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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-2042/88

Date: 20.4.1990.

Shri R.C. Chopra Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri T.C. Aggarwal, Counsel

For the Respondents Smt. Raj Kumari Chopra,
Counsel for Res.1

Shri E.X. Joseph, Counsel
for Respondent No.2

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who is an Assistant Media Executive in the Directorate of Advertising & Visual Publicity (DAVP) under the Ministry of Information & Broadcasting, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondent No.1 to revise the seniority list of Assistant Media Executive giving him seniority w.e.f. 11.10.1986 and placing him above respondent No.2, and for passing a fresh confirmation order on the basis of his revised seniority list.

2. The facts of the case in brief are that the applicant joined the D.A.V.P. as a Technical Assistant in 1962. He was regularly appointed in the said post w.e.f. 2.9.1963. He was promoted on ad hoc basis as Assistant Media Executive on 11.10.1968.

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3. The Recruitment Rules for the post of Assistant Media Executive were notified in 1962, according to which, all posts were required to be filled by promotion. The respondents took an administrative decision in 1967 to revise the rules so as to provide that 50 per cent will be filled up by direct recruitment and the remaining 50 per cent posts, by promotion though the amended rules were notified only on 7th May, 1971. On 20.9.1970, two more posts of Assistant Media Executive were created in the department. Pending notification of the amendment of the Recruitment Rules, the respondents decided, with the approval of the U.P.S.C., to fill up one post by direct recruitment and the other by promotion. A requisition was sent to the U.P.S.C. on 14.12.1970 for filling up the first vacancy through direct recruitment. The U.P.S.C. advertised it and arranged the interview on 13.7.1971. The applicant and respondent No.2 appeared before the Interview Board in the U.P.S.C. There is nothing on record to indicate that he appeared at the interview under protest. Nor did he represent to the respondents that the post was to be filled by promotion and not by direct recruitment. While the applicant was not selected, respondent No.2 was selected by the U.P.S.C. Respondent No.2 was appointed to officiate in the post of Assistant Media Executive w.e.f. 18.9.1971. Simultaneously, action to fill up the vacancy meant for the departmental promotees was also initiated. The D.P.C. meeting was held on 10.9.1971. The applicant, who was the senior-most Technical Assistant in the feeder grade, was recommended by the D.P.C. for appointment as Assistant Media Executive on 10.9.1971. He joined the post on 18.9.1971.

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4. The date of appointment of both the applicant and respondent No.2 was the same, viz., 18.9.1971. It is the inter se seniority between the two of them which is the bone of contention.

5. The case of the applicant is that he is senior to respondent No.2. In support of this, he has contended that his appointment should be treated as regular w.e.f. 14.10.1968, when he was initially promoted on ad hoc basis as Assistant Media Executive, that under the rules as amended in 1971, the first vacancy is to be filled by promotion and not by direct recruitment and that as the two posts of Assistant Media Executive were created on 20.9.1970, both of them should be filled by promotion in accordance with the unamended rules.

6. The stand of the respondents is that the applicant was appointed as Assistant Media Executive on ad hoc basis on 11.10.1968 against a short-term vacancy. According to them, the first out of the two vacancies created in 1970, was required to be filled by direct recruitment as is borne out from the following appointment roster:-

S.No.	Name	Date of apptt.	Remarks
1.	Shri Harnam Singh	9.2.1967	D.P.
2.	Shri R.N. Chadha	14.1.1969	D.R.
3.	Shri Pran Vir Gupta	10.9.1969	D.P.
4.	Shri Ved Parkash Sharma	14.1.1969	D.R.
5.	Shri M.C. Syne	10.9.1969	D.P.

(Vide counter-affidavit of Respondent No.1, p.39 of the paper-book).

7. As regards the inter se seniority between the applicant and respondent No.2, the respondents have stated that the same was determined on the basis of the appointment

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roster points. Respondent No.2 who was appointed as a direct recruit against the first point, was placed senior to the applicant who was appointed against the second point due to a promotee. On 6.4.1977, a seniority list of Assistant Media Executives was circulated, but no objections were raised by the applicant. The seniority list which was last circulated on 21.7.1986, included the name of the applicant below respondent No.2. Again, he did not raise any objection. He raised objection only after confirmation orders were issued based on the seniority list. The plea of the applicant that he was unaware of those seniority lists, is not very convincing.

8. On the abolition of one post of Assistant Media Executive in 1973, the applicant who was the junior-most Assistant Media Executive, was reverted to his substantive post of Technical Assistant but continued in the higher post of Assistant Media Executive against leave vacancies during the period from 1.6.1973 to 20.7.1973, 21.7.1973 to 4.9.1973, and from 5.9.1973 (vide Annexures III, IV and V to the counter-affidavit of respondent No.1 at pages 53-56 of the paper-book).

9. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The applicant has relied upon numerous rulings* in support of his contentions and we have carefully considered them. In our opinion, none of these decisions is directly in point.

* AIR 1988 S.C. 394; 1988 (7) ATC 441; 1987 (3) SLJ(CAT)199; AIR 1984 SC 1527; 1970 SLR 483; ATR 1986 (2) CAT 346; ATR 1986 (2) CAT 365; ATR 1987 (1) CAT 268 and 426; ATR 1987 (1) SLJ (CAT) 286; ATR 1988 (1) CAT 422; ATR 1988 (1) CAT 134; 1972 SLR 411; AIR 1983 SC 852; 1987 (2) SLJ 501; 1984 (3) SCC 281; 1989 (9) ATC 306; ATR 1987 (1) CAT 221; 1987 (2) SLJ 238; ATR 1986 (1) SC 61; ATR 1986(1) CAT 398; 1977 (3) SCC 399; AIR 1988 SC 2068; ATR 1987 (2) CAT 500; 1988 (2) SLJ (CAT) 133; AIR 1985 SC 1605; AIR 1984 SC 1527; ATR 1986(2) CAT 346;305; 1987 (1) ATLT 50; 1988 (3) SLJ (CAT) 33.

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10. The applicant has strongly relied upon the decision of this Tribunal in A.N. Krishnan Vs. Union of India, 1987 (3) SLJ (CAT) 199. In that case, the Tribunal held that the promotees who were promoted before the amended rules were notified, should be placed en block senior to the direct recruits who were appointed after the amended rules came into force. In the instant case, the amended rules came into force on 7.5.1971 and the appointments of the applicant as well as respondent No.2 as Assistant Media Executive were made w.e.f. 18.9.1971. In our opinion, the decision in A.N. Krishnan's case, would not be applicable to the facts and circumstances of the instant case.

11. We may also deal with another aspect of the matter. There is no statutory rule that the vacancies are to be filled up immediately after they arise. A reasonable time may be involved in processing the filling up of the vacancies. In view of this, it is for the Government to consider as to when a post may be filled up and in what manner. In the instant case, before the two vacancies arose in 1970 with the creation of two posts, a practice was in vogue to fill up the vacancies by direct recruits and promotees in the ratio of 1:1. The Government had also taken a conscious policy decision to amend the Rules. The interviews were held and the appointments made only after the Rules had been amended. In view of this, we are of the opinion that the filling up of the posts in accordance with the provisions of the amended Rules, cannot be called in question.

12. We are further of the view that it will not be fair, just and equitable to rake up the procedure followed

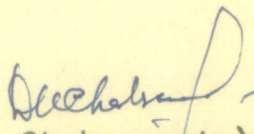
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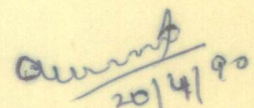
by the respondents in this regard after a lapse of several years. In our view, it is also not open to the applicant after having appeared at the interview held by the U.P.S.C. on 13.7.1971 and failed to get selected, to challenge the validity of the very selection held under the amended rules. In this context, reference may be made to the decision of the Madras High Court in OADK - Lakshmanan Chettiyar Vs. Corporation of Madras, AIR 1927, Madras 130 and of the Supreme Court in M/s Panna Lal Binjaraj Vs. Union of India, A.I.R. 1957 S.C. 397. Having appeared at the interview, a candidate cannot challenge that very interview (See also Brij Kishore Dubey and 5 others Vs. Union of India & Another, 1989(2) (CAT) 577 at 592).

12. In the conspectus of the facts and circumstances of the case, we see no merit in the present application and the same is dismissed.

The parties will bear their own costs.


(D.K. Chakravorty)
Administrative Member

20/4/1990


(P.K. Kartha)
Vice-Chairman(Judl.)