

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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OA.No.462 of 1992

(15)

Dated New Delhi, this 7th day of May, 1997.

HON'BLE MRS LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR R. K. AHOOJA, MEMBER (A)

Narendra Singh
S/o Shri Ram Dev Singh
R/o D-5, Radio Colony
K.W. Camp
DELHI-110009. ... Applicant

By Advocate: Shri B. S. Jain
versus

1. Union of India
Through Secretary
Information and Braodcasting Ministry
Shastri Bhavan
NEW DELHI-110001.
2. Director General
All India Radio
Akashwani Bhawan
NEW DELHI-110001. ... Respondents

By Advocate: Shri P. H. Ramchandani

O R D E R (Oral)

Mr R. K. Ahooja, M(A)

The applicant joined as a direct recruit Junior Scale Officer of the Indian Broadcast (Engineering) Service (hereinafter referred to as IB(E)S) in 1989 through Union Public Service Commission. According to Schedule 3 of IB(E)S Rules there is a provision for promotion to the post of Senior Time Scale Officers who have put in four years of regular service as Junior Time Scale Officers. Note 3 in Schedule 4 of the Rules further provides that if an officer appointed to any post in the service is considered for the

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purpose of promotion to a higher post all persons senior to him in the grade shall also be considered notwithstanding that they may not have rendered the requisite number of years of service. In the year 1990, a DPC was held for such a promotion on the basis of the seniority-cum-fitness. Several direct recruits were not promoted. According to the provisions of Note 3 in Schedule 4 of the IB(E) S Rules another DPC was held on 18.12.91. The grievance of the applicant is that those direct recruits who joined in the year 1988/1989 were not being promoted in violation of the aforesaid Rules. He has, therefore, come before this Tribunal seeking a direction to the respondents to consider him for promotion to the post of Senior Time Scale alongwith the other Junior Scale Officers proposed to be promoted on the basis of the DPC held on 18.12.91 with consequential benefits.

2. The respondents in their reply state that as per the instructions issued by DP&T vide O.M. dated 22011/7/86/Est(D) dated 19.7.89 only those Junior Scale Officers can be considered for promotion to Senior Scale ^{who have} ~~on~~ completion ~~of~~ the probationary period. They say that on the basis of the aforesaid O.M., only those direct recruits Junior Scale Officers who had successfully completed their probationary period were

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considered for the promotion by the DPC held on 18.12.91. (A)

3. We have heard the counsel on both sides and have perused the records. Shri B. S. Jain, learned counsel for the applicant has argued that there is no requirement in the statutory rules which entitles only such Junior Time Scale Officers to be considered for promotion who have completed the probationary period. He further submits that any instruction of an administrative nature such as the O.M. dated 19.7.89 of the DP&T relied upon by the respondents cannot overrule the statutory rules. In this respect he relied on the orders of the Hon'ble Supreme Court in K. K. Khosla Vs State of Haryana [1990 ATC (12) 754] which has also been followed by the Bombay Bench of the Tribunal in T. N. Chakravorty & Anr Vs UOI & Ors. [1994(3) CAT SLJ Vol.53 p.361.] In this context Note 3 in Schedule 4 of IB(E)S Rules is reproduced:

"Note 3: If an officer appointed to any post in the service is considered for the purpose of promotion to a higher post, all persons senior to him in the grade shall also be considered notwithstanding that they may not have rendered the requisite number of years of service."

It is an admitted fact that the applicant is senior to some of the Junior Scale Officers who have completed the requisite service and who have

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been considered by the DPC held on 18.12.91. It is a settled position that an administrative instruction such as contained in the O.M. of DP&T quoted above cannot supplant or overrule the statutory rules framed under Article 309 of the Constitution. In a similar case, Viz. K. K. Khosla & Anr. Vs State of Haryana & Ors (supra) the three Judge Bench of the Supreme Court observed as follows:-

"7. Respondent 3 had been appointed as a direct recruit to the post of Assistant Executive Engineer on December 7, 1977 on probation for a period of two years. Before the expiry of the probation period he was selected for promotion to the post of Executive Engineer. The appellants' contention that unless the respondent had satisfactorily completed the probation period, he could not be promoted to the post of Executive Engineer, is misconceived. There is no specific provision in the Rules requiring completion of probationary period for the purposes of promotion within the service. ..."

(Emphasis supplied)

As there is no provision in the Rules that completion of probationary period is a precondition for consideration of promotion to the post of Senior Time Scale Officer, the applicant was obviously entitled for consideration for such promotion. When persons junior to him in the service having requisite years of service were considered for such promotion by the DPC held on 18.12.91, the applicant was also entitled for such

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promotion.

4. Shri P. H. Ramchandani, learned counsel for respondents submits that even if the applicant were to be considered by a Review DPC, he would be entitled for promotion and the consequential benefits as per the law.

5. In the facts and circumstances of the case, we allow this application. Respondents are directed to convene a Review DPC for promotion to the post of Senior Time Scale Officer within a period of three months from the date of receipt of a copy of this order and consider the case of the applicant for promotion to the post of Senior Time Scale Officer. In case the applicant is found fit for the promotion, he would be entitled to all the consequential benefits as may be available under the law.

Parties to bear their own costs.

R.K. Ahuja
(R. K. Ahuja)
Member (A)

Lakshmi Swaminathan
(Mrs Lakshmi Swaminathan)
Member (J)

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