

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED TUESDAY THE FIFTH DAY OF SEPTEMBER ONE THOUSAND
NINE HUNDRED EIGHTY NINE

PRESENT

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI A.V HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO. 30/89

1. R. Janardhanan Nair
 2. G. Sreekumar
 3. J. Vasanthakumari
 4. C.E. Prasanna Kumari
 5. C.D. Valsalakumari
 6. M.J. Aleyamma
- .. Applicants

v.

1. Union of India represented by Secretary,
Ministry of Information and Broadcasting,
Sasthri Bhavan, New Delhi.
 2. Director General, Doordharsan,
Copernicus Marg, New Delhi-1.
 3. Director General, All India Radio,
Akashvani Bhavan, Parliament Street,
New Delhi-1,
 4. Director, Doordharsan Kendra, Trivandrum.
 5. Station Director, All India Radio,
Trivandrum.
 6. Mohan Nair P.
 7. C. Rajamma
- .. Respondents

- M/s. G.P. Mohanachandran &
K.R. Haridas
- .. Counsel for
the applicants
- Mr. TPM Ibrahim Khan, ACGSC
- .. Counsel for
R1 to R5.
- M/s. K.S. Rajamony & M. Lalitha Nair
- .. Counsel for
R6 and R7.

O R D E R

Shri S.P. Mukerji, Vice-Chairman

In this application dated 10.1.1989 the six
applicants who have been working as Grade II Clerks in
the office of the Station Director of All India Radio,
Trivandrum, have prayed that the impugned order issued
by the 4th respondent, i.e., Director, Doordharsan Kendra,
Trivandrum, promoting respondent 6 and 7 as Clerk Grade I
should be set aside and the respondents 1 to 5 directed

to promote the applicants in accordance with their seniority to Grade I with effect from the dates on which their juniors, i.e. respondents 6 and 7 were so promoted with all consequential benefits. The brief facts of the case are as follows.

2. It is admitted that the applicants and the respondents though working in Doordharsan and All India Radio, belong to a common Ministerial cadre and figure in the same seniority list. It is also admitted by the respondents that all the applicants are senior to respondents 6 and 7. Promotions to post of Clerks Grade I is made in accordance with the seniority in Grade II subject to the rejection of unfit. Respondents 6 and 7 were originally in the Indian Space Research Organisation, but were subsequently absorbed in Doordharsan in August, 1985. The 6th respondent was ^{thereafter} working at Raipur in Madhya Pradesh and the 7th respondent in Orissa. Consequent on the opening of the Doordharsan Kendra in Kerala, ^{by the D.G. Doordharsan,} options were invited, in response to which respondents 6 and 7 applied for transfer to Kerala and placed at the bottom of the seniority list on the ground that they were transferred from one zone to another at their request. Their representations to get their original seniority by counting their previous service outside Kerala was rejected. They moved this Tribunal claiming seniority on the basis of their date of original appointment in Doordharsan in Madhya Pradesh and Orissa. During the pendency of their application before the Tribunal, to meet the exigencies of service, the Director, Doordharsan Kendra, Trivandrum

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appointed respondents 6 and 7 on a purely adhoc basis as Clerks Grade I vide Ext.R5(A) dated 29.11.87 and R5(B) dated 3.11.1986. Their reversion could not be effected due to the order passed by the Tribunal which by their judgment^{w OAK 41/87} dated 22.12.88 directed that the seniority list of Grade II Clerks should be revised by reckoning their seniority from the date of their initial appointment in Doordharsan. The applicants have urged that since respondents 6 and 7 have been working in the Doordharsan, while the applicants were in the All India Radio, the latter did not know of the adhoc promotion given to respondents 6 and 7 who were junior to them. They have stated that it is true that the Director General, Doordharsan had called for volunteers for manning the Doordharsan Kendra at Trivandrum in 1984, but the DG clarified in 1988 that the options^{wvt} called for from Staff Artists and the "remaining categories" did not cover administrative staff to which respondents 6 and 7 belong. Accordingly respondents 6 and 7 had no right to claim seniority in the Kerala zone from the date of commencement of their past service.

3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. Though respondents 6 and 7 had been given bottom seniority in the Kerala zone on their transfer from Madhya Pradesh and Orissa, by the order of this Tribunal dated 22.12.88 in O.A.K-41/87 they were allowed the benefit of counting of their previous service as Clerk Grade II before their

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induction to the Kerala zone, for purposes of seniority. This was allowed because it was found that they had exercised their option to come over to the Kerala zone not on their own, but on the basis of the options invited by the respondents for posting in Kerala to man the Doordharsan Kendra opened in 1984. The telegram from DG to various Directors of Doordharsan Kendras reads as follows:-

" Interim set-ups of Doordarshan Kendras at Trivandrum/Gauhati and Ahmedabad likely to come up in a few months time. Ascertain if employees in staff artists category are willing to be transferred to these Kendras. Send consolidated information separately for staff artists categories viz. Producer/Cameraman/Production Asstt./Film Editor/Floor Manager/Scenic Designer/Graphic Artist/Sound recordist and separately for remaining categories latest by 15th April, 1985. Repeat 15th April '84. Requests received thereafter will not be considered."

Long after the respondents 6 and 7 had been transferred to Trivandrum in response to the aforesaid telegram, the respondents on 8th August, 1985 issued orders to the effect that seniority of such transferred persons will be reckoned from the respective dates of their regular appointment in Doordharsan. Concluding that the transfer of respondents 6 and 7 to the Kerala zone was not at their request, the Tribunal in their judgment, to which one of us was a party, allowed them to count their previous service for purposes of seniority. The clarification now being given by the respondents ^{was} ~~was~~ that the telegram did not include administrative staff, cannot be accepted at this stage. The clarification is dated 22.11.1988 i.e, more than four and a half years after the original telegram was sent on 23.3.84.

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No such plea was taken by the respondents in O.A.K 41/87 which was filed in May, 1987. The clarification seems to be an after-thought in order to frustrate the application which respondents 6 and 7 had filed. Even during the course of the argument, no such clarification had been given.

It appears that when on 27.10.88 ~~when~~^{adverse} the import of the telex message of 1983 appeared to the Doordharsan and other respondents in that case, to tilt the arguments in favour of respondents 6 and 7, before us, the clarificatory message was issued. We do not see much force in the clarificatory message. In any case if the applicants before us felt aggrieved by the judgment of the Tribunal in O.A.K 41/87, there was nothing to prevent them from seeking a review of the same. The other respondents in that case also should have filed a review application or an appeal against that order. Unless and until that judgment is set aside or stayed or reviewed, the respondents 6 and 7 before us, who were applicants in that case, cannot be denied the benefits of that judgment.

4. In the facts and circumstances we close this application with the direction to respondents 1 to 5 that the entitlement to promotion to Clerks Grade I of the applicants as against respondents 6 and 7 should be considered on the basis of their inter-se-seniority based on the judgment of the Tribunal dated 22nd December, 1988 in O.A.K 41/87. The question of reversion of respondents


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6 and 7 or promotion of any of the applicants in their places will be governed by their inter-se-seniority , as indicated above, subject to ^{the} rejection of unfit. The application is disposed of on the above lines with no order as to costs.



(A.V HARIDASAN)
JUDICIAL MEMBER



5.9.89.

(S.P MUKERJI)
VICE CHAIRMAN

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