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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 600/2000

This the 4th day of September, 2000.

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S.Tampi, Member (A)

Smt. Malti Sahay
Joint Director
Directorate of Film Festivals,
Lok Nayak Bhawan,
Khan Market
New Delhi.

.....Applicant

(By Advocate Sh. R.Venkatramani,
Sr. Advocate with Ms. V.Vijaylakshmi)

-: VERSUS :-

UNION OF INDIA

THROUGH

The Secretary
Ministry of Information & Broadcasting,
Government of India,
Shastry Bhawan,
NEW DELHI.

.....Respondents

(By Advocate Sh. R.P.Agarwal with
Sh. J.B.Mudgil)

O R D E R

By Hon'ble Sh. Govindan S.Tampi, Member (A)

In this O.A., Smt. Malti Sahai, Jt. Director in the Directorate of Film Festivals (D.F.F.), holding additional charge of the Director, challenges the validity of the Office Memorandum No. 301/30/91-7 (7) Vol.IV dated 17-12-99 issued by the respondents, Information and Broadcasting Ministry, informing her that the selection to the post of Director was about to be conducted afresh and the vacancy circular bearing the same No. dated 27-12-99, as the same were intended to damage her career.

2. To narrate the facts, the applicant was appointed in 1982/83 as Jt. Director in the Directorate of Film Festivals, on the basis of due selection, when it was a part of National Film Development Corporation (NFDC). The said Directorate which was an attached office of the Information & Broadcasting Ministry till June 1981, was transferred to NFDC and rejoined the Ministry in July 1988. In terms of the Recruitment Rules of the Directorate of 1989, she was assessed and appointed as Jt. Director w.e.f 10-04-90. She had thus completed nearly 17 years with the Directorate, 8 years when it was in NFDC, and 9 years as a regular Government servant in Information & Broadcasting Ministry. Though the post of Director, Directorate of Film Festivals has been vacant since 1986, it was not filled, but kept with officers from other services, on additional charge. She was given the current charge of the Director since September, 1993, in addition to her own duties; but without any financial benefits. In terms of the relevant recruitment rules, the Director's post was to be filled by promotion/transfer on deputation (including short term contract) from officers holding posts of Rs. 5100-5700/- or holding posts in Rs. 4500-5700 scale on a regular basis in Central/State Government or organisations and from Jt. Director with two years regular service. Therefore, she was eligible to get promotion Rules in 1986 itself. But, she had been given only additional charge and that too

from September, 1993 only. In September 1996, the post of Director was circulated inviting applications to fill it. The applicant also applied for it, though she should have been the automatic choice for selection having been the Joint Director for nearly 13 years and looking after the charge of Director for nearly three years. But, even after two years as the selection process was not complete, apprehending that the post would be re-circulated to her detriment, she filed a detailed representation dated 25-11-99 enumerating her claim for being appointed as the Director, which was responded by the impugned letter dated 17-12-99 intimating her that due to administrative exigencies, the selection could not be completed and as in between the field of candidates had narrowed down considerably, it was decided to start the selection process afresh. This was followed by the communication No. 301/30/91-F (F) Vol.IV dated 27-12-99, inviting fresh application. Hence this application.

3. The grounds on which the application is based are as below :-

(i) Though she was the only officer available from the feeder cadre for promotion as Director, with all requisite qualifications she was not given the promotion, but officers from other organisations were given additional charge for nearly seven years.

(ii) By not circulating the post for nearly ten years, she was deprived the opportunity of even contesting for the post with other eligible officers.

(iii) Delay in filling up the post was irregular, especially as the Recruitment Rules had been framed in 1989 itself.

(iv) Having initiated the selection process in 1996, Respondents should have completed the process in reasonable time and/or should have brought the selection process to a logical end which they failed to do. Not having acted in that manner, the respondents are not legally justified in initiating the fresh recruitment process.

(v) Qualifications and eligibility criteria for filling up a vacancy were to be reckoned with reference to the date of accrual of vacancy, and those who obtained then on subsequent days are ineligible. Respondents have given a go bye to this principle.

(vi) Grave injustice has been done to the applicant who was with the organisation for nearly 17 years, who was eligible to become Director in 1986 itself, and who has been holding additional charge for the last seven years, by denying her even a chance of consideration for the post of Director.

