

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.No.1367/1987

DATE OF DECISION 7.6.91

SHRI D.N. BHAKRI

-- APPLICANT

VS

UNION OF INDIA & ORS.

-- RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

-- SHRI T.C. AGGARWAL

FOR THE RESPONDENTS

-- SHRI P.H. RAMCHANDANI

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

JUDGMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, Administrative Officer, Central Stores of All India Radio, New Delhi filed this application under Sec.19 of the Administrative Tribunals Act, 1985 on 16-9-1987 aggrieved by the order dated 20-12-1985 (Annexure A-6) passed by the Directorate

(V)
-2-

General, All India Radio, New Delhi, challenging inter-alia, the seniority list of Administrative Officers in All India Radio as on 1-11-1985. In this seniority list the name of the applicant is at Sl.No.44 and the date of his regular appointment in the grade is 22-5-1985. It is alleged by the applicant in the application that his position in the seniority list (Annexure A-6) should be just below V.V.Banot (Sl.No.13) The date of appointment in the present grade of Shri V.V.Banot is 5-8-1985 and the person next below him at Sl.No.14 Shri T.N.Miyan the date of appointment in the present grade is 8-4-1985.

2. The applicant has claimed the following reliefs:-

- a) to allow this application of the applicant with costs;
- b) to issue appropriate order or orders direction or directions;
 - i). quashing the findings of the Departmental Promotion Committee held on 8-4-85 to finalise candidates for promotion to the post of A.O. on regular basis in AIR/Doordarshan and also directing to hold fresh DPC according to vacancies available in different years of 1982, 1983, 1984, 1985 and 1986.
 - ii) or in the alternative direct Respondent to place applicant below Shri V.V.Banot (S.No.13) and above Shri T.N.Miyan (S.No.14) of the seniority list of Administrative Officers circulated vide Respondent Memo. dated 2nd Dec., 1985 (Annexure A-6)
- c) to pass such other order or orders, direction or directions as deemed fit and proper by this Hon'ble Tribunal under the circumstances of the case to meet the ends of justice.

3. The applicant stated that the cadre of Administrative Officers is ^a combined cadre in All India Radio/Doordarshan and posts are required to be filled according to the recruitment rules by promotion as follows as shown in Annexure R-1 in Col.6, 10 & 11:-

6 10 11

Selection By promotion Sr. Accountant in the Commercial Broadcasting; Union of All India Radio, with 3 years regular service in the grade, and Clerks/ Accountants in Subordinate Offices of All India Radio with 7 years regular service in the grade.

4. The grievance of the applicant is that a combined eligibility list was prepared on 2-3-1985 of Head Clerk/Accountant/Senior Store Keeper in the offices of All India Radio/Doordarshan (Annexure A-2). In this eligibility list the position of the applicant has wrongly been shown and he represented to the respondents to show him senior to Shri J.S. Sarang and on the representation of the applicant the Station Director, All India Radio was advised to take corrective measures for placing the name of Shri J.S. Sarang in the seniority list at the correct place. It is stated by the

14

applicant that in the appointment order of Administrative Officer issued on the recommendation of the D.P.C. the position of the applicant would have been at Sl.No.4 and not at Sl.No.18 in para 2 of the order issued by the Respondent dated 29-4-1985 (Annexure A-5). It has therefore been stated that the applicant should have been placed at Sl.No. below 13 Shri V.V.Barot (Sl.No.13) and not at Sl.No.44 of the seniority list (Annexure A-6).

5. The applicant has also challenged the holding of the D.P.C. in the year 1985 in total disregard to the rules laid down in D.P. & A.Rs' O.M.No.22011/3/76-Est.(D) dated 24-12-1980 (Annexure A-1). It is stated that the list was to be prepared of feeder post seniority list separately for the vacancies following in different years of 1982, 1983 1984 and 1985. It is further stated that holding of D.P.C. in total disregard to the basic rule of 'consideration of zone' is arbitrary, illegal and against natural justice.

