

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 123 of 1991
XXX XXXX 199

DATE OF DECISION 31-8-92

KS Unni _____ Applicant (s)

M/s MR Rajendran Nair _____ Advocate for the Applicant (s)
and SM Prem

Versus
Union of India rep. by the
Secretary to Govt. of India, Respondent (s)
Ministry of Information and
Broadcasting, New Delhi and
others.

Mr NN Sugunapalan _____ Advocate for the Respondent (s) 1-4

CORAM:

The Hon'ble Mr. PS Habeeb Mohamed, Administrative Member
and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

Shri PS Habeeb Mohamed, A.M

In this O.A., Shri KS Unni who was Assistant Station Director, Doordarshan Kendra, Trivandrum (at the time of filing this O.A.) has challenged the orders issued by Respondent-2 vide letter No.6/122/62-SI(A) (Vol.II) dated 30.10.90 (Annexure-A8) by which his representation dated 7.5.90 (Annexure-A7) for inclusion of his name in the seniority list of Programme Executives fit for promotion as Assistant Station Director for the year 1981 in All India Radio/ Doordarshan was rejected and has prayed for directions by the Tribunal quashing the same. The impugned order at Annexure A8 reads as follows:

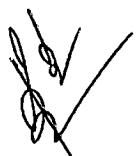
" Reference representation dated 7.5.90 from Shri KS Unni, ASD, DDK, Trivandrum addressed to the Secretary, Ministry of I&B, New Delhi on the subject noted above.

"2. The representation of Shri KS Unni, ASD, DDK, Trivandrum has been carefully considered in consultation with the Ministry of I & B. Shri KS Unni is informed that after re-casting the seniority list of Programme Executive as on 1.10.85, a Review DPC in the cadre of Assistant Station Director was held as per the directives of CAT, New Delhi. Shri Unni was also considered alongwith all other eligible candidates for retrospective promotion to the grade of ASD by the Review DPC. However, the Review DPC did not recommend his name for retrospective promotion to the grade of ASD in 1981 panel. The Review DPC recommended his promotion only in the 1982 panel. On the other hand, some persons junior to him were recommended for promotion in earlier panel on the basis of the better gradings earned by them on account of their performance as reflected in their ACRs. Obviously, therefore, Shri KS Unni has been superseded by some of his juniors. Shri KS Unni is further informed that the post of ASD in AIR/ Doordarshan is a 'Selection' post and seniority-cum-merit is the criterion for promotion to this post. The Review DPC was conducted by an Independent Body i.e., by Union Public Service Commission. In view of this, no injustice, whatsoever, has been done to Shri Unni in the matter of his promotion.

"3. As regards the contention of Shri KS Unni, ASD that his ACRs for the period from 1.5.79 to 31.12.79 and 16.4.80 to 31.12.80 were not written/reviewed according to the prescribed procedure, Shri KS Unni is informed that no such irregularity was committed and his ACRs for these periods were written/reviewed strictly in accordance with the rules in force.

"4. In view of the position explained above, there is no case for the promotion of Shri KS Unni as ASD from a date earlier to 28.8.82. The competent authority has, therefore, rejected his representation."

He has prayed for directions by the Tribunal to Respondents 1-3 to give the applicant his legitimate place and rank in the 1981 seniority list and to give him retrospective promotion as Assistant Station Director from the earliest date which has been given to his juniors with all service benefits; he has also prayed for a declaration that his ACRs for the period 1.5.79 to 31.12.79 and 16.4.80 to 31.12.80 were not written/reviewed according to the rules and the prescribed procedure. He has also prayed for incidental relief.



The facts as stated in the application are that he was directly appointed as Transmission Executive in the All India Radio at Rajkot in the year 1963. He was promoted as Programme Executive in the All India Radio on ad-hoc basis with effect from 14.7.71 and later regularised in the same post with effect from 15.11.74. He was granted selection grade in the cadre of Programme Executive with effect from 1.8.84. He was later promoted to the post of Assistant Station Director in the All India Radio/Doordarshan Kendra and appointed on ad-hoc basis with effect from the date of assumption of charge by order dated 16.8.88 of the Ministry of Information and Broadcasting. The ad-hoc promotions were based on the seniority list prepared by the DPC, but subject to the decisions in OA 663/86 and OA 1161/87 before C.A.T.

