

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

14

O.A. No.2591/1997.

New Delhi, this the 3rd day of November, 1998.

HON'BLE SHRI JUSTICE K.M. AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER (A)

Shri D.P.Malik
S/o Late Shri R.S.Malik,
Deputy Director,
External Services Division,
All India Radio,
Parliament Street,
New Delhi-110001.
(BY ADVOCATE SHRI S.Y. KHAN)

....APPLICANT

vs.

Union of India through
The Secretary,
Ministry of Information & Broadcasting,
Government of India,
Shastri Bhawan,
New Delhi.

....RESPONDENT

(BY SHRI HARVIR SINGH, PROXY OF MRS.R.K.
GUPTA, ADVOCATE)

ORDER

JUSTICE K.M. AGARWAL:

In this O.A., the claim of the applicant is for a review D.P.C. for his promotion to the Senior Time Scale w.e.f. 28th of June 1995, or in the alternative, for promotion w.e.f. 14.10.1996, the date of D.P.C., after quashing the order dated 8.5.1997, Annexure A-1, rejecting his claim for promotion from a retrospective date.

2. Briefly stated, since 28th of June 1991, the applicant was holding the post of an Assistant Station Director (Production) in Junior Time Scale, (in short, "Jr. T.S."), in All India Radio. after relaxation of one year in the period of 5 years qualifying service for promotion to the post of Senior Time Scale, the applicant became eligible for consideration to the post of Senior Time Scale on 28th of June 1995 on completion of 4 years service as Assistant Station Director in Jr. T.S. Accordingly his name was included in the panel prepared for the year 1995-96. D.P.C.

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was held on 14.10.1996 for consideration of the panel. The applicant was considered, selected and also promoted to the post of Senior Time Scale by order dated 20.3.1997, Annexure A-6. The applicant claims that his name ought to have been considered for his promotion to the said post w.e.f. 28th of June 1995, when he became eligible for promotion, because vacancies were existing on that date. In the alternative, he claimed his promotion from 14.10.1996, when the D.P.C. had held its meeting for considering the panel of 1995-96. A representation made to the respondent was rejected by the impugned order dated 8.5.1997. Hence, he has filed this O.A. for the said reliefs.

3. The O.A. is resisted by the respondent. Paragraphs 4, 7 and 10 of the reply filed on behalf of the respondent are relevant in this connection. They are as follows:

"4. In reply to Para 1 it is submitted that the applicant's claim for promotion from retrospective date is not tenable since promotion involves assumption of higher duties and responsibilities. Mere occurrence of vacancy does not confer any automatic right for promotion. The Government have the inherent discretion or power not to fill up a post and keep it vacant. It is further submitted that the Hon'ble Supreme Court have held in a case of Union of India & others Vs. Majri Jungamayyer & others. (1977 SLJ 90 SC) that the promotion is to be made on prospectively and not retrospectively."

"7. In reply to para 4.2 to 4.7 it is submitted that the Departmental Promotion Committee was convened on 24.07.96 so as to prepare year-wise panels for the vacancies pertaining to the years 1993-1994 and 1994-1995. The applicant was not considered by this DPC as he was not fulfilling the four years' (after relaxation to bring at par with Management Cadre) qualifying service on the cut off date as on 1.10.1993 and 1.10.1994 since he was promoted to the Assistant Station Director grade on 28.06.91. The cut off date of Ist

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October has been equally applied to all officers in the feeder grade in accordance with the Department of Personnel and Training's O.M.No.22011/7/86-Estt.(D) dated 19.7.89 (A copy of the same is annexed as R-1). It is submitted that the DPC which met on 14.10.96 to consider the panel for the year 1995-96, considered the applicant for the promotion to the grade of STS applying four years' service as qualifying service and 1st October, 1995 as cut off date. There was a delay in issuing the promotion orders due to stay granted by the Hon'ble Tribunal, Jabalpur Bench, in O.A. No.801/96 filed by Shri Qumar Ahmed. However it is also submitted that the promotion could not be effected on retrospective basis as it involves assumption of higher duties and responsibilities."

"10. In reply to para 7 it is submitted that the applicant did not complete qualifying service of four years as on 1.10.1993 and 1.10.94 for consideration against the vacancies pertaining to the years 1993-94 and 1994-95 respectively for which the DPC met on 24.7.96 as he joined the post of Assistant Station Director on 28.06.91."

4. After hearing the learned counsel for the parties and perusing the record, we are of the view that the applicant could not be empanelled in the panel of candidates for promotion during the years 1993-94 and 1994-95, though there were large number of vacancies, because during those years, he had not completed four years of qualifying service for the post of Senior Time Scale. He qualified himself for the post on 28th of June 1995 as per his own showing. Accordingly as per O.M.No.22011/7/86-Estt (D) dated 19.7.1989, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, the crucial date for determining the eligibility of the applicant for promotion would be the 1st of October 1995, as in his case ACRs appeared to be written financial yearwise

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and not shown to be written calendar yearwise. A copy of this O.M. has been filed as Annexure R-1 by the respondent. No Government servant is entitled as of right to immediate promotion soon after becoming eligible for promotion. Accordingly his claim for promotion w.e.f. 28.6.1995 is misconceived.

5. In Shankarasan v. U.O.I., JT 1991(2) SC 380 = AIR 1991 SC 1612, it was held by the Supreme Court that:

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post."

Accordingly respondent appears to be right in contending in paragraph 4 of its reply that "the applicant's claim for promotion from retrospective date is not tenable..... Mere occurrence of vacancy does not confer any automatic right for promotion. The Government have the inherent discretion or power not to fill up a post and keep it vacant." It also appears right in contending that ordinarily promotion cannot be retrospective, but generally prospective in effect.

6. For the foregoing reasons, we find no merit in this O.A. Accordingly it is hereby dismissed, but without any order as to costs.

K.M.
(K.M.AGARWAL)
CHAIRMAN

R.K.
(R.K.AHOOJA)
MEMBER (A)