

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00517/2017

Friday, this the 5th day of March 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

T.Chamiyar, Aged 62 years,
Deputy Director General (P) (CDC)
& Head of Office (Retd.),
Doordarshan Kendra, Thiruvananthapuram.
Residing at Padmasaras, KP 9/354,
Eanikkara, Karakulam P.O.,
Thiruvananthapuram – 695 564.

...Applicant

(By Advocate Mr.P.Santhosh Kumar)

v e r s u s

1. The Union of India
represented by the Secretary,
Ministry of Information & Broadcasting,
New Delhi – 110 001.
2. The Prasar Bharathi
(Broadcasting Corporation of India),
represented by its Chief Executive Officer,
Prasar Bharathi Board, PTI Building,
Parliament Street, New Delhi – 110 001.
3. The Director General,
Office of the Director General, Doordarshan,
Doordarshan Bhavan, New Delhi – 110 001.
4. The Joint Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan, New Delhi – 110 001.
5. The Member (Personnel),
Prasar Bharathi,
Prasar Bharathi Secretariat,
2nd Floor, PTI Building,
Parliament Street, New Delhi – 110 001.

...Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 24th February 2021, the Tribunal on 5th March 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant who is a retired Deputy Director General of Doordarshan Kendra, Thiruvananthapuram is aggrieved by his non promotion to the post of Director on completion of five years tenure in the Senior Time Scale on 21.06.2009. He submits that though he was legitimately entitled for regular promotion to the next post in the hierarchy, he was not considered for the sole reason that no Departmental Promotion Committee (DPC) was constituted in time to consider the claims of the eligible candidates. He had earlier filed O.A.No.180/31/2017 before this Tribunal asking for fitment in the Junior Administrative Grade for the Assessment Year 2010-11 and Senior Administrative Grade, considering his fitment in the Junior Administrative Grade, with all consequential benefits. This Tribunal had disposed of the same on 12.01.2017 by directing the respondents to dispose of the representation submitted by the applicant in this regard. The respondents having considered the representation have issued a Speaking Order at Annexure A-6, wherein they had come to a conclusion that there is no merit in the representation of the applicant and, as such, no relief is admissible. Aggrieved by this order, he has filed the O.A seeking the following reliefs :

1. *To set aside Annexure A-6 order.*
2. *To issue a declaration that the applicant is entitled for fitment in the Junior Administrative Grade for the Assessment Year 2010-2011 and Senior Administrative Grade considering his fitment in the Junior Administrative Grade with all consequence to benefits like fixation of pay and arrears of pay.*

3. *To declare that the applicant is entitled for revised pension taking into account his fitment in the Junior Administrative Grade (JAG) for the Assessment Year 2010-2011 and Senior Administrative Grade (SAG) considering his fitment in the Junior Administrative Grade with arrears of pension; and*

4. *To grant such other reliefs as may be prayed for and the court may deem fit to grant.*

2. The applicant belongs to the Programme Production Cadre of Doordarshan. He had been appointed on a regular basis to a post in the Senior Time Scale of Doordarshan with effect from 22.06.2004. He was working as Deputy Director General holding full charge of the Director of Doordarshan Kendra, Thiruvananthapuram. As per the provisions contained in the Recruitment Rules and the Manual of Doordarshan Kendra when an incumbent officer completes 5 years tenure in the category of Senior Time Scale, he is entitled for further promotion to the post of Director and other allied categories. Accordingly the applicant submits that he was in the area of consideration for the post of Director when he completed 5 years service after regular appointment in the Senior Time Scale ie., from 21.06.2009. However, he was not considered for the same only for the reason that no DPC was constituted for considering the claim of eligible candidates. He submits that after 2004 no promotion has been given to the Senior Time Scale from the Production Cadre of Doordarshan whereas the administration has given promotion to the Engineering Cadre of Doordarshan who are similarly situated. Regular promotion has also been given to the personnel of the Programme Management Cadre of Doordarshan, who are in the Senior Time Scale of Indian Broadcasting (Programme) Service, to the Junior Administrative Grade in PB-3 (Rs.15600-39100) with Grade Pay of

