

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.259/98

Dated this the 31st January,2000.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI J.L.NEGI, MEMBER(A)

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Vellayambalam, Sasthamangalam, P.O.Trivandrum-10.

..Applicant

(By Advocate Sri M.R.Rajendran Nair)

vs.

1. Union of India, represented by
Secretary to Government,
Ministry of Information and Broadcasting,
New Delhi.
2. The Director, Directorate of Advertising and Visual
Publicity, Ministry of Information and
Broadcasting, New Delhi.

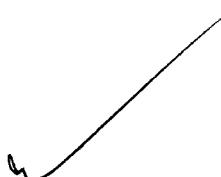
(By Advocate Sri S.Radhakrishnan)

The Application having been heard on 19.1.2000 the
Tribunal on 31.1.2000 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This is the fifth time that the applicant is approaching the Tribunal for redressal of his grievances regarding the seniority in Central Information Service (CIS for short). The historical backdrop in which the application came to be filed is as follows. The CIS consisted of various grades. The post of Field Exhibition Officer(FEO for short) in the pay scale of Rs.270-485, Field Publicity Officer(FPO) and Information Assistant were all posts in the same grade. Promotion to the post of FEO was



made from the post of Field Exhibition Assistant in the scale of pay Rs.210-425. While so, by an order dated 18.8.1967(Annexure A2) the posts of FEO was taken out of the CIS and was placed in the pay scale of Rs.350-575 with Gazetted rank. The applicant who was working as Field Exhibition Assistant was appointed as FEO on adhoc basis on 3.11.67 and was regularised in that post w.e.f. 31.7.68. The post of FPO continued to be in Grade IV of CIS. Officers who joined the posts of FPO in Grade IV of CIS in 1970 Sri S.S.Pillai and Sri K.L.Sreekrishna Das were promoted to Grade III in 1974, Grade II in 1981 and Grade I in 1985 and thereafter even to Junior Administrative Grade while the applicant stagnated in the post of FEO in the lesser scale of pay than Grade III of CIS. However considering the representation of the affected persons like the applicant by an order dated 8.4.1988 officers including the applicant then working in the post mentioned against each of them were appointed to officiate in the grade of CIS Group-A and B. The applicant was appointed of officiate in Group-B Grade III in the scale of Rs.2000-3200 with effect from 23.11.86. Since the grievance of the applicant was not redressed even by the issue of the order dated 8.4.88(Annexure A3) he made a representation on 17.6.88 pointing out that the post of FEO was upgraded to Gazetted rank in 1967, that as the posts in Grade IV of CIS such as FPO were in a lower scale, and that as FPOs who joined even in the year 1970 were getting higher scale of pay than the applicant and seeking redressal of the grievances by

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including them in Grade III of the CIS with effect from 3.11.67. Since there was no response to this representation the applicant filed O.A. 78/1989 which was disposed of by this Tribunal directing the second respondent to consider the representation and to give the applicant an appropriate reply within a period of three months. Even before the disposal of the representation, the first respondent issued an order dated 16.5.1989 by which the applicant and similar others were enbloc placed below Smt. Kalpana Palkhivala Sl.No.296 in the seniority list of Grade III of the CIS of the year 1986. Sl.Nos. 1 to 296 had started officiating in the grade in various dates from 1.3.1971 to 27.7.1984. After issuing the said seniority list, the first respondent rejected the representation made by the applicant by an order dated 9.6.1987. Aggrieved by this, the applicant filed O.A.386/89 praying for setting aside the seniority list Annexure A3 and for a direction to include the applicant and others in the CIS Grade III with effect from the date of their initial appointment as FEOs and to give them further promotion and consequential benefits. This O.A. was disposed of by judgment dated 26.2.90 directing the respondents to fix the seniority of the applicant and other FEOs on 27.11.86 in Grade-III of the CIS immediately below those Grade III officers who at the time the post of F.E.O. was included in Grade III and to consider his case for further promotion on the basis of seniority so fixed without disturbing the inter-se-seniority of FEOs on 27.11.86. However the prayer for inclusion of the applicant

