

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No. 84 of 1988

Date of Decision : 4.2.1993

Avimanyu Tripathy

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. Deepak Mishra,  
R.N. Naik,  
R.N. Hota,  
Advocates

For the respondents

Mr. Ashok Mohanty,  
Sr. Standing Counsel  
(Central Government)

...

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN.)

...

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

...

### JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the prayer of the applicant are as follows :

- a) To issue a direction to the respondents to produce the relevant papers which would indicate the reasons for fixation of seniority between the applicant and Respondent Nos. 3 to 10 and also to produce the relevant rules of the years 1962, 1980 and 1985 for the purpose of perusal by this Court.
- b) To quash the order passed in Annexure-6 which is final determination of the interse seniority between the applicant and Respondent Nos. 3 to 10.
- c) To declare that the AIR (Group 'B' posts Recruitment or Amendment Rules 1985 is **ultravirās** to the extent the same makes an entry of Research Assistants in an equal manner to that of Sr. Investigators and the note which comes under the heading of 'direct recruits' is **ultravirās** of the Constitution of India.
- d) To direct the Respondent Nos. 1, 2 and 11 to treat the applicant as senior to Respondent Nos. 2 to 10.
- e) To pass any further orders as may be deemed fit and proper **in the facts** and circumstances of the case;

2. Shortly stated, the case of the applicant is that he was appointed as Regular Investigator in the All India Radio on 8.5.1968 and was confirmed as such on 10.7.1970. The applicant was promoted to the post of Senior Investigator in the said Department and joined the post in question on 25.5.1992. In the year 1991, the Respondents 3 to 10 were brought to the

All India Radio organisation on adhoc basis as Research Assistants from the Indian Space Research Organisation as their services in the said organisation were no longer required. On their entry to the All India Radio, Respondents 3 to 10 were designated as Research Assistants and such posts had no connection with the Senior Investigators. In the year 1985, All India Radio (Group 'B' Posts) Recruitment Rules, 1962 (hereinafter to be referred to as Rules) under Article 309 of the Constitution of India came into force. By virtue of the later amendment of the Rules, Research Assistants were given benefit of service from their date of entry to the All India Radio and the post of Research Assistant was made equal to that of Senior Investigators. The grievance of the applicant in a nut-shell is that by virtue of a notification and the subsequent amendment of the Rules a benefit has been conferred on Respondents 2 to 10 retrospectively adversely affecting the seniority position of the applicant which is not permitted under the law. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that four posts of Senior Investigators were **created** in the All India Radio with effect from 17.12.1976. Being a new category of posts the Recruitment Rules were formulated and finalised in Consultation with the Department of Personnel and the Union Public Service Commission which were notified on 16.12.1980 vide Annexure-R-1. It is further maintained that the Departmental Promotion Committee which met on 9.3.1982 recommended the case of the applicant for appointment as  
*for.*

Senior Investigator and accordingly the applicant was appointed and posted in All India Radio, Madras with effect from 25.5.1982. The Respondents 3 to 10 were initially appointed by the Indian Space Research Organisation in its Site Continuity Research Centres on contract basis for doing research work. This arrangement continued till 30.9.1981 and in the year 1981 the Government decided to transfer the Research and Evaluation Work handled by Indian Space Research Organisation (ISRO) to Door Darshan alongwith the staff. The posts were specifically created in Door Darshan for this purpose. On acceptance of the offer of appointment made to the Respondents 3 to 10, they were initially appointed on adhoc basis pending completion of certain formalities like finalisation of Recruitment Rules etc. which was notified in June, 1985 and thereafter the Respondents 3 to 10 were appointed on regular basis with effect from 1.10.1981 retrospectively. Hence, it is maintained by the respondents that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. R. N. Naik, learned counsel for the applicant, Mr. Ashok Mohanty, learned Senior Standing Counsel (Central) and Mr. N. C. Mishra, learned counsel for Respondent No. 4. According to the Respondents, the post of Senior Investigator and Research Assistant has been made equal to that of a Senior Investigator. This fact was undisputed. Further admitted case of the parties is that the applicant was appointed as Investigator in the year 1968 and was confirmed on 10.7.1970 and vide Annexure-A/1, the applicant was promoted to the post of Senior Investigator with effect from 7.4.1982. The Respondents 3 to 10 were on contract service in the I.S.R.O.

Vm.

and they were doing research work. In the year 1981, they were transferred to the Research and Evaluation work of the Door Darshan and this was purely on adhoc basis. Rules had not been framed till then which were notified in June, 1985. Hence, the period of adhoc service rendered by the said respondents cannot be counted in their favour. But the fact remains that the applicant had joined the Door Darshan as an Investigator and was promoted to the post of Senior Investigator much prior to the regularisation of the services of the Respondents-3 to 10 whose regularisation has been antedated to 1.10.1981 thereby the applicant is being treated as junior to the said respondents. Before changing of the seniority list or the service prospects of a particular officer on the basis of the Rules framed, no notice was given to either the applicant or Respondents 3 to 10 especially to the applicant calling upon him to show cause as to why the seniority position should not be refixed. No doubt by virtue of the note contained in the Rules the appointment of the said respondents has been antedated but such a step having adversely affected the applicant, due notice should have been given to the applicant for due compliance with the principles of natural justice. Even though it was argued with emphasis that no rule can be enacted to adversely affect the interest of a particular Government servant who is already in a post prior to the incumbents deserving such benefit, we refrain ourselves from expressing any opinion because of the order we propose to pass.

5. In the case of K.I. Shephard and others vrs. Union of India and others, reported in (1987) 4 SCC 431, Hon'ble Mr. Justice

R.N.Mishra (as my Lord the Chief Justice then was) speaking for the Court was pleased to observe as follows :-

" on the basis of these authorities it must be held that even when a State Agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet".

In a recent judgment delivered by the Hon'ble Supreme Court in the case of Navjyoti Co-operative Group Housing Society etc. vrs. Union of India and others, reported in Judgments Today 1992 (5) SC 621. This view has been confirmed and Their Lordships have the term 'legitimate expectation'. Their Lordships have been pleased to observe as follows :

" It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in."

6. In view of the aforesaid facts and circumstances of the case we would direct that the applicant would file a representation before the Director General, All India Radio Audience Research Section and the Director, General, Door Darshan who may devote their attention to the points raised by the applicant and after giving a personal hearing both to the applicant and respondents 3 to 10, a reasoned order

for.

be passed by the competent authority and in case, the applicant is still affected, liberty is given to him to approach this Bench along with the aforesaid order.

7. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

*b. Lawars.*

MEMBER (ADMINISTRATIVE)

*h. a. Sarangi*  
4.2.93.

VICE-CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench, Cuttack  
dated the 4.2.1993/ Sarangi

