

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision : 30.10.1989

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.221 OF 1987

N.Krishna Iyer .. Applicant

v.

1. The Union of India represented by the Secretary to Government, Ministry of Information & Broadcasting, Shastri Bhavan, New Delhi-110 001.
2. The Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi-110 001.
3. The Station Director, All India Radio, Bhaktivilas, Vazhuthacaud, Trivandrum-695 014.
4. Shri K.S Chacko .. Respondents

M/s. K.S Rajamony and K.K. Gopinathan Nair .. Counsel for the applicant

Mr P.V.Madhavan Nambiar, SCGSC .. Counsel for Respondents

Mr.G.P Mohanachandaran, ADD C .. Counsel for R4.

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 5.3.87 the applicant who has been working as Stenographer(Grade III) in the office of the All India Radio, Trivandrum has prayed that he may be declared to be senior to respondent 4 in the category of Stenographer (Grade III) and that the respondents be directed to promote him to the Selection Grade of Stenographer, with effect from 1.7.1974 on which date the 4th respondent was promoted, with all back wages

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and other consequential benefits. He has also requested that his reversion from Selection Grade to Grade III of Stenographers with effect from February, 1986 should be declared as illegal and the order at Ext P-17 dated 3rd February, 1986 about his reversion should be set aside. The chronological facts of the case, which are not in dispute are recounted as follows.

2. The applicant was recruited as a Stenographer in the All India Radio, Kozhikode in Kerala zone on 6.12.56 for a period of three months against a reserved vacancy. To avoid retrenchment he was transferred in the same capacity to Indore on 22.5.57 and then to Bangalore on 9.12.57 and finally posted under AIR, Trivandrum on 11.6.58. He was confirmed in that post with effect from 1.4.60 by the order at Ext P-2. His service was also regularised with effect from 6.12.56. He was transferred to ^{in Karnataka zone} Gulbarga where he took over on 5.1.67 and remained there for 16 years. He represented in February, 1973 for retransfer to Trivandrum but the same was rejected in April, 1973 (Ext P-3) with the assurance that his case will be considered for transfer to Trivandrum when the Commercial Broadcasting Station starts there. On 16.8.73 his name was included in the seniority list of Junior Stenographers for the State of Karnataka and on 2.11.73(Ext P-4) he pretested against the inclusion of his name stating that " I hold lien in the post of Junior Stenographer at AIR, Trivandrum, where I was working prior to my transfer to Gulbarga in December, 1966". He requested that he may be transferred back to Trivandrum and his name should also be included in the seniority list of Junior Stenographers of Kerala State for consideration of promotion in that State. Despite his representations, two developments took place. On 28.9.73 the DPC of Kerala zone met and considered all eligible persons for promotion

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to the post of Selection Grade Stenographer and Smt. Chellamma who was senior to the petitioner in Kerala zone was promoted to the Selection Grade. The petitioner was not even considered as admitted by the Departmental respondents on the ground that he was not physically working in the State of Kerala. On retirement of Smt. Chellamma the applicant's immediate junior Shri Chacko was promoted to the Selection Grade with effect from 1.7.74. On the other hand, in the Karnataka State the DPC met and on the basis of their recommendation the applicant was granted Selection Grade with effect from 1.2.81. On 27.2.82 the Station Engineer, Gulbarga asked the applicant (Ext P-5) the reasons for his seeking transfer to Trivandrum and whether he was ready to forego seniority as also TA/DA and joining time in the event of his transfer to Trivandrum. He was also informed that an undertaking to that effect was required. To this the applicant replied (Ext P-6) on 1.3.82 indicating the various domestic reasons for seeking transfer to Kerala by referring to his aged mother residing at Trivandrum, his wife's illness, the illness of his two sons including the second son who was suffering from Polio. He indicated that "I am ready to forego TA/DA etc." and also that "in view of compelling circumstances, I am prepared to forego my seniority also". On 16.7.82 (Ext P-7) the applicant was transferred to Trivandrum without TA/DA or joining time "as the transfer is on his own request". The order also indicated that "Shri Iyer will get seniority in the new zone of his posting from the date he joins his duty at the new Station". The applicant joined duty at Trivandrum on 4.9.1982. According to him it was only after he joined at Trivandrum ^{that} he came to know that his junior Shri Chacko was promoted to the Selection Grade with effect from 1.7.74. Immediately thereafter on 19.10.82 he represented repudiating his undertaking that he will forego his seniority on his transfer to Kerala and claimed that his seniority of Kerala zone should be

