

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 124/91
~~XXX No.~~

199

DATE OF DECISION 28-8-1992

TP Vijayan Applicant (s)

Mr KP Dandapani Advocate for the Applicant (s)

Versus
Station Director
All India Radio, Respondent (s)
Thiruvananthapuram and
others.

Mr George Joseph, AC GSC Advocate for the Respondent (s)

CORAM :

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

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. 124/91 filed by Shri TP Vijayan, Clerk Gr.I, All India Radio, Kozhikode under Section 19 of the Administrative Tribunals Act of 1985, he has challenged orders issued by the Respondent-1 in No.TVM-1(9)90-S/5703 dated 17.4.90 (Annexure-IV) in which he was placed in the post of Clerk Gr.I/ Store Keeper(Junior) below the 3rd respondent and has prayed for the issue of directions by the Tribunal quashing the same and for a declaration that he is senior to 3rd respondent in the cadre of Clerk-I; he has also prayed for orders quashing Annexure 1 and 1(a), both dated 9.1.1991, issued by 1st respondent nominating 3rd respondent(Annexure-I) for promotion as HC/AC/SSK in that it cancels the nomination of the applicant

has prayed
and for directions to Respondents 1 & 2 to promote him
as SSK at the All India Radio, Kozhikode, in preference
to the 3rd respondent ~~and~~ also for other incidental reliefs.


2 As per application, he is in regular service as
Clerk, Gr.II from 18.5.1962 and was confirmed in the
same post on 18.1.1969. He also mentioned that he was
senior to Respondent-3 and ought to have been placed in
the Seniority List of Clerk Gr.I/Store Keeper over
Respondent-3. Even though, the applicant filed objections,
to the final seniority list dated 24.4.90 at Annexure-IV
his position is at Sl.No. 11 and of Respondent-3 is at
Sl.No.10. The reason given by the official respondents
is seen from Annexure-VI, a communication to Station
Director, All India Radio, Kozhikode which states that
~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ that though the case of promotion
of Respondent-3, KA Sreedharan is after the date of
promotion of TP Vijayan, seniority in the cadre of Clerk
Grade-I has been drawn ^{up} on the basis of seniority in the
feeder category of Clerk Gr.II.

3 The Official respondents have taken the stand that
~~xxxx~~ the applicant and the respondent-3 were promoted
from Clerk Gr.II to Clerk Gr.I with effect from 11.7.73
and 17.7.73 respectively. It is also stated that though
the applicant was junior in the grade of Clerk Gr.II on
11.7.73 prior to the date of promotion of Respondent-3
who is senior in the grade of Clerk Gr.II; ^{the latter} ~~he~~ was promoted
as Clerk Gr.I with effect from 17.7.73 but their ^{actual} seniority
will be in the order of seniority in the feeder category.

4 In the rejoinder filed by the applicant, the applicant has taken up the stand that Respondent-3 should have been posted in the first vacancy which occurred on 13.1.83 at the All India Radio, Calicut and the second vacancy at the All India Radio, Trissur should have been offered to the applicant in case the seniority in feeder category was to be followed. Instead, the first vacancy at the All India Radio, Calicut has been given to the applicant and the second vacancy at Trissur was offered to Respondent-3. It is clear from the Annexure VI letter dated 19.7.90 that the seniority in the feeder category of Clerk Gr.II has been taken into account for posting as Clerk Gr.I.

5 The arguments of the learned counsel for the applicant were on the lines as taken in the application and the rejoinder and that of the learned counsel for respondents as per counter as filed by the respondents. The point has also been taken by respondents that if at the time promotion is considered, there are more than 1 post and there are morethan 1 eligible candidates in the promotion panel, the place of posting on promotion can be made suitably to the convenience and benefit of the promotee, which means that the promotion of respondent-3 even from a later date, was only for a short term adjustment and does not confer any added benefit to the applicant by way of seniority.

