

16

26

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.17 OF 1991

Cuttack, this the 29th day of May, 1995

CORAM:

THE HONOURABLE SHRI JUSTICE D.P.HIREMATH, VICE-CHAIRMAN  
AND  
THE HONOURABLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMN.)

...

Smt. Bina Devi,  
(W/o Sri Shantimoy Pati),  
At-Tala Telenga Bazar,  
P.O-Telenga Bazar,  
Cuttack

...

Applicant.

By the Advocate

-

M/s J.Patnaik,  
L.Pangari,  
N.C.patnaik &  
S.Udgata.

-versus-

Union of India,  
represented by the Secretary,  
Ministry of Information & Broadcasting,  
Sastri Bhawan,  
New Delhi-110 001

...

Respondent.

By the Advocate

-

Mr.Ashok Misra,  
Sr.Central  
Govt.Standing  
Counsel.

ORDER

D.P.HIREMATH, VICE-CHAIRMAN

The applicant herein joined

All India Radio in February, 1958 as a Staff Artiste.

Having been selected by the Union Public Service

Commission ('U.P.S.C.' for short) she was appointed

as a Station Director (Ordinary Grade) at Jeypore

on regular basis with effect from 14.2.1978 and after

17

21-

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.17 OF 1991  
Cuttack, this the 29th day of May, 1995

Smt.Bina Devi

...

Applicant.

-versus-

Union of India

...

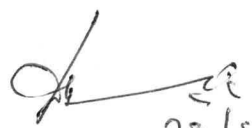
Respondent.

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? 7/9
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 7/9

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMIN.)

29 MAY 95

  
(D.P. HIREMATH)  
VICE-CHAIRMAN

29/5/95

she put in five years of service as a Station Director (Ordinary Grade) she was appointed as a Station Director with effect from 28.6.1983 and was confirmed as such in consultation with the U.P.S.C. Having worked as Deputy Director (External Services) and Joint Director (Family Welfare) in the All India Radio, she was working as Director, Doordarshan Kendra at Cuttack when this application came to be filed on 2.1.1991. In the year 1988-89 five posts of Deputy Director General, All India Radio/Doordarshan fell vacant and she was considered along with others by the Departmental Promotion Committee ('D.P.C.' for short) and on the basis of the instructions and guidelines contained in D.P. & A.R. O.M.No.22011/6-75-Estt.(D) dated 30.12.1976, the D.P.C. selected the applicant for promotion to the post of Deputy Director General, All India Radio/Doordarshan and recommended her case for promotion. As per the guidelines then existed in O.M. dated 30.12.1976, officers categorised as 'Good' by the D.P.C. could be empanelled for promotion to any post under the Union of India to which the promotions were to be made by the selection method. Thus she was found suitable by the D.P.C. for the said post.

js

2. Even the Ministry of Information and Broadcasting agreed with the recommendation of the D.P.C. finding her suitable for promotion to that post, but the Appointments Committee of the Cabinet (A.C.C. for short) unfortunately for her disagreed with the recommendation of both the D.P.C. and the concerned Ministry and as a result, she was not promoted. It appears that though five posts were vacant and to be filled up and only three officers were in the fray, only two officers, namely, T.R. Malekar and Chitra Narayan were promoted to the post of Deputy Director General by notification dated 31.1.1989 (Annexure-1) and she was not given promotion depending only on the dissent given by the A.C.C. Being aggrieved against her non-consideration for promotion, she approached this Tribunal in Original Application No.128 of 1989 which came to be transferred to the Principal Bench of C.A.T. at Delhi and re-numbered as Original Application No.2055 of 1989. The contention of the respondent in that application was that on account of the higher selectivity standards subsequently laid down in O.M. dated 10.3.1989 in respect of posts which are in the scale of Rs.3700-5000/- and above, only officers with Bench Mark Grade of 'Very Good' and 'Outstanding' were considered to be suitable for promotion and that those with Bench Mark Grade of 'Good' were not suitable for promotion.

dm

It was urged in that application that the said O.M. dated 10.3.1989 had no retrospective effect, that it came into force only with effect from 1.4.1989 as stated in the O.M. itself and therefore on the date when she was to be considered for promotion this impediment coming in her way was not in force at all. Having considered all aspects the Bench directed that her promotion had to be considered afresh. She then made a representation dated 1.10.1990 to the Union Ministry, but retired on 30.11.1990 on attaining superannuation. She now prays that the respondent be directed to consider her case in the light of O.M. dated 30.12.1976 and to pass suitable orders within<sup>a</sup> time frame.

