

(47)

Central Administrative Tribunal
Principal Bench: New Delhi

CCP No. 198/94
in
OA No. 761/86

New Delhi this the 6th Day of October 1994

Hon'ble Mr. Justice S.C. Mathur, Chairman

Hon'ble Mr. P.T. Thiruvengadam, Member (A)

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

... Applicant

(By Advocate: Ms. Shashi Kiran)

Vs.

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

... Respondents

(Departmental Representative
Shri A.K. Rana, Section Officer)

O R D E R

Hon'ble Mr. Justice S.C. Mathur, Chairman

This is second contempt application filed by the applicant in OA No. 761/86 decided on 24.9.1991.

2. In the aforesaid application the applicant's grievance related to assignment to him of seniority in the grade of Assistant Station Director and promotion to higher post. The Tribunal issued the following directions:

"(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 26.8.1971 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

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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 25.4.1972, 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 8.5.1974 and there seems no reason why he should not be considered for regularization 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 DDC 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." (Emphasised).

3. The applicant in his earlier contempt application No. 112/93 alleged that none of the directions contained in the judgement of this Tribunal had been complied with. The Tribunal while disposing of that application by order dated 5.4.94 observed that the applicant had been actually appointed Assistant Station Director on 25.4.72 but in fixing his seniority in the cadre the service rendered by him in the Armed Forces was to be counted in terms of Department of Personnel and Administrative Reform's OM No. 9/20/69-S(C) dated 26.8.71 and in this manner the applicant's deemed date of appointment would be 10.11.65. The Tribunal has noticed

the order dated 1.10.1993 passed by the Administration in which applicant's deemed date of appointment as Assistant Station Director has been fixed as 10.11.65.

4. The Tribunal has further observed that the applicant had been placed on two years probation and, therefore, if his performance within the period of two years from the date of actual appointment viz. 25.4.72 was satisfactory, the applicant was entitled to be confirmed on the expiry of the period of two years from the date of deemed appointment. In this manner, the Tribunal was of the opinion that the applicant's deemed date of confirmation would be 10.11.1967 as his work and conduct during the period of two years from 25.4.1972 was satisfactory which was apparent from the fact that he was promoted to the post of Station Director on 8.5.1974.

5. Dealing with the question of applicant's date of promotion to the post of Station Director, the Tribunal found that an error had been committed by the Departmental Promotion Committee. The Tribunal has noticed that the applicant has been given regular promotion with effect from 30.4.1974 and the D.P.C. proceeded on the basis that Tribunal had directed consideration of the applicant's case for promotion to the cadre of station Director (Ordinary Grade) in any vacancy that occurred after the applicant completed his period of probation and the period of probation was understood to have been completed on 25.4.1974. On this basis, the Tribunal noticed, the DPC identified

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the vacancy against which the applicant was to be promoted that occurred after 25.4.1974 and before 8.5.1974 and since such a vacancy was available on 30.4.1974, the applicant was given regular promotion with effect from that date. The Tribunal had dealt with the applicant's earlier contempt application and was of the opinion that this approach of the DPC was incorrect. The Tribunal held that the D.P.C. was required to locate the actual date of vacancy that occurred between 25.4.1972 and 8.5.1974 and accord to him the date of promotion from such a date. After making these observations, the Tribunal issued directions in these terms: "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."

6. The learned counsel for the applicant has submitted that the above directions have not been complied with. The submission of the learned counsel is incorrect. During the course of the arguments, the learned counsel herself placed before us a copy of the Government of India's order No. 45023/3/93-B(A) of Ministry of Information and Broadcasting dated 17.6.1994. In paragraph 1 of this Order, it is mentioned "the President is pleased to decide that Shri Bhama will be deemed to have completed his probationary period

with effect from 10.11.1967 (F.N) due to his deemed appointment in this grade with effect from 10.11.1965." There is no flaw in this portion of this order. In fact this is what has been observed by this Tribunal in the order passed on Applicant's earlier contempt application.

7. In paragraph 2 of the aforesaid Government's order it is mentioned "In pursuance of judgement dated 5.4.1994 delivered by the Central Administrative Tribunal, Principal Bench, New Delhi in CCP No. 112/93 in DA No. 761/86, the President is further pleased to advance the date of appointment of Shri I.S. Bhama in the grade of Station Director (OG) in All India Radio/Doordarshan to 29.4.1972 with effect from which the vacancy was available in the said grade." The learned counsel for the applicant could not point out that vacancy in the grade of Station Director occurred on a date earlier to 29.4.1972 between the date 25.4.1972 and 8.5.1974. The Tribunal's order dated 5.4.1994 clearly provides for promotion of the applicant to the post of Station Director against the vacancy which occurred between 25.4.1972 and 8.5.1974. The applicant cannot claim promotion against any vacancy which occurred prior to 25.4.1972. Thus, the direction contained in Tribunal's order dated 5.4.1994 has clearly been complied with. The submission to the contrary made by the learned counsel is not sustainable.

8. The learned counsel had started her arguments by submitting that no portion of the first judgement as well as the second judgement had been complied with. During the course of arguments, she herself produced

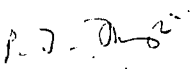
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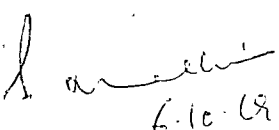
before us the copies of the orders dated 1.10.1993 and 17.6.1994. These orders were passed in compliance of the orders passed by this Tribunal. The learned counsel, of course, challenged the correctness of the orders. Incorrect compliance of Tribunal's order is something different from non-compliance of the order. Accordingly, the initial submission of the learned counsel that non compliance has been made of either of the two orders was misconceived.

9. The learned counsel challenged the assignment of seniority contained in Government of India's order dated 1.10.1993. By this order, the applicant has been assigned seniority below Shri R.S. Bhole and above Shri V.S.N. Camphor. According to the learned counsel, the applicant should have been placed above Shri R.S. Bhole. The submission of the learned counsel cannot be sustained. It is mentioned in the Government's order itself that Shri Bhole was the last direct recruit recommended for appointment as Assistant Station Director in the year 1965. From the emphasised portion in the Tribunal's judgement dated 24.9.1991, it is apparent that the applicant was not entitled to claim seniority over direct recruits corresponding to the year to which the applicant was allotted. The applicant was allotted to the year 1965. Shri Bhole is a direct recruit of that year. Accordingly, Shri Bhole was entitled to rank senior to the applicant in terms of Tribunal's judgement in the original application. The learned counsel for the applicant submitted that Shri Bhole was recruited against the reserved vacancy and, therefore, he cannot rank senior to the applicant. There is no observation

in the judgement of the Tribunal that reserved category candidates were to be differently treated. The submission of the learned counsel is entirely misconceived and is overruled.

10. From the above discussion, we are satisfied that judgement of this court dated 24.9.1991 was clarified by Order dated 5.4.1994 passed in CCP No. 112/93 has been complied with. The respondent is accordingly not guilty of contempt of this Tribunal. The application is rejected and the notice issued is hereby discharged. There shall be no order as to costs.


(P.T. Thiruvengadam)
Member (A)


6.10.1994
(S.C. Mathur)
Chairman

Mittal