

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 115/99

TUESDAY, THIS THE 12th DAY OF JUNE, 2001.

C O R A M

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

A. K.Varghese S/o A.S. Varghese
Motor Driver, All India Radio
Alappuzha
residing at B-II, All India Radio Quarters
Pathirappilly P.O., Alappuzha Applicant

By Advocate Mr.P. Ramakrishnan

Vs.

1. Union of India represented by the Secretary
Ministry of Information & Broadcasting,
New Delhi.
2. The Director General
All India Radio, Akashvani Bhavan
New Delhi-110 001
3. Deputy Director of Administration (E)
Office of the Directorate General,
All India Radio, Sansad Marg,
New Delhi-110 001
- 4/ The Station Director,
All India Radio,
Thiruvananthapuram. Respondents

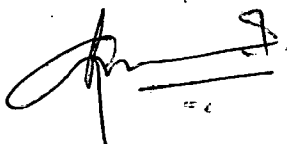
By Advocate Ms. Rajeswari. A., ACGSC

The application having been heard on 31.5.2001, the Tribunal delivered the following on 12.6.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant has filed this Original Application aggrieved by A-8 order dated 10.12.98 of the third respondent rejecting his claim for reckoning his service from the date of his original appointment for inclusion in the eligibility list of Motor Drivers as on 1.10.93 for promotion. He sought to quash and set aside Annexure A-8, to declare that he was entitled to reckon his entire service from 24.5.82 towards the eligibility period prescribed for grade promotions as per Annexures A1 and A-2 promotion scheme, for a direction to the respondents to include his name in the eligibility list of



Motor Drivers working in All India Radio, Kerala zone as on 1.10.93 for promotion to Grade-II and for a direction to the respondents to promote him as Grade-II Driver w.e.f. 1.8.93 and grant all consequential benefits.


2. The applicant commenced service as Motor Driver All India Radio, Mumbai on 24.5.82 and was transferred to Alappuzha on his request on 22.11.87. According to him the Union Government by A-1 O.M. dated 30.11.93 formulated promotion scheme for Staff Car Drivers with grade structure to come into effect from 1.8.93. By A-2 O.M dated 27.7.95 modification in the eligibility period for grade promotion prescribed in A-1 scheme was made. According to him by A-1 and A-2 O.M the post of Motor Drivers were classified into three categories with eligibility criteria as follows:

i). Ordinary grade (Rs. 950-1500)	Basic Grade
ii) Staff Car Driver Grade-II (Rs.1200-1500)	9 years of regular service in ordinary grade
iii) Staff Car Driver Grade-III	6 years of regular service in grade-II or a combined service of 15 years in Grade-II and Ordinary Grade put together.


The method of appointment to the Grade-II and Grade-I Staff Car Drivers were to be made by promotion (seniority -cum-fitness basis) subject to passing of Trade test of appropriate standard. All India Radio adopted A1 scheme with modification brought about by A2 and by notification dated 3.1.97. The first respondent promulgated the All India Radio/Doordarshan Staff Car Drivers (Group-C posts) Recruitment Rules, 1997 under Article 309 of the Constitution incorporating the grade structures prescribed in A-1 and A-2



Second and third respondents initiated steps to implement the promotion scheme w.e.f. 1.8.93. In the seniority list published on 20.8.98 by the fourth respondent the applicant's date of appointment in the grade of Motor Driver and date of regular appointment in the grade (col. 6 and col.7) were shown as 25.11.87. Applicant gave A-3 representation to the 4th respondent seeking appropriate correction in the seniority list. This was rejected by the 4th respondent by A-4 letter dated 21.9.98. Thereupon, the applicant represented the matter to the second respondent and his representation was still pending. In the meanwhile the fourth respondent by letter dated 6.10.98 published the eligibility list of Motor Drivers in Kerala Zone w.e.f. 1.8.1993 (Annexure A-5) in which the applicant's name was missing. His name was shown at Sl. No. 15 in the eligibility list as on 1.10.97 (Annexure A-6). The applicant submitted A-7 representation dated 9.10.98 against exclusion of his name from A-5 and requested the fourth respondent to correct the discrepancy by reckoning his service from 24.5.82 and A-6 eligibility list which showed his date of appointment as in the grade of Motor Driver and date of regular appointment as 25.11.87. A-7 was forwarded by the fourth respondent to the third respondent. The third respondent by A-8 order dated 10.12.98 held that the applicant's date of joining at Alappuzha viz. 25.11.87 would alone be considered for the purpose of considering him for promotion and rejected his representation dated 9.10.98. According to the applicant A-8 is arbitrary and illegal. His case was that he having commenced his service 24.5.82 had completed 9 years of service on 24.5.91 and he had also passed the trade test and was therefore eligible for promotion as Driver Grade-II w.e.f. 1.8.93. Exclusion of his name from Annexure A-5 was therefore, unreasonable and unsustainable. The applicant claimed ^{that}