3. The respondent has contended in its counter that the applicant having filed her representation dated 1.10.1990 did not wait for the statutory period of six months before filing this application. Though she had not completed the requisite qualifying service when the D.P.C. considered her case, she was in fact recommended for promotion to the said Deputy Director General grade. The recommendation of the D.P.C. is only advisory in nature and is always subject to the orders of the competent appointing authority. The entire

dw

case of the respondent is stated in paragraph 2 of the counter as below:

"However, the recommendations of the Departmental Promotion Committee are advisory in nature and are always subject to the approval of Appointing Authority/Competent Authority. The recommendations of the Departmental Promotion Committee were duly placed before the Competent Authority. The Competent Authority while considering the recommendations of the Departmental Promotion Committee applied higher standards of selectivity in this case as it has been done in many other cases. Smt. Bina Devi applicant did not come up to the standards, so laid down by the Competent Authority, while considering the recommendations of the Departmental Promotion Committee. The applicant was not promoted to the post of DDG because she was not approved for promotion to the said post by the Competent Authority."

When this was the case, the applicant filed the earlier application, O.A.No.128 of 1989 which was decided later by the Principal Bench at Delhi and a direction was given to consider her case afresh for promotion to the aforesaid post. The respondent then proceeds to add as follows in paragraph 3:

dk  
"Accordingly, the case of applicant for promotion to the post of DDG was considered afresh but on reconsideration also, the Competent Authority decided that its earlier decision should stand. Accordingly, the direction of the Principal Bench of the Tribunal stand fully complied with."

-6-

4. The respondent maintained that the higher selectivity standards laid down in D.O.P. & T. O.M. dated 10.3.1989 in respect of the posts which are in the level of Rs.3700-500/- and above are the guidelines to be followed by the D.P.C. There are no guidelines which bound the competent authority to follow any Bench Mark Grades. It thus took a stand that the directions given by the Principal Bench were carried out and her case considered but not cleared for promotion.

5. The relevant Office Memo relied upon by the respondent is of 10.3.1989 and it referred to the D.P.Cs. enjoying full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. However, the Office Memo was intended to prescribe fresh guidelines in order to ensure greater selectivity in matters of promotions and for having uniform procedures for assessment by D.P.Cs. Among other things, the most relevant and the one which is squarely relied upon is as follows in para 2.3.1 :

"Wherever promotions are made for induction to Group 'A' posts or Services from lower groups, the bench mark would continue to be 'good'. However, officers graded as 'outstanding' would rank en bloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good'

and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post.

(ii) In respect of all posts which are in the level of Rs.3700-5000 and above, the bench mark grade should be 'Very Good'. However, officers who are graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post."

The Office Memo further made it clear that these instructions will take effect from 1.4.1989.

6. Even before the Principal Bench which decided O.A.No.2055/89 the same argument was advanced relying on the aforesaid Office Memo dated 10.3.1989 and the same para 2.3.1 (ii) as well as para 2.1.2 were relied upon and referred to. It was canvassed before the Tribunal by the applicant's counsel that these guidelines came into force about three months after the D.P.C. considered the case of the applicant and recommended her for promotion. Therefore, these guidelines are not applicable to her case. The selection of the applicant and three others was made by the D.P.C. and recommended for promotion in the light of the guidelines then existed, namely, D.P. & A.R. O.M.No.22011/6/75-Estt.(D) dated 30.12.1976. Therefore, when the matter came before the A.C.C., it had only to apply the norms and guidelines considered by the D.P.C.



