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CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH

Original Application No. 25/2010

Jodhpur this the 29 January, 2013

[Reserved on 22.1.2013]

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Jai Prakash S/o Shri Hans Raj aged about 45 years, resident of Inside Nagaurigate, Kalal Colony, Gali No. 2, Kila Road, Jodhpur, at present employed on the post of LDC in the Office of All India Radio, Paota 'C' Road, Jodhpur.

.....Applicant
(Through Adv. Mr. J.K.Mishra)

Versus

1. Union of India through the Secretary to the Government, Ministry of Information and Broadcasting, 'A' Wing, Shastri Bhawan, New Delhi.
2. Director General, Prasar Bharti (Broadcasting Corporation of India), Doordarshan, Doordarshan Bhawan, Copernicus Marg, New Delhi – 110 001.
3. Station Director, Prasar Bharti, Broadcasting Corporation of India, Civil Construction Wing, All India Radio, TV Studio Complex, Jhalana Doongri, Jaipur.

.....Respondents
(Through Adv. Mr. Kuldeep Mathur)

ORDER

Per : Justice K.C.Joshi :

This application is directed against the order No. JAI(RAJ ZONE)/ACP/2008-S/5735 dated 14.8.2008 (Annexure.A1) of the Station Director, Prasar Bharati Broadcasting Corporation of India, Civil

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Construction Wing, Jaipur turning down the claim for ACP benefits to the applicant.

The applicant has prayed for the following relief(s):

"(i) That impugned order dated 14.8.2008 (Annexure.A1) may be declared illegal and the same may be quashed. The respondents may be directed to treat the appointment of the applicant as Clerk-II (LDC) as direct recruit and grant him the financial benefits under ACP Scheme from due date ie., 18.3.2003, on rendering 12 years of regular service as LDC and allow all consequential benefits including arrears of difference of pay along with market rate of interest.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice."

(iii) That the costs of this application may be awarded.

2. The brief facts of the case are that the applicant was appointed as Peon on 26.7.1983 in office of AIR, Jodhpur. He was promoted to the post of Sorter vide letter dated 16.10.1992. The Recruitment Rules for the post of Clerk Grade II in scale Rs. 950-1500 stipulates 90% direct recruitment and 5% from amongst educationally qualified Group 'D' of All India Radio, through Departmental Competitive Examination having 5 years regular service in Group D post and 5% by seniority-cum-fitness from amongst educationally qualified Group D staff of All India Radio having five years experience in Group D posts. When two vacancies were notified for filling up under 5% quota through Departmental Examination, the applicant who was fully eligible applied for the same and he passed the examination. He has been promoted as Clerk Grade II vide order dated 19.3.1993. When he requested for 2nd ACP, he was informed that he would be eligible for 2nd ACP w.e.f. 27.6.2007. His case was again taken up for 2nd ACP, which was also rejected on the ground of Clarification No.8 of the Scheme for ACP as

per the said clarification applicant is not entitled for the benefits on completion of 24 years of service. Applicant states that his appointment was against 5% quota through competitive examination and the same is to be treated as a direct recruitment. He has further stated that in identical cases this Bench of the Tribunal had granted due benefits of ACP by treating their appointment through competitive examination as direct appointment to the post of LDC. He has mentioned the names of Shri Jetha Ram and Amar Singh LDCs to that effect. Since the same benefit has not been granted to him, he has filed the present OA for the aforesaid reliefs.

3. The respondents have filed a reply to the OA opposing the prayers. They have stated that as per clarification given in Para 8 of the Scheme, where relevant recruitment rules prescribed promotion quota to be filled up on the basis of the departmental examination and shall be counted as promotion for the purpose of ACP. It was for this reason that the applicant's claim was rejected and this was duly intimated to him. They further submitted that the applicant was initially appointed as Peon in the year 1983 and thereafter he was promoted as Sorter on 5.0.1992 in grade Rs. 2610-3300. Subsequently he was promoted from Group D post to LDC on the basis of Departmental examination against 5% quota from amongst educationally qualified Group D staff of All India Radio with 5 years service in Group D post.

4. The counsel for the applicant vehemently contended that the Recruitment Rules for filling-up the post of Clerk Grade - II in the pay

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scale of Rs. 950-1500 were issued on 15.12.1989. The vacancies for the said post were to be filled in as under :-

- “(i)90% by direct recruitment
- (ii)5% from amongst educationally qualified Group ‘D’ staff of All India Radio, through Departmental Competitive Examination, having 5 years regular service in Group ‘D’ post.
- (iii)5% by seniority-cum-fitness from amongst educationally qualified Group ‘D’ staff of All India Radio, having five years experience in Group ‘D’ post.

He further contended that the applicant was selected under category – II i.e. through departmental competitive examination, having 5 years regular service in Group ‘D’ post and he was placed for two years for probation and thus, the applicant can only be treated as a direct recruitee in the cadre of Clerk Grade-II whereas, the non applicants are treating the applicant as if he has been promoted against the 5% quota. The counsel for the applicant put his argument that if a person is posted under probation for two years then it can only be a direct recruitment and the department has erred in treating the applicant as a promotee while recruited on the category – II i.e. through departmental competitive examination having 5 years regular service in Group ‘D’ post.

5. Per contra, the learned counsel for the respondents refuted the arguments of the counsel for the applicant and he further contended that out of the total cadre 90% is fixed for direct recruitment and rest 10% quota is fixed by way of promotion and out of that 5% by departmental competitive examination and 5% by seniority-cum-fitness and the respondents have rightly issued the order Annex.A/1 dated 14.08.2008, therefore, it cannot be said to be bad in the eye of law. The ACP has been granted to the applicant treating him as a promotee official and

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granted him all the consequential benefits and the claim of the applicant to grant the ACP w.e.f. 18.03.2003 is not sustainable in the eye of law.

6. We have considered the rival contentions of both the parties and also perused the ACP Scheme issued by the respondents. In the ACP Scheme itself, it has been laid down that 5% employees promoted through limited competitive examination having 5% of continuous service shall be treated as promotee and not as a direct recruitee. The Scheme of the ACP and the Rules clearly show that the intention of the rule making authority is to provide accelerated promotion through the limited competitive examination to the 5% persons working in Group 'D' on the basis of limited competitive examination and in any case this quota cannot be called as reserved for direct recruitee.

7. In our considered view, the contention raised by the counsel for the applicant is not tenable and does not carry any force, therefore, the Annex.A/1 order dated 14th August, 2008 cannot be said to be illegal or against the law and accordingly, the OA being bereft of any merit is dismissed with no order as to costs.

(MEEAKSHI HOOJA)
ADMINISTRATIVE MEMBER

(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER