

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1224/2000

New Delhi, this the 20th day of December, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Sh. Rohtash Kumar Verma
(as per memo of parties)
(By Advocate: Sh. B.S.Jain)

...Applicant.

VERSUS

1. Union of India,
Through Secretary,
Ministry of I & B.
Shastri Bhawan, New Delhi-1.
2. Director General,
All India Radio,
Akashwani Bhawani,
Parliament Street,
New Delhi-1.
3. Chief Controller of Accounts,
Ministry of I & B,
Shastri Bhawan, New Delhi-1.

...Respondents

(By Advocate: Sh. A.K.Bhardwaj)

O R D E R

By Hon'ble Sh. S.A.T.Rizvi, M (A):-

The applicant is a directly recruited JTS Group 'A' officer and a member of the Indian Broadcasting (Engg.) Services (for short "IBES). He is governed by the IBES Rules, 1981 notified on 4.11.81. His grievance is that he deserved to be promoted to the next higher scale in accordance with the provisions of the IBES Rules, 1981 but has not been promoted. The specific provision to which a reference has been made by him in this connection is Note-3 forming part of Schedule-IV of the aforesaid Rules. The said Note is reproduced below:-

"Note-3

"If anyone appointed to any post in the Service is considered for the purpose of

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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."

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2. The applicant's contention is that in contravention of the above-mentioned statutory provision, the respondents promoted a number of persons from the junior scale to the senior scale of the service on 7.3.90 (Annexure A-3). Considering this, the applicant had apprehended that the story will be repeated in 1992 also. Accordingly, he represented in the matter personally and also filed formal representations before the respondents. However, his prayer was rejected by the respondents on 30.3.92 (Annexure A-4). The ground taken in that order was that the right for promotion does not arise till an officer completes his period of probation satisfactorily. The respondents simultaneously promoted a large number of officers from the junior to the senior scale vide orders dated 4.3.92 (Annexure A-4) on which occasion the applicant was not considered. The aforesaid promotions were made subject to the decision of this Tribunal in OA-337/92 filed by the applicant in the meanwhile.

3. The aforesaid OA-337/92 filed by the applicant on being aggrieved by the promotion order of 4.3.92 was placed before the Lok Adalat. The Judge, Lok Adalat recorded the statement of a Dy. Secretary in the Ministry of I & B on 2.10.96 which paved the way for the consideration of the applicant's case for promotion. The aforesaid statement is reproduced below:-

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"In view of the provisions of the Rules mentioned in note No.3, Schedule IV of Indian Broadcasting (Engineering Service), 1981, we will consider the applicant Rakesh Kumar and three others from the date when the DPC took place and will be entitled to consequential relief according to law."

4. This Tribunal thereafter decided the afore-mentioned OA-337/92 by passing the following orders on 26.2.97:-

"This matter has been placed on board for formal disposal in terms of the agreement reached between the parties. We hereby order that this O.A. may be disposed of in accordance with those terms. Accordingly, the original application is disposed of finally. There is no order as to costs."

5. In a similar case (OA-462/92) filed by one Sh. Narendra Singh, this Tribunal vide order dated 7.5.97 had disposed of the application by directing the respondents to convene a review DPC for promoting the applicant in that case to the post of Senior Time Scale Officer. The Tribunal had further laid down that if the applicant was found fit for promotion, he would be entitled to all the consequential benefits as may be available under the law.

6. The aforestated developments led to the passing of order dated 10.7.99 (Annexure A-9) by the respondents by which the earlier order of promotion dated 4.3.92 was modified and the applicant along with four others was appointed to officiate in the Senior Time Scale (STS) of the service against the vacancies for the year 1990-91 with effect from the date their juniors have got

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promotion to the Senior Scale. The same order further provided that on promotion the pay of the applicant and the others would 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 supplied)

7. By another order passed on 24.11.97, the respondents, while referring to the afore-mentioned order of 10.7.97, laid down that the date of notional promotion of the applicant and the four others against the vacancies for the year 1990-91 shall be 7.3.92, i.e., the date on which Sh. Surinder Singh-II joined the Senior Scale he being immediate junior to Sh. Sasadhar Mandal, the junior-most among the five officers including the applicant. Thus a formal date of notional promotion was fixed by the respondents and the same was 7.3.92, being the date from which the junior (Sh. Surinder Singh-II) to the applicant joined the Senior Scale. In the earlier orders, no such date was fixed. However, since the aforesaid orders of 24.11.97 was passed in continuation of the order dated 10.7.97, the condition that no arrears would be admissible for the intervening period between the date of promotion and the date the applicant actually assumed the charge of the Senior Scale post remained intact.

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8. Aggrieved by the aforesaid order providing for the condition of non-payment of arrears as above, the applicant filed a CP-274/97 in OA-337/92 on 26.11.97. In that petition, this Tribunal held that the petitioner (applicant in the present case) could not agitate the validity of the order passed by the respondents on 10.7.97 in pursuance of the earlier order passed by this Tribunal on 26.2.97, taking into account the understanding reached at the Lok Adalat on 2.10.96. The Tribunal had, however, gave liberty to the applicant to have recourse to appropriate proceedings.

9. The applicant took advantage of the liberty so given and filed another OA-1608/98 which was decided on 25.8.99. The said OA was allowed and the respondents were directed to pay to the applicant the difference of salary and allowances on the basis of his retrospective promotion as per the order dated 10.7.97. We have already seen that a formal date of notional promotion was not fixed by the respondents in that order of 10.7.97 and, therefore, the net effect of the Tribunal's aforesaid order was that while his pay on promotion was still to be fixed under FR 27 at the stage it would have reached, had he been promoted from the date the officer immediately below him was so promoted but no arrears were to be admissible for the intervening period between the date of promotion and the date he actually assumed the charge of the Senior Scale post.