Rs.7600/-. His grievance is that being an officer in the Production Wing, similar steps taken in the case of Engineering and Management officers has not been done, which is arbitrary, discriminatory and against the provisions of Articles 14 and 16 of the Constitution of India. Earlier, he had approached this Tribunal by filing O.A.No.252/2014 for consideration of his case for regular promotion to the post of Director and other allied categories since he has completed 5 years of service after regular appointment in the Senior Time Scale on 21.06.2009. Meanwhile, the Principal Bench had also passed an order for conduct of DPC which he has produced at Annexure A-2. Based on the Annexure A-2 order this Tribunal passed an order in O.A.No.252/2014 granting the same benefits as has been granted by the Principal Bench in C.P.No.39/2004 in O.A.No.243/2002 (order produced at Annexure A-3). Thereafter, pursuant to Annexure A-2 and Annexure A-3 orders, a meeting of the DPC was held on 13.04.2016 and 18.04.2016 to consider candidates for promotion to the Junior Administrative Grade of Indian Broadcasting (Programme) Service in the Programme Production Cadre of Doordarshan. However, the applicant had already since retired from service on 31.08.2014. The minutes of the DPC, which is produced at Annexure A-4, reveals that the applicant was found fit for the Junior Administrative Grade for the Assessment Year 2010-2011. After the DPC was held the applicant, though retired, submitted a representation to the respondents on 28.09.2016. Having failed to get a response he filed O.A.No.31/2017 (indicated in the first paragraph) for a direction to dispose of his representation in the light of the Annexure A-4 minutes of the DPC. It is in response to orders of the Tribunal in this O.A.,

produced at Annexure A-5, that the Annexure A-6 order was passed by the respondents. The applicant attacks Annexure A-6 order as baseless and without appreciating the facts of the case. He seeks interference by the Tribunal.

3. As grounds, the applicant submits that a model employer is duty bound to convene the DPC Meetings as per the procedures and guidelines prescribed by the Government and DoPT. As per the above guidelines and directions, regular DPCs have to be convened by the employer after constituting the members of the DPC. The delay and latches on the part of the employer in not convening the DPC meeting by constituting the members of the Committee cannot be taken as a ground for not having the recommendations in appropriate time, by which, the right of an employee for getting a promotion is denied. He submits that promotion to a post is a vested right entitled for an employee and it cannot be denied on the basis of inaction on the part of an employer. As such, Annexure A-6 order is vitiated by malafide and for that sole reason that order has to be set aside. Annexure A-6 order has been issued on the basis of relying on an O.M issued in the year 2009. It is submitted that Annexure A-7 series of O.Ms produced by him in the O.A which are issued by the competent authority would reveal that promotions can be made with retrospective effect and not by prospective effect. Hence Annexure A-6 order is illegal and unjustified.

4. In response to the O.A., the respondents filed a reply statement stating that promotion to the next grade of a person who has become eligible for promotion on completion of the required regular service in the grade is not something automatic. It is based on availability of vacancies in the higher grade for which he has become eligible. It is submitted by the respondents that the Engineering Cadre is a separate cadre governed by the IB(E)S Rules whereas the Programme Cadre is governed by the IB(P)S Rules, 1990. The rules of Engineering Cadre cannot be made applicable to the IB(P)S/Programme Cadre. Further, it is stated that the applicant belongs to the Production Cadre as per his own choice and he was not eligible to be considered for the management cadre. As such, the grounds of discrimination are unfounded and baseless.

5. The respondents submit that the promotions of Programme Officers of Prasar Bharati had been pending since September 2013 onwards as UPSC was not accepting the DPC proposals, stating that all posts stand transferred to Prasar Bharati with effect from 01.04.2000, as per the Prasar Bharati Amendment Act notified on 09.01.2012. This impasse of non-convening of DPC by UPSC, was resolved after consultation with the DoPT and the Ministry of Law with the approval of the Minister of I & B. It was then decided that Prasar Bharati would convene/hold DPC meetings for promotions to all Group A posts. Accordingly, the DPC for promotion to Junior Administrative Grade of Programme Production Cadre of Doordarshan was conducted in Prasar Bharati on 13.04.2016 and 18.04.2016 for the vacancies from 2005-06 to 2016-17, as per the