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in Grade III of CIS with effect from 1967 was rejected. The review application filed by the applicant was disposed of by order dated 5.4.90 making it clear that the judgment would not preclude the applicant from claiming induction into Grade IV of CIS with retrospective effect from the relevant date. The applicant thereafter made another representation on 28.4.90 (Annexure A9) before the first respondent claiming that atleast the applicant may be included in Grade IV of the CIS with effect from 3.11.67 and to give notional promotion on that basis. At that time, the Madras Bench of the Central Administrative Tribunal had decided O.A. No.44/89 and 514/89 filed by one Mr. Venkatesan who was appointed as Field Exhibition Officer under the respondents challenging the seniority list dated 16.5.1984 and the exclusion of the service rendered during 25.9.67 to 26.11.86 while reckoning the seniority. The Madras Bench of the Tribunal quashed the seniority list and directed the respondents to evolve fair and just criteria which will not have the effect of artificially depressing the seniority of the applicant therein. The review application filed by the Government was dismissed and the review application filed by the applicant before the Tribunal was disposed of directing the department to finalise the seniority list within the given period. Taking note of the development, the O.A. 360/91 was disposed of by order dated 29.6.92 directing the respondents to decide whether the applicant could be given the benefits of the judgment of the Madras bench in the aforesaid cases. The first respondent issued an order dated

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31.7.91 laying down criteria for the purpose of fixing the seniority of Sri A.R.Venkatesan and other similary situated others in the Grade III of the CIS. It was stipulated that due weightage to the length of regular service rendered as FEO in CIS would be given to these officers provided that:-

- (1) They had worked before the decasualisation of the post.
- (2) They had been regularised in accordance with the provisions of the relevant recruitment rules
- (3) They were appointed to Grade-III of CIS on inclusion of the post on 28.11.1986.

In supersession of this letter, another order was issued on 12.10.92(Annexure A13) laying down the following criteria for the purpose of fixing the seniority of FEOs.

(1) In the case of F.E.Os who joined prior to 1.1.1973, their length of regular service rendered as FEO will be counted for the purpose of seniority subject to the following in Grade-IV of CIS.

(a) such FEO shall not rank senior to any person who was in Grade-III of CIS at the time when the FEO was in Grade-IV of the CIS.

(b) By counting such past service the FEO shall not rank senior to any Field Publicity Officer (F.E.O. for short) with the same length of service who was in Grade-III of the CIS when the FEO was working in lower scale than the Grade-III of the CIS.

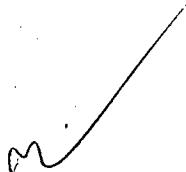
Thereafter an order dated 28.10.92 was issued assigning

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seniority to FEOs including the applicant in the seniority list of Grade-III of CIS as on 1.1.86. The applicant was assigned seniority at Sl.No.4. Another order dated 7.3.94(Annexure A15) was issued promoting the applicant to officiate in the junior grade of Indian Information Service Group A with effect from 25.2.87. Then in supersession of the earlier orders including Annexure A13 the order dated 6th June 1995 was passed appointing the applicant and certain others in Junior Grade of Indian Information Service with effect from 25.2.87. In the meanwhile the applicant had been promoted by order dated 26.5.94 (Annexure A17) to officiate in the scale of pay of Rs.3000-4500. Despite all these orders, the applicant's grievance persisted. While the applicant was working as FEO in the Gazetted rank with a higher pay than that of FPO in CIS Grade-IV from 1968 onwards he was granted promotion to Group-A only in 1992 while those who were appointed to Grade-IV Non-Gazetted post in the CIS were promoted to Group-A in 1985. They were promoted to Grade-III in 1974 and Grade-II in 1981 while the applicant was promoted to Grade-II only in 1987. Detailing the above said grievances the applicant submitted a representation on 9.10.95 to the first respondent. Finding no response, the applicant again approached the Tribunal filing O.A.1608/95 for a declaration that he was entitled to get promotions to Grade-II, Grade-I and Junior Administrative Grade with effect from the date of promotion of M/s.Sivasankara Pillai and K.L.Sreekrishna Das who were



