

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION 26.2.90

PRESENT

Hon'ble Shri S.P.Mukerji, Vice Chairman
And

Hon'ble Shri N.Dharmadan, Judicial Member

Original Application No.386/89

S.P.Gopakumar ... Applicant

vs.

1. Union of India
represented by
Secretary, Ministry of
Information & Broadcasting,
New Delhi.

2. The Director,
Directorate of Advertising
and Visual Publicity,
New Delhi. ... Respondents

M/s M.R.Rajendran Nair
P.V.Asha ... Counsel for the
Applicant

Mr. P.S.Biju, ACGSC ... Counsel for the
Respondents.

O R D E R

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application under Section 19 of the

Administrative Tribunals Act, the applicant who has

been working as Field Exhibition Officer in the

Directorate of Advertising and Visual Publicity

under the Ministry of Information and Broadcasting

has prayed that the impugned order dated 8.4.88

at Annexure-I to the extent it fixes the date of

appointment of the applicant to the Central Information Service on 23.11.86, should be set aside. He has also challenged the seniority list of Grade III of the Central Information Service, Group 'B' circulated on 16.5.89 at Annexure-IV and the other circulated on 7.2.86 at Annexure-V. He has also prayed that the Field Exhibition Officers (FEO) should be declared to be continued/included in the Central Information Service (CIS) with retrospective effect from the date they were taken out of the CIS and that the applicant is entitled to get his further promotions from Grade III with retrospective dates. His further prayer is that the respondents be directed to include his name and all other FEOs in the CIS with effect from the date of their initial appointment as FEOs with all consequential benefits of promotions, etc.

The brief facts of the case are as follows:

2. Having joined as Exhibition Assistant in 1962 the applicant was promoted as Field Exhibition Officer on 3.11.67. The posts of FEOs were included in the Central Information Service which was constituted in 1959 along with other categories like Field Publicity Officers, Information Assistants. Till 1967 FEOs were

appointed in Grade IV of the CIS in the scale of Rs. 270-485. In 1967, in view of the importance and responsibilities of the post of FEOs, the posts were upgraded to the scale of Rs. 350-575 and excluded from Grade IV of the CIS. The applicant was appointed as FEO on 3.11.67 after it was taken out of the CIS. But those FEOs who are already working were not given any option either to remain in the CIS or join the new service. The applicant's grievance is that because of lack of promotion avenues to higher grades he has been stagnating as FEO for the last 22 years whereas those who had joined CIS in Grade IV May/June 1970 were promoted to Grade III and Grade I of the CIS. After repeated representations from various quarters and the applicant, the Government of India issued an order dated 8.4.88 appointing them to officiate in the various Grades of the CIS. The applicant was appointed to officiate in Group B, Grade III of the CIS in the revised scale of Rs. 2000-3500 with effect from 28.11.86. The applicant represented that the posts of FEOs should be included in Grade III of the CIS with effect from

3.11.67 with all consequential benefits of seniority, promotions, etc. As there was no response on his representation, the applicant filed O.A. 78/89 before the Tribunal which, by its order dated 2.3.89, directed that his representation should be disposed of within 3 months. In the meantime, the respondents on the basis of the notification dated 24.12.86 appointing the applicant to Grade III of CIS Group 'B' issued a seniority list (Annexure-IV) giving him a position immediately below Sl.No.296. Those who were above him in seniority were officiating in Grade III of the CIS between 1.3.71 and 27.7.84. Thereafter, his representation was rejected by a non-speaking order dated 9.6.89 at Annexure-VI. The applicant has argued that originally the Field Publicity Officers and Field Exhibition Officers were in the same grade, i.e., Grade IV of the CIS, in the scale of Rs. 270-485. The Government upgraded the posts of FEOs to the scale of Rs.350-575 but instead of including these posts in Grade III of the C.I.S. in the scale of Rs. 350-800

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they excluded these posts from the CIS without providing any further avenues of promotion. By an arbitrary date of 23.11.86 FEOs posts were re-included in the CIS but in the meantime the FEOs suffered stagnation while those who remained in Grade IV were promoted to higher grades of the CIS. According to him, unless the FEOs are given notional promotions to the higher grades with all consequential benefits including arrears of salary, the damage done to them by their exclusion from the CIS would not be repaired. His representation, despite the directions of the Tribunal, was rejected summarily by a non-speaking order and therefore the relief which he had sought remained unattended.

3. In spite of sufficient opportunities given to the respondents, they have refrained from filing any reply to the main application.

4. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. A more or less identical case of FEOs was decided by the Madras Bench of the Tribunal by a judgement

dated 16th November, 1989 in OAs 44/89 and 514/89.

