O.I. & Others, wherein the Hon'ble Supreme Court relying upon a Full Bench judgment given by the CAT, Hyderabad Bench in Sambhus's case had approved the formula evolved by the Full Bench of the Hyderabad Bench of the CAT. In that case the Hyderabad Bench has stated that an applicant who shouldered higher responsibilities for higher Class I post of ASW/SW, the gradation as SA should be treated as one level higher grading than the grading awarded to them as ASW, i.e., if the ACR as ASW reflects 'good' it should be taken as 'very good' and if 'very good', then it should be taken as 'outstanding'. On the basis of this judgment the learned counsel for the applicant stated that the applicant was also entitled to be given a grading of one level higher than it had been actually granted to him.

21. We have also gone through the Full Bench Judgment in the case of S.S. Sambhus Vs. U.O.I. given by the Hyderabad Bench and we are of the considered opinion that the judgment in Sambhus's case is quite distinguishable from the facts of the present case. In Sambhus's case the applicants were holding substantively Class-III posts of Surveyors Assistants who had been officiating in Class-I posts of Assistant Surveyors (Works) for a number of years continuously with some technical breaks of one or two days. They were, however, officiating on ad hoc
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basis and had been promoted not by selection but on the basis of seniority. so they were shouldering the responsibilities of a higher post and on that basis the Full Bench had evolved a formula that the officers should be given one level higher grading in comparison to their counter parts who were working in the substantive post of ASW. But in this case the seniority of the applicant had been challenged in the earlier OA 663/86 and applicant was one of the respondents in that case. The applicant did not contest the said case and the Principal Bench in the said case while granting relief to the applicants in OA 663/86 had given the following directions:-

" In view of our discussion in the foregoing, we direct respondents 1 and 2 to grant seniority to the applicants over respondents No.3 to 92 by giving them the benefits of continuous service as Programme Executive from various dates set out in Annexure-I to the application and to consider the case of the applicants for promotion on the aforesaid basis with all consequential benefits. The above directions shall be complied with on or before 31.3.88". (emphasis supplied)

22. The fact that the applicants in OA 663/86 had been given seniority with all consequential benefits with the direction to consider for promotion shows that the said applicants had been erroneously ignored or had not been given promotion despite the fact that they were available to serve on the promoted post that is why the consequential benefits had been given to them and since the promotion had been effected with retrospective effect, so those applicants (in OA 663/86) come at par with the present applicant. An order to this effect was passed on 13.3.90. (which is placed on page 30 of the paper book) shows that the respondents had been promoted with retrospective effect from sometime in the year 1985. The applicant also claims to have been promoted as Station Director in the year 1985 so all those persons who were considered in the DPC were holding the post of feeder cadre with effect from the

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year 1985 and since the respondents whose promotions are under challenge had been given consequential benefits by virtue of the order passed in OA 663/86 so for all practical purposes even for considering promotion etc. they have to be considered as if they were holding the post in feeder cadre from the year 1985. In view of this situation the judgment cited by the learned counsel for the applicant in **Sambhus's** and **Sharma's** cases (Supra) are of no help to the applicant.

23. In case the contention of the applicant that he is entitled for being assessed one level higher grading is to be accepted. that would mean that the applicant had, in fact, been working at a higher position which had been set at naught by the Tribunal in OA 663/86 and in case the applicants who had succeeded in OA 663/86 are not considered for promotion for having been directed to be considered, it would amount to denying the benefits granted in OA 663/86 to the applicants therein. The reliefs granted to the applicants in OA 663/86 would be rendered meaningless in case the applicant in the present case is considered for assessing his ACRs at one level higher merely because he was holding a senior post wrongly, which wrong had been set right by the judgment in OA 663/86.

24. So we are of the considered opinion that the case of the applicant is quite distinguishable from **Sambhus's** and **Sharma's** cases (Supra) and applicant is not entitled for assessment of his ACRs at one level higher than at what he was assessed because he was not holding the senior post by any valid order. *kmr*

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25. As regards the promotion of respondent No.4 is concerned, we have seen the records of the DPC proceedings and we find that the DPC had correctly recommended her case for recommendation.

26. As regards the case of the applicant regarding the promotion of Sh.J. Sharma is concerned, since he was in post on the date when the DPC was held so the DPC was bound to consider him as well and the applicant cannot challenge the DPC proceedings on this score.

27. As stated above, we have seen the DPC proceedings and the list of panels prepared by the DPC and we find that the applicant has been properly considered and no interference is called for.

28. In view of the above discussion, we find no merit in the O.A. and the same is dismissed but without any order as to costs.

Shanta F

(Shanta Shastray)
Member (A)

Kuldeep Singh

(Kuldeep Singh)
Member (J)

Rakesh