restored. His representation was rejected on 27.11.1982 (Ext P-9). He represented again on 4.8.83 (Ext P-10) for restoration of his seniority, but to that a reply was received dated 31.10.1983 (Ext P-11) stating that his representation was under consideration. Shortly thereafter an order was issued dated 9th October, 1985 (Ext P-12) promoting him to the Selection Grade with effect from 4.9.82, when he ^{had} joined at Trivandrum. This promotion was made against a second post of Selection Grade by reverting one Stenographer Shri T.M.George. The applicant was not satisfied and he represented on 14.10.85 claiming that he should be promoted to the Selection Grade with effect from 1.7.74 when his immediate senior Smt.Chellamma retired. This representation was rejected on 20.1.86 (Ext P-14). The applicant again represented on 20.2.86 claiming that he should have been promoted to the Selection Grade with effect from 1.7.74 when his immediate junior Shri Chacko was promoted. This representation was also rejected on 28.4.86 (Ext P-16) and he was informed that no further representation would be entertained.

3. It was at this stage that suddenly the applicant was informed by the All India Radio, Trivandrum's letter dated 3rd February, 1986 (Ext P-17) that even the belated promotion to the Selection Grade with effect from 4.9.82 is withheld. No reason was given in that communication. The applicant represented against this order on 17.2.86. He also referred in his representation to DG's memo dated 20.1.86 stating that the applicant should not have been promoted to the Selection Grade on 4.9.82 as the question of continuance of the Selection Grade post beyond 1.8.82 "is still under consideration". Since no reply was received to his representation, the applicant approached the Tribunal.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The point at issue in this case is simple and straight forward. The applicant claims that since he had been confirmed in the

post of Stenographer at Trivandrum and maintained his lien there, he is entitled to preforma or actual promotion to the Selection Grade ^{in Kerala zone} in accordance with his original seniority in the grade of Junior Stenographer from the date his next junior Shri Chacko was promoted to that Grade. The respondents- Department however states that on his transfer to Gulbarga in 1967 in Karnataka zone, where he stayed for 16 long years and where he was promoted to the Selection Grade of Stenographers with effect from 1.2.81, his connection with the Kerala State had been severed and therefore, he could not be considered for promotion to Selection Grade of Kerala during 1973-74 when he was physically not present there. They have also relied upon the fact that the applicant was transferred to Kerala in 1982 on his giving a clear undertaking that he has no objection to loss of seniority on his transfer to Trivandrum. This is so far as the applicant's claim for promotion to the Selection Grade with effect from 1.7.74 on the basis of his original seniority in Kerala is concerned. But the matter does not end there. The respondents - Department even after his transfer to Kerala with bottom seniority did promote him to the Selection Grade by the order dated 9.10.85 with retrospective effect from 4.9.82 by reverting one Shri T.M.George, who could be senior to him if the applicant was to be maintained at bottom seniority on his transfer to Kerala. The applicant has taken advantage of his promotion with effect from 4.9.82 by stating that the respondents-Department have themselves partially restored his original seniority and withdrawn the bottom seniority by giving him promotion to the Selection Grade in preference to Shri George. Therefore, he claims that according to the Departments' own perception of his seniority, he should be

promoted to the Selection Grade with effect from 1.7.74 on the basis of his original seniority in Kerala. The respondents, however, instead of giving him the partial relief of promotion with effect from 4.9.82 when he rejoined Kerala and perhaps for repairing the damage^{caused} to their original stand of bottom seniority, unilaterally withdrew the promotion of the applicant even from 4.9.82 on the spurious plea that the continuance of Selection Grade posts beyond 1.8.82 had been under consideration when the order of promotion with retrospective effect was erroneously passed on 9.10.85.

5. Let us start from the beginning. The applicant was confirmed with effect from 1.4.60 at All India Radio, Trivandrum vide the order dated 30th October, 1962 (Ext P-2). This order reads as follows:-

" Shri N.Krishna Iyer, Q.P. Stenographer , All India Radio, Trivandrum, is appointed as Stenographer in a Substantive capacity with effect from 1.4.1960 at All India Radio, Trivandrum.


His confirmation is subject to the condition that he will be liable to transfer at any time to serve under a Public Corporation if formed and that on such transfer he will be liable to the conditions of service to be laid down for the employees of that corporation ".

Two things are clear from this order. Firstly, the applicant was confirmed as Stenographer not in the cadre of Stenographers for the Kerala State or any other State, but "at All India Radio, Trivandrum". Secondly his confirmation was subject to his liability to transfer only "under a Public Corporation" and not to any other State.

6. The above will show that unless his lien is transferred to a Public Corporation, it ^{was to} ~~would~~ be maintained at the All India Radio, Trivandrum. The respondents have not been able to produce any order or instructions which would indicate that on his transfer to Gulbarga in Karnataka his lien had been transferred to that State or to that zone. When the applicant protested against the inclusion of his

name in the seniority list of Junior Stenographers of Karnataka zone on 2.11.73(Ext P-4), no reply was given to him ever thereafter. In that representation he had clearly maintained that his lien lies in Trivandrum. No rule has been shown to indicate that protracted posting outside one's cadre would automatically result in transfer of lien. Transfer or termination of lien is a serious matter and before any action is taken, the person concerned has to be intimated and given notice. Considering that the applicant has been representing for his reversion to Kerala State from 1973 onwards, i.e, within six years of his transfer to Gulbarga and considering also that he was assured on 2.4.73(Ext P-3) that he will be considered for reversion to Kerala when the Commercial Broadcasting Station is opened there, the respondents cannot take the plea that merely because he stayed at Gulbarga for 16 years , his lien at Trivandrum stood terminated.

7. The learned counsel for the respondents indicated that the applicant was promoted to the Selection Grade of Karnataka zone on 1.2.81 and therefore he should be deemed to have accepted transfer of his lien from Kerala to Karnataka. This also is not acceptable. When one is working outside the cadre he enjoys the actual benefit of pay and promotion in the cadre in which he is working as also the notional promotion and seniority in his parent cadre. This is an elementary and equitable principle of Service Jurisprudence applicable to employees who are sent out of the parent cadre in public interest. Since the applicant was not sent to Gulbarga at his own request he cannot be denied the notional promotion and seniority which he would have enjoyed in his parent cadre had he not been sent out of his cadre. Also, so long as he was working in the Karnataka zone , his promotion to Selection



Grade ~~also~~^{is} could not be denied. The fact that he was promoted to the Selection Grade in 1981 cannot therefore be a sufficient reason to presume that he had accepted transfer of his lien from Kerala to Karnataka zone. As a matter of fact and in fairness to him, when his junior in the parent cadre Shri Chacko was promoted to the Selection Grade on 1.7.74, he should have been given the benefit of 'next-below-rule' and promoted to the Selection Grade in Karnataka zone. The applicant states that he came to know about the promotion of Shri Chacko to Selection Grade only in 1982 when he reverted to Kerala.

8. The only point going against the applicant is that he had given an undertaking that he would accept the bottom seniority on his transfer to Kerala. It has been held by the Supreme Court in Central Inland Water Transport Corporation Ltd. v. Broje Nath Ganguly and another, AIR 1986 SC 1571, that Courts will not enforce an unfair and unreasonable contract or clause in a contract between parties who are not equal in bargaining power. In the instant case the applicant was under acute domestic pressure for going back to Kerala, where his aged mother stayed and he had to rehabilitate his two sons, one of whom had eye trouble and the other had polio attack on his leg. His wife was also a chronic patient. The respondents themselves by promoting him with effect from 4.9.82 and reverting Shri George who was senior to the applicant if the applicant had to be given a bottom seniority, reneged from their original stand of giving the applicant bottom seniority.

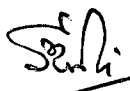
9. Even if there was some justification in denying the applicant promotion from 1.7.74 there was no justification whatsoever in withdrawing his promotion to the Selection Grade by an order dated 3.2.86 to take effect from the very date of promotion given to him from 4.9.82. It is an established law that even statutory rule much less administrative instructions cannot be given retrospective

effect to withdraw vested interests. In the instant case before us no notice to the applicant was given before the promotion was withdrawn. There was also no error in the order of promotion and the stand taken by the respondents that the order of promotion was erroneous because the continuance of the Selection Grade post after 1.8.82 was under consideration carries no conviction. The Selection Grade post had not actually been withdrawn even till 3.2.86 when the impugned order was passed. The proposal was even then under consideration.

10. In the conspectus of facts and circumstances we allow the application to the extent of directing that the applicant should be deemed to have been promoted to the Selection Grade notionally with effect from 1.7.74 with all consequential benefits of seniority, increments but the arrears of pay will be admissible to him from 4.9.82. His pay ^{in the} ~~with~~ Selection Grade will be redetermined by counting the period from 1.7.74 for the purpose of increments. The applicant will also maintain his original seniority in the cadre of Stenographer (Grade III) of Kerala Zone on the basis of his service, lien and confirmation in Kerala State and his service in Karnataka will be deemed to be on deputation. Action on the above lines should be completed within four months from the date of communication of this order. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

30/10/89


(S.P. MUKERJI)
VICE CHAIRMAN

30.10.89

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