The following extracts from the judgement are relevant and pertinent:

"The entire arguments at the time of final hearing of the case, therefore, did not go into the individual merits of the applicants' cases, but centred round the question of the rationale on the basis of which seniority lists were drawn up following the policy decision taken by the respondent, to decaderise one category of posts of one media unit, while leaving similarly placed officers in other sister media unit i.e. Field Publicity Unit, untouched. This decaderisation from the Central Information Service of the Field Exhibition Officers, was also in the name of giving them higher status and rank and additional responsibilities, yet it is noticed that on re-induction into the same service, when similarly placed officers in the other sister media unit were given a gazetted status and Grade III in the C.I.S; on demand by the F.E.Os., they were also reinducted. The date of reinduction alone was taken for purposes of giving them seniority in grade III of C.I.S. This resulted in adversely affecting the interests of those in service at the time of decaderisation. The policy decision for decaderisation of the posts of F.E.Os. from the Central Information Service and re-induction of the same in C.I.S. in 1986 has resulted in artificially depressing the seniority of the incumbents of the posts vis-a-vis similarly placed officers in the Field Publicity Unit.

" We are satisfied that the rationale adopted for fixation of seniority in Grade III of the CIS for the re-induced posts needs to be considered afresh by the respondents in consultation with the U.P.S.C. Any criteria to be evolved in this context will have to take into account that the incumbents of the posts at the time of

" de-caderisation and re-induction continued to do the same job with the same responsibility having the same status.

" In this view the Seniority List file No.A-41012/3/88-C.I.S., Aadesh No.117/89 CIS dated 16.5.89 of the 1st respondent is bad in law since it discriminates between similarly circumstanced people at the time of decaderisation. We accordingly quash the Seniority List File No.A-41012/3/88-CIS, Aadesh No.117/89 dated 16.5.1989 of the 1st respondent vide I.&B. Ministry's notification No.A-42012/3/73-CIS (Vol.IV) dt. 24.12.1986 and A-42012/2/78-CIS dt. 28.11.86 with a direction to the respondents to evolve fair and just criteria which will not have the effect of artificially depressing the seniority of the applicant."

5. It may be noted that the seniority list of 16.5.89 which is the impugned seniority list at Annexure-IV in the application before us has already been quashed by the Madras Bench of the Tribunal. Further, the Supreme Court also decided a more or less similar though not identical case of Assistant Editors who were included in the CIS in 1978. In their judgement in Rajendra Parsad Dhasmane Vs. Union of India and others JT 1988 (3) S.C.190, the Supreme Court observed and directed as follows:

"1. The appellant was appointed as Assistant Examiner (Proofs) in CWMG Unit of the Publication Division in the Information and Broadcasting Department, Government of India on 26.4.1966. In due course he was promoted and appointed as the Assistant Editor (which is a Class II gazetted post) in the Ministry of Information

" and Broadcasting by an order dated 5.9.1973 with effect from 25.8.73.

" 2. The question involved in this case relates to the seniority of the appellant. It appears that on account of some reason the post which the appellant was holding was not included in the Schedule to the Central Information Service Rules, 1959. It was specifically included by an amendment dated 3rd June, 1978. The appellant has been holding the Class II post continuously from 25.8.73 and even now he is holding the same post. The department appears to have taken the view that since the Rules were amended on 3.6.78 by including the post held by the appellant in the Schedule to the Rules he should be treated as having entered in Class II Grade III post with effect from 3.6.78. We find that this view has been approved by the High Court also. We do not agree with the above view. Since the appellant has been continuously working in Class II Grade III post with effect from 25.8.73 there was no justification for denying him the benefit of the service which had been put in between 25.8.73 and 3.6.78.

" 3. We, therefore, direct the respondents to place the name of the appellant in the seniority list above the name of officials who had joined Class II Grade III posts in the cadre to which the appellant belongs subsequent to 25.8.73. This appeal is, accordingly allowed. No costs."

From the above, it is clear that the Supreme Court allowed the Assistant Editors to count their entire service as Assistant Editors prior to their inclusion in the CIS for the purpose of seniority in the CIS.

6. Still in another case of the Central Information Service, S.L.Kaul and others Vs. Secretary to the Govt. of India, Ministry of Information and Broadcasting,

New Delhi and others, AIR 1989 SC 1688, the Supreme Court disagreeing with the judgement of the Principal Bench of the Tribunal held that the seniority of ^{were} Sub-Editors (Monitoring) which posts ^{was} inducted to the CIS in 1971 will count not from 1971 but from 1968 when these posts were brought at par with Grade IV of the CIS. In the instant case before us, however, the FEOs who were originally in Grade IV of the CIS in the scale of Rs 270-485 were upgraded to the scale of Rs 350-575 in 1967 and were excluded from the CIS. At that time the Grade III of the CIS was in the scale of Rs 350-800. The question is whether the service rendered by the FEOs in Grade IV of the CIS till 1967 in the scale of Rs 270-485, and in the scale of Rs 350-575 from 1967 onwards, can be considered to be equivalent to Grade III of the CIS in the scale of Rs 350-800 for the purpose of seniority.

