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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

NEW DELHI

(1) Original Application No.761 of 1986

I.S.Bhama ... Applicant

Versus

Union of India & others ... Respondents

(2) Original Application No. 203 of 1988

I.S.Bhama ... Applicant

Versus

Union of India & others .. Respondents

(3) Original Application No.2339 of 1988

I.S.Bhama ... Applicant

Versus

Union of India & others .. Respondents

In OA-761 of 1986 and OA-203 of 1988

Counsel for the applicant Mr. G.D.Gupta

Counsel for the respondents .. Mr. M.L.Verma

In OA-2339/88

Counsel for the applicant ... Mr. M.N.Krishnamani

Counsel for the respondents ... Mr. M.L.Verma

Coram:- Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman(J)

Hon'ble Mr. I.P.Gupta, Member (Administrative)

J u d g m e n t

Hon'ble Mr. I.P.Gupta, Member (Administrative):-

These three applications are filed by one applicant and they are interlinked with each other and that is why the same are being disposed of together.

2. The applicant was appointed Emergency Commission Officer in Indian Army on 17.2.1964. On 1.8.1970, W C

he was released from the Army, he was appointed as

T.G.T. in Government Higher Secondary School,

Harinagar, New Delhi and also in the N.C.C. as a Commissioned Officer and he remained there till 24.4.1972.

With effect from 25th April, 1972 he was appointed as

Assistant Station Director in All India Radio by

the method of direct recruitment against the post

reserved for Emergency Commissioned Officers. According

to the applicant, he was entitled to count the services

rendered by him as ECO in the past as per circular

of the Cabinet Secretariat dated 26th August, 1971.

The said circular which is on record provides that

the seniority of such officers should be fixed on the

assumption that the officer concerned had been appointed

on the date arrived at after giving him the credit

for the approved Military service including the period

of training and he would be deemed to have been allotted

the corresponding year for the purpose of fixation of

seniority.

3. Thus, according to the applicant he was

entitled to be given seniority with effect from 10th

November, 1965 and promotion as a Station Director in

1971 when a number of persons junior to him were

considered and promoted as such by a DPC held in 1971.

The DPC in the year 1971 made a number of selections

and promoted as such by a DPC held in 1971. The DPC

in the year 1971 made a number of selections, and promoted

some officers to the post of Station Director

(Ordinary Grade) on 20.3.1971. The applicant represents

that being senior & deemed to have been in service as

Assistant Director from 10.11.65 he should have been

promoted as Director (Ordinary Grade) in 1971 & the DPC

placed him at 20.3.1971 and he has been denied

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of 1971 should have considered his case along with his case along with his juniors. The applicant was informed by Ministry of I & B's letter dated 8.6.73 that the President was pleased to decide that his services as E.C.O. shall be counted towards his seniority in the cadre of Assistant Station Director from the year 1966 under Rule 6(1)(b) of the Released Emergency Commissioned Officers (Reservation of Vacancies) Rules, 1971 and seniority was allowed to him accordingly. The grievance of the applicant is that he was not assigned seniority as per the circular dated 26.8.1971. The applicant went on making representations for redressal of his grievance regarding his case for seniority and promotion which was under consideration. In the meantime on 8th May, 1974 he was promoted to the post of Station Director on (Ordinary Grade) adhoc basis. The applicant claimed that the promotion should be deemed to be regular promotion and he was entitled to the same benefit as given to the juniors who had already been regularised. In the Memorandum dated 28.7.1977 it was stated that the deemed date of appointment in the case of Emergency Commissioned Officers will be counted for their eligibility for promotion, provided they have successfully completed the period of probation and total period of service reckoned from the deemed date of appointment was not less than the period of service required under the rules for promotion and further that the applicant would have been considered for promotion to the post of Station Director, had he successfully completed the period of probation by the time when DPC had met i.e. on 4th September, 1971. The applicant's request for consideration from the date his juniors were promoted could not be acceded to. This is precisely

