

Central Administrative Tribunal
Principal Bench

O.A. 2153/97

with

O.A. 2165/97

and

O.A. 2166/97

12

New Delhi this the 7th day of August, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

O.A. 2153/97

1. Saji Kumar,
S/o late Shri Sreedharan Nair,
Dy. Director (Engg.),
DG: Doordarshan,
Mandi House, New Delhi.
2. Mrs. Anuradha Agarwal wife of
Shri V.S. Agarwal,
Dy. Director (Engg.),
DG: Doordarshan,
Mandi House,
New Delhi.
3. A.K. Mangalgi,
S/o Sh. Nagshetty Manglgi,
Station Engineer,
Doordarshan Kendra,
Akashvani Bhavan, Parliament Street,
New Delhi.
4. M.A. Akhtar,
S/o Sh. Mohd. Hasan,
Station Engineer,
Doordarshan Kendra,
Akashvani Bhavan,
Parliament Stret,
New Delhi.
5. A.K. Singh,
S/o Shri Bharat Singh,
Station Engineer,
Doordarshan
Maintenance Centre,
Itarsi-461111 (MP).
6. M.S. Thomas,
S/o Sh. Korah Varghese,
Station Engineer,
Doordarshan Maintenance Centre,
Nagpur-440010.
7. Sudhir Sodhia,
S/o Shri N.C. Sodhia,
Station Engineer,
All India Radio,
Ambikapur (MP).

.... Applicants.

By Advocate Shri B.S. Jain.

18

- ✓ 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 Advocate Shri S.M. Arif.

O.A. 2165/97

1. S. Ramesh,
S/o Shri S. Subramaniam,
S.E.,
Doordarshan Kendra,
Bhopal.

... Applicant.

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 Advocate Shri S.M. Arif:

O.A. 2166/97

- ✓ 1. Mrs. Suman Yadav,
W/o Rakesh Yadav,
Station Engineer,
DIK, Bareilly.
2. Shri A.K. Dang,
S/o Shri Manohar Lal,
S.E. AIR,
Bareilly.
3. Shri Mukesh Kumar,
S/o Mul Khan Singh,
DMC,
Bareilly.
4. Shri Ganesh Dutt Sharma,
S/o Shri Babu Ram Sharma,
Dy. Director Engg.,
O/O Chief Engineer,
(HZ) ATR IV, Jam Nagar House,
New Delhi-110011.

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5. Sh. Nazrul Islam,
S/o late Sh. Anwar Ali,
Station Engineer,
Doordarshan Kendra,
Calcutta.
 6. Sh. Shashi Kant,
S/o Sh. D.R. Dhiman,
Station Engineer,
Doordarshan Kendra,
Shillong (Meghalaya).
 7. Sh. Satyendra Kumar,
S/o Shri Sita Ram,
Asstt. Director (Engg.),
O/O CE (NE), AIR & T V,
New Delhi-11.
 8. Shri V.P. Yadav,
S/o Shri S.N. Yadav,
Station Engineer,
TV Tower, Dalton Ganj-822101.

(14)

... Applicants.

By Advocate Shri B.S. Jain.

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 Advocate Shri S.M. Arif.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

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The ^{for hearing} aforesaid three applications have been taken up together, with the consent of the parties as the law and issues are similar and they are also being disposed of by a common order.

2. The applicants in all these cases have alleged that even though they were senior to certain other officers in the Junior Time Scale (JTS), the respondents had not considered their cases for promotion to Senior Time Scale (STS) in accordance with the Indian Broadcasting (Engineers) Service

18/

15

Rules, 1981. They have relied on the provisions of Note 3 to Schedule IV of these Rules which provides that 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. The main ground taken in the reply filed by the respondents is that the applicants could not be considered for promotion, on the ground they had not completed their probationary period and they have relied on the D.O.P&T O.M. dated 18.7.1989.

3. At the time of hearing, the learned counsel for the parties have brought to our attention certain judgements of the Tribunal dealing with similar issues, namely, **Rakesh Kumar & Ors. Vs. Union of India and Anr.** (O.A. 337/92) and **Narendra Singh Vs. Union of India & Anr.** (O.A. 462/92) (copies placed at pages 46-52). Shri Mohd. Arif, learned counsel for the respondents relies on a recent judgement of the Tribunal in a similar case, **Shri P. Dass & Ors. Vs. Secretary, Ministry of Information and Broadcasting and Ors.** (O.A. 1886/97), decided on 25.5.1998 and submits that while a similar direction may be issued that the review DPC may be held to consider the applicants as it has been ordered in the other cases, it may also be clarified that the consequential benefits that the applicants will be entitled to will be in accordance with law and will not include any arrears of pay and allowances.

