

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.162/96

Tuesday, this the 7th day of May, 1996.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

KK Kurian, Assistant Station Director,
All India Radio, Kochi--682 021.

....Applicant

By Advocate Shri Sebastian Paul.

vs

1. Union of India represented by the Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan, New Delhi--110 001.
2. The Director General,
All India Radio,
Akashvani Bhavan, New Delhi--110 001.

....Respondents

By Shri TPM Ibrahim Khan, Senior Central Govt Standing Counsel.

The application having been heard on 1st May, 1996,
the Tribunal delivered the following on

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant was working as Farm Radio Officer in the All India Radio. While so, the Indian Broadcasting (Programme) Service Rules, 1990 (the Rules for short) were issued (A2). The Rules came into force on 5.11.90. The Rules provide posts of a Junior Time Scale Programme Officer, which is the entry point in the new service. These posts are to be filled 50% by promotion and 50% by direct recruitment, the feeder category for promotion being Programme Executive with three years'

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regular service in the grade. The Rules define Programme Executives as those officers regularly appointed to a grade so designated in the pay scale of Rs.2000-3500 in the media, including Programme Executive (Selection Grade) as well as those similarly appointed, but designated as Farm Radio Officers and Extension Officers. It is, therefore, clear that applicant is eligible for promotion as Programme Officer in the Junior Time Scale. The Rules also provide that vacancies in the Junior Time Scale shall be filled by promotion for a period of two years from the date of commencement of the Rules. The initial constitution of the service provides that all departmental candidates holding posts on regular basis in the scales of pay Rs.5900-6700, Rs.3700-5000, Rs.3000-4500 and Rs.2200-4000 shall be deemed to have been appointed to the corresponding posts and grades in the service from the date of commencement of the Rules. Further maintenance of the service, as far as the Junior Time Scale was concerned, was to be as stated above. According to Note 1 of Schedule IV, for purposes of promotion to Junior Time Scale posts an eligibility list of Programme Executives, Farm Radio Officers and Extension Officers shall be prepared on the basis of their date of appointment on regular basis in the pay scale Rs.2000-3500 subject to the condition that inter se seniority in their respective cadres shall be maintained.

2. Applicant states that such a combined eligibility list as on 5.11.90 was prepared and finalised on 18.3.91 according to which he was placed at serial No.21. In 1991, a Departmental Promotion Committee (DPC) considered only 69 persons from among the category of erstwhile Programme Executives and they were promoted to the Junior Time Scale on 18.6.91. Applicant has a grievance that though he was senior to such persons, he was

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not considered by the DPC in 1991. Thereafter, the DPC did not meet till 1994, though it was expected to meet at regular annual intervals. Based on the recommendations of the DPC, applicant was promoted on 18.7.94 to Junior Time Scale with effect from the date he assumed charge of the post. Applicant contends that the DPC should have determined the actual number of regular vacancies which arose in each of the previous years immediately preceding and that he should have been promoted with reference to the actual date of occurrence of vacancy and not 18.7.94, which relates to the date on which the DPC actually met.

3. Applicant has a further grievance. The Rules require a minimum of four years' regular service in the Junior Time Scale for eligibility for promotion to Senior Time Scale. The DPC which met in 1995 promoted many persons who were junior to applicant, but applicant was not promoted since he did not have four years' regular service in the Junior Time Scale. Applicant contends that had he been given promotion to the Junior Time Scale in 1991, when the DPC should have actually met, but did not, he would have acquired the required four years' service in the Junior Time Scale and so would have become eligible for promotion to Senior Time Scale in 1995. Applicant accordingly prays that respondents be directed to review the A4 promotions made on 18.7.94 to the Junior Time Scale and promote applicant with retrospective effect from 5.11.90 (the date on which the Rules came into force) or from the date on which vacancies became available against which the applicant was eligible for consideration. There is a further prayer asking for a direction to respondents to convene a DPC and promote applicant to Senior Time Scale on the assumption that he had notionally completed four years' service in the

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Junior Time Scale. Respondents had rejected these prayers by Al order dated 11.12.95. However, applicant has not prayed that Al be quashed.

4. Respondents have stated that the DPC held in 1991 was in respect of those posts which fell vacant before the coming into force of the Rules. Those promotions were to be ordered on the basis of the earlier Rules, according to which the Farm Radio Officer was not a feeder category to the post of Assistant Station Director in the promotion quota. Applicant, who was a Farm Radio Officer, could not, therefore, have been considered by the DPC which met in 1991. The DPC for the Junior Time Scale under the Rules could not be convened till 1994 since after the constitution of the Service, lot of spade work had to be done in consultation with the Union Public Service Commission and the delay was due to various administrative reasons beyond the control of respondents. A DPC which met in July, 1994, considered the case of applicant along with others and applicant was promoted in July, 1994. The DPC followed the instructions issued in Office Memorandum No.22011/5/86-Estt D dated 10.4.89 and the year-wise panels on the basis of number of vacancies available in each year were drawn up in accordance with the Rules. The Rules also state that promotions would have only prospective effect even when vacancies relate to earlier years. Therefore, applicant cannot be promoted retrospectively from an earlier date. As a consequence, since applicant had not put in four years' regular service in the Junior Time Scale, he could not also be promoted by the DPC which met in 1995 to the Senior Time Scale.