It is undisputed that the guidelines of 1976 did support the case of the applicant for promotion and considered by the D.P.C. The Principal Bench observed that because the guidelines of 10.3.1989 were not made known to the applicant nor were they published before 10.3.1989, her case was directed to be considered afresh.

7. It is now the grievance of the applicant that the selection method that was adopted by the D.P.C. while considering her case alone is applicable to her and not the O.M. of 10.3.1989. The selection method in the earlier O.M. of 30.12.1976 was as follows:

"2. Selection Method: Where promotions are to be made by selection method as prescribed in the Recruitment Rules, the field of choice viz., the number of officers to be considered should ordinarily extend to 5 or 6 times the number of vacancies expected to be filled within a year. The officers in the field of selection, excluding those considered unfit for promotion by Departmental Promotion Committee, should be classified by the Departmental Promotion Committee as "outstanding", "Very good", and "Good", on the basis of their merit, as assessed by the D.P.C. after examination of their respective records of service. In other words, it is entirely left to the D.P.C. to make its own classification of the officers being considered by them for promotion to selection posts, irrespective of the grading that may be shown in the CRS. The panel should thereafter be drawn up to the extent necessary by placing the names of the "Outstanding Officers" first, followed by the officers categorised as "Very Good" and followed by the officers categorised as "Good". The inter se seniority of officers belonging to any one category would be the same as their seniority in the lower grade."

dk

It could thus be seen that those officers who were categorised as 'Good' by the D.P.C. could also be empanelled for promotion to any post under the Union of India to which the promotions were to be made by the selection method. Because the applicant was categorised as 'Good' by the D.P.C., she was also found suitable for promotion to the post <sup>to</sup> which now she aspires. Even the learned counsel for the respondent admitted that the categorisation as 'Good' could not be considered as 'Unfit'. Therefore, in the selection method of 1976, 'Outstanding', 'Very Good' and 'Good' were categorised in which the officers could be placed though those categorised as 'Outstanding' and 'Very Good' could get preference. On the basis of these categorisations alone inter se seniority belonging to any category could not be disturbed. It was brought to our notice that the D.P.C. for promotion to Group 'A' officers consisted of Chairman/Member, U.P.S.C. as Chairman; Secretary/Joint Secretary(D), Ministry of Information & Broadcasting as Member; Director General, All India Radio as Member; and Director General, Doordarshan as Member. The recommendations of the D.P.C. have to go to the U.P.S.C. before perhaps being sent to the A.C.C. It was also stated by the respondent's counsel during arguments

dh

that even the concerned Ministry of Information and Broadcasting had recommended her case for promotion falling in line with the D.P.C. To put it in a nutshell, the D.P.C. consisting of high ranking officers recommended the case of the applicant, the U.P.S.C. gave its clearance and the Ministry accepted these recommendations. It was only the A.C.C. which perhaps did not see eye to eye with these recommendations.

8. As far back as on 25.6.1991 this Tribunal felt it necessary to look into the proceedings of the D.P.C. and A.C.C. in which, according to the learned Standing Counsel for the Central Government, mention was made about consideration of the case of the applicant in pursuance of the order of the Principal Bench referred to above. It therefore directed the respondent to produce those records for perusal of the Bench. On 16.9.1991 hearing both sides an exhaustive considered order came to be made by this Tribunal directing the respondent to produce the records referred to above and if privilege was claimed under Sections 123 and 124 of the Evidence Act, that could be taken up after the documents are produced and perused by the Tribunal. It appears after 15.7.1992 the matter was not pursued as at that stage it was submitted for the Government that the

question of privilege was pending before the Supreme Court in certain matter. When we asked for the documents repeatedly even during hearing, the respondent's reply was that they were not made available. The applicant retired as far back as in the year 1990 and this is the second round that she has resorted to, to claim benefit even though she has retired. It was brought to our notice that when the D.P.C. considered the case, there were five vacancies and only two were filled up but she was ignored by the A.C.C. Therefore, there was clear vacancy when she became due for promotion and the D.P.C. recommended her case. As we have pointed out earlier, the O.M. of 10.3.1989 under which she is now sought to be held to be not competent for promotion, was to take effect only from 1.4.1989. The respondent is not in a position to inform the Tribunal what weighed with the A.C.C. to reject her case. Even at this length of time no records were made available for our scrutiny though the respondent could ask the Tribunal to withhold them from the applicant. That, however, could have been considered by going through the records. It is undisputed that her case did not fall within the ambit of O.M. dated 10.3.1989. That being so, we do not find any reasons why the applicant should not get promotion.