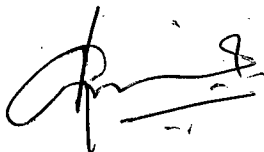


the criteria for promotion to the two higher grades was length of service and passing of the trade test. Seniority could become relevant only when eligibility criterion were satisfied. Neither the scheme nor the recruitment rules implied that if a senior was ineligible a junior who otherwise satisfied the conditions for promotion could not become eligible. The applicant who satisfied the qualifications laid down by the scheme and the Recruitment Rules ought not to have been omitted from Annexure A-5 eligibility list on account of his lower seniority. Admitting that the applicant having come on request from Mumbai was not entitled to reckon his service from 24.5.82 to 25.11.87 for the purpose of seniority, but it did not mean that his service from 24.5.82 to 25.11.87 could not be considered for any purpose. An officer did not forfeit his earlier service on account of a request transfer. At no time had the applicant disputed his seniority position or claimed that his service from 24.5.82 to 25.11.87 should be counted for seniority. All that was requested for was to reckon his service from the date of initial appointment viz. 24.5.82 as one without any break. When length of service was one of the criterion for a promotion based on seniority cum fitness, the applicant was entitled to have his entire service from 24.5.82 reckoned for coming within the eligibility zone. The restriction imposed by Annexure A-8 would mean that the applicants service from 25.11.87 would alone be considered towards "length of service" and the same was arbitrary and unreasonable. While admitting that Sl. Nos. 1 to 6 in the eligibility list were senior to him as they were appointed in regular service earlier to him and Sl. No. 7 was also senior to him though his date of appointment was later to the applicant as the applicant had come to Kerala on request transfer on a date later than the date of initial appointment



of Sl. No. 7. However, as on 1.10.93 the applicant was the only person who had the minimum requirement of 9 years service in the ordinary grade after Sl. No. 1 to 7 in Annexure A-5 eligibility list and according to him in A-6 list after Sl. No. 7 the applicant alone had the required 9 years of service as on 1.10.93 and as he had also passed the requisite trade test he should have been included in the zone of consideration of higher grade w.e.f. 1.8.93. His seniority would have been a factor only for the purpose of ranking to be made after the actual promotion and refusal to consider him was arbitrary and violative of his Fundamental Rights envisaged under Articles 14 and 16 of the Constitution of India. He claimed that the scheme for facilitating higher grade for Motor Vehicle drivers was intended to help stagnating staff car drivers who had no avenue for promotion. At the time of the transfer of the applicant from Bombay to Alappuzha, the scheme as not in existence and there was no zonal system. The zonal seniority had come into existence long after his transfer. Therefore, non-consideration of the service rendered by him at Bombay was arbitrary and against the spirit of the scheme.

3. Respondent filed reply statement resisting the claim of the applicant. According to them appointment of Motor Drivers is made by local recruitment. When a person is appointed by transfer such transferee would be ranked below the direct recruits. The applicant was appointed as Motor Driver on 24.5.82 at All India Radio, Mumbai Zone was transferred to All India Radio, Alappuzha in Kerala Zone on 25.11.87 on his own request. A request transfer led to forfeiture of seniority. On the basis of the above policy the applicant's seniority amongst the Motor Drivers in Kerala Zone had been reckoned from the date of his joining the



Kerala Zone viz. from 25.11.87 and that the same had been intimated to him stating the reasons by A-4. As he joined as Motor Driver in Kerala Zone on 25.11.87 he became eligible for promotion in Kerala Zone as Grade-II only after 9 years from 25.11.87. Although he completed 9 years on 24.11.96 the crucial date for fixing eligibility condition as a general rule was 1.10.97 for the reason that the Annual Confidential Report was written on financial year basis. Accordingly he was not found eligible on the crucial date of the previous year ie. 1.10.96. According to them the applicant could not claim seniority over other Staff Car Drivers in Kerala Zone before his coming to Kerala Zone from the date he was appointed at Mumbai. Inter zonal transfer at his own request led to forfeiture of his seniority. As the promotion of Motor Driver Ordinary Grade was made against the proportionate post, Ordinary Motor Drivers who served in Kerala Zone would loose the promotion chance if the service of Motor drivers who came from other Zone was also taken into account. Since the applicant had already gained the benefit of choice posting the benefit of others who existed in Kerala Zone before his coming to Kerala Zone could not be denied. Further, they prayed for dismissal of the Original Application with costs to the respondents.