the defence which has been taken in the written statement. Applicant's case was referred to Union Public Service Commission much before the issue of DP&AR's notification dated 17th January, 1976 and the Union Public Service Commission also gave its advice on the basis of which the said Memorandum referred to above was issued. The applicant has given the instance of one Shri Bhargava who was Emergency Commissioned Officer, who joined as Assistant Executive Engineer in C.P.W.D. on 3.10.1972 and was given promotion in CPWD with effect from 11.1.69 when his juniors had been promoted although he did not enter service on that date. Similarly he has also given the instance of Shri C.L.Kalsi who joined the Ministry of Information and Broadcasting after release from Army in the grade IV Central Information Service and whose seniority was given after giving credit to the service rendered in Emergency Commissioned Officer. One Sahib Singh who joined Central Service against reserved quota was appointed on 23.11.70 and was given seniority in accordance with the circular dated 26.8.71 and he was promoted to the post of Grade I with effect from 24.2.1972. The applicant went on making representations and sending reminders whereafter he approached the Tribunal claiming that his non-promotion as Station Director in the year 1971 and rejection of representation was illegal, malafide and unconstitutional and liable to be set aside.

4. In the Original Application No.203/1988 the applicant, after narrating these facts, has stated that he was given promotion to the post of Station Director (Ordinary Grade) with effect from 30.3.1976 and was promoted to the post of Station Director (Senior Grade)

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with effect from 28.6.1983 and rendered more than 10 years of service in April, 1986. For promotion for the post of Station Director (Senior Grade) the incumbent must have five years experience in the cadre of Station Director (Ordinary Grade) and for promotion from the post of Station Director to the post of Deputy Director General, 7 years experience is needed in the Grade of Station Director (Senior). It was decided by the Department of Personnel and Training to relax the said provisions and the total service should be taken into account and 10 years service in both the cadres should be considered for the post of Deputy Director General. The D.P.C. met on 8.4.86 and the applicant has stated that it considered incumbents who did not have 10 years experience on the post of Station Director. According to this criteria only 4 candidates including the applicant were eligible but the candidates who were not eligible and not having 10 years experience were also considered. These ineligible candidates superseded the applicant and if they would not have been considered there was no occasion for his not having been selected for the post of Deputy Director General by the D.P.C., who had rejected him and selected others. The applicant made representations against the same but no reply was received, that is why he filed another petition against non-promotion as Deputy Director General and promotion of respondents 2 and 5 not within the eligibility zone even after relaxed rules, was illegal void and ineffective.

5. In short the applicant has sought the

above relief in the following manner:

1. The applicant has sought the following relief:

following reliefs in three applications filed

before the Tribunal:-

(i) The applicant is entitled to be considered for notional promotion to the post of ^(Ordinary Grade) Station Director from the date from which his juniors were promoted i.e. from 20th March, 1971 with all consequential benefits;

(ii) Refixation of his seniority by allotting him year 1965 in the grade of Assistant Director, alternatively fixing his seniority as above the promoted persons of the year 1966 and below the direct recruits who were appointed against unreserved vacancies and direction to the respondents to make a review DPC to furnish for the year 1971 for consideration of case seeking appointment of the applicant for the post of Station Director;

(iii) the applicant may be considered for promotion as Station Director (Selection Grade) with effect from 1982 onwards eschewing from consideration of the adverse remarks made against the applicant during the period 1977 to 1980; if from year 1982 onwards no vacancy was created;

(iv) the applicant is entitled to be promoted as Deputy Director General with effect from the date from which the post of DDG was filled up by quashing the appointment of the ineligible persons who were promoted to the post of DDG without following the criteria as laid down in Office Memorandum No. 22011/3/76-Estt(D) dated 24.12.1980 which provides that where a number of eligible officers in the feeder grade is less than the number of officers to be considered, all officers including the ineligible ones according to the determined zone, all officers so eligible should be considered.

