

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 185/2012 with MA 80/2012

Jodhpur, this the 19th day of February, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms Meenakshi Hooja, Member (Administrative)

Om Prakash Bhatt S/o Shri Gauri Shanker Bhatt, aged 57 years, R/o 3 F 69, Sector 5, Prabhat Nagar, Hiran Magri, Udaipur; Accountant, Akashwani, Banswada, Rajasthan.

.....Applicant

By Advocate: Mr Vijay Mehta

Versus

1. Union of India through the Secretary, Ministry of Information & Broadcasting, New Delhi.
2. Station Director and Head of Office, All India Radio, Jaipur.
3. Director General, All India Radio, Akashwani Bhawan, Parliament Street, New Delhi-110 001.
4. Shri K P Bissa, Administrative Officer, All India Radio, Rohtak.
5. Shri S K Sillu, Administrative Officer, All India Radio, Rajkot.
6. Shri M K Ranga, Accountant, All India Radio, Kota.

.....Respondents

By Advocate : Respondents No. 1 to 3 by Ms K. Parveen.
None present for respondents No. 4 to 6.

1

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

The present OA has been filed by the applicant to challenge order Annexure A/1 dated 14.10.2004 (Ann. A/1) by which respondent-department changed the seniority of the applicant for granting promotion. The applicant has also filed miscellaneous application No. 80/2012 for condonation of delay.

2. Before going into the merit of the case we find it expedient to dispose of preliminary objection of limitation. It is settled principle of law that cases decided on merit always advance the cause of justice and in genuine cases, the case should be decided on merits notwithstanding delay in filing the case. Therefore, we allow the MA No. 80/2012 and condone the delay in filing the OA, for the reasons stated by the applicant in MA itself.

3. Short facts of the case as averred by the applicant are, that the applicant was appointed to the post of CG-II w.e.f. 29.10.1977 in the respondent-department and was subsequently promoted to the post of CG-I on 10.12.1987 and lastly to the post of Accountant on 17.12.2003. The respondents No. 4 to 6 were appointed on the post of CG-II w.e.f. 21.03.1983, 26.05.1979 and 07.08.1979 respectively and promoted to the post of CG-I w.e.f. 21.11.1989, 22.07.1990 and 27.07.1990 respectively. The respondent No. 2 vide his order dated 04.10.2004 promoted the respondents No. 4 to 6 on the post of CG I w.e.f. 25.03.1987 and on the post of Accountant w.e.f. 27.05.1994 vide

order dated 04.10.2004 (Ann. A/1). Thereafter the respondents promoted the respondents No. 4 to 6 on the post of Administrative Officers w.e.f. 16.11.2011 vide order dated 16.11.2011 (Ann. A/2). It has been averred by the applicant that official respondents have published seniority list as on 01.01.2005 in which the names of the respondent Nos. 4 to 6 have been shown is not circulated and the applicant was not informed about the publication of this seniority list. It has also been averred by the applicant that on learning about the promotion order Ann. A/1 and seniority list Ann. A/3, the applicant immediately submitted representations dated 12.10.2011, 17.11.2011, 13.12.2011, 09.01.2012 and 07.02.2012 but the competent authority is sitting tight over the matter and did not replied the same. Hence, the applicant filed this OA seeking following reliefs:

"The applicant prays that the orders Ann. A/1 and Ann. A/2 may kindly be quashed whereby respondent Nos. 4 to 6 have been granted promotion ignoring the seniority of the applicant and his right to be promoted on the said posts. It is further prayed that seniority list Ann. A/3 and other such seniority lists wherein the applicant has been shown junior to the respondents No. 4 to 6 may kindly be quashed. The applicant prays that the respondents may kindly be directed to give promotion to the applicant on the post of CG-I, Accountant and Administrative Officer over and above the respondents No. 4 to 6 i.e. from dates prior to the dates from which the respondents No. 4 to 6 have been granted promotion on these posts. In alternate it is prayed that the applicant may kindly be promoted on the said posts at least from the dates on which the respondents No. 4 to 6 have been granted promotion. It is also prayed that consequently the respondents may kindly be directed to assign due seniority to the applicant on the

promoted posts as also to pay salary and other benefits of the promoted posts to the applicant. Interest at the rate of 12% on due amount may also be granted to the applicant. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."

4. By way of reply the respondents No. 1 to 3 have averred that respondent No. 4 to 6 preferred an OA No. 257/2001 before this Tribunal with the prayer that they may be regularized from the date of initial entry in service with all consequential benefits and this Tribunal disposed of the OA vide order dated 19.09.2002 with the direction to the respondent-department to consider the cases of respondents No. 4 to 6 for regularization from the date of their initial appointment in the respondent-department in terms of earlier orders passed by the Tribunal in OA No. 03/1989 and 838/1989. Consequently the respondents No. 4 to 6 were promoted CG-II w.e.f. from the dates of their initial appointments on adhoc basis i.e. 07.05.1979, 26.05.1979 and 07.08.1978 respectively. Subsequently, the date of promotion to the post of CG-I and Accountant/HC has been changed by granting notional promotion to the respondents No. 4 to 6. It has been averred in the reply that the applicant cannot raise any grievance against the aforesaid promotion of respondent No. 4 to 6 as he himself refused promotion on the post of CG-II twice i.e. on 17.06.1985 and 06.01.1987 when it was offered to him. Even otherwise since order dated 04.10.2004 is a consequential order to the order of regularization of services of respondents No. 4 to 6 from the date of their initial appointments in service in OA No. 257/2001, no challenge can be made by the applicant to the aforesaid orders. It has also been

averred in the application that seniority list are published and given vide publicity so that aggrieved employees can submit representation, if any against his position in the seniority list and as far as Ann. R/1 and R/2 are concerned, they are not related to the applicant, therefore, they were not required to be given to the applicant.

5. By way of rejoinder the applicant reiterated the same facts as averred in the OA.

6. Heard both the parties, none was present on behalf of the respondents No. 4 to 6. During the course of argument counsel for the applicant contended that the applicant filed several representations before the competent authority but the competent authority did not consider any of the representation of the applicant and they are not fixing seniority of the applicant over and above respondents No. 4 to 6.

7. Per contra counsel for the respondents contended that the seniority has been fixed as per rules but disposal of representations of the applicant has not been averred in the reply.

8. In view of the facts submitted by both the parties, we intend to dispose of this petition with certain direction. Accordingly, OA is disposed of with the direction to the respondent-department to decide the representations filed by the applicant at Ann. A/8, A/11 to

A/15 by a reasoned and speaking order, in accordance with law, within 3 months from the date of receipt of this order and respondent-department shall also treat the OA filed by the applicant as an additional representation for the same.

9. There shall be no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C. JOSHI)
Judicial Member



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Wesley

R/c
ronika Tak
27-2-14