

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED WEDNESDAY, THE TWENTIETH DAY OF SEPTEMBER
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN
&
HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.180/89

N.Gopalakrishnan - Applicant

v.

1. Director of News Services
Division, All India Radio,
Broadcasting House,
Parliament Street,
New Delhi-110 001.

2. Director, Doordarshan Kendra,
Bangalore.

3. Smt. Rama Prasad,
Stenographer,
All India Radio,
Mangalore.

Mr N.Gopalakrishnan

Mr P.S.Biju, ACGSC

- Respondents

Party in person

Counsel for
respondents

O_R_D_E_R

(SHRI A.V.HARIDASAN, JUDICIAL MEMBER)

The applicant is a Stenographer Grade III in the All India Radio, Trichur. In the Departmental Promotion Committee held in 1986, the applicant was found fit for promotion to the post of Stenographer Grade II and he was consequently promoted and posted at AIR, Jullundhar. Since the circumstances was such that the applicant found it difficult to go to Jullundhar he made Ext. A3 representation dated 17.2.1987 requesting

for a posting at Bangalore, Madras or Trivandrum.

At that time there was a vacancy in Doordharshan Kendra, Bangalore. But during August 1987, the respondent No.1 has offered the post at Bangalore to one Shri S.A.Latheeef, a colleague of the applicant whose initial posting was to Delhi. Shri Latheeef refused to accept the offer. The applicant again submitted a representation dated 25.8.1987 for a posting at Doordarshan Kendra, Bangalore. The first respondent directed the respondent No.2 to issue an appointment order to the applicant against the existing vacancy of Stenographer Grade II on ad hoc basis vide letter dated 21.3.1988. This letter was replied by the second respondent stating that as Director, Doordarshan Kendra, Bangalore was on long leave, the question of appointment of the applicant could be taken up only after he came back. The applicant was waiting for a posting at Bangalore. Then the applicant received a communication dated 7.5.1988 from the respondent No.1 cancelling the offer of provisional appointment on the ground that action for appointment on regular basis was being initiated. But now the first respondent has issued Ext.A1 order offering to appoint one Smt Rama Prasad of AIR, Mangalore in the vacancy at Doordarshan Kendra,

Bangalore. Forty eight persons, including Smt. Rama Prasad have been promoted as per a list in which the applicant has not been included. Aggrieved by the act of the respondents in not posting him on the basis of the 1986 D.P.C., the applicant has filed this petition praying that the first respondent may be directed to issue an order promoting and posting the applicant in the existing vacancy at Doordarshan Kendra, Bangalore in the post of Stenographer Grade II giving him seniority on the basis of 1986 D.P.C.

2. Originally there were only 2 respondents. Since Smt Rama Prasad to whom an offer of posting as Stenographer Grade II at Doordarshan Kendra, Bangalore was made, was felt to be a necessary party, she was also impleaded. But though notice was served on her, she remained absent and so she was set ex parte.

3. A reply statement has been filed on behalf of the respondents. The material contention can be briefly stated as follows. The D.P.C. approved the applicant also to be promoted as Stenographer Grade II on 5.1.1987 and placed him at Sl. No.90. He was nominated for a posting at Jullundur. But vide his application dated 7.2.1987(Ext.A3) he did not accept the promotion and posting. He was further offered a promotion at AIR, Delhi on

21.4.1987 ~~for~~ which he did not respond. Since he ~~did not~~ did not accept the promotion and join ~~at~~ at the places where he was posted, he was debarred from promotion for a period of one year vide order dated 12.11.1987. The representations of the applicant dated 17.2.1987 and 25.8.1987 for a posting at Doordarshan Kendra, Bangalore could not be considered because one Smt.H.T. Radha and one Mr Latheef who were seniors to the applicant were nominated for promotion and posting at Doordarshan Kendra, Bangalore successively, though both of them did not accept the offer. Since 1987 panel has been exhausted and since the vacancy at Doordarshan Kendra, Bangalore could not be filled up and as ~~such~~ ^M the applicant was showing eagerness to join at Doordarshan Kendra, Bangalore he was nominated for ad hoc promotion by letter dated 21.3.1988. But 4 other persons who were seniors to the applicant had also applied for posting and promotion to Bangalore. Therefore the idea of posting the applicant on ad hoc basis was dropped. Now a fresh O.P.C. was convened in 1989 and the applicant has been placed at Sl.No.73 in the select list to the post of Stenographer Grade II. Since Smt. Rama Prasad, the third respondent in the O.A. is at Sl.No.25 in the select list/has been nominated to the post at Bangalore, the applicant is not entitled

to claim a posting there for the time being. His claim will be considered when his turn comes. Therefore since the application is devoid of any merit, the same has to be dismissed.

