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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2055
T.A. No.

198 9.

DATE OF DECISION September 6, 1990.

Smt. Bina Devi Applicant (s)

Shri B.A. Mohanty and Shri A. Patnaik Advocate for the Applicant (s)

Versus

Union of India & Ors. Respondent (s)

Shri M.L. Varma, counsel for Respondent No. 1.

Shri Ashok K. Marwaha, counsel for Respondent (s)
for Respondent No. 3.

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

B. C. Mathur
(B.C. MATHUR)
VICE-CHAIRMAN (A)
6.9.1990.

A. Banerji
(AMITAV BANERJI)
CHAIRMAN
6.9.1990.

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Date of decision: SEPTEMBER 6, 1990

CORAM

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the respondent No.3 Shri Ashok K.Marwaha, counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman).

The applicant, Smt. Bina Devi, had challenged the notification dated 31.1.1989 promoting the respondents 2 and 3, Shri T.R.Malakkar and Smt. Chitra Narain respectively to the post of Deputy Director General (for short 'D.D.G.') of All India Radio/Doordarshan in supersession of the applicant. The other prayer is for issue of a writ/direction, directing the Respondent No.1 to consider and promote the applicant to the post of D.D.G., All India Radio/Doordarshan with effect from 31.1.1989.

When the matter was taken up for hearing, learned counsel for the applicant Shri B.A.Mohanty along with Shri A.Patnaik urged that they were not pressing the first relief and were only asking for the second relief in the case. Shri Ashok K.Marwaha, learned counsel for respondent No.3- Smt. Chitra Narain stated that in that event, he has nothing to contend. If the applicant had pressed her claim for the first relief, he would certainly oppose that prayer on behalf of his client. No one has entered appearance on behalf of respondent No.3, Shri T.R.Malakar. Shri M.L.Verma, learned counsel for respondent No.1 is present and has opposed the above prayer and his stand is that the applicant's name was sent up by the Departmental Promotion Committee (D.P.C.) to the Appointments Committee of the Cabinet (A.C.C.) but she was not selected and that became final.

We have heard learned counsel for the parties. There is no dispute that the D.P.C. recommended both respondents 2 and 3, the applicant and Shri I.S. Bhama for the post of D.D.G. The matter went up before the A.C.C. The applicant and Shri I.S. Bhama were not selected. Respondents 2 and 3, Shri T.R.Malakar and Smt. Chitra Narain were approved.

In the counter affidavit, the stand taken by the respondent No.1 was that the recommendations of the D.P.C. are advisory in nature and are always subject to the approval of Appointing Authority/Competent Authority. The respondent No.1 has stated in the counter that:

"The recommendations of the DPC were duly placed before the Competent Authority. The Competent Authority while considering the recommendations of the DPC applied higher standards of selectivity in this case as it has been done in many other cases. These standards have subsequently also been codified in the instructions contained in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training's O.M. dated 10.3.1989. It was further stated that Smt. Bina Devi did not come upto the standards so laid down by the Competent Authority, while considering the recommendations of the D.P.C. and she was not promoted to the post of D.D.G. since she was not approved for the said post by the Competent Authority. Hence there was no illegality committed by the Competent Authority for not promoting the applicant to the post of D.D.G. in All India Radio/Doordarshan.

Learned counsel for the applicant urged that Annexure R 2 to the counter dated 10.3.1989 was an Office Memorandum on the subject: "Procedure to be observed by Departmental Promotion Committees".

Paragraph 2.1.2. of this O.M. reads as follows:

" At present DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. In order to ensure greater selectivity in matters of promotions and for having uniform procedures for assessment by DPCs, fresh guidelines are being prescribed. The matter has been examined and the following broad guidelines are laid down to regulate the

assessment of suitability of candidates by DPCs."

Reference was made to paragraph 2.3.1 (ii) of this O.M. which reads as follows:

" The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel:

(i)

(ii) In respect of all posts which are in the level of Rs.3700-5000 and above, the benchmark grade should be 'Very Good'. However, officers who are graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post."