6 Having perused the papers and hearing the parties, we notice that contrary stands have been taken in the correspondence of the Official respondents 1 & 2; the



main crucial document is the recommendation sent by the Respondent-2 to the Respondent-1 vide letter

No. CLT-I(7)/90-S/8866 dated 28.7.90 at Annexure-VII

which is reproduced below:.

" Kindly refer to the above letter intimating your clarification on the representation of S/Shri TP Vijayan and Pm Manuhlada Kurup, CG-Is regarding their seniority.

"According to the seniority list of CG-IIs circulated vide your letter No.TVM.1(9)/90-S/4672 dated 6.4.90, S/Shri Donnoony C, AG Nair, Smt Sarasu, K George, KA Sreedharan etc. etc. are shown as senior to Shri TP Vijayan in the post of CG.II (i.e., feeder post of CG-I).

"In the seniority list of CG-I circulated vide your letter No.TVM-1(9)/90-S/5703 dated 17/24.4.90, the above officials have been show as juniors (except Shri KA Sreedharan) to Shri TP Vijayan and have been given their seniority from the date of their promotion, except in the case of Shri TP Vijayan. Hence your statement that " the seniority in the cadre of CG.I has been drawn on the basis of seniority in the feeder category of CG-II" does not corroborate with the facts, as in that case, the above officials would have been shown as senior to Shri TP Vijayan. Hence, it may please be seen that your above clarification is contradictory on the basis of above points. It is, therefore, requested that the seniority in the category of CG-I to Shri TP Vijayan may kindly be given from the date of his promotion, senior to KA Sreedharan as has been given to other CG-Is.

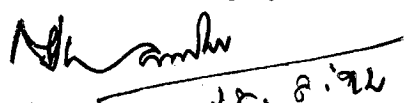
" In the case of Shri P Manuhlada Kurup, CG-I, it is not clear how the humanitarian aspect can reduce the seniority of Shri P Manuhlada Kurup, CG-I, as he was appointed as CG-I earlier than S/Shri KP Stephen and N Gopalakrishnan, CG-I.

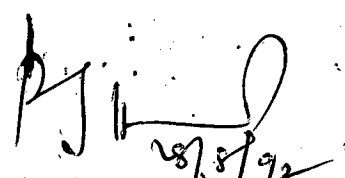
" An early action is requested."

6 Respondent-2 has clearly mentioned that the letter dated 19.7.90 at Annexure VI does not reflect the correct state of affairs. He has made the point that as per the seniority list of Clerk Gr.II circulated vide letter dated 6.4.90 at Annexure-II, the following persons viz; S/Shri Donnoony C, AG Nair, Smt Sarasu, K George and Respondent-3 (KA Sreedharan) were shown senior to the applicant, Vijayan

in the post of Clerk Gr.II and the stand of the respondent-1, that the promotion and seniority in the cadre of Clerk Gr.I reflected the seniority in the feeder category is not corroborated by facts. We have not been able to notice any where how this point made by Respondent-2 in the official correspondence to Respondent-1 has been dealt with and obviously there has been no application of mind to the materials placed by Respondent-2 before Respondent-1. In this view of the matter, we have no hesitation in quashing Annexure-IV seniority list, No.TVM 1(9)90-S/5703 dated 17/24.4.90 to the extent in which the applicant is shown below to Respondent-3 in the cadre of Clerk Gr.I/Store Keeper; and also quashing relevant portion at Annexure-I and Annexure I(a) in so far as it relates to the inferior positioning of the applicant. We do so. We further direct the respondent-1 to consider all the relevant facts, including the recommendation sent by Respondent-2 in letter dated 28.7.90 at Annexure-VII and issue orders as early as possible, about the seniority of applicant-vis a vis - 3rd respondent, ^{as in any case} within a period of two months from the date of receipt of a copy of this judgment.

7 The application is allowed as above. There is no order as to costs.


28.8.92
(N Dharmadan)
Judicial Member


28/8/92
(PS Habeeb Mohamed)
Administrative Member

28-8-1992