(v) Rule No.6 of the All India Radio

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(Group A Posts) Recruitment Rules may be declared as ultra vires of Articles 14 & 16 of the Constitution of India:

6. The learned counsel for the respondents contended that -

(a) the representations of the petitioner

were considered for notional promotion to Station Director in 1971 but since he was not in effective service on

the date of the DPC i.e. 4.9.71 his request for consideration for promotion in 1971 could not be acceded to. It

may be recalled that the officer was appointed as

Assistant Director through UPSC on 25.4.1972. The matter

relating to reservation for posts from appointment of Officers

Released Emergency Commissioned to certain Civil Services

is governed by statutory rules under Article 309 of

the Constitution of India published on 25th November,

1971. There is nothing in these rules to indicate that

probation before the promotion can be dispensed with

or deemed to have been completed even before it starts

to run. The matter of probation and promotion are governed

by the relevant Rules of the Civil Service to which

recruitment was made and these rules require completion

of probation before being considered for promotion.

There could be no such thing as deemed completion of

probation although it is conceivable that after a person

has actually completed a period of probation he may

be deemed to have completed his period of probation from

an earlier date. In short his satisfactory completion

of probation is a pre-requisite for next higher promotion.

DP & AR Notification dated 17th January, 1976 though of a period

posts of 1971 when the DPC had met, simply reiterates

general principles of service. The counter has also

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the respondents mentioned that they have no comments in regard to

the case of Shri Bhargava quoted by the applicant who has been working in CPWD since the full facts on record

are not available. In the three other cases of

Shri B.R. Bhaumick, Shri C.L. Kalshi and Gurkirat Singh

though personal files are not available it is seen from

the records of the CPWD

various orders that are available on record that they

were promoted on adhoc basis

as soon as their probation was complete. The applicant has pleaded for promotion

not only on completion of his probation in the year

at his grade of Assistant Director but also from the date

when he was actually not in service. Further in the case

of Shri Sahib Singh he was appointed to the service before

the meeting of the DPC and was deemed to have completed

his probation only after he actually went through

probation.

(b) Regarding refixation of seniority

the learned counsel for the respondents has said that

the applicant has been assigned seniority as per

Government instruction. As per instructions contained in

DP&AR Notification No. 9/20/69-Estt(C) dated 26.8.71

his seniority was fixed below the direct recruits of

the year 1966 on computation of his service as Emergency

Commissioned Officer. Accordingly his deemed date of

appointment was fixed as 15.6.67 and he was given seniority

below the last direct recruit of 1966;

(c) Regarding expungement of adverse remarks,

all the representations submitted by the applicant against

the adverse remarks were duly examined in detail at a

very senior level on a number of occasions. The applicant

earned adverse entries year after year i.e. in 1975,

1977, 1978, 1979 and 1980 by different reporting and

reviewing officers and the representations against the

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entries were duly considered and rejected. In this connection the respondents have quoted the following observations of the Central Administrative Tribunal, Cuttack Bench in OA No.189/86:-

"We are of opinion that the aforesaid remarks would not strictly amount to any adverse report against the applicant. Even if it amounts to an adverse report, we cannot interfere because performance of a particular officer is to be adjudged by his superior authority who is the reporting officer because it is the superior authority who has the opportunity of watching the performance. Law does not permit us to sit over the judgment of the reporting officer so far as this aspect is concerned. The judicial forum could only interfere when there is malafide or bias pleaded against their reporting officer. So far as the present case is concerned, of course Dr.Dash had argued certain matters trying to impeach the credibility of the reporting officer but it is well settled that such facts have to be strictly proved to the hilt. There is no proof of these facts and therefore, we do not feel inclined to interfere."

For the purpose of para (d) Regarding promotion to DDG the learned counsel

for the respondents has quoted Rule 4-A(1)(g) of the

Recruitment Rules dated 23.10.1984 which provides as under:-

"for considering an officer for promotion,

staff Grade and all persons senior to him in the grade shall also

be considered, provided they have successfully

completed their period of probation irrespective of

the fact whether they have rendered the prescribed

length of service in the grade."

