

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

1. Coir by R-3 to  
23 not sent.

11. Retrospective R-18  
2 sent.

111. Cofy sent.

111. ad 7 to 4.4.02

L  
3.4.02

B21

For [unclear]

1  
5.2.02

W

Recd recd

For [unclear] 10.2.02

at 10.0.02

L  
10.2.02

For [unclear]

L  
10.2.02

W

Order dated 11.2.2004

Heard Shri B.Pal, the learned senior counsel for the applicant and Shri U.B.Mohapatra, learned Addl.Standing Counsel appearing on behalf of the Respondents.

The applicant was initially engaged as Producer Gr.II under the Ministry of Information and Broadcasting on 1.8.1977 on contract basis and subsequently, he was regularised with effect from the said date, i.e., 1.8.1977. In the meanwhile, rules have been framed under Article 309 of the Constitution of India being called 'Indian Broadcasting (Programme) Rules, 1990'. In the said rules it is indicated as per Schedule-5 appended to the rule as to how the promotion in the grade of Jr.Time Scale Programme Officer (in the scale of Rs.2200-75-2800-EB-100-4000) shall be given. As we notice, it is stipulated that 50% of the cadre strength is to be filled by direct recruitment and the other 50% by promotion from the cadre of Producer (Selection Grade), Producer, Producer, Gr.II (which is the applicant's claim to have been initially appointed). The word 'promotion' used in the aforesaid rules has been interpreted by the Hon'ble Supreme Court in the case of Union of India & Ors. vs. Chetan S.Naik reported in (1999) 6 SCC 457, wherein, it has been laid down as under:

" Keeping in view the relevant rules, we, thus, find that the view taken by the Ernakulam Bench is the correct view in the sense that the method of

promotion to JTS posts is on the basis of promotion by seniority . subject to finding out the fitness of the candidate for the Programme Wing or the Production Wing, through the DPC. The Karnataka Bench, therefore, rightly followed the Ernakulam Bench decision. We, therefore, do not see any reason to interfere in the two special leave petitions. As a consequence, the Full Bench view of the Madras Tribunal in O.A. No.1221 of 1994 cannot be said to be laying down the correct law".

The sole grievance of the applicant is that the Respondents-Department had on a wrong premise interpreted the expression/word promotion used in the 5th schedule of the Rules and on such wrong interpretation they had notified promotion order which has been appended to the application as Annexure-3. The applicant has further stated in this case that although he was eligible to have been given promotion from retrospective date, but he has been wrongly given promotion from 1993. Therefore, he has filed this case for appropriate direction to the authorities to re-determine his seniority and give him proper seniority from the date when he would be found eligible.

The official respondents on the other hand have stated in their counter that the tentative list has been published by which it is indicated that few officers have been granted promotion on adhoc basis as per Annexure-3 to the application, but the final list would be published in due course, after recast of the seniority list as per the direction of the Hon'ble Supreme Court. As per the tentative list

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since the applicant was found to be eligible from 1993 therefore, he was given promotion from that date and after of the seniority list recast/ if they found that the applicant is due to be promoted from an earlier date they shall consider the same. Shri U.B.Mohapatra, the learned counsel appearing on behalf of the official respondents has raised an initial objection that the promotion of the applicant from a retrospective date is not possible and whatever decision the Respondents have taken, after reviewing the seniority of the applicant vis-a-vis the other officers, they have done so, and though it is tentative, but the final decision shall be taken after taking into account the stock of the entire seniority position. Whereas Shri Pal has cited a judgment of the Supreme Court reported in 1998 (7) SCC 44 and submitted that any officer or an employee having not given promotion from retrospective date, for that he should not be allowed to suffer and he should be given retrospective promotion from the date when such officer or employee is eligible to get the same, provided, he is in service and vacancies are available in that cadre.

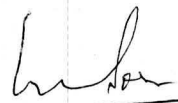
In view of the above position it is clear that tentative promotion list whatever published under Annexure-3 to the application is not final, but the Respondents shall take a final decision in the matter in course of time. Since there has been no dead-line as to when such final decision in the matter would be taken has been fixed, we, therefore, feel it proper to issue a direction to the Respondents to consider the case of the applicant for

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promotion to the Junior Time Scale as stipulated in Schedule-5 depending upon the vacancies available in that grade/cadre within a period of three months from the date of communication of this order. If the Respondents take such decision by giving promotion retrospectively, as the applicant has already retired from service, they shall, therefore, release all the arrear salaries and also the revised pension on the basis of such scale of pay which would be fixed by them.

With the ~~ad~~resaid observation and direction, this O.A. is disposed of. No costs.

  
VICE-CHAIRMAN(J)

  
VICE-CHAIRMAN(A)