

16

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.795/2004**

**New Delhi, this the 11th day of July, 2005**

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.A.Singh, Member (A)**

1. AIR & Doordarshan Engineers' Association  
Through its General Secretary,  
Sh. Deepak Mehrotra  
Room No.333, Akashwani Bhawan  
New Delhi.
2. Sh. D.S. Chandok  
Director (Engineering)  
O/o CE (NZ), Shahjahan Road  
S/o Late Shri Bishan Singh  
R/o Flat No.34, Nishhan Apartment  
Pocket IV, Plot No.23  
Nisarpur Dwarka Phase-I  
New Delhi.
3. Yuvraj Bajaj  
Director Engineering  
O/o Director General, All India Radio  
Akashwani Bhavan  
New Delhi.  
S/o Sh. R.P.Bajaj  
A-33/B2, Shalimar Garden, Ext.II  
Sahibabad Dist. Ghaziabad (U.P.).
4. Shri B.B.Sharma  
Superintending Engineer  
DDK, New Delhi  
S/o Late Shri Suraj Prakash  
R/o 703 - Asia House  
K.G.Marg  
New Delhi - 1.
5. J.M.Jain  
Station Engineer  
S/o Shri S.P.Jain  
SB-31, Shastri Nagar  
Ghaziabad - 201 002 (U.P.).

17

- 2 -

6. Shri R. Srivastava  
Director Engineering  
O/o DG: Doordarshan  
Mandi House  
New Delhi.  
S/o Dr. S.Bahadur  
R/o 89-Prashan Apartment  
Patparganj  
New Delhi - 92.
  7. R.K.Budhraj  
Director Engineering  
O/o ~~DA~~ : AIR  
Akashwani Bhawan  
Parliament Street  
New Delhi  
S/o Late Sh. C.L.Budhraj  
A-50, Nirman Vihar  
Delhi - 92.
- ... Applicants

**(By Advocate: Sh. Gopal Dutt)**

Versus

1. Union of India  
Through the Secretary to the Government of India  
Ministry of Information & Broadcasting  
Shastri Bhawan  
New Delhi - 1.
  2. Union Public Service Commission  
Through it's Secretary  
Shahjahan Road, Dholpur House  
New Delhi - 1.
  3. Union of India  
Through the Secretary to the Government of India  
Ministry of Personnel, Public Grievance & Pension  
Department of Personnel & Training, North Block  
New Delhi - 110 001.
  4. Prasar Bharati  
Through Chairman, Prasar Bharati  
2<sup>nd</sup> Floor, PTI Building  
Parliament Street  
New Delhi - 1.
- ... Respondents

**(By Advocate: Sh. R.V. Sinha)**

19

-3-

**ORDER (Oral)**

**By Mr. Justice V.S. Aggarwal:**

Applicants were initially either directly recruited as Assistant Directors (Engineering) on the basis of the selection through an open competitive examination of Combined Engineering Services conducted by the Union Public Service Commission or they were departmentally promoted as Assistant Director (Engineering). The applicants contend that prior to the order of 23.7.2004, respondents 1 and 2 had held regular Departmental Promotion Committee meetings for promotion to Junior Administrative Grade. Some promotions were given on ad hoc basis.

2. The plea raised is that terms and conditions of the service of the applicants are governed by the Indian Broadcasting (Engineering) Service Rules, 1981. Thereafter, no cadre review had been done. The applicants present the following scenario pertaining to the dates when they were promoted on ad hoc basis and the date of entitlement to promotion:

S.No.	Name of officer	Date/description of order of ad hoc appointment	Date of entitlement for promotion to STS Grade as per IBES Rules.
1.	D.S. Chandok	1/8/2001	1/7/2000
2.	Yuvraj Bajaj	26/3/1999	1/11/1996
3.	R.Srivastava	26/3/1999	1/5/1997
4.	R.K.Budhraj	26/3/1999	1/7/1997
5.	B.B.Sharma	12/4/2001	1/9/1997
6.	J.M.Jain	no ad-hoc appointment was given.	1/7/2002

18 Ag

9

-4-

3. The grievance of the applicants is that despite clear instructions of the Government of India that Departmental Promotion Committee meetings should be convened at regular intervals (by laying down a time schedule for this purpose) to draw panels which could be utilized for making promotions against vacancies occurring during the course of a year, the same has not been done. The year-wise panels have not been prepared. By virtue of the present application, the applicants seek a direction to Respondent No.1 to modify the promotion orders by convening a Review DPC in association with Respondent No.2 and in consonance with Department of Personnel & Training's OMs of 8.9.1998, 13.10.1998, 1.2.1999, 6.10.1999 and 14.12.2000.

