

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 226 of 2007

Reserved on 31.3.2015

Pronounced on 12.05.2015

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

1. Dr. Nagendra Singh Raghuwanshi, aged about 38 years, S/o Sri Rajmani Singh, R/o Village Meghpur, P.O. Purewn District Jaunpur.
2. Satyabrat Singh, S/o Sri O.P. Singh, aged about 36 years, R/o M-II 39 Mahavidhya Colony, Phase II, Mathura. \
3. Dinesh Kumar Singh, aged about 42 years, S/o Sri Devi Sahai Singh, R/o Village & Post Beldhari, District Sultanpur.
4. Mansha Ram Yaduvanshi, aged about 44 years, S/o Sri Dori Lal, R/o C-12, Akashwani Colony, Rampur.
5. K.B. Trivedi, aged about 44 years, S/o Sri G.N. Trivedi, R/o 1/83 Vineet Khand, Gomti Nagar, Lucknow.
6. Digambar Singh, aged about 56 years, S/o Sri Bhoj Raj Singh, R/o L-305, Vineet Khand, Gomti Nagar, Lucknow.

.....Applicants

By Advocate : Sri A. Moin

Versus.

1. Union of India through Secretary, Ministry of Information & Broadcasting, Government of India, New Delhi.
2. Director (P&EA), Office of Director General, All India Radio, New Delhi.
3. Prasar Bharti Broadcasting Corporation of India through its Chief Executive Officer, New Delhi.
4. Director General, All India Radio, Akashwani Bhawan, Sansad Marg, New Delhi.

.....Respondents.

By Advocate: Sri S.K. Singh

ORDER

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

- (a). to quash the impugned seniority list dated 26.04.2007 so far as it pertains to the applicants as contained in Annexure A-1 to the O.A.

J. Chandra

(b). to direct the respondents to allow the applicants in continue as programme Executive in pursuance to the Promotion order dated 25.2.2005, as contained in annexure A-5 to the O.A.

(c). to direct the respondents to draw afresh seniority list for the post of Farm Radio Reporter within specified time in terms of the relevant rules, instructions as issued from time to time and with proper determination of year of recruitment and the law relating to the Inter Zonal Transfer etc.

(D). to direct the respondents to pay the cost of this application.

(e). any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."

2. The facts of the case, as averred by the applicants through this OA, are that applicant nos.1 to 5 were appointed as Farm Radio Reporter in the grade Rs.6500-10,500/- on 04.05.1992, 11.05.1992, 05.08.1992, 15.09.1990 and 29.02.1992 respectively at Patna, Rampur, Varanasi, not disclosed and Gwalior respectively. Applicant No.6 was appointed as Farm Radio Reporter on 11.10.1991 and the place of posting is not disclosed. The next level of promotion available to the Farm Radio Reporter is the post of Farm Radio Officer in grade Rs.7500-12,000/- after 6 years of regular service as per the recruitment rules (Annexure-2). By order dated 29.04.1992 the nomenclature for the post of Farm Radio Reporter was changed to that of Transmission Executive (Farm and Home) (TREX) and similarly that of Farm Radio Officer was changed to Programme Executive (PEX) (Farm and Home) (Annexure-3). However, the rest of conditions for promotion remain unchanged. In this way the applicants became eligible for promotion to the grade of R.7500-12,000/- in 1998 but nothing was done by the respondents. The respondents circulated seniority list dated 2.2.2005 of Transmission Executives and Farm Radio Reporters in the grade of Rs. 6500-10,500 as on 01.01.2004 (Annexure A-4). In this list, the applicants were placed at Sl.No.458, 471, 490, 316, 441 and 383 respectively. In this list the year of recruitment of the applicants is shown as 1990 being the year on which the recruitment of Farm Radio Reporters was sent to the recruitment agency. The recruitment year of applicant no.4

J. Chandra

had clearly been shown to 1989. On the basis of said seniority list dated 2.2.2005 all the applicants were promoted on ad-hoc basis as Programme Executive by an order dated 25.02.2005. The names of the applicants figure at Sl.Nos.462, 475, 494, 329, 443 and 383 respectively (Annexure A-5). A 2nd seniority list termed as draft All India Inter Zonal Seniority of Transmission executives/Farm Radio Reporters and Field Reporters as on 01.01.2004 was circulated on 20.04.2005. In this seniority list the names of the applicants were downgraded to Sl. Nos. 506, 522, 546, 373, 485 and 421 respectively (Annexure A-6). This draft seniority list was replaced by the 3rd and final seniority list dated 26.05.2005 in which the names of the applicants had been further downgraded to 655, 653, 659, 1143, 827 and 413 respectively (Annexure A-7). The year of recruitment of the applicants was also changed from the year 1990 to 1991 in respect of applicant no.1, 2, 3, and 5 and 1990 in respect of applicant no.4 (Annexure A-7). The change in the seniority position in applicant no.4 and 5 were explained in terms of "Inter Zonal Transfer" on 25.04.1996 without taking into consideration the fact that the seniority list of Transmission executives is maintained on All India basis and there was no question of a person losing his seniority on the basis of Inter Zonal Transfer. Aggrieved against the said seniority list the applicants submitted a detailed representation protesting against the down grading of their position in the seniority list and also change of their recruitment year. Without disposing of the representation so preferred by the applicants the 4th seniority list (as on 1.1.2004) dated 25.07.2005 in which names of the applicants are indicated at Sl. Nos. 642, 640, 646, 1143, 824 and 413 respectively. The applicants filed O.A.No.371/2005 being aggrieved by seniority list dated 25.07.2005, operation of which was stayed by order dated 04.08.2005. Thus by virtue of the interim order the seniority list dated 25.07.2005 is still in existence. Despite that fact that seniority list was sub-judice, by an order dated 24.02.2006 the ad-hoc promotions order date 25.02.2005 was cancelled. This was later withdrawn in view of the fact that the Tribunal had stayed the operation of the seniority list dated 25.07.2005 and all the applicants were allowed to continue as Programme Executives. The respondents have now issued a draft (fifth) seniority list dated