5. As regards the first contention of applicant that he should have been promoted by the DPC which met in 1991, it is clear

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that the right of applicant to get promoted in the Junior Time Scale arose only after the Rules became effective and that applicant had no right to a promotion to a vacancy which arose prior to the coming into force of the Rules. Applicant can, therefore, only be considered for vacancies which arose after 5.11.90. It is true that the DPC which ought to have met annually, did not meet till 1994. This does not by itself confer any right on applicant for retrospective promotion. The Rules issued by the Government covering cases where the DPC did not meet for a number of years provide as follows:-

"6.4.1 Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:-

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on."

[Page 83 Swamy's Compilation on Seniority and Promotion in Central Government Service]

6. We called for the files of the DPC and perused them. It is seen that the DPC has followed the above Rule and determined the number of regular vacancies in each of the

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previous years and has considered those officers who would be within the field of choice with reference to the vacancies of each year. A select list has also been prepared placing the eligible candidates in the year-wise select list. In fact, the file shows that the applicant has been selected against a 1990-91 vacancy and has accordingly been given seniority available to those who have been selected with reference to the year 1990-91. The above Rule also provides that the promotion will be only prospective. Rule 6.4.4 states:

"Promotions only prospective--While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s)."

Applicant has not challenged the above Rule. The decisions of the DPC of July, 1994 cannot, therefore, be faulted and the promotion of applicant to the Junior Time Scale has been made strictly according to the above Rule.

7. Applicant has stated that Annexure 10 order dated 16.5.95 relates to promotion made by the 1995 DPC to the post of Senior Time Scale. This seems to be an incorrect statement. A10 relates only to a Rule 6 appointment, that is to say, an appointment at the initial constitution of the service. Applicant, who was only in the scale of Rs.2000-3500 at the time of the constitution of the Service was not eligible under Rule 6 to be placed in the Junior Time Scale. The fact that MV Seshachala, who was at serial No.77 in the combined eligibility list, was placed in the Junior Time Scale at the time of initial constitution of the Service by the DPC which met in 1991, while ignoring the applicant, who was at position 21, in the same eligibility list (A11) cannot, therefore, be faulted.

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8. Since it is not possible to grant the prayer of applicant for retrospective promotion, it follows that his claim for promotion to Senior Time Scale also cannot be granted, since he does not have the requisite period of service in the Junior Time Scale for promotion to Senior Time Scale.

9. We may also point out that persons who may be adversely affected, if the prayers in the application are granted, have not been made parties. In fact, when these issues were earlier agitated before the Tribunal in OA 613/95, the Tribunal stated (A3):

"both the reliefs cannot be granted for obvious reasons, which we do not wish to elaborate upon"

and directed that a representation made by applicant be disposed of by the respondents, resulting in the A1 order.

10. Applicant has stated that eight posts of Director are lying vacant in Kerala as a result of which all the six All India Radio Stations in the State are functioning without a Director. It is also stated that at the national level about 200 posts of Station Director are kept vacant. He further states that he has completed 21 years of gazetted service, but is not being considered for promotion only because he does not have adequate qualifying service. If the respondents find that there are not enough persons available to man the Senior Time Scale posts, it is for them to consider whether the required period of qualifying service is to be relaxed in suitable cases by having recourse to Rule 13 of the Rules which says:

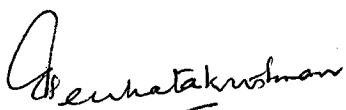
"Where Controlling Authority is of the opinion that it is necessary or expedient so to do, it may

by order, for reasons to be recorded in writing and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category of persons."

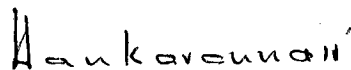
11. Application is dismissed with the above observations.

No costs.

Dated the 7th May, 1996.



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure A1: True copy of the communication No.C-18011/10/95-SI (A/B(A) dated 11.12.1995 received by the applicant from the second respondent.
2. Annexure A2: True copy of the Indian Broadcasting (Programme) Service Rules 1990, Published on 5.11.1990 in Extra Ordinary Gazette of India.
3. Annexure A3: True copy of the order dated 26.10.1995 of this Honourable Tribunal in OA 613/95.
4. Annexure A4: True copy of the order No.32013/3/92-B(A)-Vol-VII dated 18.7.1994 promoting the applicant and others to the Junior Time Scale.
5. Annexure A10: True copy of the notification No.45011/19/91-B(A) dated 16.5.1995 selecting 19 officers by the first respondent for consideration to the Senior Time Scale.
6. Annexure A11: Photostat copy of the combined eligibility list of Programme Executives/Farm Radio Officers and Extension Officers in All India Radio Dordarshan as on 5.11.1990, circulated vide Memo No.4 (71)/90-SI(B) dated 24.12.90 by 2nd Respondent.

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