10. Subsequently, by an order of 7.4.2000, the respondents modified the aforesaid order of 10.7.97

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providing that the applicant will be allowed the arrears of pay and allowances from the date of his notional promotion to the Senior Time Scale of IBES till the date he actually assumed duties of the higher post. The respondents, thereafter, passed yet another order of 10.4.2000 in supersession of the order of 7.4.2000 and in partial modification of the order dated 10.7.97 providing that the applicant and the four others will be allowed the arrears of pay and allowances from the date of their notional promotion to the STS of the IBES till the date the applicant and the others actually assumed duties of the higher post. This last order of 10.4.2000 would seem to represent the final picture insofar as the payment of arrears of pay and allowances to the applicant is concerned.

11. Meanwhile, the applicant had already filed a CP once again being CP No.76/2000 in OA 1608/98 decided by this Tribunal on 11.4.2000. In that order, the Tribunal had noted that the only direction given by it was to the effect that the respondents should pay the difference of salary and allowances to the applicant on the basis of his retrospective promotion in accordance with the order of 10.7.97. Having said this, the Tribunal in the order of 11.4.2000 referred to the respondents' order of 10.4.2000 already referred to. Looking at the aforesaid order of 10.4.2000, the Tribunal had stated that "it cannot be said that the order has not been complied with". At the same time, the Tribunal directed the respondents to make payment of all the arrears of pay and allowances to the applicant in 15 days.

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12. The Tribunal further laid down that if the payment in question was not made, the applicant could file the application for revival of CP in accordance with the law. The applicant exercised this option also and filed MA-902/2000 in OA-1608/98 in a bid to revive the CP-76/2000. The aforesaid MA was disposed of on 13.5.2000. While considering the MA, the Tribunal duly considered the claim of the applicant that he was entitled to arrears of pay and allowances w.e.f. 7.3.92, the date on which Sh. Surender Singh-II (applicant's immediate junior) joined the Senior Scale. The Tribunal clearly held that "We do not find either in our order or in the order of 1997 any direction being given to the respondents to consider the case of the applicant w.e.f. 7.3.92". The Tribunal further noted that "The Tribunal only directed that the retrospective promotion be made as per the order dated 10.7.97".

13. At this stage, it is necessary to re-capitulate the background of promotions made by the respondents in contravention of the statutory provision contained in Note No.3 of Schedule-IV of IBES. Since a number of Senior Officers had been omitted, the aggrieved persons started approaching the Tribunal in individual cases and the respective OAs were allowed directing the respondents to hold review DPCs. The respondents in the circumstances found it advisable to consider the cases of all the Senior Officers similarly placed to the applicants in the various OAs and issue promotion orders in respect of all at one go. This is precisely what they have done by passing the impugned order of 9.7.99.

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During the course of a comprehensive exercise which the respondents then made, the dates of notional promotion underwent changes not only in the case of the applicant but also in the case of several others. In the event, the applicant was assigned 6.9.93 as the date of his notional promotion. 13

14. The Tribunal in the aforesaid MA, took note of this fact and did not find any fault with the fixation of the aforesaid date (6.9.93) as the date of notional promotion of the applicant. From a perusal of the submissions placed on record by the respondents in the aforesaid MA-902/2000, it would appear that while the date of the applicant's notional promotion was changed from 7.2.93 to 6.9.93, the applicant actually joined in the Senior Time Scale on 18.5.95. From the same set of papers, it would also appear that in accordance with this Tribunal's orders dated 25.8.99 and the orders passed in CP-76/2000, the applicant was given arrears of pay and allowances w.e.f. 6.9.93 which is the revised date of his notional promotion upto 18.5.95 on which date he actually joined in the STS. The respondents' contention is that the orders of this Tribunal dated 25.8.99 have thus been fully implemented and the arrears of pay and allowances have also been paid to the applicant.

15. In the background of the above discussion, it would seem that this Tribunal at no stage ordered for the payment of arrears of pay and allowances to the applicant treating 7.3.92 as the date of his notional

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promotion to the STS. It would also seem that revision in the dates of notional promotion has been carried out by the respondents in the larger interest of the community of JTS officers of the IBES in an attempt to settle the matter finally insofar as the question of notional promotion to the STS is concerned. In the process, the applicant has also been affected along with several others. In the circumstances, the action taken by the respondents cannot be faulted. We have noted that the applicant did not take any step to agitate the matter in an appropriate forum to impugn the judgement and the order of this Tribunal passed in the aforesaid MA-902/2000 in which the question of payment of arrears of pay and allowances was finally set at rest by holding the date of notional promotion of the applicant as 6.9.93 against his claim that the same should be taken as 7.3.92. To this extent, we are in agreement with the respondents that the applicant is bound by the principle of res-judicata and cannot agitate the settled issues at this stage. We also find that in the select panel for the year 1992-93 (list annexed to the impugned order of 9.7.99) the effective date of regular promotion of the applicant has been shown as 6.9.93 while his junior Sh. Surinder Singh-II has been placed in the select panel for the succeeding year 1993-94 with the effective date of regular promotion shown as 16.3.94. Thus, the applicant has gained in accordance with his seniority and, that the effective dates of regular promotion being different as above, the applicant will be a gainer in service/promotional matters in future also. More than this, he cannot be given.

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16. In the circumstances, the OA is dismissed in
the aforestated terms. No costs.

S.A.T. Rizvi
(S.A.T. RIZVI)
MEMBER (A)

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Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN

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