recruited to Grade-IV of CIS in 1970 and for a direction to the respondents to revise and refix the date of applicant's appointment to Grade-III of CIS in accordance with the provisions of the Government of India, Ministry of Information and Broadcasting letter dated 12th October 1992(Annexure A13) reckoning his entire service as FEO. However the Tribunal dismissed the O.A. by order dated 30.4.97 (Annexure A25). The review application and the miscellaneous application for clarification filed by the applicant were also dismissed. Aggrieved by that the applicant filed O.P.12914/97. The Hon'ble High Court of Kerala directed the first respondent in this case who was the second respondent before it to consider the case of the applicant and pass appropriate order untrammelled by any adverse observations if any made by the Tribunal in O.A.1608/95(Annexure A28). It was in pursuance to the directions in the order of the High Court of Kerala in its order in O.P. No.12914/97 that the order under challenge in this application(Annexure A29)was issued by the first respondent stating that the benefit of service as FEO prior to 1.1.73 could not be given to the applicant as the post of FEO was in a lower scale than that of Grade III of the CIS. It is aggrieved by that the applicant has now for the fifth time approached this Tribunal with this application seeking to have the impugned order Annexure A29 set aside for a declaration that the applicant is entitled to get promotion to various grades with effect from the

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dates of promotion of M/s.Sivasankara Pillai and K.L.Sreekrishna Das who were recruited to Grade IV of CIS in 1970 i.e. with effect from 7.7.81 , 25.4.85 and 5/94 respectively and for a direction to grant him consequential benefits revising and refixing the date of appointment of the applicant in Grade-III in accordance with the Annexure-A13 order reckoning his entire service as FEO and to revise the dates of promotions granted to applicant in Grade II and Grade I and to give him promotion to Junior Administrative Grade with effect from the dates of promotion of those who were recruited to Grade IV subsequent to his joining service as FEO.

2. The respondents have filed a detailed reply statement.

3. Shri M.R.Rajendran Nair, the learned counsel of the applicant argued that the stand of the respondents that the service rendered by the applicant as FEO after the post of FPO was upgraded to Grade-III of CIS (on 1.1.73) alone could be counted for seniority and that the benefit of service as FEO prior to 1.1.73 cannot be counted as the post of FEO was in a lower pay scale than that of Grade-III of CIS is irrational and unjustified and is opposed to the instructions contained in the order of the first respondent dated 12th October 1992 (Annexure A13). Sri S.Radhakrishnan, the learned Additional Central Government



Standing Counsel appearing for the respondents on the other hand argued that this Tribunal had in its order in O.A. 1608/95 held that the length of service of the FEO cannot be permitted to count for seniority over the FPOs who was already in Grade-III of the CIS with a higher pay scale and that, therefore the applicant cannot raise the same question again in this case. The argument of the learned counsel of the respondents would have been acceptable if the order in O.A.1608/95 had attained finality. Dissatisfied by the decision, the applicant had filed O.P. 12914/97. Taking note of the contention of the applicant that even though he was given seniority just below one P.P.Awasthi whose date of appointment in Grade-III was 1.3.71 it was not properly worked out, the Hon'ble High Court felt that this matter which could be looked into by the appropriate authority and therefore the O.P. was disposed of directing the first respondent in this case to consider the same and pass appropriate order untrammelled by the adverse observations if any made in the judgment of the Tribunal. Therefore the adverse observations made in the judgement of the Tribunal in O.A.1608/95 is not to be taken note of by the first respondent while considering the case of the applicant for fixation of his correct seniority in terms of the criteria contained in Annexure A13 order. Annexure A13 as it stands corrected vide the corrigendum dated 10.6.97 read as follows:



No.C-17011/3/89-CIS

Government of India

Ministry of Information & Broadcasting

New

Delhi, the

12th, October, 1992.