DPC guidelines circulated by the DoPT vide their O.M.No.22011/5/86-Estt. (D) dated 10.04.1989. It is submitted by the respondents that as per the DoPT O.M.No.22011/1/2014-Estt.(D) dated 14.11.2014 names of the retired employees are to be included in the eligibility lists in the DPC, but, such retired officers would, however, have no right for actual promotion. As such, the name of the applicant along with other retired officers was included in the eligibility lists. The minutes of the DPC were sent to the Ministry of I & B for obtaining approval of the competent authority. It is submitted by the respondents that out of the total 30 officers recommended as 'Fit' by the DPC, only 4 officers were currently in service and the remaining 26 officers had already retired from service. The applicant's representation for consideration filed in O.A.No.31/2017 was disposed of by the respondent (Prasar Bharati Secretariat) vide the Speaking Order dated 06.04.2017 at Annexure A-6. The respondent (Prasar Bharati Secretariat) have outlined the facts and the rule position as given in the DoPT O.M of 10.04.1989 (supra) which indicates that *“promotion will be made in the order of consolidated select list but such promotions will have only prospective effect even in the case where the vacancies relate to earlier years.”* As such, approval of the Minister of I & B, the appointing authority, was accorded for promotion of only the 4 officers who were still in service to the Junior Administrative Grade Level of IB(P)S in Programme Production Cadre of Doordarshan.

6. As regards the contention of the applicant that the Annexure A-7 series of O.Ms issued by the DoPT indicates that promotions can be made with retrospective effect and not just by prospective effect, the respondents submit that the DoPT O.M dated 24.04.2009 clearly states that non functional upgradation to the next higher grade pay granted under the scheme is to be applied in cases where officers of a particular service have not been granted promotion to a particular grade in normal course according to the due procedure. Further, the DoPT O.M dated 10.04.1989 (supra) also clearly states that promotion will be made in the order of consolidated select list but such promotions will have only prospective effect even in the case where the vacancies relate to earlier years. The respondents submit that for these reasons the O.A is devoid of any merit and relief should be rejected.

7. In his rejoinder the applicant submits that the DPC has to be convened by the employer in time. It can be seen from Annexure A-4/2 and Annexure A-4/9 there were two vacancies available for the year 2006-07 and five vacancies arose during 2007-08. If the respondents had conducted the DPC in time, he would have been promoted during 2007-08. It is submitted that DPC has not been conducted by the respondents from 2007-08 to 2010-11. From the DPC list of the 2010-11 (Annexure A-4/9) it can be seen that he has become eligible for the higher grade during 2007-08 itself. As on that date there are $(2+5) = 7$ vacancies and he was the 6th person in the list. Hence the fault of the respondents in not conducting DPC for 2007-08 was the sole reason for non sanctioning of the higher grade to him. The Respondent's statement that non availability of vacancy is the

reason for non sanctioning of higher grade to him is baseless and should be rejected. Even as per Annexure A-4/6 Minutes of the DPC held on 13/18.04.2016 he was included as 6th person in the DPC list for 2010-11 and was thus eligible for the higher grade, even though he was actually eligible for higher grade from 2007-08. He was assessed as 'Fit' for promotion as per page 2 of Annexure A-4/6 and included at Sl.No.4 of Annexure 2 with effect from 2010-11. He had to retire from service on 31.08.2014 without enjoying the promotional benefits. The benefit of promotion and pay parity eligible to him during the service period cannot be denied by the reason of retirement. Even though he cannot be promoted due to his retirement, the benefit of pay parity, may be allowed from the date on which he becomes eligible for promotion. The application made for the fitment benefit etc. was not at all considered by the respondents. Based on the DPC, 4 officers junior to him and who were still in service were promoted, but he was not. He submits that the fitment benefit eligible to him should be allowed from the date of joining of the junior in the promotion post. It is prayed that this Tribunal may direct the respondents to allow the fitment benefit in a notional manner from the above date. Accordingly, the Tribunal may be pleased to declare that he is entitled for revision of pension taking into account his fitment in the Junior Administrative Grade from the year 2010-11 and Senior Administrative Grade considering his fitment in the Junior Administrative Grade with arrears of pension and other benefits. In the circumstances he prayed that the O.A may be allowed in the interest of justice.