These Rules were made applicable to Programme cadre officers

of AIR/Doordarshan by Ministry of Information and

Broadcasting's letter dated 6.10.86 (Annexure-R-III).

By the same order, issued in exercise of powers under Rule 6 of Recruitment Rules of 1963, the total period of service in combined grade of Station Director was reduced from 12 to 10 years. The officers who were considered by DPC for the post of DDG on 8.10.86 were eligible under these provisions of the order dated 6.10.86. For the post of DDG in AIR/Doordarshan the officers who were considered in 1988 had either completed their 12 years of service or were senior to those who had completed 12 years of service. The applicant was also considered. Thus the contention of the applicant that the Recruitment Rules were relaxed to consider

ineligible persons is not correct. The Recruitment Rules and the provisions made therein have been made under the powers conferred under Article 309 of the Constitution and the power to relax is inherent in the notified recruitment Rules by virtue of power conferred by the Constitution and the clause regarding relaxation states that "where the Central Government is of the opinion that it is necessary and expedient so to do, it may, by order, made and published in the Gazette of India, for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules with respect to any clause or category of persons." However, according to the respondents' view the instant case is not a case where the counsel for the respondents has said that in the instant case relaxation was not necessary as all the persons who were considered for promotion were eligible in their own right in terms of the notified Rules and provisions made therein.

The analysis of the above contentions would indicate that the DPC of 1971 could not have considered the promotion of the applicant from the post of Assistant Station Director to that of Director (Ordinary Grade) since the incumbent was first appointed as Assistant Station Director in Civil Service on 25.4.72 only on recommendation of UPSC against the quota of Emergency Commissioned Officers. The applicant had also to undergo the period of probation, although he may be deemed to have completed his period of probation from an earlier date only after actual completion of the period of probation. He could thus have been considered by a DPC which met only after completion of his probation. It appears that the

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applicant was promoted as officiating Station Director (Ordinary Grade) on ad hoc basis from 8.5.74 but his promotion on regular basis took place from 30.3.76 in the grade of Station Director (Ordinary Grade).

There seems no reason why he should not be considered for regularisation at least from 8.5.74, if not from an earlier date between 25.4.⁷² & 8.5.74 by deeming him to have completed his probation, subject to availability of vacancy.

8. Regarding refixation of seniority his deemed date of appointment as Assistant Director comes to 10.11.65 which coincides with the date of his appointment after computing his ECO's service including the training period. It is felt that to accommodate him to the trainee period. The point to be examined is whether he was placed among the recruits to whom he was allotted only such recruits as were appointed through competitive examination or test or interview by UPSC corresponding to the year to which the applicant was initially allotted. The recruits were allotted and the promotees, if any, of the same year of appointment will be exempted from the additional allotment were placed below. This should be so in terms of Department of Personnel's Notification No.9/20/89-

Exts (c) dated 26.8.1971, which says that ECOs will rank even to below candidates appointed through competitive examination or test or interview conducted by the Commission corresponding to the year to which the former candidates are allotted.

9. Regarding the applicant's claim for promotion to the post of Station Director (Selection Grade) with effect from 1982 onwards eschewing from consideration the adverse remarks made against the applicant during 1975 to 1980, we would like to state that we do not find any justification to interfere with the adverse remarks in the ACRs of the applicant, since they were not communicated to him and the representations were duly considered at a higher level and rejected. No mala fide

Abhijit

has been established against the Reporting or Reviewing Officers. Further, different Reporting and Reviewing officers had given adverse remarks in years of reporting. A recent decision of the Hon'ble Supreme Court may also be cited in this connection. In the case of [Union of India Vrs. E.G. Nambudri (1991 SCC (L&S) 813] the Hon'ble Supreme Court held that in the absence of any statutory rules or statutory instructions requiring the competent authority to record reasons in rejecting the representations made by a Government servant against the adverse entries the competent authority is not under obligation to record reason. But the competent authority has no licence to act arbitrarily; it must act in a fair and just manner. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file.