2 Vide Annexure A4, Respondent-2 issued the seniority list of Programme Executives of the All India Radio and Doordarshan as on 1.10.1985. In this, the applicant's name is at No.217, but subsequently, in pursuance of the judgment of the Central Administrative Tribunal in OA 663/86 and Government decision to extend the benefits of the same to similarly placed persons, a revised seniority list which was issued vide O.M. No.4(259)/88-SI(B) dated 24.7.89. In this revised seniority list, the applicant is at Sl.No.115 whereas, Respondents 5 to 17 are at various Sl.Nos. beginning

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from 121 to 163. A review DPC, thus, became necessary to review the earlier Select List for promotion to the vacancies of Assistant Station Director which arose in 1981 and 1982. It was held in August 1989 (29th & 30th August). Government of India reviewed the Select List of Programme Executives eligible for appointment as Assistant Station Directors and consequently, on the basis of promotion of 48 Assistant Station Directors have been advanced to earlier dates. Orders were issued by Respondent-1, Government of India, Ministry of Information & Broadcasting on 11.10.89 at Annexure A6. As per this order, his Sl.No. is 38 and the date of promotion has been advanced to 28.8.82 as against the earlier order of promotion dated 17.11.83 at Annexure A3 issued by Respondent-1. His date of promotion as per this order is 28.8.82, but 13 Assistant Station Directors were junior to the applicant as is evident from Annexure A5 seniority list and were given promotion from earlier dates i.e., from 1981.

3 The real prayer of the applicant is for rectification of the ante dating of his promotion as Assistant Station Director with reference to the revised seniority list and for the consequential benefits, apart from another prayer about his ACRs not being written/reviewed according to rules.

4 Respondents 1-4 have filed the reply to which a rejoinder has been filed by the applicant to which an additional reply has been filed by the official respondents.



will

5 We first dispose of the applicant's prayer for a declaration that his ACRs for the period from 1.5.79 to 31.12.79 and 16.4.80 to 31.12.80 were not written/reviewed according to the rules and prescribed procedure. We have perused the ACRs for the relevant period and we find that the ACRs are written in accordance with the rules; there is no irregularity in the procedure followed and hence this part of the prayer by the applicant does not survive for consideration and accordingly it is rejected.

regarding

6 As for the next prayer ~~ante~~-dating of his promotion with reference to the vacancies of 1981 and with reference to the dates of promotion advanced in the case of his juniors, Respondents 5 to 17, the following stand has been taken in paragraph-4 of the reply.

"4. In reply to para 4(7) of the OA, it is admitted that vide para 2 of the order dated 11.10.89 (marked as Annexure A6 by the applicant), 13 Programme Executives were given retrospective promotion as Assistant Station Director between 4.11.81 to 23.8.1982. They were given promotion from the dates from which their juniors were already holding the post on the recommendations of the earlier DPC. It is also admitted that all these 13 persons were junior to the applicant when adhoc promotion to the cadre of Assistant Station Director was made vide order No.13/88-B(A) dated 16.8.88 and when regular promotion was given vide order No.18/88-B(A) dated 17th November, 1988. It is also admitted that all these 13 officers were junior to the applicant in the revised seniority list of Programme Executives circulated vide O.M No.4/259/88-S I(B) dated 24th July, 1989. It is also a matter of record that the applicant had held his place vis-a-vis these 13 officers when the DPC to the cadre of ASD was held. The contention of the applicant is that the assessment made by the DPC during the year 1988 should and could not have been different from the assessment of the review DPC held subsequently. In other words, the assessment of both the DPCs should have been identical and he should have maintained his seniority in the review DPC over these 13 persons. This contention is wrong and is not based on facts. The applicant was considered for promotion to the cadre of Assistant Station Director alongwith these 13 officers and other eligible persons in 1988 and as that the ACRs for the 5 years preceding the date of the DPC were taken into consideration as per the rules. On the basis of his performance as reflected through these

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ACRs the applicant was able to retain his place above these 13 persons. However, when the review DPC was held subsequently for the vacancies for 1981 onwards, the ACRs for the five years preceding the year of the DPC were taken into account in respect of each year. In other words, the ACRs, evaluated for the regular DPC in 1988 and the subsequent review DPC were different and therefore, the recommendations of the DPC-review DPC were bound to be different. In the review DPC, the 13 officers were given better gradings than the applicant on the basis of their performance as reflected through their ACRs which were taken into account, for 1980/1981 vacancies. As a result of it, he was not recommended for promotion to the cadre of ASD in the 1980/1981 Review DPC panels. Further review DPC in the cadre of Assistant Station Director was held for the vacancies for the year 1982 and this time the applicant got a better grading and he was recommended for promotion to the cadre of ASD. Accordingly, he was promoted to the grade of ASD w.e.f. 28.8.82 when his juniors in the review DPC panel had taken over. In view of this position there has been no discrimination against the applicant and his placement has been done correctly as per rules."

(Actually the number of private respondents is 14 and not 13 as stated in the reply).

7 Respondents 5 to 17 are admittedly juniors to the applicant in the earlier seniority at Annexure A4 and also at Annexure A5. They had superseded him at the time of ad-hoc promotion in August 1988 and regular promotion in November, 1988. The ground taken in the counter is that in the review DPC in 1989, the subject matter for reviewing the recommendation of the earlier DPC being as follows:,

"Review of the recommendations of the DPCs held from 1980 onwards which prepared panels for the years 1980 to 1987 for promotion to the grade of Assistant Station Director (Group 'A' - Rs 2200 - 4000) in the AIR/Doordarshan as a sequel to the judgment of the CAT, Principal Bench, New Delhi in Application No. 663/86 filed by Shri MP Verma and others.",

the respondents have considered ACRs for different periods, first for the purpose for the DPC in 1988 and the Review DPC in 1989. This point is also repeated



in the additional reply filed by the official respondents vide paragraph 12 of the additional counter.

"12. The applicant was considered for promotion to the cadre of Assistant Station Director alongwith these 13 officers and other eligible officers in 1988 and at that time the ACRs for the 5 years preceding the date of the DPC were taken into consideration as per rules. On the basis of his performance as reflected through these ACRs the applicant was able to retain his place above these 13 officers. However, when the Review DPC held subsequently for the vacancies for 1980 onwards, the ACRs for the five years preceding the year of the DPC were taken into consideration in respect of each year. In otherwords, the ACRs evaluated for the regular 1988 DPC and the subsequent Review DPC were different and therefore, the recommendations of the DPC/Review DPC were bound to be different."

8 The learned counsel for the applicant pointed out that the Review DPC is for the purpose of reviewing the proceedings of the earlier DPC and since the vacancies earmarked, according to this case, is from 1980 onwards, the very same ACRs had to be reviewed for the vacancies for the particular years, whereas the learned counsel for the official respondents stated that for the purpose of the review DPC the period for which the ACRs were reviewed was different. It is on this ground that the continued supersession of the respondents 5 to 18 was sought to be justified by the learned counsel for the respondents, besides the point that even at the time of ad-hoc promotion, the respondents 5 to 18 were juniors to the applicant and had superseded him.

9 The proceedings do not indicate as to why different set of ACRs were taken into account for the purpose of ^{review} DPC. If a further DPC is held to consider



the decision of an improperly constituted DPC, it may go into fresh matters, but in this case since the review was necessitated on account of implementation of the judgment in OA 663/86 and following Government's decision to extend giving the benefits of the judgment to similarly situated persons, the review could not take into account a fresh set of ACRs for a different period. We have ourselves verified the entries made in the ACRs of the applicant and the classification given to him by the Review Committee in 1989. We are unable to see any reason why he was considered for appointment only for 1982 and not 1981 with reference to his juniors who have been assigned the year 1981 for the ante-dating promotion, particularly in the absence of the ACRs of the private respondents 5 to 17. Neither the instructions issued in respect of the "selection posts" vide relevant circulars of the Department of Personnel & Training OM No. 28034/6/86-Estt(D) dated 17.11.86 and OM No.22011/6/75-Estt(D) dated 30.12.76 reproduced in Rai Bahadur G.K. Roy's Rules and Orders relating to Government Servants and their dismissal (Eighth Edition) 1990 by RK Mehra at pages 1657 and 1658 nor the further circular issued vide OM.No. E. 22011/5/86-Estt(D) dated 10.3.1989 which was considered in by this Bench of the Tribunal CS Gopalakrishnan Nair Vs. Union of India - (1991) 17 Administrative Tribunals Cases-439) gives any clue as to why in respect of a selection post, different procedures are followed when it is a case of review, and not a fresh consideration by DPC with

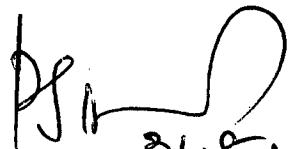
reference to the ACRs for different period in the case of an individual. This does not mean that the circular of 10.3.89 will apply in respect of the vacancies for 1980, 1981 or 1982.

10. In this view of the matter, we are convinced on a perusal of the DPC proceedings of 1989 and the relevant circulars on the subject and the ACRs of the applicant that he has a case for getting ante-dated promotion in preference to his juniors who have been assigned earlier dates of promotion. Orders of promotion ante-dating the promotions of his juniors should be reviewed by the respondents 1 to 3 and appropriate orders issued in accordance with law taking into account the above observations within a period of two months from the date of receipt of a copy of this judgment, but we make it clear that the applicant will not be entitled to any arrears, except the benefit of notional pay fixation and consequential service benefits due to him under law. However, arrears as admissible from the date of his actual joining of the post shall be paid to him. Respondents are directed accordingly.

11. There is no order as to costs.


31.8.92

(N.Dharmadan)
Judicial Member


31.8.92

(P.S.Habeeb Mohamed)
Administrative Member

31.8.92

CPC 156/93 in
O.R. 123/91

ADJAR

26.

Mr. M. M. Nair
SCGSC by Pro.

Learned counsel for respondents prays
for time for getting instructions. He may
file statement within ^{two weeks with} a copy to learned counsel
for petition. Post for further direction on
26.4.93.

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(AR)
27/3

✓
(AD)
22/3

(34) Mr. MRR Nair
SCGSC

Learned counsel for the respondents seeks
one month time to file a statement. He may do so
by filing full compliance of the judgment. List
on 2.6.93.

✓
RR

✓
AVH

26.4.93

ADJAR

25.

Mr. M. M. Nair
SCGSC by Pro.

Learned counsel for respondents prays
for time for filing relief for
some time for presentation of time. Post
on 9.6.93.

✓
PM

✓
9.6.93

✓
(AR)
27/3

✓
(AD)
27/3

(22) Mr M.R. Rajendran Nair
SCGSC through Mr Polly Mathai

Post on 5.7.93 alongwith the ~~M.P.~~

R. Rangarajan
A.M.

C. Sankaran Nair (J)
V.C.

9.6.93

5.7.93

(20) Mr MRR Nair
Mr Poly Mathai

Post peremptorily on 20.7.93, to consider
whether personal appearance should be ordered,
along with M.P. 903/93.

R. Rangarajan
A.M.

C. Sankaran Nair (J)
V.C.

5-7-93

20/7/93

Post on 3/8/93

By order
Mr
C.O
20/7

3.8.93 Mr. M.R. Rajendran Nair
Mr. George CP Tharakan, SCGSC

Learned counsel for respondents submits that
relief has been granted to petitioner by order
No. 45013/4/91-B(A) dated 29.7.93 of Ministry of
Information & Broadcasting, New Delhi. We record
the submission. It is unnecessary to consider the
matter further. CP(C) is dismissed as infructuous.
No costs.

R. Rangarajan
A.M.

Chettur Sankaran Nair (J)
V.C.

20 issued
JUL 1993
At 10 AM

CO
for
4/10
M.B.M.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P. (C) No. 264 of 1994
in
O.A. 123 of 91

Tuesday this the 1st day of August, 1995.

CORAM

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

K.S.Unni,
Assistant Station Director,
Doordarshan Kendra,
Trivandrum. Petitioner

(M.R.Rajendran Nair-Advocate for petitioner)

v.

1. Mr. Bhaskar Ghosh,
Secretary to Government,
Ministry of Information and
Broadcasting, New Delhi. ... Respondent

(By Advocate Mr. T.P.M.Ibrahim Khan, SCGSC)

The application having been heard on 1st day of August, 1995 the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Both sides submit that petitioner has been promoted to the Junior Administrative Grade by an order dated 11.7.95. Notwithstanding this, counsel for petitioner would submit that petitioner has other grievances. The redressal of those must be outside this Contempt Petition. We record the submission and dismiss the petition. No costs.

Dated 1st day of August, 1995.


S.P. BISWAS
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN