

Central Administrative Tribunal, Principal Bench

Original Application No.83 of 2000

New Delhi, this the 24th day of July, 2000

Hon'ble Mr.Justice Ashok Agarwal Chairman
Hon'ble Mr.V.K.Majotra, Member (Admnv)

Vipul Kulshrestha, Deputy Director, Office
of the Chief Engineer, North Zone, All India
Radio & Doordarshan, Man Singh Road, New
Delhi.

- Applicant

(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 A.K.Bhardwaj)

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicant has sought a direction to the respondents to treat him as promoted to the Senior Time Scale ('STS' for short) with effect from 20.3.1992 - the date on which his junior was promotion to the STS - and to fix his pay notionally in the STS with effect from 20.3.1992 - the date on which his junior was promoted.

2. The applicant is a direct recruit Junior Time Scale ('JTS' for short) Group 'A' officer of the Indian Broadcasting (Engineering) Service ('IB(E)S' for short). He is governed by IB(E)S Rules, 1981. His name figures at serial no.850 of the seniority list dated 15.7.1991 (Annexure-A-3). It is alleged that the applicant was not considered for promotion though his juniors were considered and promoted to the STS vide orders dated 4.3.1992 (Annexure-A-4). Note 3 to Schedule-IV of the IB(E)S Rules 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 of service. According to the applicant non-consideration of the applicant for promotion vis-a-vis his juniors is in violation of statutory rules and Articles 14 & 16 of the Constitution of India. This point was agitated by certain applicants in OAs 337& 462/1992 which were decided on 26.2.1997 and 7.5.1997 (Annexures -A-5 & A-6 respectively). In these cases the Tribunal directed that a review DPC should be convened for promotion to the STS and in case applicants in those cases are found fit for promotion they would be entitled to consequential benefits as available under law. It is alleged that the respondents partially implemented aforesaid orders of the Tribunal but did not extend the benefit of the judgment to the present applicant though he was similarly placed as the applicants in those cases. Consequently the applicant filed OA No.2188/97. Vide order dated 20.7.1998 (Annexure-A-7) this OA was decided along with OA 2187/97 with the directions to the respondents to convene review DPC for considering promotion of the applicants of both the OAs to the STS and in case found fit they were held to be entitled to have their seniority refixed from the dates their juniors were promoted. However, the applicants were held not entitled to consequential benefits in terms of arrears of pay etc.

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3. The review DPC was held. The applicant was found fit for promotion. Earlier on applicant's junior D.S.Khurana was promoted in the year 1992 vide order dated 4.3.1992, but in the impugned order the effective date of regular promotion of the applicant has been shown as 8.8.1997 instead of 20.3.1992, the date on which his immediate junior D.S.Khurana was promoted.

4. Another grievance of the applicant is that his pay has not been fixed notionally with effect from 20.3.1992 in STS - the date on which Shri D.S.Khurana's pay was so fixed. The applicant has alleged that the respondents have indulged in a mala fide exercise by a device treating the promotion of his immediate junior Shri D.S.Khurana on adhoc basis during the intervening period from 20.3.1992 to 8.8.1997. According to the applicant there was no reason for holding review DPC on year to year basis as promotion from JTS to STS is on the basis of seniority-cum-fitness and not selection.

5. The respondents have explained in their counter that juniors of the applicant including Shri D.S. Khurana, had to be considered for promotion due to a statement made by respondents in Lok Adalat on 2.10.1996, so neither any statutory rule nor any constitutional provision had been violated while considering promotion of applicant's juniors. In pursuance of various judgments in a number of OAs filed by different applicants, directing the department to give notional promotion to those applicants with reference to their juniors and keeping in view the fact that there were number of similarly placed officers as

the applicant, the respondents decided to give the benefit of notional promotion to all those who had not filed court cases to avoid repeating Review DPCs. Accordingly, review DPC from the year 1988-89 to 1996-97 on 3.6.1999 was held and orders issued on 9.7.1999 wherein the benefit of notional promotion was given to all the similarly placed officers including the applicant in the present OA. Consequently, the applicant was given notional promotion and has been placed below Shri G.Krishnaia and above Shri D.S.Khurana. In the relevant order which has been impugned the appointment of the applicant's junior Shri Khurana in STS has been treated as adhoc promotion with effect from 20.3.1992 to 7.8.1997, as in accordance with the review DPC the regular effective date of promotion of Shri D.S.Khurana has been changed from 20.3.1992 to 8.8.1997. The applicants in OAs 337&462/1992 have also been given promotions through the review DPC from the date of issuance of the original promotion order for the year of panel in which they have been placed by the review DPC. The same method has been applied in the case of the applicant in the present OA. The respondents have maintained that none of the applicant's junior has been given regular promotion prior to the date of his regular promotion. It has further been submitted by the respondents that Shri D.S.Khurana was appointed against promotion quota in the JTS grade on 31.5.1984 vis-a-vis the applicant who was appointed in JTS grade against direct recruitment quota on 24.4.1990. He got higher seniority by virtue of his interpolation in the seniority list. According to the respondents as per instructions on the subject under FR 22(I) (a)(1)

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the applicant cannot claim equal pay to his junior in the STS grade as their method of recruitment in the JTS was different, also the junior was already drawing higher pay in the lower grade by virtue of getting five increments in JTS grade as on 24.4.1990 and his sixth increment was due on 1.5.1990. The applicant has filed a rejoinder as well.