4. Shri B.S. Jain, learned counsel, on the other hand has very strongly argued that if in the review DPC the ~~applicants~~^{he} are found suitable to STS posts, applicants cannot be deprived of the arrears of pay from the due date i.e. from the dates of

16

✓ the promotion of their juniors. He has submitted that the respondents cannot take advantage of their own wrong in not promoting the applicants from an earlier date. He relies on the judgements, list of which is placed on record, and in particular, the judgment of the Supreme Court in **Union of India Vs. K.V. Jankiramam** (1993(23) ATC 322) and **Charan Das Chadha Vs. State of Punjab and Anr.** (1980(3) SLR (P&H High Court) page 702 at 705.

5. As the present three applications are on all fours with the cases dealt with by the Tribunal in **Rakesh Kumar's case**, **Narender Singh's case** and **P. Dass and Others (Supra)**, they are entitled to similar reliefs and accordingly the respondents shall hold review DPCs to consider them for promotion to the post of STS in accordance with the Recruitment Rules.

6. Apart from the above, the other main issue raised in these cases is the question of consequential benefits and whether the applicants shall be entitled to all arrears of pay and allowances from the date when their juniors were promoted. ^{with interest} In this connection, we note that in the impugned order No. 41/97-B(D) dated 10.7.97, the respondents have stated as follows:

18. "2. On promotion, the pay of the above mentioned officers will be fixed under FR 27 at the stage it would have reached, had they been promoted from the date the officers immediately below them were promoted but no arrears would be admissible for the intervening period between the date of promotion to be fixed as per this order and the date they actually assumed the charge of the post".

(Emphasis added)

17

It is seen from the above order that the respondents have not paid arrears of salary to other similarly situated persons who have been promoted to STS for the period between the date of promotion and the date they actually assumed charge of the post. In the circumstances, taking into account the facts, and the stand taken by the respondents in the cases of all other similarly situated persons in the same Department, there appears to be no justification in the public interest to take the contrary view held by the Punjab and Haryana High Court in Charan Dass Chadha's case (supra).

7. The ^{other 13} judgements relied upon by the applicants are not directly on the same facts and issues as raised in these applications. In K.V. Jankiraman's case (supra), the issues before the Supreme Court related to issuance of chargesheet in a disciplinary proceeding/criminal prosecution, as to when the sealed cover procedure is to be resorted to and the result of the final order passed in the pending proceedings fully exonerating the concerned official in which case the Court has stated that the benefit of the salary of the higher post may be given. Those facts will not be applicable to the present cases.

8. It is also settled law that there must be consistency, certainty and uniformity in judicial pronouncements and we respectfully agree with the order of the co-ordinate Bench of this Tribunal in P. Das's case (supra) (See State of UP Vs. R.C. Trivedi (AIR 1976 SC 2547), Union of India Vs. Godfrey Phillips India Ltd. (1985 (4) SCC 369) ¹³ recent decision of the Hon'ble Supreme Court in and K. Ajit Babu & Ors. Vs. Union of India (1988 (1) AISLJ 85). Further, in the light of the judgements of the Tribunal on the same issues given in the aforesaid three cases against the

28

same respondents, we are unable to agree with the contention of Shri Jain, learned counsel that there has been any wrongful or illegal action taken by the respondents previously, of which they cannot take advantage and, therefore, they should be asked to pay the arrears of pay and allowances to the applicants in these cases. In the facts and circumstances of the case, the claim of the applicants for payment of arrears of pay and allowances with interest is rejected. However, as directed by the Tribunal in P. Dass's case (supra), the applicants shall be entitled to arrears of pay from the respective dates of their filing the Applications in the Tribunal.

9. In the result, the O.As (O.As. 2153/97, 2165/97 and 2166/97) are allowed with a direction to the respondents to hold review DPCs to consider the applicants for promotion to the higher posts of Senior Time Scale. This shall be done within three months from the date of receipt of a copy of this order. The applicants shall be entitled to consequential benefits in accordance with law, but for the reasons given above, it is clarified that they shall only be entitled to pay and allowances from the dates they have filed these applications in the Tribunal i.e. 8.9.1997, 10.9.1997 and 11.9.1997 respectively. No order as to costs.

10. Let a copy of this order be kept in O.A. 2165/97 and O.A. 2166/97.

(K. Nuthukumar)
Member(A)

SRD

(Smt. Lakshmi Swaminathan)
Member(J)

Attested
March
07/08/98