

Central Administrative Tribunal, Principal Bench

O.A. No. 89 of 2000

New Delhi, this the 25th day of February, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)

I.S. Bhama,
S/o late Shri Har Chand,
Aged about: 66 years,
R/o A-1/244, Paschim Vihar,
New Delhi

....Applicant

(By Advocate: Shri B.B. Raval)

Versus

Union of India,
Through: The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi

....Respondents

(By Advocate: Shri Neeraj Goyal, proxy for Shri Adish C. Aggarwala)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

By virtue of the present application, the applicant seeks a direction, to consider his case and promote him to the post of Station Director (Selection Grade) from the date his junior S.K. Mallick was considered for promotion, with consequential benefits.

2. Some of the relevant facts are that the applicant served the Indian Army and was released on 1.8.70. He had joined the Indian Army in February, 1964. After that, he joined All India Radio on 25.4.72 as Assistant Station Director against the vacancy reserved for Emergency Commissioned Officer.

3. We need not dwell into the all other factual matrix because the short question agitated before us was

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that Shri S.K. Mallick, junior to the applicant was considered and promoted as Station Director (Selection Grade) from 22.6.78 and the claim of the applicant has been ignored. According to the applicant, this has been done illegally.

4. The respondents have not filed the reply.

5. We have heard the parties counsel.

6. On 8.8.2002, office memorandum had been issued dealing with the case of the applicant informing that Shri S.K. Mallick who was immediately junior to him, was considered by the departmental promotion committee held on 4.7.97 but since Shri Mallick did not complete the qualifying service of six years for promotion to the post of Station Director (Selection Grade), he was not promoted. The said order reads:

"Subject:- Promotion to Station Director (Selection Grade) by reviewing the proceedings of DPC held on 4.7.1977.

Reference representation dated the 13th December, 2001 on the subject cited above.

2. The first sentence appearing at para 3 of this Ministry's memorandum of even number dated the 2nd August, 2000 may please be read as "whereas in terms of recruitment rules then in force, Shri I.S. Bhama had to complete six years service in the Station Director (Ordinary Grade) for promotion to Station Director (Selection Grade) and that he completed this period only on 28.4.1978" instead of "whereas in terms of recruitment rules then in force, Shri I.S. Bhama had to complete five years service in the Station Director (Ordinary Grade) for promotion to Station Director (Selection Grade) and that he completed this period only 28.8.1977".

3. It is further informed that Shri S.K. Mallick, the immediate junior to Shri Bhama was

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not considered by the DPC held on 4.7.1977 as Shri Mallick did not complete the qualifying service of six years for promotion to Station Director (Selection Grade).

4. In view of the foregoing, the request for reviewing the proceedings of DPC held on 4.7.1977 is hereby rejected."

7. We do not dispute the said proposition that if the person junior to the applicant was considered on 4.7.77 and was not qualified and was not promoted, the applicant cannot draw the benefit from that date.

8. However, the matter does not end here. It appears that subsequently Shri Mallick, who is the immediate junior to the applicant, earned the promotion w.e.f. 22.6.1978. This becomes apparent from the Office Memorandum of 2.8.2000. The operative part of the same reads:-

"WHEREAS in terms of the recruitment rules then in force, Shri I.S. Bhama had to complete five years service in the Station Director (Ordinary Grade) for promotion to Station Director (Selection Grade) and that he completed this period only on 28.4.1977. Thereafter, the first Departmental Promotion Committee proceedings held on 21.6.1978 was reviewed on 28.9.1994. However, the review Departmental Promotion Committee did not recommend Shri I.S. Bhama fit for promotion keeping in view the performance reflected through Annual Confidential Reports. Accordingly, the Committee recommended that no change was called for in the panel prepared by the Departmental Promotion Committee held on 21.6.1978. Shri I.S. Bhama had already been considered in the subsequent Departmental Promotion Committees held for the post of Station Director (Selection Grade) and hence it was not considered necessary to review the proceedings of the subsequent Departmental Promotion Committee meetings. Thus the earlier empanelment in the grade of Station Director (Selection Grade) remained intact even after according revised seniority to Shri I.S. Bhama w.e.f. 29.4.1972.

WHEREAS the seniority position in the grade of Station Director (Selection Grade) as explained above remained unchanged, there was no necessity to review the proceedings of any of the

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Departmental Promotion Committee meetings held to the higher grade(s)."

9. Perusal of the same would clearly reveal that the person junior to the applicant was promoted on 22.6.1978. Since the applicant was senior to Shri Mallick, his claim should have been considered on the said date and due benefits accorded to him.

10. It appears that the claim of the applicant was reviewed almost more than sixteen years thereafter on 28.9.1994. This is unfortunate. The claim of the concerned person necessarily has to be considered on the date his junior is promoted and thereafter it has to be reviewed periodically. It cannot be after sixteen years. Therefore, we dispose of the present petition directing the respondents:-

- a) The claim of the applicant should be considered from the date Shri S.K. Mallick, junior to the applicant, was promoted on 22.6.1978;
- b) We are informed that the applicant has since superannuated on 31.12.1994. If he is promoted, the notional benefit would accrue to him; and
- c) The said exercise should be done preferably within four months from today.

Naik
(S.K. Naik)
Member (A)

Aggarwal
(V.S. Aggarwal)
Chairman

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