

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 576/2003

Wednesday, this the 22nd day of March, 2003.

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

M.S. Pushparaj,
S/o. M. K. Sankaran,
Motor Driver,
All India Radio / Trichur,
Residing at Mankuzhi House,
Kanimangalam, Trichur – 7

... **Applicant.**

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. The Director General,
All India Radio,
Prasad Bharati Broadcasting Corporation of India,
New Delhi.
 2. The Station Director,
All India Radio,
Prasar Bharati Corporation of India,
Trivandrum
 3. The Station Director
All India Radio,
Trichur
- ... **Respondents.**

(By Advocate Mrs. Mariam Mathai, ACGSC)

{The application having been heard on 28.2.06, this Tribunal
on 22.3.06, delivered the following:}

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O R D E R
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Applicant's grievance in the present O.A. is that the respondents have not granted him either the grade promotion or in its absence the financial upgradation as envisaged under the Assured Career Progression Scheme (ACP Scheme, for short) issued by the Government of India vide Annexure A3 O.M. dated 9.8.99.

2. The brief facts of the case are that the applicant was initially appointed as a Motor Driver on 11.5.1990 at the T.V. Relay Centre at Malappuram. He sought transfer to All India Radio, Trichur on loss of seniority and he joined there on 1.2.1995. According to the applicant, he is eligible for grant of the first Grade promotion in the pre-revised scale of Rs. 1200-1800 (revised scale of Rs.4000-6000) on completion of nine years service from the date of his initial appointment, i.e. 11.5.99 in terms of the Government of India, Department of Personnel and Training' O.M. No. 22036/1/92-Estt. (D) dated 30.11.1993 (A/1) and O.M. Dated 27.7.1995 (A/2) issued in pursuance of the directions of the Principal Bench of this Tribunal in the case of Staff Car Drivers' Association and Others vs. Union of India (O.A. No. 2957/91) devising a promotional Scheme for Staff Car Drivers with the graded structure [Rs. 950-1500, 1200-1800 and 1320-2040

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(pre-revised scale)]. The percentage of allocation of scales among the three categories, the nomenclature of the posts in the various scales, the minimum eligibility criteria for placing the Staff Car Drivers in the respective scales and method of appointment to the posts in the above scales, as envisaged in the said Scheme, are as follows:

“2.1 The post of Staff Car Drivers in the existing scale of Rs. 950-1500 will be placed in the following three scales, viz., Rs. 950-1500, Rs.1200-1800 and Rs. 1320-2040 in the ratio of 55:25:20 (for example, if there are five posts of Staff Car Drivers, 55% of 5 posts, i.e., 3, will be in the scale of Rs. 950-1500; 25% of 5, i.e., 1, will be in the scale of Rs. 1200-1800; and 20% of 5, i.e., 1, will be in the scale of Rs. 1320-2040.)

2.1.1. The nomenclature of the posts in the various scales will be as under:

<u>Sl.No.</u>	<u>Scale</u>	<u>Nomenclature</u>
1.	Rs.950-1500	Staff Car Driver Ordinary Grade
2.	Rs.1200-1800	Staff Car Driver Grade II
3.	Rs. 1320-2040	Staff Car Driver Grade - I
<u>Grade</u>		<u>Eligibility Period</u>
(A) Ordinary Grade (Rs. 950-20-1150-EB-25-1500)		Basic Grade
(B) Staff Car Driver, Grade II (Rs. 1200-30-1440-EB-25-1800)		9 years regular service in Ordinary Grade.
(C) Staff Car Driver, Grade I (Rs. 1320-30-1560-EB-40-2040)		6 years regular service in the Grade-II or a combined service of 15 years in Grade II and in Ordinary Grade put together.

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The method of appointments to the post in Grade-II and Grade-I of Staff Car Drivers will be by promotion on Non-selection (Seniority-cum-fitness) basis and will be further subject to passing of a Trade Test of appropriate standard, contained in the Annexure-I annexed to A/1 O.M."