OFFICE MEMORANDUM

Subject: Fixation of criteria for determining the seniority of the incumbents of the post of Field Exhibition Officers appointed to Grade III of CIS on 28.11.1986.

In compliance with the directions of Madras Bench of Hon'ble Central Administrative Tribunal in O.A.No. 44 & 514 of 1989 dated 16th November, 1989 and order of Ernakulam Bench of CAT dated 29.6.92 in O.A.No.360 of 1991 filed by Shri S.P.Gopakumar, the following criteria for the purpose of fixing the seniority of Field Exhibition Officers appointed to Grade-III of CIS w.e.f. 28.11.1986 vis-a-vis existing officers on that date is given below:-

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(i) In the case of FEOs who joined prior to 1.1.1973 their length of regular service rendered as FEO will be counted for the purpose of seniority subject to the following limitations:

a) Such FEO shall not rank senior to any person who was in Grade III of the CIS at the time when the FEO was in Grade IV of the CIS.

b) By counting such past service the FEO shall not rank senior to any FPO with the same length of service who was in Grade III of the CIS when the FEO was working in a lower scale than the Grade-III of the CIS.

(ii) FEOs who joined on or after 1.1.1973 shall be ranked enbloc junior to the juniormost Grade III officers of the CIS as on 28.11.1986.

This supersedes the criteria prescribed vide the Ministry O.M. of even number dated 31st July, 1991.

3. The orders refixing the seniority of the concerned are being issued separately."

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4. It is evident from a reading of the above Government order that in case of the FEOs who joined service prior to 1.1.73 like the applicant their length of regular service would be counted for the purpose of seniority subject only to the limitations stipulated therein. The limitation that would apply to the case of the applicant is that contained in para i(b). Therefore the stand of the respondents taken in the impugned order as also in the reply statement that the benefit of service rendered by the applicant prior to 1.1.73 cannot be given to him as the post of FEO was in the lower scale than that of Grade-III of the CIS is unsustainable and opposed to the provisions contained in the Government order dated 12th October, 1992(Annexure A13).

5. In the result, the impugned order is set aside. The first respondent is directed to reconsider the claim of the applicant for fixation of the correct seniority and consequential benefits taking into account the regular service rendered by the applicant as FEO , i.e., with effect from 31.7.68, in accordance with the stipulations contained in Annexure A13 order especially paragraph i(b) and to give the applicant a speaking order as expeditiously as possible and at any rate within a period of two months from the date of receipt of a copy of this order.

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(J.L.NEGI)
MEMBER(A)


(A.V. HARIDASAN)
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure A2 True copy of the Memorandum No.40/2/67-Est.dated 18.8.67 issued by the 2nd respondent.
2. Annexure A3 True copy of the Notification dated 8.4.1988 issued by the 1st respondent to the applicant.
3. Annexure A9 True copy of the representation dated 28.4.90 submitted by the applicant to the 1st respondent.
4. Annexure A13 True copy of the Order No.C-17011/3/89-CIS dt. 12.10.92 issued by the 1st respondent to the applicant.
5. Annexure A15 True copy of the Order No.A. 32012/4/92-CIS dated 7.3.1994 issued by the 1st respondent to the applicant.
6. Annexure A17 True copy of the order No.A. 321013/1/94-CIS dated 26.5.94 issued by the 1st respondent to the applicant.
7. Annexure A25 True copy of the order dated 30.4.97 in O.A.1608/95 issued by the Hon'ble Tribunal.
8. Annexure A28 True copy of the order dated 13.8.97 in O.P.No.12914/97 of the Hon'ble High Court of Kerala.
9. Annexure A29 True copy of the Order No. 17011/3/96-IIS(Pt)dated 2.12.97 issued on behalf of 1st respondent.