

on 29.3.04

For hearing.  
1/4.

Benen

12/4/04

For further hearing  
ad 21-3.5.04

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30.04.04

Mr. A.K. Mishra  
entered appearance  
on behalf of the  
applicant.

For further hearing  
ad 21-3.5.04.

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18.5.04  
Received from Court

Copies of court  
may be sent to the  
Court to be decided.

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most position in the relevant  
grade/cadre, in the interest  
of proper adjudication of  
this case. Accordingly, the  
matter is adjourned to  
13.4.2004 as a part-heard  
case.

Vice Chairman

Member

12.04.2004.

By filing a vakalatnama today in court,  
Mr. A.K. Mishra Ld. Sr. Counsel entered appearance  
on behalf of the applicant. Heard the Counsel  
for both the Parties in Court.

Can on 03.05.2004 for further hearing.

Vice Chairman

Member

19.05.04

Heard further. Hearing is concluded.  
For the reasons recorded separately,  
this is disposed of.

Vice Chairman

Member

1/4  
18/5/04  
S.C.

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O.A.No.536 of 2000

ORDER DATED : 19-05-2004.

Applicant was initially recruited as a Technician by the Superintending Engineer, High Power Transmitter, AIR, Kingsway, New Delhi (North Zone) vide order dated 04.12.1985 under Annexure-1 and, thereafter, he was promoted as Senior Technician on 08.08.1989. He made a representation for a zonal transfer (to All India Radio, Cuttack) on compassionate ground; which was considered by the competent authority and ultimately, he was transferred to All India Radio, Cuttack under East Zone in the grade of Senior Technician (vide order under Annexure-3 dated 04-08-1993) and, since he was transferred on his own request; it was stipulated in the order that he will not be entitled to any TA/DA and joining time and that he would rank junior to all the Senior Technicians (regularly appointed prior to him, to the grade) in the East Zone. Pursuant to the said order, the Applicant came on transfer to East Zone. When 15 Senior Technicians were promoted to the grade of Engineering Assistant (vide order dated 24.06.1996, under Annexure-4) and the Applicant did not get the promotion, he represented raising the question of his nonconsideration for his promotion to the post of Engineering Assistant and, when it did not

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yield any fruitful result, the Applicant filed this Original Application under section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed for a direction (to the Respondent No. 1) to consider him (Applicant) for promotion to the Post of Engineering Assistant with effect from 24-06-1996 and for inclusion his name in the proper place in the gradation list.

2. Respondents, in their counter, have stated that Posts of Tech./Sr. Tech. and Engineering Asst. are Zonal cadres so far as their promotions are concerned (and that promotions and seniority etc. are maintained in the Organisation on Zonal basis) and that the gradation lists of persons recruited in different zones (i.e. North, South, East and West) are maintained separately for the purpose of granting promotions. Seniority list of Technicians are prepared as per the date of joining in the zone and that transfers of Technicians are normally not made except on their own request and that inter-zonal transfer, even on request, is done only in exceptional cases and that too, with the undertaking that employee is ready to lose his seniority and TA/DA/Joining time and that on the transfer of the Applicant from one Zone to another

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his seniority has been fixed according to the said principle and that his promotion to the post of Engineering Asst. shall definitely be considered as per his seniority in the Zone to which he has gone on transfer. It has been disclosed that the position of the Applicant in the seniority list (of Senior Technicians) is at 279 in the East Zone; for which it has been clarified by the Respondents that none of the Sr. Technicians below (in the gradation list) of the Applicant had been promoted to the post of Engineering Assistant and it has been further clarified that Sh. Hamid Khatar, Sr. Tech. stands at Sl. No. 23 and Smt. Ila Bardhan stands at Sl. No. 55 in the gradation list much above the name of the Applicant in the gradation list of Sr. Technicians. Respondents have also denied to have received any representation against the order of promotion and, therefore, they have prayed for dismissal of this O.A.

3. We have heard the learned counsel appearing for both sides and perused the materials placed on record.

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4. The proviso appended to the Memorandum issued on 14-06-1963 reads as under:-

"provided that transfer from one zone to another will be permissible only on the written request of the official concerned so transfer and on his agreeing to give his consent in writing that he has no objection being treated as junior to all the senior Technicians already in the zone on the date of his joining the new zone".

Therefore, there is nothing wrong in placing the Applicant below in the gradation list of the persons those who were recruited or promoted much before the Applicant joined in the East zone. The Applicant was also transferred in his capacity as Sr. Tech. from North Zone to East Zone on the clear understanding that he will lose his seniority in the grade and will become junior to his juniors (from among the Sr. Tech.) who are already in the East Zone. Order to that effect was made on 4.8. 1993 and the Applicant obeyed the said order and joined in the new Zone. He never challenged the same at any point of time even by making any representation against the said order. Therefore, having accepted

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the said order, now he is estopped under law to make any objection with regard to his position in the seniority list. He has also not challenged the seniority list published in the grade of Sr. Techs. at any point of time.

5. Recruitment Rule for promotion to the post of Engineering Assistant (Annexure-7) provides for direct recruitment as against 80% of vacancies ; by promotion 10% of the vacancies on seniority-cum-fitness basis and 10% of the vacancies through limited departmental competitive examination. It has further been provided that Senior Technicians in All India Radio/Doordarshan (with five years service in the grade or in a higher grade, rendered after appointment to the grade on a regular basis) are eligible for consideration for promotion. Since the persons, those who were considered for promotion by DPC under 10% vacancies quota, were senior to the Applicant in the grade of Sr. Tech. according to their place in the gradation list of Sr. Tech., the Applicant has got no grievance really to be raised.

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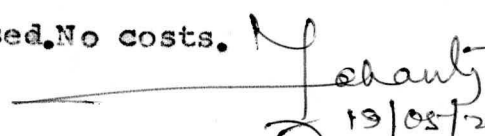
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6. Apart-from the above, the persons those who were promoted to the Engineering Assistant have not been made party in this Original Application;nor the persons over whom the Applicant wants to be placed in the gradation list of Sr.Techs.have been made parties.Applicant have also not controverted the statements made in the counter(by filing any rejoinder)nor he has made any appeal against the order of promotion to his higher authorities.Therefore,he is estopped to raise any such point.

7. In the light of the discussions made above,we find no merit in this Original Application; which is accordingly dismissed.No costs.

  
(B.N. SOM)  
Vice-Chairman

  
13/05/2004  
(M. R. MOHANTY)  
Member(Judicial)