As the grade promotion has not been granted to him the applicant claims that he should be granted the first financial upgradation under the ACP Scheme in the scale of Rs. 4000-6000 (revised scale) with effect from 11.5.2002, i.e. after completion of 12 years from 11.5.1990.

3. The respondents vide Annexure A/4 letter dated 19.7.2002 have stated that the Motor Drivers in AIR are governed by the aforementioned Grade Promotion Scheme and, therefore, they are not entitled to ACP Scheme as the ACP Scheme and the Grade Promotion Scheme cannot run concurrently. They have also submitted that the Department of Personnel & Training vide Annexure R/2 O.M. dated 15.2.2001 modified the existing orders regarding Promotion Scheme for Staff Car Drivers and with effect from 8.11.1996 and a 4th grade, namely "special grade" has also been introduced and the promotion to the said grade shall be on the basis of seniority-cum-fitness from Grade-I with 3 years regular service in Grade-I of Staff Car Drivers. The revised ratio in which the posts of Staff Car Drivers shall be placed in different grades henceforth has also been prescribed in the following manner:



<u>S.No.</u>	<u>Grade</u>	<u>Pay Scales</u>	<u>Percentage</u>
1.	Ordinary Grade	Rs. 3050-4590	30
2.	Grade-II	Rs. 4000-6000	30
3.	Grade-I	Rs. 4500-7000	35
4.	Special Grade	Rs. 5000-8000	05

While rejecting the claim of the applicant for financial upgradation under the ACP Scheme, the respondents have relied on Para 13 of the Annexure to O.M. dated 9.8.99 of the Ministry of Personnel, Public Grievances and Pensions (Annexure A3), which reads as follows:

“13. Existing time-bound promotion Schemes, including in-situ promotion Scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these Schemes shall not run concurrently with the ACP Scheme. The Administrative Ministry -- not the employees -- shall have the option in the matter to choose between the two Schemes, i.e. existing time-bound promotion Scheme or the ACP Scheme, for various categories of employees. However, in the case of switch-over from the existing time-bound promotion Scheme to the ACP Scheme, all stipulations (viz. For promotion, redistribution of posts, upgradation involving higher functional duties, etc.) made under the former (existing) Scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality.”

The reason for rejecting the request of the applicant for Grade promotion as applicable for Staff Car Drivers was that he did not have the prescribed minimum length of service for that purpose as his service shall be reckoned

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only from 1.2.1995 (the date of joining in AIR, Trichur) and not from 11.5.1990, the date of commencement of the previous service.

4. One of the grounds taken by the applicant in the O.A. is that the Grade Promotion Scheme for Staff Car Drivers is not a Time Bound Promotion Scheme so as to be excluded from the purview of the ACP Scheme and in case the respondents' consider the said Grade Promotion Scheme as a time bound one then their refusal to count the period of service rendered for the period from 11.5.90 to 31.1.95 in the previous department is not justified. The other ground canvassed by the applicant is that the seniority is not relevant in all cases of time bound promotion. The applicants has relied upon the judgements of the Apex Court in Renu Mullick (Smt.) vs. Union of India and Anr., (1996) 26 ATC 602, and Dwijen Chandra Sarkar and Anr. vs. Union of India and Ors., (1999) 2 SCC 119. In Renu Mullick's case (supra), the Apex Court was considering the case of appellant therein who was a UDC in Central Excise and Customs, New Delhi, who got transferred to Allahabad on 4.8.1987 loosing her seniority in that grade from 10.5.1981 till date of her joining. She was accordingly treated as a fresh entrant in the cadre of UDC in the new charge. In the year 1991, the appellant and several other UDCs was promoted to the post of Inspector in terms of Rule 4 read with the

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Schedule to the Central Excise and Customs Department Group 'C' Posts
Recruitment Rules, 1979, which is reproduced below:

"Inspector: Promotion by selection from UDC with 5 years service or UDC with 13 years of total service as UDC and LDC taken together subject to the condition that they should have put in a minimum of two years of service in the grade of UDC

Note 3 : If a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation."

8. To clarify Note 3 quoted above, Office Memorandum dated July 19, 1989, was issued which is in the following terms:

"When juniors have completed the eligibility period are considered for promotion, their seniors would also be considered irrespective of whether they have completed the requisite service provided they have completed the probation period in order to ensure that seniors who might have joined later due to various reasons are not overlooked for promotion."

In 1992, the appellant was reverted from the post of Inspector. She challenged the reversion order before the Tribunal, but it was dismissed. The Apex Court overturned the order of the Tribunal and held as under:

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"10. XXXXXX XXXXXXXX XXXXXX The transferee is to be treated as a new entrant in the Collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in 2 years' service in the category of UDC. But when she is so considered, her past service in the previous Collectorate cannot be ignored for the purpose of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous Collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under Rule 4 which is a statutory rule. The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness."

In Dwijen Chandra Sarkar's case (supra), the appellants were transferred from the Department of Rehabilitation, Government of India to P&T Department.

The order of transfer reads as follows:

".... treated as transferred in the public interest and their past service is counted for all purposes (i.e. fixation of pay, pension and gratuity etc.) except seniority."

According to the Time Bound Promotion Scheme dated 17.12.83 issued by the P&T Department, all officials belonging to basic grades in Group 'C' and Group 'D' to which there is direct recruitment either from outside and/or by means of limited competitive examination from lower cadres, and who have completed 16 years of service in that grade will be placed in the next

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higher grade. The appellants wanted the services rendered in the Department of Rehabilitation to be counted for determination of eligibility under the aforesaid Scheme which was rejected by the Department and by the Tribunal. The point in issue is whether for the purpose of computing 16 years' service for getting a "time-bound promotion", as per the relevant circular of the Government dated 17.12.1983, the appellants are entitled to count the service rendered by them in the Rehabilitation Department of the Government of India prior to their transfer to the Department of Posts and Telegraphs. The Tribunal has held that the said service with the former Department cannot be counted and, therefore, the appellants are not entitled to the time-bound promotion unless they complete 16 years in the transferee Department, namely the P&T Department. The Apex Court after due consideration of the issue held as under:

10. It is to be noted that the transfer of the appellants from the Rehabilitation Department to the P&T Department was not on their request but was expressly stated to be in public interest. But while doing so, it was clarified that their past service in the Rehabilitation Department would not count for "seniority". The purpose of this restriction was that their transfer should not disturb the chances of promotion of those who were already working in the P&T Department. There is no doubt that for the purpose of their regular promotions to higher posts in the P&T Department, their seniority is to count only from the date of their transfer to the P&T Department. The transfer order imposed this restriction. We are not concerned with the validity of this restriction. All that it means is that these two transfers will not alter the existing seniority of those in the P&T Department.

11. However, the position in regard to "time-bound" promotions is different. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low position in the seniority list, the Government has found it necessary that in order to remove frustration, the employees are to be given a higher grade in terms of emoluments - while retaining them in the same category. This is what is generally known as the time-bound promotion. Such a time-bound promotion does not affect the normal seniority of those higher up.

12. If that be the true purpose of time-bound promotion which is meant to relieve frustration on account of stagnation, it cannot be said that the Government wanted to deprive the appellants who were brought into the P&T Department in public interest - of the benefit of higher grade. The frustration on account of stagnation is a common factor not only of those already in the P&T Department but also of those who are administratively transferred by the Government from the Rehabilitation Department to the P&T Department. The Government while imposing an eligibility condition of 16 years' service in the grade for being entitled to time-bound promotion, is not intending to benefit only one section of employees in the category and deny it to another section of employees in the same category. The common factor for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of eligibility for obtaining a financial benefit of a higher grade.

13. If the appellants are entitled to the time-bound promotion by counting the service prior to joining the P&T Department, the next question is whether treating them as eligible for time-bound promotion will conflict with the condition imposed in their transfer order, namely that they will not count their service for seniority purposes in the P&T Department.