4. Heard learned counsel for the parties. Learned counsel for the applicant after taking us through the facts of the case as contained in the Original Application cited the ratio of the decision of the Hon'ble Supreme Court in Union of India and Others Vs. C.N. Ponnappan (1996(1)SCC 524) and submitted that the O.A. was liable to be allowed. He also cited the ratio of the judgment of the Hon'ble Apex Court in Scientific Advisor to Raksha Mantry and Another Vs. V.M. Joseph(1998) 5 SCC 305)



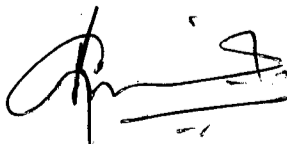
5. The learned counsel for the respondents took us through the pleadings in the reply statement and resisted the claim of the applicant.

6. We have given careful consideration to the submissions made by the learned counsel for the parties, rival pleadings and have also perused the documents brought on record.

7. The applicant is not disputing the fact of his having come on request transfer from Mumbai. We find that he also admits that he is not entitled to reckon his service from 24.5.82 to 25.11.87 for the purpose of seniority. However, his main argument is that the above would not mean that his service from 24.5.82 to 25.11.87 could not be considered for any purpose. According to him he did not forfeit his earlier service on account of his request transfer and that his service from the date of initial appointment viz. 24.5.82 which was one without any break should be reckoned for determining the eligibility for consideration for promotion to Driver Grade-II w.e.f. 1.8.93 on the basis of seniority cum fitness.

8. We have carefully gone through the two judgments cited by the learned counsel for the applicant. In C.N. Ponnappan's case decided on 5.12.1995, the Hon'ble Supreme Court held:

4. The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is not different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at



the place from where he was transferred. The said service, being regular service in the grade has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.

5. It has been pointed out that subsequent to the judgment of the Tribunal in Ponnappan case, the relevant rules governing promotion from Lower Division Clerk to Upper Division Clerk have been amended by notification dated 30.6.1986 and now the requirement is "with eight years" regular service in the grade in the unit / office / establishment / laboratory / centre / unit, etc. in which they are considered for promotion."

6. Since we are in agreement with the view of the Tribunal on the interpretation of the rules as they stood at the relevant time, the appeals fail and are accordingly dismissed. No costs.

(emphasis added)

9. It is evident from the above that the Hon'ble Supreme Court held as above on the basis of the interpretation of the rules as it stood at the relevant time. Therefore, in our view what is required to be examined in this case is on the basis of the Recruitment Rules for promotion to Grade-II Staff Car Drivers and Grade-I Staff Car Drivers what is the relevant eligibility criteria. We also note that the second case cited by the learned counsel for the applicant was also pertaining to a period prior to 1986.

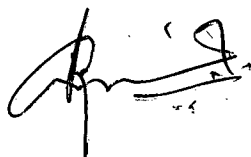
10. Even though the applicant is aware and has stated that by a notification dated 3.1.97 the first respondent promulgated All India Radio/Doordarshan Staff Car Drivers Group-C Posts Recruitment Rules 1997 under Article 309 of the Constitution and as a result of the above, steps were initiated by the second and third respondents to implement the promotion scheme w.e.f. 1.8.93, for reasons best known to him, he had not annexed a copy of the Recruitment Rules with the O.A. His claim for the benefit is on the basis of