6. The applicant has also moved an application for condonation of delay (Annexure A-9). It is stated in this application that the applicant reminded the respondents again and again to correct his position in the list of Administrative Officers and again by legal notice in 1987. The respondent on personal

contact assured the applicant to consider the matter and to revise his position in the seniority list of Administrative Officers. It is further stated that no final decision has yet been communicated to the applicant and delay if any be condoned.

7. The respondents contested the application and stated that the present application is barred by Sec.21 of the Administrative Tribunals Act, 1985.

8. It is also stated that post of Administrative Officers in All India Radio and Doordarshan is a promotional post as per recruitment rule (Annexure R-1) referred to above. The delay in holding the D.P.C. was due to the fact that a combined list of eligible officers for promotion to the grade of Administrative Officers was not ready and remained under finalization in consultation with department of Personnel and Administrative Reforms.

9. It is further stated that the applicant was not even qualified to be considered for promotion to the post of Administrative Officer as not disputedly his date of regular appointment as Head Clerk is 30-12-1976 and 7 years period could be completed in end of December, 1983 so even if there was some

-6-

irregularity in holding the D.P.C. in the year 1981 to 1983 then the applicant has not been prejudiced as he could not qualify to be considered for promotion and was not therefore in the zone of consideration. Regarding his replacement in the Administrative Officers list, it is stated that the applicant only objected to the placement of Shri J.S.Sarang in the eligibility list and which was corrected and J.S.Sarang was made junior to the applicant by placing him down below in the list of eligibility. Even J.S. Sarang was not recommended for promotion by the D.P.C. It is further stated that neither in terms of service nor in terms of seniority the applicant can be placed below Shri V.V.Barod and above Shri T.N.Miyan to the seniority list (Annexure A-6). Shri Barot joined service as Head Clerk/Accountant on 22nd October, 1971 and Shri T.N.Miyan on 3rd May, 1972 whereas the applicant joined service on 30th December, 1976. In fact the applicant became eligible for consideration for promotion in question only on completion of 7 years of service i.e. on 30-12-1983. It is stated that the application is misconceived and is liable to be dismissed.

10. We have heard the learned counsel at length and have gone through the records of the case

11. The learned counsel for the applicant argued that the proceedings of the D.P.C. held on 8.4.1985 for promotion as Administrative Officer should be quashed as the irregularities have been committed which have almost been conceded by respondents in their reply. The first contention of the learned counsel is that a D.P.C. was held on a provisional seniority list dated 2.3.1985 when D.P.C. was held on 8.4.1985. The respondents have admitted this discrepancy in reply dated 20.5.1985. It is a fact that the provisional list of Head Clerk/Accountant/Store Keeper was circulated among all concerned by the letter dated 2.3.1985 (Annexure-A 2). However, para-2 of this letter clearly indicates that the representations which were received from the stations/officers/persons concerned regarding their placements in the eligibility list have been considered and necessary changes wherever necessary, have been affected in accordance with the advice of the Department of Personnel and Administrative Reforms circulated vide Directorate's Memo No.2/22/77-6 II dated 25.7.1984. The applicant has taken the plea in para 6(v) that his position has wrongly been shown in the eligibility list (Annexure-A 2) and he immediately represented to respondent to correct the same earlier to the date when the Departmental Promotion Committee met, in the representation dated 4.4.1985 (Annexure-A 3). In Annexure-A 3, the only objection raised on the eligibility list was on the placement of one Mr. Sarang. No other objection has been taken. This has since been corrected by the order dated 20.5.1985 (Annexure-A 4). So though this