4. In the reply filed, the application has been contested. Respondents plead that Prasara Bharati was constituted as an autonomous organization in November 1997. After the formation of Prasara Bharati, UPSC declined to hold recruitment for the post of Prasara Bharati as they are not mandated under the Constitution to conduct any recruitment for the posts in autonomous bodies. Subsequently, the Commission agreed to convene the DPC in pursuance of the directions dated 29.10.2001 of this Tribunal. As such, a proposal for all the pending DPCs was sent to the Commission. It is, therefore, pleaded that delay in holding the DPC is beyond the control of the respondents 1 to 4. Under these circumstances, vacancies in Junior Administrative Grade were filled up on ad hoc basis. The DPCs for the years upto the year

18 Aug

2003-2004, have already been held. The year-wise vacancies have been detailed in the reply.

5. Respondents plead that ad hoc promotion was made on the basis of 'seniority-cum-fitness' according to the instructions and that too without convening the DPC. However, as per the recruitment rules, the prescribed criterion for promotion to Junior Administrative Grade is 'selection'. Thus, it is pleaded that statutory rules had not been strictly followed while making the ad hoc promotions.

6. It is insisted that date of promotion would be when the person joins on regular basis.

7. The learned counsel for the applicants, strongly relied upon the decision of this Tribunal in OA 178/2001 entitled **All India Radio & Doordarshan Engineers' Association & Others V. Union of India & Others**, decided on 11.12.2001. In the cited case, the relief claimed was for a direction to conduct DPC for various cadres from Junior Administrative Grade to Senior Administrative Grade, etc. and the respondents should do their statutory duty in this regard. This Tribunal had issued the following directions:

"7. In the above view of the matters the OA succeeds and is accordingly allowed. Respondents are directed to initiate the procedure for initiating the DPCs for filling up the vacant posts in IB (E)S, with the association of UPSC, whenever necessary on yearly basis and consider the cases of the applicants if they are eligible for such consideration and if found fit, promote them in accordance with rules and instructions laid down by DoPT's OM No.24011/9/98 Estt.(D) dated 8.9.1998 and

12 Aug

23.10.1998 and the IB(E)S Rules, 1981. This exercise shall be finalised as early as possible and in any rate within four months from the date of receipt of this order. No costs."

8. In the present case before us, as is apparent from the reply that has been filed, DPCs had been held in respect of all the available vacancies and the year-wise details have been given. Thus, once the promotions have been made year-wise in accordance with the instructions, so far as that particular plea is concerned, very precious little in this regard can be made in favour of the applicants.

9. The applicants contend that since the year 1996, no regular promotions had been made and thus respondents had failed to do their statutory duty. We do not dispute that regular DPCs should be held. In fact, it is unfortunate that inordinate delay had occurred because it is administratively not proper to keep such vacancies for years together. It is the system that suffers. However, the delay has been explained in the peculiar facts of the present case. Respondents pointed that in the year 1997, Prasar Bharati had been constituted as an autonomous body. Thereafter, the UPSC had declined to hold recruitment for the posts in the Prasar Bharati because their plea was that they were not mandated under the Constitution to conduct any recruitment for the posts in the autonomous bodies. It was in pursuance of the directions of this Tribunal in OA No.2067/2000, entitled **S.K.Garg & Others V. Union of India & Others**, decided on 29.10.2001 that the UPSC had agreed to hold/convene DPCs.

As Ag

In such an eventuality, when UPSC necessarily had to be associated, the delay could not be within the control of Respondent No.1.

10. At the outset, it must be stated that it is not a case where persons junior to the applicants have been promoted on regular basis and that the applicants can contend that they should also be given the same benefit retrospectively. The principle of law is well settled that promotion is not a right. A person has only a right to be considered for promotion. When the delay has occurred because of circumstances stated above, in our opinion, in the peculiar facts, the applicants cannot contend that they should be promoted on regular basis retrospectively from the date when the vacancies had arisen.