6. We have heard the learned counsel of both sides and given our careful consideration to the material on record.

7. The learned counsel of the applicant contended that the respondents have erred in holding a review DPC on year to year basis. They should have considered the case of the applicant only on the basis of his seniority. According to the learned counsel the respondents were not required to shift the date of promotion of juniors of the applicant. The only obligation on the respondents was to give regular promotion to the applicant with effect from the date the junior had been accorded promotion. The learned counsel relied on a decision in Jagdish Chandra Vs. Union of India, (1997) 36 ATC 58 contending that while implementing the order of the court its order cannot be substituted or modified by the executive authorities in accordance with their own views. According to him the respondents have not implemented the orders of this Court in OA 2187/92 in the right spirit. He pleaded that not only that the applicant should have been promoted to the STS grade with effect from 20.3.1992

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when his junior Shri D.S.Khurana received the same, his pay should also be put at par with that of his junior Shri Khurana.

8. The learned counsel of the respondents maintained that in view of several judgments in a number of OAs filed by different applicants directing the department to give notional promotion to the applicants with reference to their juniors, the respondents have not committed any error in considering the cases of similarly placed persons along with the applicant. Accordingly, review DPC from the year 1988-89 to 1996-97 was held on 3.6.1999 wherein the benefit of notional promotion has been given to all similarly placed officers including the applicant. In this manner the respondents have promoted 388 JTS officers of IB(E)S vide order dated 9.7.1999 to the STS. The review DPC had indicated the effective date of regular promotion of each candidate keeping in view his seniority and availability of vacancies. The effective date of regular promotion of all those who had been accorded promotion earlier on was modified if it was found to be necessary in view of his seniority and availability of vacancies at the time of eligibility. The officers who had been promoted on the basis of earlier orders like the applicant's junior Shri Khurana were treated to have been officiating in the grade on adhoc basis during the intervening period. According to the respondents they have fixed the pay of the applicant giving him benefit of notional promotion with effect from the effective date of regular promotion of his junior Shri Khurana.

9. In our view the provision^s contained in Note-3 to Scheduled-IV of IB(E)S Rules has not been violated by the respondents while holding a review DPC for considering promotion of the applicant to the STS along with all similarly placed personnel. Universal application of afore-stated provision cannot be faulted with if thereby the respondents have attempted at rectification of numerous errors committed by them in promoting persons leaving out several seniors to those promoted. It is true that if the respondents had considered the case of the applicant alone vis-a-vis his junior Shri D.S.Khurana, he would have received greater benefit in respect of fixation of pay and seniority, but when a standard yardstick has been applied to about 400 JTS officers of IB(E)S by holding review DPC from the year 1988-89 to 1996-97 and vide order dated 9.7.1999 (Annexure-A-1) benefit of notional promotion has been given to all the similarly placed officers including the applicant, it is not possible to find fault with the action of the respondents.

10. It is unfortunate that in the process whereas applicant's junior Shri Khurana and some others must have received the benefit of pay fixation taking into account the increments received by them during the intervening period when they were initially accorded promotion and the effective date of regular promotion, applicant and several others ~~etc.~~ have not received as much benefit of notional promotion, however, in view of the fact that now the effective date of regular

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promotion of all has been fixed in view of respective seniority and eligibility nobody will be able to derive any undue benefit in this future promotions.

11. There is no gain saying the fact that in the present case whereas the applicant's junior Shri Khurana was able to avail himself of pecuniary benefit in the matter of his pay fixation and increments in the STS with reference to the date of actual charge assumption in STS even though his effective date of regular promotion has been changed to a later date, the applicant has certainly been placed in a disadvantageous position in the matter of notional pay fixation as under the changed parameters he has been promoted with effect from 8.8.1997 instead of the earlier date of promotion of his junior Shri Khurana i.e. 20.3.1992. When the respondents have accorded the same treatment to everyone in view of their respective seniority and eligibility, afore-stated situation cannot be helped. However, keeping in view the interest of justice we deem it fit and proper that the respondents grant same number of increments in the STS to the applicant with effect from 20.3.1992 to 8.8.1997 as in the case of his junior Shri D.S.Khurana during the intervening period between the date of actual charge assumption in STS and effective date of regular promotion.

12. The learned counsel of the respondents placed reliance on the decision of the Hon'ble Supreme Court in the case of Union of India & others Vs. M.Suryanarayan Rao, JT 1998 (5) SC 448 contending that the applicant is not entitled for getting his pay stepped up. The facts

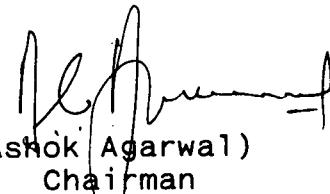
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of the two cases are not identical. In the cited case promotions were made within the circles where vacancies arose and senior claimants were working in different circles. In such a situation the senior claimant was held not entitled for getting his pay stepped up. In the present case, there is no question of promotion in different circles. All eligible personnel had to be considered for promotion in the STS as per their seniority and eligibility. Earlier on several seniors had been discriminated against by omitting their consideration for promotion and by giving promotion to their juniors who reaped benefits thereof for considerable length of time. Whereas the respondents should not have resorted to discriminatory treatment to such a large number of personnel by adopting the policy of pick and choose, now that they have rectified their mistake and applied a universal yardstick in the matter of promotion to all eligible personnel as per their seniority, they have absolved themselves of their sin to an extent. It is unfortunate that juniors have derived pecuniary benefits in the process, when erroneous view was taken and the seniors have suffered, through the process of rectification of the wrongs. It is just and proper that the wronged is compensated to some extent.

13. In the result, the OA is disposed of with a direction to the respondents to grant same number of increments in STS to the applicant with effect from 20.3.1992 to 8.8.1997 as in the case of his junior Shri D.S.Khurana during the intervening period between the date of actual charge assumption in STS and effective

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date of regular promotion. However, he will not be entitled to any arrears of pay and allowances for the said intervening period. This be implemented within a period of four months from the date of receipt of a copy of this order. No order as to costs.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member (Admnv)

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