10. Regarding the applicant's claim for promotion as Deputy Director (General) it may be said that while the Ministry of Information and Broadcasting vide order dated 6th October, 1986 relaxed the provision of Recruitment Rules reducing the qualifying service in the combined grade of Station Director to 10 years and extended the provisions of Rule-4-A(1) (g) to the officers of the Programme cadre also. This clause for relaxation was introduced after consultation with UPSC. These orders were issued in exercise of powers under Rule 6 of Recruitment Rules of 1963. The relaxation from 12 to 10 years was given when none, according to the position then obtained had 12 years of service and several posts of Deputy Director General had to be filled. The conditions for considering the seniors was to avoid hardship to Seniors, it would not have been equitous to leave out seniors. These relaxations, exercised in consultation with the UPSC, cannot be treated as if they were not in good faith or were not objective.

11. Attention in this connection

is also invited to the case of Roshan Lal Tandon Vs. Union of India (AIR 1967 SC Page 1894) where in it

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was held that there was no warrant in the argument that the Railway Board had laid down that promotion from one grade to another was to be based on seniority-cum-suitability and the could not be altered later to the prejudice of the petitioner. It is true that the origin of Government service is contractual. There is an ~~offer~~ ^{offer} and acceptance. But once appointed to his post or office the Government servant acquires a status and his right and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government.

12. It would be seen that in October, 1988 when the DPC considered officers for promotion to the post of DDG namely, Shri S.C.Garg, Shri Y.T.Kharat (S/C), Shrimati Bina Devi, Shri T.R.Malakar (SC) and Shri I.S. Bhama, the officers had either 12 years' service or were eligible in terms of 4-A(1)(g) of the Recruitment (Amendment) Rules, 1984 which provided that all seniors to those eligible would also have to be ^{officers} considered. Therefore, relaxation to 10 years was not necessary as all the persons who were considered for promotion had either 12 years or were senior to those with 12 years of service.

13. It may also be mentioned that according to the learned counsel for respondents the DPC of 1988 did consider the applicant along with others. The DPC even recommended him but only two persons were approved - one senior to applicant and the other against the single vacancy of the Staff Artist quota. Since the applicant was duly considered, his right to consideration was not violated.

Applaud

14. In the conspectus of the aforesaid fact, the Tribunal directs the appropriate official respondents:-

(i) to review the seniority of the

applicant in the grade of Assistant Station Director in terms of Department of Personnel Notification

No. 9/20/89 dated 26.8.71 keeping in view the fact that promotees with the year of allotment as of the applicant are placed below him and only direct recruits or those recruited through competitive examination or test or interview conducted by UPSC corresponding to the year to which the applicant is allotted are placed above him.

(ii) to review the promotion of the applicant

subject to suitability and availability of vacancy in

the grade of Station Director (Ordinary Grade) on

the recommendation of the appropriate DPC which might

be deemed to sit after completion of probation by the

applicant. But the promotion can be effected, subject

to vacancy even from a date during the period of

probation but not earlier than 25.4.72, on the assumption

that he would be deemed to have completed his

probation from an earlier date (such an assumption is

to be made only on actual completion of satisfactory

probation). The applicant was promoted as officiating

Station Director (Ordinary Grade) from 8.5.74 and

there seems no reason why he should not be considered

for regularisation at least from that date, if not

from an earlier date between 25.4.72 & 8.5.74, subject,

of course to the availability of vacancy & suitability;

(iii) to review the case of promotion of

the applicant to the post of DDG on the basis of the

affidavit

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position emerging in regard to seniority in the light of the above, more so when it appears that some vacancies are existing and the applicant was even recommended by DPC of 1988.

15. With the above directions which should be complied with within four months, the three applications namely; OA-761 of 1986; OA-203 of 1988 and OA-21339 of 1988 are disposed of. There is no order ~~as to costs~~.

(I.P.Gupta)

Member (A)

(U.C. Srivastava)

Vice-Chairman (J)

pronounced by me in open court.

24. 9. 91.