

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 28 OF 2010

Tuesday, this the 15th day of March, 2011

CORAM:

**HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE Dr.K.B SURESH, JUDICIAL MEMBER**

A.J John
S/o. The late A.V John, aged 57 years
Regional Officer, National Film Archive of India
Chalachithra Kalabhavan, Vazhuthacaud
Thiruvananthapuram – 695 014
residing at Avicot Thekkethil, PRA 70
Parakode Lane, Nalanchira P.O
Thiruvananthapuram – 695 015 - Applicant

(By Advocate Mr.O.V Radhakrishanan, Sr., Mrs.K Radhamani Amma,
Mr.K Ramachandran)

Versus

- 1 Union of India represented by its Secretary
Ministry of Information and Broadcasting
A-Wing, Shastri Bhavan, New Delhi
- 2 Joint Secretary (Films)
Ministry of Information and Broadcasting
A Wing, Shastri Bhavan, New Delhi
- 3 Director
National Film Archive of India
Law college Road, Pune – 411 004
4. Departmental Promotion Committee (for considering promotion), represented by its Chairman/Member,
Union Public Service Commission
Dholpur House, Shajahan Road,
New Delhi – 110 069

(By Advocate Mr.Sunil Jacob Jose, SCGSC for R 1-3 and
Mr. Thomas Mathew Nellimoottil for R-4)

The application having been heard on 17.02.2011, the Tribunal on 15.03.2011...delivered the following:

ORDER

HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER

1. The applicant has filed this Original Application seeking the following main reliefs.

1. To issue appropriate direction or order, directing the respondents to convene Group A Departmental Promotion Committee for promotion to the post of Director and to consider the applicant for promotion to the post of Director calling for his ACRs for the relevant period expeditiously and at any rate, within a time frame that may be fixed by this Hon'ble Tribunal.
2. To issue appropriate direction or order, directing the respondents to promote the applicant to the post of Director, National Film Archive of India on the basis of the Select List prepared by the Group A Departmental Promotion Committee with effect from the date of his entitlement with all consequential benefits.
3. To issue appropriate direction or order, directing the respondents to call for the ACRs of the applicant for the period 2002-03 to 2008-09 and to make them available for consideration by the Group A Departmental Promotion Committee.
4. To grant such other reliefs which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, and
5. To award cost to the applicant.

2. The brief facts are as follows:-

The applicant commenced his service in 1975 as a Laboratory Assistant in the Films Division, Bombay. He was appointed as Film Preservation Officer in the National Film Archives of India (for short N.F.A.I),

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Pune in 1985. He was promoted to the post of Regional Officer in N.F.A.I, Trivandrum in 1996. The post of Director in N.F.A.I, Pune fell vacant in 2002 and Deputy Director-cum-Curator was appointed as Director-in-charge. The first respondent issued a notification in August 2003 inviting applications for selection to the post of Director on deputation basis. This notification was challenged by the applicant in O.A 873/03 which was disposed of by directing the first respondent to consider his representation with reference to the existing Recruitment Rules. The applicant was served with a speaking order on 28.03.2005 in compliance of the order by this Tribunal in O.A 873/03. Immediately thereafter the Recruitment Rules for recruitment to the post of Director NFAI was amended and Gazette notification was published on 10.09.2005. In April 2006 the respondents once again invited application for appointment to the post of Director by deputation. As there was no response one more notification was released in Sep 2007. In the meanwhile the Deputy Director-cum-Curator who was holding charge of Director, NFAI superannuated on 31.03.2008 and the post of Director was left unfilled. In response to his representation the applicant was told that his request for promotion could not be processed due to wanting Annual Confidential Reports (A.C.Rs) and the respondents intended to hold an inquiry into the alleged irregularities in raw stock account in NFAI. The applicant has never been informed that the alleged irregularities in raw stock accounts were found to have been committed during his tenure. He was told that his ACRs were not received for five years. He avers that he is fully eligible for promotion to the post of Director since he has regular service of 10 years in the grade and has a B.Sc degree in Chemistry. He has done a certificate course in Photography

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from Sir J.J Institute of Applied Arts, Mumbai. He has attended a Film Appreciation Course conducted by the Ministry of Information and Broadcasting and Summer School at Berlin, conducted by International Federation of Film Archives (FIAF) and acquired the theoretical and practical knowledge of film preservation. He had also participated in a training session at Paris on Film Archives Treatments, restoration and preservation of cinematography.

