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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 98 OF 1999
Cuttack this the 02nd day of September 2004

Sushil Kumar Patnaik ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

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

[Signature]
(M.R. MOHANTY) 02/09/04
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 98 OF 1999
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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND

THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

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Susil Kumar Pattnaik, aged about 45 years,
S/o. Sri H.K. Pattnaik - at present working
as Producer, Grade-II, Doordarshan Kendra,
Bhubaneswar, Dist-Khurda

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Applicant(s)

By the Advocates

M/s. V. Narasingh
L. Samantray
Mr. P. V. Ramesh
M/s. B. Pal,
B. Mahapatra
B. Pal, P. Pradhan
S. R. Pattnaik

- VERSUS -

1. Union of India through Director General,
Doordarshan, Mandi House, New Delhi
2. Director General, All India Radio, Akashvani
Bhawan, New Delhi
3. Station Director, Door Darshan Kendra, Bhubaneswar
4. Taradatta Satti, Asst. Station Director,
Doordarshan Kendra
5. MS M. L. Sharma, Asst. Station Director,
Doordarshan Kendra
6. Md. Ratiq Khan, Asst. Station Director,
Doordarshan Kendra
7. MS Balbir Kaur, Asst. Station Director,
C/o. Station Director, Doordarshan Kendra
8. B. D. Mohanty, Producer, Gr. II, Doordarshan Kendra
9. R. N. Mishra, Producer, Gr. II, Doordarshan Kendra,
Shilong

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Respondent(s)

By the Advocates

Mr. A. K. Bose, S. S. C.
M/s. C. R. Misra
G. Misra
D. Das (Res. No. 9)



O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicant (Shri Sushil Kumar Pattnaik) has filed this Original Application being aggrieved by the inaction on the part of the Respondents to correctly reflect his position in the gradation list of Producer, Gr.II, for which he has been submitting repeated representations to them from November, 1996 onwards. He has prayed for the following reliefs:

- 1) To direct the Respondents to correctly reflect his position in the gradation list of Producers, Gr.II within Sl. Nos. 36 to 38 and declare him senior to Res.Nos. 4 to 9 in the said grade.
- 2) To direct the authorities to consider him for promotion to the rank of Asst. Station Director (in short A.S.D.) by treating him senior to Res. Nos. 4 to 7 with all consequential benefits.
- 3) To quash Annexure-A/6 relating to promotion of Res. Nos. 4 to 6; and
- 4) Any other relief(s).

2. The facts of the case in brief are as follows.

The applicant was recruited as Producer, Gr.II (Staff Artist) on 4.5.1982. After his appointment, Res. Nos. 4 to 7, who were working as Production Assistant and Floor Manager were promoted as Producer, Gr.II (Staff Artist) vide order dated 30.3.1983 (Annexure-A/3). With effect from 23.10.1984, All India Radio (Group-B Posts) Recruitment (Amendment) Rules, 1984 came into force laying down the rule for maintaining inter se seniority of staff artist, who became Govt.servants and continued as a separate category. By order dated 03.5.1982, the Govt. decided to treat the staff artists

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as Govt.servants," and it is in this background, the applicant as well as private-respondents opted to become Govt.servants. Thereafter, Indian Broadcasting (Programme) Service Rules, 1990, was notified with effect from 5.11.1990 laying down the promotion rules in respect of Producers, Gr.II, making them eligible to hold junior time-scale post with three years of regular service in the grade. On 19.10.1995, Respondent Nos. 4 to 7 got promotion as A.S.D. inspite of the fact that they were junior to the applicant in the feeder cadre of Producer, Gr.II. Soon thereafter, on 26.11.1996, combined seniority list of Producer, Gr.II was published placing Res. No.8 at Sl. No.123 and Res. Nos.4,5, and 6 at Sl. Nos.131,132 and 133 and Res.No.7 at Sl.No.135, Res.No.9 at Sl.No.137 and the Applicant at Sl.No.173, respectively. The applicant submitted representation demanding correction in the gradation list, by placing him above the private respondents as he was a direct recruit to the grade of Producer, Gr.II. But his representations were of no avail and in the circumstances, being aggrieved, he has filed this O.A. with the prayers referred to above.

Vide Order dated 16.3.1999, while admitting this O.A., the Tribunal was pleased to issue interim direction to the effect that the result of this O.A. should govern all promotions made during pendency of the O.A.

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The Respondents-Department as well as private Res.No.9 have filed their counter opposing the prayer of the applicant. As regards the Respondents-Department,

they have, at the outset, raised the question of limitation. They have argued that after 1996, a combined seniority-list was again published in 1998, to which no representation was received from the applicant, and therefore, the applicant is estopped to agitate the matter now before the Tribunal. On the merit of the case, they have submitted that the combined seniority list has been prepared on the basis of panel on the basis of which the applicant was selected and appointed in the grade in various offices/stations of AIR and Doordarshan, without disturbing the inter se seniority of the officers empanelled. They have further stated that firstly, the seniority of different ^{panel}/prepared at the different stations of All India Radio and Doordarshan has been decided chronologically and the officers from the respective panel have been placed in the seniority list enblock irrespective of their date of joining. They have submitted that the date of appointment in respect of the applicant had been corrected, but that correction did not affect his place of seniority, because, his place of seniority was the direct derivative of his place in the panel from which he was appointed. It has been stated by them that the applicant was informed of this fact vide D.G., AIR's Office Memorandum dated 17.6.1997. They have also stated that the promotion to the next higher grade has been done strictly as per rules/guidelines applicable in this regard. They have canvassed that the application, on all these grounds, deserves no merit and therefore, the same is liable

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to be rejected.

We have heard the learned counsel appearing on behalf of the parties and perused the materials available on record. The applicant has submitted a rejoinder to the counter and also relied on the amended recruitment rules of All India Radio (Group-B Posts) 1984, published on 23.9.1984, Recruitment Rules for the Indian Broadcasting (Programme) Service Rules, 1990 and two case laws, viz., Union of India & Ors. vs. Chetan S. Naik (reported in (1999) 6 SCC 457 and Baijnath Sharma v. Hon'ble Rajasthan High Court at Jodhpur & another (reported in (1998) 7 SCC 44. The Respondents have also brought on record the relevant recruitment rules.

Respondent No.9 has also filed his counter. He has disputed that the applicant could be placed senior to him, because, the name of Res. No.9 does not appear in the same list of regularisation under Annexure-A/4. In fact, Res.No.9 was regularised long before the date of regularisation of the applicant. However, no material has been placed before us by Res.No.9 to substantiate the claim that he has made and also stated that the question of regularisation of the applicant does not arise as he was a direct recruit and the private Res.No.9 was a promotee.

We have considered the rival submissions advanced at the Bar. At the outset, we must point out that the question of law involved here is not a trying or complicated one. The applicant was appointed

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as a direct recruit Producer, Gr.II on 23.5.1982 for DDK, Bhubaneswar/Cuttack. The private Respondents were promoted from the grade of Production Assistant/ Floor Manager to Producer, Gr.II (Staff Artist) on 30.3.1983. The applicant, has, therefore been agitating his grievance before the Respondents that he being recruited as Producer, Gr.II earlier than private Respondents, his place in the gradation list should have been shown above them. This fact has not been disputed in the counter by the Respondents or during oral argument. Thus, there is no iota of doubt that the grievance of the applicant has not been squarely answered by the Respondents-Department and therefore, it is not open to them to shut the door for the applicant by invoking the point of limitation with a view to denying him justice once again. It is the Respondents-Department, who are duty-bound to have sincerely answered the question raised by the applicant in his earlier representations. With regard to grievance of the applicant in respect of combined seniority list of 1998 as raised in his representation, has been explained by him in his application which are quite convincing and therefore, we reject the plea of limitation as raised by the Respondents-Department in their counter as well as during oral argument.

Coming to the merit of the case, we find from the counter that the Respondents-Department have fixed the seniority of the applicant vis-a-vis private Respondent Nos. 4 to 9 in the grade of Producer, Gr.II,

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as averred by them in their counter, on the following principles:

"...has been fixed on the basis of panel from which the officer has been selected and appointed in the Grade in various offices/stations of AIR and Doordarshan without disturbing the inter se seniority of the officers empanelled. In other words, first the seniority of the different panel prepared at the different stations of AIR and Doordarshan has been decided chronologically and the officers from the respective panels has been placed in the senior list enblock irrespective of their date of joining".

Accepting the principles as propounded by the Respondents-Department in their counter, we had called upon them to produce before us the combined seniority list showing the chronology of panel and the inter se seniority position of the officers in order to find out whether the position of the applicant-vis-a-vis the private respondents had been fixed correctly according to that principle. We had to allow several adjournments to enable the Respondents-Department to produce the relevant file/materials in support of the principle of chronology of panels for preparing the combined seniority list by them, and Finally, they submitted through the learned Senior Standing Counsel that "the documents on the basis of which the notings were recorded by the then dealing hand and officers at that time could not be traced out inspite of our best efforts". This may please be intimated to the Hon'ble C.A.T. through the Senior Standing Counsel". We are not impressed by this submission. The documents which deal with policy matter, as in the instant case to be seniority, are always preserved as permanent documents.

But we are surprised to note that the Respondents-Department have not cared to follow this basic principle of administration. Further, the averments made by them in their counter-affidavit filed on 20.8.1999 were at best prepared without any reference being made to the original policy decision and therefore, the averment which has been made by the Respondents cannot but be treated insufficient and false and therefore, the defaulting officer is liable to be proceeded against. We would, therefore, direct the Director General, AIR to fix responsibility and take suitable disciplinary action against the officer swearing false affidavit before the Tribunal, and report compliance within a period of 120 days from the date of receipt of this order.

From the above, it is apparent that the combined seniority list of Science Officers/Producers Gr.I/Producers (SG)/Producers, Gr.II/Editor(Script)/Translators of All India Radio/Doordarshan was prepared on no basis of rules laying down the principles for fixation of seniority as notified by the Government in spite of the fact that the said seniority rules governing the field were very much available with the Respondents-Department. The basic principle of determining inter se seniority of promotees and direct recruits etc. is based on the length of service. However, in the case of All India Radio, the authorities having notified All India Radio (Group-B) Recruitment(Amendment) Rules, 1984, which was promulgated on restructuring of

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Staff Artist as Govt. employees, it has been clearly laid down that the staff artists after become Govt. employees shall continue as a separate category and therefore, inter se seniority shall be determined on the basis of their date(s) of joining in the post/grade on regular basis. As the seniority rules concerning the staff artist on their becoming Govt. servants ^{is} to be determined on the basis of the length of regular service in the grade of Producers-Gr.II, the Respondents-Department are duty-bound under the rules to recast the combined seniority list of Science Officers/Producers, Gr.I/Producers (SG)/Producers, Gr-II/Editors(Script)/Translators of All India Radio/Doordarshan etc. on the basis of the seniority rules as contained in the recruitment rules referred to above. As it is clear that the combined seniority lists published in 1996 as well as 1998 (Annexures-A/7 and A/9) were prepared on rules other than the seniority rules as notified in the recruitment rules of 1984, we have no hesitation to quash both those impugned seniority lists, being de hors the rules. Ordered accordingly.

For the reasons discussed above, we direct the Respondents-Department to publish revised seniority list by following the principle of length of regular service as enshrined in the recruitment rules, called All India (Group-B Posts) Recruitment (Amendment) Rules, 1984, within a period of 120 days from the date of receipt of this order.

Before we part with this case, we would

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like to observe in addition to what has been discussed above, that one of the cardinal principles of determining seniority is that a person recruited earlier either by way of direct recruitment or by way of promotion will, always rank senior. Admittedly, the applicant was as Producer, Gr.II recruited as a direct recruit/with effect from 24.5.1982 whereas the private respondents were promoted to that grade with effect from 30.3.1983. Thus, by no stretch of imagination, the applicant having joined the post of Producer, Gr.II earlier than the private Respondents can be held junior.

In the result, this O.A. is allowed with the observation and direction made above. No costs.

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(M.R. MOHANTY) 02/09/04
MEMBER (JUDICIAL)

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(B.N. SOM)
VICE-CHAIRMAN

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