

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

CCP NO. 112/93

in

OA No. 761/86

New Delhi this the 5th day of April, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Shri I.S. Bhama,
S/o late Shri Harchand,
R/o No. A.1/244, Paschim Vihar,
New Delhi.

...Petitioner.

By Advocate Shri G.D. Gupta.

Versus

Shri Raj Kumar Bhargava,
The Secretary,
Ministry of Information and
Broadcasting,
Shastri Bhavan,
New Delhi.

...Respondent.

By Advocate Shri M.L. Verma.

ORDER (ORAL)

Shri Justice V.S. Malimath.

The complaint in this case is that the directions of the Tribunal in O.As 761/86, 203/88 and 2339/88 have not been faithfully complied with. The directions are contained in paragraph 14 of the judgement and / usefully be extracted as follows:

"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 and 8.5.74, subject, of course, to the availability of vacancy and suitability.

(iii) To review the case of promotion of the applicant to the post of DDG on the basis of the 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".

The petitioner was appointed as Assistant Station Director on 25.4.1972. Having regard to the order of Department of Personnel No. 9/20/89 dated the 26th August, 1971, the petitioner was entitled to get his seniority fixed in the cadre of Assistant Station Directors on his appointment to that cadre taking into consideration the service rendered by him in the armed force. The respondents have by order dated 1.10.1993 clearly stated that the

petitioner shall be deemed to have been appointed as Assistant Station Director w.e.f. 10.11.1965. As the petitioner was required to be on probation, the Tribunal issued certain directions in regard to the completion of the probationary period as well. The clear effect of the second direction is that the period of probation being two years his performance from the date of his actual appointment, namely, 25.4.1972, for a period of two years shall be taken into account. If on examination of his performance the authorities find that he has satisfactorily completed the period of probation, then it should relate back to the date on which he would have successfully completed the probation had he been inducted as Assistant Station Director w.e.f. 10.11.1965. As regards further promotion to the cadre of Station Directors is concerned, the Tribunal has noted that, in fact, the petitioner was promoted to that cadre on 8.5.1974 on ad hoc basis. Having regard to the circumstances, the Tribunal said that there is no reason why the petitioner should not be considered for regularisation at least from 8.5.1974, if not from an earlier date between 25.4.1972 and 8.5.1974, subject, of course, to the availability of vacancy and suitability. The clear effect of these directions is that on the petitioner being found to have satisfactorily completed the probation period of two years from the date of his actual appointment, he should be deemed to have satisfactorily ^{commencing} completed the period of probation/ from the date of his deemed appointment, namely, 10.11.1965.

On that basis, his case has to be considered for promotion to the cadre of Station Directors (Ordinary Grade). The question for consideration is as to what is the vacancy in which the petitioner was directed to be considered. There is no direction to consider the case of the petitioner for promotion to the cadre of Station Directors with effect from the date on which his juniors have been promoted on the assumption that the petitioner would be deemed to have completed his probation from an earlier date. On the contrary, there is a direction that his case for regular promotion to the cadre of Station Directors (Ordinary Grade) should be considered on any date between 25.4.1972 and 8.5.1974 subject to the availability of vacancy and suitability. The clear effect of this direction is that the petitioner's case for promotion should be considered against a vacancy in the cadre of Station Directors that occurred between 25.4.1972 and 8.5.1974. We should emphasise what is relevant is the date of occurrence of the vacancy and not the date on which the DPC was held or the date on which the others were promoted. The direction has to be complied with to accord regular promotion to the petitioner on any date between 25.4.1972 and 8.5.1974 if any vacancy occurred on any date between those two dates. This should be done even if such a vacancy has already been filled up by promoting a junior Assistant Station Director who had entered service later than 10.11.1965. We have been shown the DPC proceedings on the basis of which the petitioner has been given regular promotion w.e.f. 30.4.1974. The DPC proceedings proceed on the basis that the Tribunal has directed consideration of the case of the petitioner for promotion to the cadre

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of Station Directors (Ordinary Grade) in any vacancy that occurred after the petitioner completed his period of probation. They have understood that the period of probation of the petitioner was completed on 25.4.1974 and that, therefore, they identified the vacancy that occurred after 25.4.1974 and before 8.5.1974. As there was such a vacancy available on 30.4.1974, the petitioner was accordingly given promotion from that date. A mistake has been committed by the DPC in understanding ~~xx~~ the second direction in paragraph 14 of the judgement. It is no doubt true that the direction is to consider the case of the petitioner for promotion only on his completing the probationary period satisfactorily. The period of service to be examined for the purpose of successfully completing the probation period of two years is from 25.4.1972. Once the authorities are satisfied that the said period of probation was successfully completed by the petitioner w.e.f. 25.4.1972, the clear direction is that it shall relate back to the period of two years from the date of his deemed appointment, namely, 10.11.1965. Thus, the clear effect of the petitioner successfully completing the period of probation on 25.4.1974 is that he should be deemed to have completed satisfactorily the period of probation w.e.f.

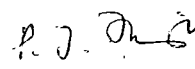
10.11.1967. That being the position, what the DPC was required was to locate the actual date of vacancy that occurred between 25.4.1972 and 8.5.1974 and accord to him the deemed date of promotion from such a date. We are satisfied that an obvious mistake has been committed in considering the case of the petitioner for promotion

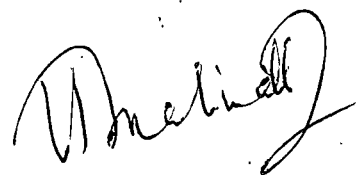
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in a vacancy that occurred after 25.4.1974 instead of considering his case for promotion in a vacancy that might have occurred between 25.4.1972 and 8.5.1974. As considerable time has already been spent and as we are satisfied that the DPC has found the petitioner fit and suitable for promotion w.e.f. 30.4.1974, there is no need now to subject the petitioner to one more DPC. All that is required to be done by the respondents is to identify if any vacancy occurred between 25.4.1972 and 8.5.1974 and if any vacancy was available, even if it has been filled up by promoting another ^{junior} person, the petitioner shall be accorded a deemed date of promotion from the date of occurrence of such a vacancy provided that the vacancy has not been filled up by a senior who became Assistant Director before 10.11.1965. In the event of the petitioner becoming entitled to promotion to the cadre of Station Directors earlier than the date of promotion to him, namely, 30.4.1974 which has now been accorded/ he shall be accorded all the consequential benefits flowing from the same. It is obvious that when a fresh decision is taken as per these directions, the earlier orders automatically stand modified. It is needless when to say that the petitioner's case falls for consideration for further promotion to the next higher cadre, that has to be done on consideration by the DPC in accordance with law.

2. The above directions shall be carried out within a period of six weeks from this date.

Order Dasti.


(P.T. Thiruvengadam)
member(A)


(V.S. Malimath)
Chairman

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