11. In fact, the position is well settled that promotion can only be made prospectively and not retrospectively. A Bench of the Supreme Court in the case of **UNION OF INDIA & OTHERS** v. **MAJRI JUNGAMAYYER & OTHERS**, 1977 AISLJ SC 90 had considered this question and held that promotion can only be made prospectively. The order of the Supreme Court reads:

"57. The respondents contended that the regularization of 107 promotees had to be done from the date of original promotions on ad hoc basis. In this connection, the respondents relied on the observations of this Court in *Bishan Sarup Gupta's* [(1968) 1 SCR 10] (*supra*) at p.506 of the report. The observations relied on are that after the fresh seniority list is made in accordance with the direction given by this Court in *Bishan Sarup Gupta's case* (*supra*) *supra* would it be open to any direct recruit or promotee to point out to the department that in the selection made to the post of Assistant

18 Aug

8

Commissioner from 1962 onwards he, being otherwise eligible, is entitled on account of the new seniority given to him to be considered for promotion to the post of Assistant Commissioner.

58. The observations of this Court in Bishan Sarup Guptas' case (supra) are that if a result of the fresh seniority list it is found that any officer was eligible for promotion to the post of Assistant Commissioner on account of his place in the new seniority list, the department might have to consider his case for promotion on his record as on the date when he ought to have been considered, and if he would be selected his position will be adjusted in the seniority list of Assistant Commissioners. The object is to see that the position of such a person is not affected in the seniority list of Assistant Commissioners he is actually promoted later pursuant to the new seniority list, although according to the new seniority list itself he should have been promoted earlier. The observations does not mean that although the Committee can meet for the selection of officers for promotion to the post of Assistant Commissioner only after the seniority list is approved by the Court, the selection would be deemed to be made at the time when a vacancy in the post of Assistant Commissioner occurred and the eligibility of officers for selection will be determined by such deemed date of selection. No employee has any right to have a vacancy in the higher post filled as soon as the vacancy occurs. Government has the right to keep the vacancy unfilled as long as it chooses. In the present case, such a position does not arise because of the controversy between two groups of officers for these years. The seniority list which is the basis for the field of choice for promotion to the post of Assistant Commissioner was approved by this Court on 16 April, 1974. Promotions to the post of Assistant Commissioners are on the basis of the selection list prepared by the Committee and are to be made prospectively and not retrospectively."

**(Emphasis added)**

12. Same question was again considered by the Supreme Court in the case of **BAIJ NATH SHARMA** v. **HON'BLE**

ls Ag e



24

9

**RAJASTHAN HIGH COURT AT JODHPUR AND ANOTHER, 1998**

SCC (L&S) 1754. One of the pleas raised by Shri Baij Nath Sharma was that if Departmental Promotion Committee Meeting had been held, he would have got his promotion retrospectively.

The plea was rejected and it was held:

“6. The appellant could certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation. It is not the case here. From the promotional quota, four promotions were made only on 30-12-1996, i.e., after the appellant had retired. Those promoted were given promotions from the dates the orders of their promotions were issued and not from the dates the posts had fallen vacant. It is also the contention of the High Court that these four officers, who were promoted to the RHJS, were senior to the appellant as per the seniority list. The question which falls for consideration is very narrow and that is, if under the rules applicable to the appellant promotion was to be given to him from the date the post fell vacant or from the date when order for promotion is made. We have not been shown any rule which could help the appellant. No officer in the RJS has been promoted to the RHJS prior to 31-5-1996 who is junior to the appellant. Further decision by the Rajasthan High Court has been taken to restore the imbalance between the direct recruits and the promotees which, of course, as noted above, is beyond challenge.”


13. In face of the situation given above, when the applicants cannot claim retrospective promotion and further that the delay was beyond the control of Respondent No.1 because UPSC was not agreeable in this regard, indeed, in the peculiar facts when no junior to the applicants has not been promoted, the applicants have no right to retrospective promotion.

As Ag

25

-10-

14. Resultantly, the Original Application being without merit  
must fail and is dismissed.

  
**(S.A. Singh)**  
**Member (A)**

/NSN/

  
**(V.S. Aggarwal)**  
**Chairman**