4. We have heard the arguments of the counsel on either side and have very carefully perused the records produced on either side. It is a fact beyond dispute that the applicant was approved by the D.P.C. held in 1987 for promotion to the post of Stenographer Grade II and that he was given an order of posting directing him to join at Jullunder. The counsel for the respondents contended that since the applicant did not accept promotion and posting, he was debarred from promotion for a period of one year vide order dated 12.11.1987. Ext.A3 is the representation made by the applicant on receipt of the order promoting and posting him as Stenographer Grade II at Jullunder. This representation reads as follows:

"Sir,

I take this opportunity to thank you for having considered me for promotion to the post of Steno Gr.II and posting me at AIR, Jullendar.

Sir, I am very happy to take up the promotion and to reach there wherever possible because promotion is a very rare chance to a Gr.III Steno like me. But due to pressing family problems and ill-health of my family members, I am not in a position to go far off places like Jullendar. I am a family man with three children that too girls not keeping good health always. My wife is also employed. Hence the idea of taking up the family with me is not at all possible due to ill-health of my family/ children and my wife's employment.

So, I humbly request you, Sir, you may kindly make it convenient to see that I am posted either at Trivandrum or Madras/Bangalore.

It is also understood vacancies are available at Bangalore Doordarshan, Trivandrum Doordarshan Kendra & Radio Stations situated in Madras city.

I do hope you will consider my case favourably.

Thanking you,

Yours faithfully,*

Having read the representation carefully, we are not in a position to accept the contention of the respondents that the applicant has refused to accept the promotion and posting. He had only made a request for a change of posting on compassionate grounds. The respondents have no case that they have ever given any reply to this representation. So the applicant is justified in expecting a favourable order on this representation, especially, in the face of the fact that though many persons were offered the post of Stenographer Grade II in Doordarshan Kendra, Bangalore, nobody had accepted the same. In the reply statement at paragraph 8, it has been averred as follows:

"Since 1987 panel had been exhausted and the vacancy at Doordarshan Kendra, Bangalore could not be filled and the applicant was showing his eagerness to join at Doordarshan Kendra, Bangalore he was nominated for ad hoc promotion vide letter No.1(13)/88-S, dated 21.3.88(Ext.A5)...."

It is not correct to say that the 1987 panel/exhausted and that the vacancy at Doordarshan Kendra, Bangalore could not be filled. It would be correct if it is

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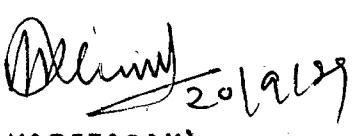
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said that the respondents did not fill the vacancy of Stenographer Grade II at Doordarshan Kendra, Bangalore even though the applicant, who was approved for promotion as per the 1987 panel had been making repeated requests for a posting there. Long before 12.11.1987 on which date the respondents passed an order debarring promotion of the applicant for a period of one year, the applicant had made two representations for a posting at Bangalore and several persons nominated for a posting at Bangalore had refused to accept the posting. The applicant in Ext.A3 had only expressed his pleasure and thanked the first respondents for having considered him for promotion and made a request for a posting at Bangalore, Madras or Trivandrum instead of Jullunder. This cannot be said to be refusal to accept the promotion. If a change to either of the three places mentioned in Ext.A3 was impracticable the first respondent should have given a reply to the applicant stating so and should have directed him to join duty at Jullunder or in the alternative to state that he was not willing to accept the promotion and posting. Since the first respondent has not done so, it cannot be said that the applicant has refused to accept the promotion. Therefore, the first respondent was not justified in debarring the promotion of the applicant for a period of one year

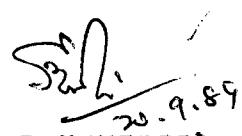
on 12.11.1987 while a clear vacancy to the post of Stenographer Grade II was existing at Bangalore and when the applicant had expressed his desire to be posted there. In this circumstances, it is difficult to accept the contention of the respondents that the applicant has lost his place in the select list of 1987 D.P.C. and that he should wait for his chance in the select list prepared by the D.P.C. held on 4.3.1989. Smt. Rama Prasad the third respondent who has been nominated to be posted at Doordarshan Kendra, Bangalore has not showed any interest in the matter. She remained absent and she was set ex parte. The applicant averred Smt. Rama Prasad in the application that she is not interested in taking up the post. [However, since the selection of the applicant in the D.P.C. held in 1987 stands good and since the debarring him from promotion by the order dated 12.11.1987 is unjustified, we hold that the applicant is entitled to be considered for a posting at Doordarshan Kendra, Bangalore before anyone in the select list of the D.P.C. dated 4.3.1989. Since the vacancy at Bangalore has not yet been filled, it is only just and proper that the applicant is given a posting there.]

5. [Hence the application is allowed. The first respondent is directed to issue an order of promotion and posting the applicant at Doordarshan Kendra, Bangalore where a vacancy exists for the post of Stenographer Grade II.]

6. We make no order as to costs.


20/9/89
(A.V.HARIDASAN)

JUDICIAL MEMBER


20.9.89
(S.P.MUKERJI)

VICE CHAIRMAN

20-9-1989

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