the promotion scheme of Staff Car Driver as in A-1 as modified by A-2. Respondents while admitting the eligibility for promotion of Ordinary Staff Car Driver to Grade-II Staff Car Driver as 9 years have specifically averred that while considering the promotion of the Staff Car Drivers to Grade-II the eligibility of all Motor Drivers in Kerala Zone who have completed 9 years in Kerala Zone as on 1.8.93 have been taken into account and that as the applicant who had joined as Motor Driver in the Kerala Zone only on 22.11.87 became eligible for promotion in the Kerala Zone as Grade-II only after 9 years from 25.11.87. Respondents had not also enclosed the relevant Recruitment Rules. Under such circumstances when we examined the documents produced by the parties, viz. A-1 O.M. dated 30.11.93 by which the promotion scheme for Staff Car Drivers was introduced w.e.f. 1.8.93 and A-2 O.M. dated 27.7.95 by which the said scheme was slightly modified we find that the action taken by the respondents cannot be faulted. In our view as per A-1 and A-2 the eligibility period mentioned in para 2.3 of A-1 O.M. dated 30.11.93 has to be interpreted with reference to the unit of promotion. According to us the scheme envisages re-distribution of posts of Staff Car Drivers in a particular unit, in this case, the Kerala Zone, as existing on 1.8.93 in the scale of Rs. 950-1500 in three scales comprising of Rs. 950-1500, 1200-1800 Staff Car Driver Grade-III and Rs. 1320-2040 Staff Car Driver Grade-I in the ratio of 55:25:20. It is not providing for redistribution of the total number of posts of Staff Car drivers posts under the Government of India only on the basis of length of service of the Drivers as provided for in some of the Time Bound Promotion Schemes introduced in some of the Government Departments. Under such circumstances, the distribution in the above mentioned ratio



has to be done with reference to the promotional unit. Had the redistribution/^{been} done on the basis of xxxxxxxxxxxxxxxx the total number of Staff Car Drivers available under All India Radio through out the country there can be validity in the argument of the applicant. But it is not so. Further, in para 2.6 of A-1 O.M. dated 30.11.93 it has been specifically provided that the distribution made under the scheme would be subject to the application of reservation orders as applicable to the said grades and reservation orders are always applicable with reference to the specific Recruitment unit. Apart from this, the specific averments in the reply statement that "while considering the promotion of Motor Drivers Ordinary Grade to Grade-II, the eligibility of all Motor Drivers in Kerala Zone who have completed 9 years in Kerala Zone as on 1.8.93 has been taken into account" - has not been specifically denied by the applicant. 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. the 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 judgment of the

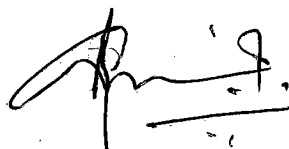


Hon'ble Supreme Court in the case of Union of India and Others Vs. K. Savitri and Others (1998 SCC (L&S) 1134) decided on 4.3.1998 which we have come across. That was also a case pertaining to the employees of All India Radio. Some employees who had joined the All India Radio on becoming surplus from the Rehabilitation and Reclamation Organisation and who did not get the benefit of service prior to their re-deployment 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 OAs are dismissed and these appeals are allowed but in the circumstances there will be no order as to costs.

(Emphasis added)

11. 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 forgo 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.

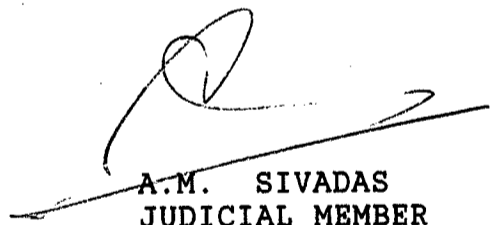
13. In the result, we hold that the applicant is not entitled for the reliefs sought for in this Original Application. Accordingly, we dismiss this Original Application with no order as to costs.

Dated the 12th June, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

kmn



A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES REFERRED IN THIS ORDER

- A1 True copy of OM No. 22036/1/92 Estt(D) dated 30.11.93 issued by the Ministry of Personnel, Public Grievances and Pensions
- A2 True copy of OM No. 22036/1/92-Esst.(D)dated 22.7.95 issued by the Ministry of Personnel and Public Grievances and Pensions.
- A3 True copy of representation dated nil from the applicant to the fourth respondent.
- A-4 True copy of letter No. Tvm-1(9)98-S dated 21.9.98 from the 4th respondent to the Superintending Engineer, All India Radio, Alappuzha.
- A-5 True copy of list of Motor Drivers as on 1.10.93 eligible for promotion to Grade-II
- A-6 True copy of list of Motor Vehicle Driver as on 1.10.97 for promotion to Grade-II
- A-7 True copy of representation dated 9.10.98 from the applicant to the 4th respondent.
- A-8 True copy of order No. 4/74/98-S.IV(A)/1109 dated 10.12.98 issued by the 3rd respondent.
- R-1 True copy of the communication No. TVM-1(9)99-S/4136 dated 12.1.99