4. Reliefs claimed by her, therefore, are

(a) declaration that her non-consideration for the post of Director was bad in law;

(b) quashing the impugned O.M. dated 17-12-99 and the circular dated 27-12-99.

(c) direction to the respondents to hold the DPC, for the post of Director, DFF in 1993 when she was given additional charge and regularise her from that date and

(d) direction to the respondents to hold the DPC for 1996, in view of the vacancy circular issued in 1996, consider the candidature for regular promotion based on her record and if found fit to promote her as Director with retrospective effect from that date with all consequential benefits.

5. The applicant's request for interim relief has been allowed and further selection process has been stayed.

6. The applicant's claims have been forcefully contested in the reply filed by the respondents. They are summarised as below :-

(a) As the applicant was appointed as Joint Director in the Directorate of Film Festivals w.e.f. 10-4-90 on the basis of recommendations of the Selection Committee in consultation with UPSC, her regular service counts only from that day and her service in DFF when it was a part of NFDC was not relevant.

(b) Recruitment Rules of April 1989, were sought to be modified by providing for promotion failing which transfer on deputation, but as UPSC was against giving it retrospective effect some delay had taken place before the revised rules were notified on

[6]

26-11-96. Vacancy of Director was circulated on 11-9-96, with the last date for receipt of application as 16-11-96. Nine applications, including that of the applicant duly received, were sent to UPSC on 15-4-97, but documents called for by the UPSC could not be made available till October, 1999, by which time only two of the nine applicants remained, others having been promoted in their own cadres. Keeping in mind the importance of the post, which was that of the Head of the Deptt, it was felt that there should be a wider choice for selection, and hence the decision to start the selection process afresh by the Circular No. 301/30/91-F (F) Vol.IV dated 27-12-99. The applicant was also informed about the decision by letter of the same number dated 24-12-99. There was nothing irregular about it and applicant's case also would be considered in accordance with the composite method of recruitment i.e. promotion/deputation (including short term contract). It was true that the applicant has been looking after the current charge of the Director since 27-9-93.

(c) The circular dated 27-12-99, was not issued in response to the applicant's representation, but only to ensure that the choice for selection for the post of Director gets widened, keeping in mind its importance. It was not meant to deny her rightful claim and she was not the only person qualified to get the post.

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(d) The application is pre-mature as she had not waited for the response to her representation dated 25-11-99 and exhausted the deptt. remedies.

(e) The applicant has no claim for counting her service in DFF from 1982, when it was a part of NFDC and is entitled to the service only from 9-4-90, when she was regularised as Jt. Director, in DFF after it became an attached office of Information and Broadcasting Ministry.

(f) It is wrong to say that the post of Director was the direct promotional post for the Jt. Director as it has to be filled in terms of the Recruitment Rules of 5-4-89, applicant was, therefore, not the only eligible candidate.

(g) The applicant's service as Joint Director in NFDC till 9-4-90 was not relevant and only the service rendered by her after her regularisation in DFF in Information & Broadcasting Ministry was taken for determining her eligibility. She cannot, therefore, claim that she had 16 years of qualifying service. Officers of other services looked after the charge from 1988 to 1993, purely on administrative reasons. The applicant has been asked to look after the current charge in 1993.

(h) It was wrong to state that the applicant was next in line to become the Director when the vacancy arose in 1986.

(i) Selection to the post of Director was to be only through the composite method of recruitment, provided for, in the Recruitment Rules. The fact that

the applicant has been asked to look after the work in addition to her own duties does not entitle her for promotion. Therefore, there was nothing irregular or malafide in inviting fresh applications.

(j) The applicant though was looking after the current charge, she was not exercising any statutory powers or enjoying any financial benefits.

(k) Though holding regular charge as Jt. Director for two years makes her eligible for being considered for the post of Director, it does not make her the only candidate for automatic elevation. She will be considered along with the other eligible candidates.

(l) The recirculation of the vacancy was on justifiable grounds and the applicant cannot have any care against it.

(m) The grounds made out by the applicant do not have any basis. The respondents have throughout acted properly and correctly and in public interest. There was nothing illegal, arbitrary or discriminatory in their as alleged by the applicant. Her application, therefore, has to fail.

7. We have heard the learned counsel for both the applicants and the respondents on 25-8-2000. Reiterating the pleas by the applicant Sh. Venkataramani, the learned senior counsel urges that the applicant's having completed over 16 years as Jt. Director in the Directorate of Film Festivals since 1982-83, she had a prime case for being considered for promotion as Director over others in

1986. Even if the respondents version that she is only entitled to count her service from 9-4-90, when she was regularised as Jt. Director in DFF after its return to Information and Broadcasting Ministry is accepted for arguments sake, it is evident that she had more than the requisite service in September 1993, for being promoted as Director, a fact implied by her being given the current charge of the Director, though as additional charge from that date. That being the case the applicant's case for consideration for promotion/promotion cannot be overlooked. Though the post of Director had fallen vacant in 1986, inspite of its 'important nature', no action had been taken to fill it up on a regular basis, and the post was held on additional charge by officers of other other organisations till September, 1993, when the applicant was directed to look after the current charge which she has been doing since then. She, therefore, has to be appointed on promotion as Director as of right, argues the Counsel.

8. The counsel further points out that the Relevant Recruitment rules of 5th April, 1989 provided in Column 11 of the Schedule the method of recruitment for the post of Director as "By Promotion/transfer on deputation (including short term Contract"). It was also indicated that "the Depttl. Joint Director with two years regular service in the grade will also be considered along with others. In case he is selected it will be deemed that the post has been filled by promotion". The amended rules of 26-11-96 has the

following in column 11 on the method of recruitment. "By promotion failing which by transfer on deputation (including short term contract). And for promotion it is indicated "Joint Director with two years regular service in the grade" Though the post was lying vacant all the while and the applicant has been holding additional charge, the post was surprisingly circulated in September 1996, with the last date for receipt of application as 16-11-96 i.e. a mere ten days before the notification of the revised Recruitment Rules dated 26-11-1996. The applicant, therefore, has a genuine apprehension that this was done to reduce the claims of the applicant by resorting to the earlier recruitment rules, wherein the method of recruitment was shown as "By promotion/transfer on deputation (including short term contract.)" and to deny her the benefit of the new rules wherein the method of recruitment has been shown as "promotion failing which by transfer on deputation (including short term contract.)", argues the counsel. Even this prejudicial act of the respondents should not come in the way of the applicant, in view of this Tribunal's decision in OA No. 624/99, delivered on 14-5-99, in the case of Ramesh Hanumantrao Bhalekar in similar circumstances that the symbol "/" used between the words "By promotion/transfer on deputation (including short term contract.)" used in the entries below Column 11 signifies 'or' or "in the alternative", ruling out composite method of recruitment." In view of the above, it is evident that even under the

earlier recruitment rules (and now clearly under the present rules), the first consideration has to be for promotion, and only on its failure the courses like deputation or short term contract could be considered. This would ensure that the applicant's claim gets primacy and it should be considered first, more so in view of the fact that the applicant has been holding the post of Jt. Director since 1982 - first seven years in NFDC and since 1990 in DFF in Information & Broadcasting Ministry and had become eligible to hold the post in 1986 itself in NFDC and in 1993 in DFF, and has been looking after the charge of Director since September, 1993. Her claim has to be recognised and she be considered for promotion since 1996 at least, and if found fit be given all the consequential benefits, argues the counsel.

9. Refuting the pleas raised on behalf of the applicant, Sh. R.P. Aggarwal, learned counsel for the respondents argues that the applicant having joined only in NFDC in 1982 and has been selected in DFF in the Information & Broadcasting Ministry only on 9-4-90, she can claim seniority from that latter date. Merely because the applicant has been asked to look after the current charge of the post of the Director - excluding the statutory work - as an additional charge she cannot have any right to be automatically posted as the Director. In terms of the Relevant Recruitment rules, the post was to be filled by promotion/transfer

on deputation (including short term contract) it was clear that the recruitment was by composite method. This method is to provide opportunity for the departmental officers also to be considered for promotion along with others. If the depttl. officer is selected, it would be treated as being filled by promotion; otherwise it would be treated as being filled by deputation or contract at the end of which the departmental officers would be considered again. This does not confer on the depttl. candidate any right for exclusive consideration or the first consideration, as claimed by the applicant. Her plea for promotion with retrospective effect from 1996 is also misplaced, as she would be given promotion by the selection procedure now initiated, subject to her being found eligible and suitable and not automatically as she thinks. The learned counsel for the respondent indicates that nothing much turned on the reliance placed on the decision of the Tribunal in Ramesh Khalekar's case as the same was clearly distinguishable from the case on hand. The said decision related to a case where the promotion post was non-selection post, field of promotion was more than one post which was not the case in this matter. Here the promotion was for a selection post, and there was only one post available. Applicant cannot, therefore, get the benefit of the above decision. This was a case of composite recruitment method and it has to be accordingly accepted and acted upon. The

applicant has to correctly place herself along with other candidates who would be responding to the notice/circular of 27-11-99 and try her chance instead of disturbing the process of recruitment, argues Sh. Aggarwal.

10. In his further reply, Shri Venkataramani points out that asking the applicant to appear along with the candidates, in terms of the new circular, but on the basis of the earlier recruitment rules, would place her in a situation where she is being asked to compete with people who were not eligible to apply when the vacancy first arose or when it was advertised in 1996 and this amounted to hostile discrimination.

11. We have given careful consideration to the rival propositions ably canvassed by the learned counsel on both sides. The preliminary objection raised by the respondents that the applicant had not waited for the reply her representation dated 25-11-99 before filing the OA is meaningless, as the application has been filed against the respondents OM dated 17-12-99 and the circular dated 27-12-99, which undoubtedly was coming in the way of her rights. The respondents plea that they were yet to consider her representation and that their OM dated 17-12-99 and the circular dated 27-12-99 are not relatable to the representation dated 25-11-99 is a bit too difficult to believe. The applicant has, therefore, in our view come to the Tribunal in proper time and her plea cannot be rejected as pre-mature, as requested by the respondents.

12. The undisputed facts in this case are that the applicant had joined as Joint Director in the Directorate of Film Festivals in 1982 when it was a part of National Film Development Corporation, got absorbed and appointed in the same capacity in the Directorate on 9-4-90 after DFF became an attached office of the Information & Broadcasting Ministry and has been acting as its Director looking after the current charge since September 1993. The post was circulated inviting applications, in terms of the Recruitment Rules, 1989, in September 1996 with last date of receipt of application being 16-11-96, just ten days before the new Recruitment Rules were notified on 26-11-96. Even this selection had not taken place and the respondents have been trying to fill up the vacancy by a fresh recruitment process, on the basis of the Circular dated 27-12-99; impugned in this case.

13. The post of Director of Film Festivals has been lying vacant since 1986, first in NFDC and then in Information & Broadcasting Ministry; and was being looked after by outsiders on deputation or on additional charge till September 1993, when the applicant has been given the additional charge apparently as she had become eligible for promotion in terms of the Recruitment Rules of 1989. Still three more years had to go by when the post was circulated inviting applications from the eligible candidates. Obviously, therefore, the complaint by the applicant

that the post was kept vacant inspite of its importance for inordinately long time has considerable force.

14. The selection process duly initiated was in terms of the earlier recruitment rules, though it was initiated just two months before the notification of the new recruitment rules of 1996, wherein the wording of method of recruitment has been amplified and this amplification would have placed her at an advantage as her case would have been the first to be considered. Therefore, her plea against the timing of the circulation of the vacancy, keeping the earlier Recruitment Rules in view also cannot be rejected out of hand.

15. The selection process initiated in terms of the circulation of the post in September 1996 was aborted in 1999, on the explanation that due to administrative exigencies certain documents called for by the UPSC to whom the names of nine individuals including the applicant was sent in April, 1997, could not be provided for even after two years. The documents called for included the updated ACRs, Vigilance Clearance Certificate integrity certificates etc. It is really surprising that these documents which could have been very much available with the concerned offices where the person belonged could not be procured and placed before the UPSC even after more than two years. More so, as the post for which the selection was being held was of 'an important post' in

according to the respondents themselves. Strangely enough at the end of their long period of inaction, the respondents chose not to proceed with this selection process on the premise that during the interregnum some of the individuals who had applied have become ineligible for consideration on account of their promotion in their own cadres and the field of choice had narrowed down to just their candidates, including the applicant. While the respondents impliedly concede that their inaction for two years has resulted in this impasse, they desire that they should be given the benefit of their inaction and be permitted to go ahead with the new selection process on the ostensible reason of having a wider choice of persons for filling up this 'important post'. We find it difficult to be convinced of the reasonableness of such a plea, in the backdrop of the case.