14. The words "except seniority" in the 1983 circular, in our view, mean that such a benefit of a higher grade given to the transferees will in no way affect the seniority of the



employees in the P&T Department when the turn of P&T employees comes up for promotion to a higher category or post. The said words "except seniority" are intended to see that the said persons who have come from another Department on transfer do not upset the seniority in the transferee Department. Granting them higher grade under the Scheme for Time-bound Promotion does not, therefore, offend the condition imposed in the transfer order. We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and P&T Department."

While passing the aforesaid orders in the judgement, the Apex Court had considered the precedent case of Renu Mullick (supra) also where the transfer was on her own request.

5. The respondents have denied the grounds taken by the applicant. They have also denied the contention of the applicant that the seniority is not relevant in all cases of time-bound promotion. They have submitted that according to the promotion Scheme for Motor Drivers, appointment to the post of Grade-II, Grade-I and Special Grade is by promotion on the basis of seniority-cum-fitness and the ratio for each grade has also been determined. The respondents have also produced Annexure R3 seniority list of Drivers working in AIR, Kerala Zone as on 1.4.2003 and the applicant's name appeared at sl. No. 29 among the total number of 31 Drivers. They have also relied upon the order of this Tribunal in O.A. No. 115/99 dated

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12.6.2001, A.K. Varghese vs. Union of India and Ors. In which it was held as under:-

“10. XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXX
Further, we find validity in the plea of the respondents that inter zonal transfer at the applicant's own request led to forfeiture of his seniority and that as the promotion of Staff Car Driver Grade-II was made against the proportionate post, Ordinary Motor Drivers who served in Kerala Zone would loose the promotion chance if the service in the earlier unit of Motor Drivers who came from other zone was also taken into account. Apart from the above, the O.M. dated 30.11.93 also indicates that the method of appointment to the post in Grade II and Grade I Staff Car Driver would be by promotion non-selection basis i.e., seniority cum-fitness and further subject to passing of trade test of appropriate standard. Thus, in this appointment, seniority plays an important part and an employee who has lost seniority cannot claim the benefit of the service rendered prior to the date of joining the zone for counting his fresh seniority. We find support for our conclusion in the ratio of the judgement of the Hon'ble Supreme Court in the case of Union of India and Others vs. K. Savithri and ors. (1998 SCC (L&S) 1134) decided on 4.3.1998 which we have come across. That was also a case pertaining to the employees of All India Radio. Some employees who had joined the All India Radio on becoming surplus from the Rehabilitation and Reclamation Organisation and who did not get the benefit of service prior to their redeployment for the purpose of seniority and who got a decision in their favour at the hands of the Cuttack Bench of this Tribunal that such service should be counted for the purpose of promotion on appeal by the Union of India, the Hon'ble Supreme Court held :

Coming now to the question whether the said past services can be counted as experience for promotion, it appears that under the Recruitment Rules for various posts in All India Radio called the All India Radio (Class III Posts) Recruitment Rules, 1964 (hereinafter referred to as “the Recruitment Rules”) as amended from



time to time the post of Head Clerk is filled up by promotion to the extent of 50% from amongst the Clerk Grade II/Clerk Grade I/ Stenographer with a minimum of five years of service in the grades on the basis of a qualifying departmental examination and the criteria for promotion is seniority-cum-fitness. In that view of the matter, since the past services of redeployed surplus employee cannot be counted for his seniority in the new Organisation, equally the past experience also would not count as the so called past services rendered will not be service in the grade. Similarly, for promotion to Clerk Grade I which is made on the basis of seniority-cum-fitness from amongst the Clerks Grade II five years of service in the grade is required for being considered for promotion. Obviously, therefore, an employee should have five years of experience in Clerk Grade II of All India Radio after being redeployed under the Rules in order to be eligible for being considered for promotion. The Tribunal, therefore, was wholly in error in directing that the past services of the employees should be counted for granting them the benefit of seniority and experience for promotion in All India Radio. In the aforesaid premises, the impugned orders of the Central Administrative Tribunal, Cuttack bench, in Original Applications Nos. 160, 161 and 163 of 1993 are set aside and those O.As are dismissed and these appeals are allowed but in the circumstances, there will be no order as to costs.