8. We have heard Shri.P.Santhosh Kumar, learned counsel for the applicant and Shri.N.Anilkumar, SCGSC learned counsel for the respondents. We have also gone through the records provided both by the applicant and the respondents including the O.Ms issued by the DoPT. It is contended by the applicant that there has been a series of O.Ms (as brought out in Annexure A-7 series) as well as a number of court judgments stating that employees should not be made to suffer in case the DPCs are not being convened in time. The DoPT has acknowledged in its O.Ms that delay in promotion affects manpower planning and impedes career progression of the employees. The delay in conduct of DPC also negates the very purpose of the Model Calendar for DPCs issued by the DoPT. In addition, the Courts including the Hon'ble Apex Court in a number of cases have frowned upon the practice of the Departments not holding the DPC either by not convening the same or by not constituting the Committee. They have held in many cases that the employees should not be made to suffer. In some cases, the Hon'ble Apex Court has even allowed employees to be promoted from the due date owing to administrative delays in holding the duly constituted DPC in time.

9. It is our view that the issue needs to be viewed in a proper perspective as the situation may differ from case to case due to various factors. In the instant case, there appears to have been an issue relating to the conduct/convening of DPCs, after the creation of Prasar Bharati merging the erstwhile Doordarshan and All India Radio. The DPC minutes produced at Annexure A-4 clearly state (in para 3) that the Committee was informed that

the UPSC has not been accepting the DPC proposals primarily due to the reason that all posts stood transferred to the Prasar Bharati, with effect from 01.02.2000 as per amendment to the Prasar Bharati Act, notified on 09.01.2012. Consequently, it is mentioned (in paragraph 4) that the Ministry of I & B has approved modified composition of the DPCs for all Group A posts in the Prasar Bharati vide their letter No.515/75/2014-(BAE) dated 22.03.2016. According to this, the following composition of the DPC for selection to the Junior Administrative Grade has been approved :

Member (Personnel), Prasar Bharati	:	Chairman
Joint Secretary, Ministry of I & B	:	Member
Additional Director General/Dy. Director General, All India Radio:		Member
Additional Director General/Dy. Director General, Doordarshan	:	Member

10. The composition of the above DPC was made in March 2016 and the DPC then was able to convene on 13.04.2016/18.04.2016. This DPC also took into account specifically the para 2.4.4 of the DoPT O.M dated 10.03.1989 (supra) which provides that while promotions will be made in the order of the consolidated Select List, such promotions will have only prospective effect even in cases where the vacancies relate to earlier years. What is not disputed in this case is that the applicant had retired by this time on 31.08.2014. Hence, though his name was considered as per rules in the zone of consideration and also as per DoPT O.M dated 14.11.2014 (supra), he did not have a right for promotion as he was retired. Learned counsel for the respondents has brought to our notice a series of judgments which supports this position. In **Union of India & Ors. vs. Nirmal Chandra Sinha (2008) 14 SCC 29** it has been held that “*a promotion takes effect*

*from the date for which it is granted and not from the date of occurrence of vacancy or creation of post.” Further, in **Union of India & Ors. vs. K.K.Vadera & Ors. 1990 AIR 442** it has been held that “we do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.” This judgment indicates that the holding of the DPC is *sine qua non* to the promotion. Promotion, therefore, cannot be with effect from the date that a person becomes eligible or a vacancy arises. It will require the DPC to meet and then consider the case of the applicant, if he is eligible. If, by then, the applicant has retired from service, he obviously therefore cannot be considered.*

11. Further the Hon'ble High Court of Delhi in **P.P.Verma vs. Chief Secretary & Ors. in W.P.(C) No.7968/2012** while stating that the issue is well settled and the petitioner would not be entitled to any relief and thus dismissing the petition has observed as follows :

“16. We are conscious of the fact that instructions have been issued by the DoPT, Government of India dated September 08, 1998 and September 14, 2007 to the extent that a panel for promotion must be prepared in advance against anticipated vacancies. As and when vacancy arises the promotion to that vacancy is made from the panel. At the same time the O.M dated October 12, 1998 issued by DoP&T, Government of India, also stipulates procedure to be followed by DPC in regard to retired employees. In terms of the said instructions, which have been reproduced by the Tribunal, it is revealed that a retired employee is not entitled to any actual promotion after his retirement. In terms of the said instructions the names of the retired employees are included in the zone of consideration so as to determine the correct zone of consideration for relevant years except that their names are not included in the panel nor they are promoted.

17. Suffice it to say that this issue is no more res integra. This Court also on various occasions dealt with the issue in the following cases : WP(C) No.8102/2012 Union of India & Anr. v. K.L.Taneja & Anr. decided on April 13, 2013; W.P.(C) No.4908/2007 Union of India v. R.N.Malhotra decided on July 06, 2012; 2007 (1) ILR Delhi 378 Union of India v. Rajendra Roy; 2010 166 DLT 706 Ramakrishna Sharma v. Union of India.”

The Hon'ble High Court has elaborately quoted a series of judgments such as Rajendra Roy in paragraph 16, Ramakrishna Sharma in paragraph 18, K.L.Taneja in paragraph 19 etc. to drive home the same point. The court has also pointed to the Apex Court's ruling in K.K.Vadera (supra) that *“....a promotion cannot be granted prior to the convening of the Departmental Promotion Committee which considered the question of promotion. The only rider is where a junior has been promoted prior to the superannuation of the retired employee.”*

12. Given the ratio of these cases, it is clear that once an employee is superannuated he no longer can be considered for promotion. The series of O.Ms which have been released by the DoPT only relate to the

consideration of the retired employee in the zone of consideration so that the correct zone of consideration is determined for the relevant years. But such employees are not to be included in the panel nor are they to be promoted. In this matter, the DPC was held in April, 2016, much after the employee retired in August 2014, after the issue relating to the authority to convene the DPC was sorted out. Though the vacancies and the zone of consideration indicated against the applicant in the DPC pertain to the year 2010-2011, the fact of the matter was that he had retired on 31.08.2014. As such, he could not be included in the panel and was not considered for promotion. As per instructions, his name appeared in the zone of consideration but that was only in order to ensure that proper zone of consideration was determined. It was also clear that his was not the only case which was not considered. Only 4 officers out of the total 30 officers who were considered were found fit to be promoted as they were still serving. Thus, in line with the above judgments as well as in the light of the circulars/O.Ms of the DoPT, we hold that in the case of the applicant there was no element of arbitrariness or discrimination affecting his rights under Articles 14 & 16 of the Constitution of India. The respondents have followed the procedures properly. We find the O.A., thus, devoid of merit and, therefore, dismiss the same. There shall be no order as to costs.

(Dated this the 5th day of March 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00517/2017

- 1. Annexure A-1** – A copy of the Order dated 08.04.2014 of this Hon'ble Tribunal in O.A.No.252/2014.
 - 2. Annexure A-2** – A copy of the Order dated 04.11.2015 of the Principal Bench in C.P.No.39/2004 in O.A.No.243/2002.
 - 3. Annexure A-3** – A copy of the Order dated 14.12.2015 in M.A.No.1259/2015 and 180/1003/2014 in O.A.No.252/2014.
 - 4. Annexure A-4** – A copy of the Minutes of Meeting of DPC dated 13.04.2016 & 18.04.2016.
 - 5. Annexure A-5** – A copy of the Order dated 12.01.2017 in O.A.No.31/2017.
 - 6. Annexure A-6** – A copy of the Order No.A-10/11(60)/2015-PBRB dated 06.04.2017 of the 2nd respondent.
 - 7. Annexure A-7** – A copy of the Office Memorandum No.22011/1/2014-Estt.(D) dated 14.11.2014 of the Government of India, Department of Personnel and Training.
 - 8. Annexure A-7(a)** – A copy of the Office Memorandum No.22011/1/2011-Estt.(D) dated 23.04.2015 of the Government of India, Department of Personnel and Training.
 - 9. Annexure A-7(b)** – A copy of the Office Memorandum No.22011/3/2013-Estt.(D) dated 25.01.2016 of the Government of India, Department of Personnel and Training.
 - 10. Annexure A-7(c)** – A copy of the Office Memorandum No.22011/1/2011-Estt.(D) dated 27.10.2016 of the Government of India, Department of Personnel and Training.
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