eligibility list (Annexure-A 2) was provisional in nature, but for all purposes it has been given finality as there was no undisposed of representation pending against the same. In this eligibility list, the name of the applicant finds place at Serial No.62. But in the promotion list communicated by an order dated 29.4.1985 (Annexure-A 5) in para-2, the name of the applicant is at Serial No.18. The applicant has claimed for the relief in the alternative that he be placed below Shri V.V. Barot and above Shri T.N. Miya in the seniority list of Administrative Officers circulated vide respondents' Memo dated 2.12.1985 (Annexure-A 6). In this promotion list (Annexure-A 5), Shri V.V. Barot is shown at Sl. No.3 and his present place of posting was at Ahmedabad and he was transferred on promotion to Rajkot. The date of regular appointment of V.V. Barot as H.C./S.C./S.S.K. is 22.10.1971. In the eligibility list, S/Sh. S.K. Pandey, R.C. Bairwa (SC), M.P. Kesavan Nambissan, R.N. Rathi, T.R. Sharma, N.G. Sarkar (SC), P.K. Chatterjee, T.N. Sinha, S.B. Singhe (SC), R.D. Vaity (ST), P. Appa Rao (ST) and S.S.R. Anjana Yulu are shown above the applicant at Sl. Nos. 29,30,34,38,41, 47,48, 50, 51, 52, 59 and 60 respectively. In the representation made by the applicant in April, 1985 (Annexure-A 3), the applicant did not raise any objection regarding these persons. It is not disputed by the applicant that he had no knowledge about the placement of these persons above him in the provisional All India eligibility list and nor he can take this plea now. As such the applicant is now estopped to take any plea which he had not already taken and represented

-8-

(P9)

in the representation dated 4.4.1985 (Annexure-A 3).

If the applicant is allowed to take such pleas, then there will be no end to finality in the matters like seniority list. Even if the applicant was aggrieved by this list of 1985 (Annexure-A 2), he could have assailed it within one year after he was duly communicated the reply to his representation by the Memo dated 20.5.1985 (Annexure-A 4). The present application has been filed by the applicant on 16.9.1987. Section 21 of the Administrative Tribunals Act, 1985 especially lays down the limitation for assailing any order and in this case, there was a definite order passed by the respondents on 20.5.1985.

12. Though the applicant has made an application for condonation of delay, but that application does not disclose any reasonable ground to justify the condonation because it is mentioned in the application (Annexure-A 9) that the applicant was making representations and he was verbally assured. But there arises no question of making any representation on the All India eligibility list after the applicant has received the reply in May, 1985 and the necessary corrections were ordered to be made and the person complained against by the applicant, Shri Sarang was not even promoted as Administrative Officer by the D.P.C. held in April, 1985. The applicant has also not challenged the All India eligibility list (Annexure-A 2) because unless that is challenged and set aside, the seniority list of Administrative Officers which is based

(20)

exclusively on the consideration of the All India eligibility list (Annexure-A 2) cannot be said to be in any way bad on account of wrong placement in the All India eligibility list of certain persons. Thus on two accounts, firstly, the applicant has not challenged the All India eligibility list and secondly, the applicant has not come within time to challenge that list and thirdly, no reasonable or specific ground has been shown in the application for condonation of delay to warrant the consideration of the matter even though that has not been specifically prayed for in the reliefs claimed by the applicant in the Original Application.

13. Regarding the irregularity committed by the respondents in clubbing the vacancies arising from 1982 onwards when the D.P.C. met, it appears that the applicant has rather been benefitted on this account and no prejudice has been caused to him. It is not disputed by the learned counsel for the applicant that the applicant was a regular appointee from 30.12.1976 as Head Clerk/Accountant/Store Keeper and the Recruitment Rules (Annexure-R 1) quoted above specifically prescribe minimum 7 years' regular service in the grade which in the case of the applicant gets completed only in December, 1983 which goes to show that the applicant could have been considered in the vacancies arising in the year 1984 and not in any of the vacancies arising earlier. There were 49 vacancies which occurred during the year