7. Let us recapitulate the brief history of the post of FEO. Before 1967 the posts of FEOs were in the scale of Rs. 270-485 which was the scale of pay of Grade IV of the CIS when the scale of pay of Grade III of the CIS was Rs. 350-800. In 1967 the scale of pay of the FEOs ^{was} ~~were~~ upgraded to that of Rs 350-575 which is an intermediate scale between Grade IV and Grade III of the CIS. In November 1986 the posts of FEOs were included

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in Grade III of the CIS, that is elevated from the intermediate grade between Grade IV and III to Grade III of the CIS. There were thus two upgradations of the FEOs' posts—once in 1967 and again in 1986. To include the entire service rendered by the FEOs both in Grade IV and III for seniority in Grade III of the CIS will be unfair to those who were Grade III in the CIS when FEOs were in Grade IV of the CIS. In the like manner, to include the service rendered by FEOs in the intermediate scale of Rs. 350-800 for the purpose of seniority in Grade III will be unfair to those who were promoted in Grade III (Rs. 350-800) of the CIS when FEOs like the applicant were in the scale of Rs. 350-575.

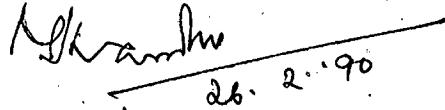
8. We feel that the interest of justice will be served if the FEOs in position on 27.11.86, i.e. immediately before the posts were included in Grade III of the CIS, ~~are~~ should be placed en bloc below that Grade III officer of the CIS who was junior-most on that date. The rulings of the Supreme Court and the Tribunal discussed above may not apply in toto to the case before us because in those cases, unlike the post of FEOs, the scale of the posts was identical with the scale of the Grade of the CIS in which they were finally included. The applicant's plea that he should be included in the

Grade III of the CIS with effect from 3.11.67 cannot be accepted as at that time, he was in the pay scale of Rs. 350-575 as FEO when Grade III officers of the CIS were in the scale of Rs. 350-800. Immediately before 1967, the FEOs were having the same scale of pay as Field Publicity Officers in Grade IV of the CIS, i.e. Rs.270-485. Accordingly, before 1986, by no stretch of imagination can the posts of FEOs be considered to have been equated with Grade III of the CIS. As a matter of fact, before 1967 they were very much in Grade IV of the CIS.

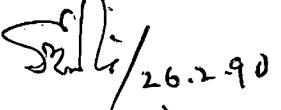
9. In the facts and circumstances, we allow this application only to the extent of directing the respondents to fix the seniority of the applicant and the other FEOs as on 27.11.86, in Grade III of the CIS immediately below that Grade III officer who, at the time the post of FEO was included in Grade III of the CIS, was junior-most in Grade III. His case for further promotion should be considered on the basis of his seniority so fixed after re-considering the seniority of other FEOs similarly circumstanced as the applicant, without disturbing the inter se seniority of the FEOs

as on 27.11.86. Action on the above lines should be completed within a period of three months from the date of communication of this order.

10. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

26.2.90


(S.P. MUKERJI)
VICE CHAIRMAN

26.2.90

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 5.4.1990

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. No. 39/90 in O.A. 386/89

S. P. Gopakumar

Review Applicant

Vs.

1. Union of India represented by Secretary to Government, Ministry of Information and Broadcasting, New Delhi and
2. The Director, Directorate of Advertising and Visual Publicity, PTI Building 3rd Floor, Parliament Street, New Delhi-1

Review respondents

M/s. M. R. Rajendran Nair &
P. V. Asha

Counsel for the
review applicant

ORDER

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

We have heard the arguments of learned counsel for both the parties on this Review Application regarding our judgment dated 26.2.1990 in O.A. 386/89. The apprehension of the learned counsel for the applicant is that this judgment will preclude him from claiming his induction in Grade IV if not in Grade III with retrospective effect from 3.11.1967. Though such a relief is not patently manifest in the Original Application dated 27.6.1989, from the tenor of the arguments ^{and} ~~or~~ grounds

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given in the ^{original} application and the prayers 3 and 4 in that application, it appears that the applicant was not excluding the possibility of his induction in Grade IV of Central Information Service while formulating the application and the reliefs sought therein. In the ^{therefore} interest of justice ^{if so advised} while we see no merit in the Review Application as such and reject the same, we make it clear that our aforesaid judgment will not preclude the applicant from claiming induction in ^{the} Grade IV of the CIS with retrospective effect from the relevant date, in accordance with law.


(N. Dharmadan) 5.4.90
Judicial Member


S. P. Mukerji / 5.4.90
(S. P. Mukerji)
Vice Chairman

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