(emphasis added)

A-8 impugned order dated 10.12.98 reads as follows:

Subject: Promotion Scheme for Staff Car Drivers

Reference: AIR, Thiruvananthapuram's letter No. TVM.1 (9)/98-S dated 16.10.98 on the above subject.

2. The cadre of Motor Driver is a local cadre. As Shri A.K. Varghese was transferred from O/o. CE (WZ), Mumbai to AIR, Alleppey on his own request, he will have to forego his seniority. This must have been clearly stated in his request transfer order. Hence the date of



joining of Shri Varghese in the Kerala zone, i.e. 25.11.87 shall be taken for the purpose of considering him for promotion.

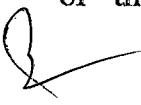
12. In the light of our analysis as above and the law laid down by the Hon'ble Supreme Court as above that when the past service cannot be counted for seniority, the same also would not count as experience, the conclusion arrived at by the Department as reflected in the above letter dated 10.12.98 could not be faulted.

13. In the result, we hold that the applicant is not entitled for the reliefs sought for in this Original Application. Accordingly, we dismiss this Original Application with no order as to costs."

6. We have heard Mr. TCG Swamy, learned counsel for the applicant and Mrs. Mariam Mathai, ACGSC, appeared for the respondents. We have also perused the documents made available on record by both the parties. The claim of the applicant is that he is entitled for counting his services from 11.5.1990 for grant of grade promotion as available to Motor Drivers. The reason for denial of grade promotion to the applicant, according to the respondents, is that the applicant does not possess "9 years regular service". Only the regular service can be counted while determining the length of continuous service and the seniority. In the absence of any rules to the contrary, the seniority has to be determined from the date of appointment. Promotion being one of the methods of recruitment, seniority is an integral aspect for consideration of promotion. When promotion has to be

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made on the basis of the criterion of seniority-cum-merit or seniority subject to rejection of unfit, seniority has to be given due regard. It is an admitted position that the applicant got his transfer to the office of the third respondent on the specific understanding that he will loose his seniority for the services rendered in the previous Department. Once the seniority was voluntarily surrendered by the applicant he cannot now turn around and say that the seniority has nothing to do with the promotion as envisaged in the Grade Promotion Scheme applicable to the Staff Car Drivers. The upgradation under the Grade Promotion Scheme and the ACP Scheme are two different and distinct Schemes. Moreover, according to ACP Scheme only the Administrative Ministry and not the employees shall have the option to choose between the two Schemes. As the respondent-department decided to apply the Grade Promotion Scheme as applicable to the Staff Car Drivers to its concerned employees, he has no choice but to confine himself to that Scheme and cannot lay claim on ACP Scheme as well. Admittedly, the respondents have 31 Drivers and the applicant's position in the seniority of Drivers is only 29. They have to be placed in the respective Grades - Ordinary Grade, Grade II, Grade I and Special Grade in the ratio 30:30:35:05 and this has to be done by promotion on non-selection (seniority-cum-fitness) basis. In this view of the matter, the order of this Tribunal in A.K. Varghese's case (supra) which is based on the

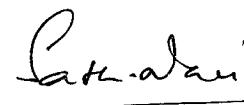


Apex Court's judgement, Union of India and Ors. vs. K. Savithri & Ors. (supra), fully covers the present case also. The judgements of the Apex Court reported in (1994) 26 ATC 602 and (1999) 2 SCC 119 (supra) are not relevant and they are distinguishable from the present case. In view of this, we are of the considered view that the applicant's claim for grade promotion without completing 9 years of service in the office of the respondent No. 3 is baseless and therefore, the same cannot be granted. We also hold that since the applicant is governed by the Grade Promotion Scheme as applicable to the Staff Car Drivers, he cannot claim benefit under the ACP Scheme as both the Schemes cannot run concurrently.

7. In the result, we hold that the O.A. is devoid of any merit and it is accordingly dismissed. There will be no order as to costs.

(Dated, the 22nd March, 2006)


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

cvr.