3. The respondents contested the claim of the applicant regarding his eligibility for promotion to the post of the Director, NFAI. They stated that the promotion to the post of Director is governed by the Recruitment Rules (RRs for short) dated 01.09.2005 published in the gazette of India on 10.09.2005. As per Column 9 of the said RRs, the following educational qualifications are applicable to promotee officers as well as the direct recruits.

Essential:

- (i) Bachelor's Degree from a recognised University or equivalent;
- (ii) ten years experience in teaching on subjects relating to cinema or mass communication or use of mass media including five years experience in administration.

Note: 2.- The qualification (s) regarding experience is/are relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to Schedules Castes and Scheduled Tribes if, at any stage of selection, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the posts reserved for them.

Desirable:

- (i) Knowledge of specialized techniques and technology of film classification and preservation for archival purposes;

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(ii) experience in film criticism or film research work including publications; and

(iii) knowledge of foreign language.

4. The respondents added that the Ministry of Information and Broadcasting in its letter No.F.Np.814/6/2010-F(C) dated 22.06.2004 pointed out that the UPSC considered the applicant ineligible for promotion because of lack of requisite teaching experience on the subject related to Cinema or mass communication or use of mass media. So the respondents contended that in the absence of 10 years teaching experience in the subjects mentioned above his case for further promotion to the post of Director in NFAI can not be entertained.

5. The vacancy in the post of Director was first advised in the year 2003. Shri K.S Sasidharan, Director-cum-Curator was the only eligible candidate in the feeder category. However, UPSC raised certain queries on the candidate's qualification. By that time the clarifications were furnished to the UPSC, new Recruitment Rules (RRs) came into force from September 2005. Hence the post has to be advertised afresh in April 2006. Again Shri K.S Sasidharan was found to be the only eligible departmental candidate. This time his ACRs were incomplete and hence could not be submitted to the UPSC in time. Therefore once again in September 2007 the notification was issued to fill up the post of Director in NFAI. The applicant applied in response to the notification. But he was not considered eligible as he did not possess 10 years teaching experience on any subject relating to cinema or

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mass communication or use of mass media. Moreover, the selection process which commenced in September 2007 is already wound up since no suitable candidates could be selected. The first respondent has given additional charge of Director, NFAI to Shri.V.H Jadav who is the Joint Director of Press Information Bureau, an ISS officer in the rank of Director. The counsel for UPSC, R4 filed counsel statement stating that in the selection held in 2004 the applicant was found ineligible due to lack of 10 years teaching experience.

6. The applicant has filed rejoinder refuting the plea of the respondents that 10 years teaching experience in a subject related to cinema or mass communication or use of mass media is an essential condition for departmental officers who are in the feeder category for promotion to the post of Director in NFAI. He averred that the 'other qualification' of ten years' teaching experience prescribed for direct recruits is not made a condition of eligibility for promotion of departmental Regional Officers and Deputy Director-cum-Curator under column 9 of the Schedule to the Recruitment Rules. Column 12 of the Schedule enumerates the feeder categories. Item No.I thereunder deals with the source of deputation and Item No.II deals with the source of promotion. The applicant's case is covered by Item No.II under column 12 of the Schedule. The applicant fulfils the conditions prescribed in Item No.II under column 12 of the Schedule to Annexure A-4 Recruitment Rules. It is submitted that the respondents are attempting to make the conditions prescribed for direct recruitment applicable to promotions also which is totally impermissible. Hence he emphasised that in Annexure A-4

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Recruitment Rules ten years' teaching experience is not prescribed as an eligibility condition for Departmental Regional Officers and Deputy Director-cum-Curator in the scale of pay of Rs.10,000 – 15200 with 10 years regular service in the grade for their consideration for promotion along with Deputationists.

7. He added that the ACR forms with the self appraisal portion duly filled by him have been submitted to the respondents in time and it was their responsibility to write the reporting and reviewing portion by the Reporting Officer and the Reviewing Officer respectively in time. The non-completion of the ACRs is not a good ground for keeping the post of Director unfilled on regular basis for long intervals.

8. He questioned the action of first respondent in sponsoring the name of Mr.K.S Sasidharan, Deputy Director-cum-Curator to UPSC for promotion to the post of NFAI even though he did not possess any teaching experience and attempt of the respondents to treat him as ineligible for promotion is an act to justify the unjustifiable.