Learned counsel for the applicant pointed out that while the D.P.C. met and decided the matter in 1988, the above guidelines were laid down on 10.3.1989, nearly three months afterwards and these guidelines could have no retrospectivity in the present case. The second contention was that the above O.M. relates to the guidelines for the D.P.C. and does not say anything about the A.C.C. In other words, the contention was that these guidelines contained in Annexure R 2 have no application whatsoever to the facts of the present case. Learned counsel further contended that four officers were selected by the D.P.C. including the applicant. Their names were forwarded to

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the A.C.C. These were made in accordance with the existing guidelines issued vide D . P. & A.R. O.M. No.22011/6/75-Estt.(D) dated 30.12.1976. When the matter went before the A.C.C., it had to apply the norms which were applicable to the D.P.C. In support of his case, learned counsel cited the following two cases:

1. DR. AMARJIT SINGH AHLUWALIA Vs. THE STATE OF PUNJAB AND OTHERS
[(1975) 3 SCC 503]
2. M/S. HOCHTIEF GAMMON Vs. STATE OF ORISSA AND OTHERS.
[(1975) 2 SCC 649]

The first case pertains to a matter of seniority. In the second case, the Supreme Court was considering a question of payment of bonus. On facts, both the cases are distinguishable. We do not think that these principles apply in a case of selection of a candidate for a higher post in the Government. It is no doubt true that the Government has to consider the cases of candidates whose names are recommended by the D.P.C. The Government is under no compulsion to select all of them.

The law is clear on the subject that nobody has a right to promotion but has a right to be considered for promotion.

Learned counsel for respondent No.1 took up a plea that the applicant is not entitled to any relief because she had not taken care to exhaust all the remedies available to her under the relevant service rules before approaching the Tribunal. She had filed the O.A. on

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21.3.1989 and gave her representation to the Secretary, Ministry of Information and Broadcasting on 13.2.1989. The plea taken by the learned counsel was that the O.A. could not be entertained by the Tribunal because the applicant had not exhausted all the remedies. The question is whether a party is entitled to approach the Tribunal even before the expiry of six months period allowed for disposal of appeal or representation against an order in respect of service matter. It has been clearly held that such power ^{exist} in the Tribunal but it should not ordinarily entertain such Applications. The matter was considered in the case of B. PARAMESHWARA RAO Vs. THE DIVISIONAL ENGINEER & ANR. (SLJ 1990 (2) CAT 525) by a Full Bench of the Central Administrative Tribunal at Hyderabad. One of us (Amitav Banerji, J.) was Member of that Bench. The reference was made to the use of word 'ordinarily' in Section 20 of the Administrative Tribunals Act. It was observed:

"The emphasis on the word "ordinarily" means that if there be an extraordinary situation or unusual event or circumstance, the Tribunal may exempt the above procedure being complied with and entertain the Application. Such instances are likely to be rare and unusual. That is why the expression "ordinarily" has been used. There can be no denial of the fact that the Tribunal has power to entertain an Application even though the period of six months after the filing of the appeal has not expired but such power is to be exercised rarely and in exceptional cases. " (Emphasis supplied)

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We find there was a sufficient reason in the present case to entertain the Application even before the expiry of six months period.

Learned counsel for the respondent also argued that higher standards of selectivity was not inappropriate for choosing persons to very high office under the Central Government, and if such standards were applied, it is not open to a party to complain about the same. Normally, one can take no objection when he or she does not succeed in a selection. He/she should have the satisfaction that he/she was considered. Normally, it is not open to a party to challenge the selection unless he or she can establish that this was a mala fide or bias. We do not find any case of mala fide or bias in the present case.

It cannot be denied that the D.P.C. only makes recommendations. The Competent Authority or the A.C.C. is the body to make the final choice and select the person for appointment. It certainly has overriding powers in the interest of the State to select a proper person. There can be no dispute with the above proposition.

However, in the present case, the position is slightly different. The D.P.C. recommended four names including that of the applicant. The principle of there being higher standards of selectivity was not made known to the applicant nor she knew the parameters thereof. It was codified and announced for the first time on 10.3.1989, nearly four months after the recommendations

made by the D.P.C. We think that if a particular standard were to be applied in selection, then that should have been made known to the applicants for the post.

Now that the guidelines have been prepared in the form of an Office Memorandum dated 10.3.1989, all those seeking the appointment for higher places would be aware of the same and even ^{if} they do not succeed, they can have no cause of action to complain. As indicated above, this was not known to the applicant for the O.M. was not published or made known to anyone before 10.3.1989, that is, more than four months after the D.P.C. had made its recommendation and the A.C.C. had made its choice.

We notice another fact that the applicant is to reach the age of superannuation on 30.11.1990.

We are, therefore, of the view that we should allow the prayer of the applicant only to a limited extent viz., to direct the respondent No.1 to consider the case of the applicant afresh for promotion to the post of D.D.G. We order accordingly. There will be no order as to costs.

B.C. Mathur
(B.C. MATHUR)
VICE-CHAIRMAN (A)
6.9.1990.

AM
(AMITAV BANERJI)
CHAIRMAN
6.9.1990.