967

9. It is next urged for the applicant that the action of the competent authority in the matter of promotion denying promotion to her to the post in question is discriminatory in nature inasmuch as two other officials whose cases were also considered along with hers and who had also secured the same rating from the D.P.C. were given promotion. In support of this grievance, the applicant has made certain averments which have not been controverted by the respondent. One of the guidelines in O.M. dated 30.12.1976 with regard to selection method has been reproduced in para 4(ii) of the application to which we have adverted earlier. What she has particularly averred in para 5(ii) of her application is also quite relevant and it is as follows :

"ii) For that at the hearing of O.A.No.2055 of 1989 before the principal Bench of the Central Administrative Tribunal from the proceedings of the D.P.C. produced it was revealed that Smt.Chitra Narayan had also been categorised as "Good" by the Departmental Promotion Committee for some of the years on the basis of her service records and the Appointments Committee accepted the recommendations of the Departmental Promotion Committee for her promotion. The petitioner on the other hand with the same Bench Mark Grade of "Good" was not promoted to the post of Deputy Director General, All India Radio/Doordarshan. Denial of promotion to the petitioner on the ground that the petitioner has been categorised as "Good" by the D.P.C. would amount to discrimination and would be violative of the fundamental rights of the petitioner under Articles 14 and 16 of the Constitution."

The learned counsel for the respondent only stated that it was the A.C.C. which turned down all the recommendations

29

38

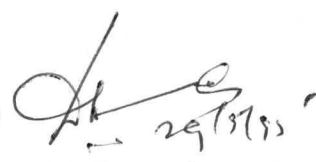
-13-

and did not give promotion to her. Though the applicant has been agitating about her being ignored without any valid reasons from the year 1989 by filing O.A.No.2055 of 1989, still the Tribunal is not made known why the same norms that weighed in giving promotion to the two other officials did not weigh in the case of the applicant. In our considered view, therefore, denial of promotion to the applicant on the plea that her case did not fit into the norms that were laid down in 1989 guidelines is clearly discriminatory offending Article 14 of the Constitution and cannot be upheld. The learned counsel for the applicant Shri J.Patnaik referring to the prayer made in the application urged that though she prayed for a direction to reconsider her case, in the circumstances obtaining so far, it serves no purpose by making such a direction but a direction be made to give her promotion from the date her colleagues were promoted, i.e. from 31.1.1989. According to him, the Tribunal is competent to give appropriate relief and need not confine itself to the one prayed for in the application, as ultimately it is the Tribunal which has to do justice to the parties taking into consideration all the attendant circumstances. We do find sufficient force in this contention. It may be stated here that generally the Tribunals shall ask the competent authority or the appointing authority to reconsider the case of a Government servant who has

been denied promotion. That course was adopted, as already pointed out earlier, by the Principal Bench while disposing of O.A.No.2055 of 1989 before it. The applicant retired in November,1990 and still she has not been able to enjoy the fruits of favourable consideration of her legitimate grievance. In our considered view, this is a fit case in which we should make a direction that she shall be given promotion to the post of Deputy Director General with effect from 31.1.1989 on which date Shri T.R.Malakkar and Smt.Chitra Narain were promoted in the pay scale of Rs.5900-6700/-. The applicant shall be deemed to have been promoted from that date and she shall be given all the monetary benefits including the pensionary benefits in the light of the pay scale to which she stands promoted. All the monetary benefits so awarded shall be calculated and paid within 120 (hundred and twenty) days from the date of receipt of copy of this order. Parties to bear their costs.

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)

29 MAY 91

  
(D.P. HIREMATH)  
VICE-CHAIRMAN

A.Nayak, P.S.