9. Heard the learned counsel on both sides and perused the documents. Column 8 of the RRs at Annexure A-4 shows Graduation from a recognised University and 10 years of experience in teaching on subjects relating to cinema or mass communication or use of mass media including 5 years of experience in administration as essential qualification for direct recruitment. Column 12 gives the details regarding the experience required by

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Deputationists or Regional Officers in the feeder category. The Deputationists are eligible to apply for the post of Director in NFAI if they hold an analogous post on regular basis with five years experience in the grade in the scale of pay of Rs.12000-16500 or 10 years service in the pay scale of Rs.10000 – 15200 and possessing the educational qualifications and experience prescribed for direct recruits under Column 8. As far as the Regional Officers and Deputy Director-Cum-Curator in the feeder category are concerned they need 10 years regular service in the scale of pay of Rs.10000-15200, as per Column 12 II of Annexure A-4 RRs. They will be considered along with the Deputationist and in case any one of them is selected for appointment to the post of the same shall deemed to have been filled up by promotion. Hence in the RRs the eligibility conditions are different for Deputationist and the departmental officers in the feeder category in NFAI. The departmental officers need the educational qualification of Graduation, as in the case of direct recruits and as provided in Column 8 of the Recruitment Rules, but not necessarily the experience. For them 10 years regular service in the grade in the scale of pay of Rs.10000-15200 will suffice, as noted in Column 12.II

10. . The objective of the NFAI is the Preservation for Archival purposes and hence knowledge and experience in techniques and technology of film classification is required. The applicant was working in related field before he even entered the service of the 3rd respondent as Film Preservation Officer in 1985. He has done a certificate course in Photography from Sir J.J Institute of Applied Arts, Government of Maharashtra. He attended Film Appreciation

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Course conducted in India and Berlin. He also acquired a certificate from AFCM, Paris on treatments, restoration and preservation of Cinematography. Therefore the experience required for a departmental officer is fulfilled in his case and the Recruitment Rules also note very clearly under 12.I(b) & III that departmental regional officers need to have only a Bachelor's degree and 10 years regular service in the scale of pay of Rs.10000-15200/. When the feeder category officers in the department work in an institution like NFAI where teaching arguably is not one of the activities it does not stand to logic and rationale to expect the department officers to have 10 years teaching experience. I find the right interpretation of the eligible conditions as contained in the Annexure A-4 RRs call for only a Bachelor's degree and 10 years regular service in the scale of pay of Rs.10000-15200. The UPSC (R4) obviously has gone wrong in insisting on 10 years of teaching experience for a departmental officer with the 3rd respondent.

11. The respondents are found totally negligent about getting the ACRs written and reviewed in time. As per the DOPT's guidelines on the subject, the reporting officers should submit ACRs to the reviewing officer by 16th of April every year. If the officers do not send the ACR with self appraisal by 31st of March every year, the reporting officer can, initiate the ACR, on his own without waiting for self appraisal, in accordance with the rules on the subject. If the convention in the Office of the respondents is to wait indefinitely for ACRs from officer, with self appraisal duly filled in, it is better to circulate the orders on the subject of writing ACR, to all officers. Again the rules on the subject are to send the ACR Forms, along with the instruction to

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all officers in the month of February itself. Shri K.S Sashidharan's case was also unduly delayed for want of ACRs.

12. When the respondents have sponsored the case of Shri KS Sasidharan, Dy Director-cum-Curator, as a departmental candidate to the UPSC, for considering him for promotion, there is no case for respondents to withhold the name of the applicant alone from consideration by UPSC, when Shri K.S Sasidharan did not possess 10 years teaching experience. To that extent, there is an element of selective discrimination, in respect of the applicant.

13. The respondents have been trying in vain from 2003 to 2007, to get the post of Director NFAI filled up, through deputation or promotion, failing which by direct recruitment. Incorrect interpretation of RRs may quite possibly be one reason. I find that the applicant has every right to be considered by the Departmental Promotion Committee for his further promotion to the post of Director in NFAI. It is the responsibility of the respondents to get the required ACRs to be sent to the UPSC reported and reviewed and commence the process for filling up the post of Director by promotion especially since no notification has been issued after the year 2007.

14. Accordingly, I direct the respondents to act in accordance with the Recruitment Rules and take the prescribed education qualification along with the experience required under Column 12. II for departmental officers for their eligibility for promotion to the post of Director in NFAI. Respondents 1-4 are

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directed to initiate the process for notification of the vacancy for promotion/deputation, convene Departmental Promotion Committee and consider the applicant as an eligible departmental officer in the feeder category for promotion, in view of the observations above. The entire process is to be completed within a time line of 6 months from the date of receipt of this order. Ordered accordingly.

(Dated, this the 15th day of March, 2011.)


Dr.K.B SURESH
JUDICIAL MEMBER


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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