4

1982 to 1985. Out of these 49 vacancies, 24 vacancies have been filled up by those persons who had already been working on ad-hoc basis as Administrative Officers and their appointment has been termed to be as one on regular basis w.e.f. 8.4.1985. It was the 25 officers who were working as Head Clerks/Accountants/Senior Store Keepers who were promoted for the first time as Administrative Officers and the applicant is placed at Sl. No.18. The applicant has not given out any reason whatsoever that the D.P.C. of 1984 could have been held in 1984 itself. In fact the D.P.C. of 1984 could only be convened in 1985 or in the fag end of 1984. Thus the applicant on this account has not at all been prejudiced and the applicant has no right to come forward for quashing the findings of the D.P.C. held on 8.4.1985 of which he is also a beneficiary. Moreover, the present petition has been filed on 6.9.1987 and in this D.P.C. there are 49 promotees and none of those have been impleaded as respondents by the applicant so that they could have also been heard regarding the vacancies and their position in the said panel and on this account also, the present application of the applicant suffers from non-joinder of necessary parties.

14. There is no dispute about the ~~pre~~position of law that the vacancies which arise in the years 1982, 1983 and 1984 should not have been jumbled together for consideration by the D.P.C. held in 1985, but at the same time it has

to be seen whether any prejudice has been caused to the applicant and if has not been so caused, then the applicant cannot be said to be an aggrieved person and cannot challenge the said panel as of right.

15. The learned counsel for the applicant has also argued that the seniority in the feeder grade on a zonal basis was to be considered for All India eligibility list, but neither in the application itself nor during the course of the arguments, by any specific averment, it has been pointed out that there is any mistake in the said eligibility list. As already referred to above, the applicant has not challenged that All India eligibility list. What the applicant challenged is the seniority list of Administrative Officers circulated in December, 1985 (Annexure-A 6). Even taking a lenient view of the matter, the Memo dated 2.12.1985 invited objections, if any, to correct any discrepancy and such representation may be sent to the Directorate General, All India Radio, New Delhi by 30.12.1985. The applicant has not sent any representation within that time limit. What the applicant has filed with the application is a representation dated January, 1986 (Annexure-A 7). In this representation also, what the applicant has desired in the last para is that his name be placed above J.S. Sarang which was got corrected, but the senior persons to him in the Delhi zone were not placed above him as the zonal seniority list was not corrected at the time of D.P.C.

2

It is further urged in that representation that since mistake has been rectified later on by the Station Director, A.I.R., Delhi, the same needs to be corrected in other lists also, i.e., All India eligibility list and seniority list of Administrative Officers. When once the applicant has already raised objection restricted to only one person, Shri Sarang in the All India eligibility list, he cannot modify his stand and now challenge the whole list in January, 1986. Even then since the representation was made in January, 1986 and no reply was received by the applicant, so after waiting for six months, the applicant could have come in July, 1986 for redress of his grievance, if any, before the Tribunal or utmost giving one year more benefit to the applicant in July, 1987. But he has filed this application in September, 1987 and no reason whatsoever has been disclosed for this delay of two months.

16. The learned counsel for the applicant has argued with force that the technical objection of limitation should not be considered by the Tribunal and referred to the law laid by the Hon'ble Supreme Court in AIR 1987 SC 1353-Collector Land Acquisition Vs. Anand Nag Kalji and AIR 79 (1) SLR 757-Madras Port Trust Vs. Humanshu International. However, in the present case, the specific limitation has been provided under section 21 of the Administrative Tribunals Act, 1985 as said above and if the applicant has not come within time, then he has to

24

-14-

give specific reasons convincing the judicial mind that the applicant was prevented by a sufficient and reasonable cause in not coming to the Tribunal at the proper time. A perusal of the application (Annexure A-9) will show that it does not mention any ground whatsoever and what is mentioned is that he was verbally assured for conceding the matter regarding his position in the seniority list of Administrative Officer and as no decision has been taken, so if any delay, be condoned. To our mind, this is not a sufficient cause.

17. Having given very careful consideration to all aspects of the matter, we hold that the applicant has not made out any case for grant of any of the reliefs, either the main relief or the alternative relief, he has prayed for. The application is, accordingly, dismissed as barred by limitation and also being devoid of merits. In the circumstances, the parties shall bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

D. K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)
7-6-1991