16. The Recruitment Rules of April 1989, in respect of the post of Director, Film Festival, provide in column 11, the method of recruitment as "By promotion/transfer on deputation (including short term contract)". This would mean, as per the respondents that the departmental candidates would also be permitted to appear for promotion alongwith outsiders, but it doesnot grant them any right for being considered exclusively or as the first choice. The applicant on the other hand points out that in view of the decision of this Tribunal in OA No.1 624/99 dated 14-5-99, in the case of Ramesh Khalekar, it has

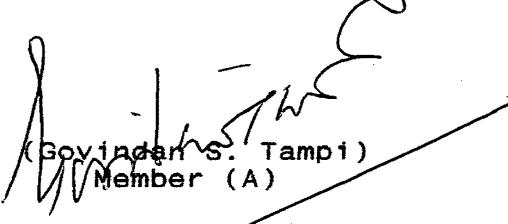
been clarified that the symbol "/" appearing between the words "By Promotion/transfer on deputation should be read as 'or' or in the alternative", meaning thereby that the first method is by promotion, only failing which it should be by transfer etc. According to them the Tribunal had in the said case correctly rejected the method of recruitment method as a composite one, but declared it as an alternative method. In fact, it is this position which been amplified by the revised recruitment rules, notified in November 1996, wherein the relevant column "leads as : By promotion/failing which by transfer on deputation (including short term contract)". The respondents objection that the recruitment rules impugned in the decision referred to had considered the post as a selection post is not borne out by facts. In fact the expressions used in the recruitment rules relating to the post of Chief Controller of Explosive decided in Ramesh Khalekar's case as well as in the recruitment rules in request of the Director of Film Festivals impugned in this case is the same and the relevant column No.5 reads as under "whether selection post or non selection - Not applicable". Therefore, we have to respectfully concur with the decision given by this Tribunal in Ramesh Khalekar's case and endorse the view propounded by the applicant that even prior to its amendment the method of recruitment provided for was by promotion, failing which being transfer by deputation". It

would, therefore, mean that in this case the applicant who has been working for the last nine years as Joint Director in the Directorate of Film Festivals as against the requirement of two years regular service in that capacity, and who has been looking after the current charge of the Director as her additional duty since September 1993, has the first claim to be considered for the post of the Director, by promotion before any deputationist or transferee or individual on short-term contract could have been considered for being brought in. This is what the Recruitment correctly provides for.

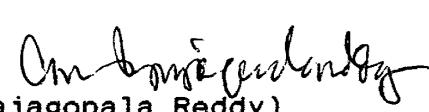
17. The applicant's plea that the selection process which was initiated in 1996 should have been taken to its logical conclusion, and should not have been stopped in midstream on account of the inaction on part of the respondents to procure and present the papers to the UPSC for more than two years also merit endorsement in the circumstances of the case. The applicant's complaint that the cancellation of the selection process have been ordered to deny her the promotion and to consider few others who would not have been eligible to be considered in 1996, but could have become to eligible now has also cannot be treated as being without merit. The action of the respondents in giving up the selection process already initiated was, therefore, in our view incorrect and not maintainable. The applicant would, therefore, be entitled for being considered on the basis of the

application filed by her in 1996, especially keeping in view that she has been holding the post of Joint Director in the Directorate of Film Festival since April 1990 on regular basis and has been looking after that current charge of the Director since September, 1993, which has been assigned to her after she had completed two years of regular service and became eligible for being considered for promotion.

18. In the result, the application succeeds and is allowed. The proceedings initiated for fresh selection by Information & Broadcasting Ministry for filling up the post of Director, Film Festivals in terms of the impugned circular dated 27-12-99 and the OM dated 17-12-99 are quashed. The respondents are directed to consider the case of the applicant for promotion to the post of Director, Film Festivals, in terms of circular of September 1996, and if found fit, promote her from that year and give her all the consequential benefits, including pay and arrears within the period of three months of the receipt of this order. We also award her Rs. 5,000/- as costs of this case. The interim relief granted in this case is thus made absolute.


(Govindaraj S. Tampli)
Member (A)

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(V. Rajagopala Reddy)
Vice-Chairman (J)