J. Chandra

23.03.2007 (copy not provided) followed by the impugned list dated 26.4.2007 (Annexure no.1) in which the seniority position of the applicants was further reduced to 683, 681, 694, 408, 523 and 424 respectively. The applicants have filed this OA against the said seniority list. The grounds for challenging this seniority list are (a). the respondents have combined the seniority list in respect of Transmission Executive and Field Radio Reporter and Field Reporters despite the fact that all three have got different sources of recruitment, which is gross violation of DOPT O.M. dated 10.09.1985 and 12.12.1988 which categorically provides that where promotions to a grade are made from more than one group, the eligible persons shall be arranged in separate lists in the order of their relevant seniority in their respective grades. Moreover, the officers up to the number of vacancies for each feeder grade as per the quota may be selected and interpolated in a combined select list according to their grading. (b) The down grading of the seniority of the applicant no.4 and 5 on behalf of their Inter-Zonal transfer is wrong as the seniority of Farm Radio Reporter/Transmission Executive is All India Seniority list maintained on All India basis. Mere fact that a person who may be working in Gwalior gets transfer/ is transferred to Lucknow would not make any change in the cadre either at Lucknow or Gwalior. (c) The change in recruitment years has been done without considering the fact that the recruitment year is the year in which the indent of number of vacancies were given to the selection body in this case Staff Selection Commission (SSC). Hence this OA.

3. The respondents have filed their Counter Affidavit denying the averments so made by the applicants and also raising objections as to the maintainability of this O.A. The applicants have deliberately chosen to suppress the facts that applicants no.2, 3 and 4 are presently posted at All India Radio Mathura, Jhansi and Rampur, respectively which fall under the jurisdiction of the Allahabad Bench of this Tribunal. As such, this bench has no jurisdiction over these three applicants. Coming to the merits, they have stated that Transmission Executive, Farm Radio Reporters and Field Reporters are all recruited through SCC and are part of the same cadre.

J. Chandra

As per Annexure no. A-3 earlier designations have been renamed as below:-

| | | | |
|--------|--------------------------------------|---|--------------------------|
| (i) | Production Assistants | - | TREX (Production) |
| (ii) | Assistant Editor (F&H) | - | TREX (F&H) |
| (iii) | Assistant Editor (Script) | - | TREX (script) |
| (iv) | Assistant Editor (Science Reporting) | - | TREX (Science Reporting) |
| (v) | Assistant Editor (FW) | - | TREX (FW) |
| (vi) | Assistant Editor (Tribal Dialect) | - | TREX (Tribal Dialect) |
| (vii) | Assistant Editor (EB) | - | TREX (EB) |
| (viii) | Assistant Editor (Translation) | - | TREX (Translation) |
| (ix) | Sub Editor (Script) | - | TREX (Script) |
| (x) | Farm Radio Operator | - | TREX (F&H) |
| (xi) | Field Reporter | - | TREX (FW) |

4. All these posts are recruited through the Staff Selection Commission (SSC). The only channel of promotion available to persons holding all such designation is that of PEX. These rules are well laid down in the All India Radio & Doordarshan Gr. "B" Recruitment Rules, 1984. Further, it is submitted that 8 years of regular service on the post of TREX is the minimum eligibility criteria for promotion to Group "B" post of Programme Executive (PEX). Further actual promotion is subject to availability of vacancy, suitability of officers and administrative clearance from the concerned authorities.

5. Coming to the background of preparation of an All India Seniority List the position as on 01.01.2004 was computed on the basis of information received and the same list was circulated on 2.2.2005. On circulation of the list many errors were pointed out by many TREXs throughout the country. The errors covered areas like year of recruitment, rank, quota and the like. Based on such representations, a modified seniority list was issued on 26.5.2005. All the representations given upon 25.5.2005 were considered but the applicants gave their representations after such time. Hence, their representations could not be considered and the list dated 25.7.2005 was issued. There was a single All India merit list for TREXs recruited through SSC in 1986. Therefore, the seniority of DR TREXs appointed on the basis of 1986 recruitment has been fixed on the basis of their All India rank irrespective of Inter Zonal Transfer. The inter-se seniority of persons recruited through SSC was restored as per their position in the merit list and that of

J. Chandra

promotees, compassionate appointment etc. were adjusted on the basis of their date of joining.

6. The respondents have categorically made a statement that the averments of the applicants with regard to direction of the Tribunal passed in O.A.No.371/2005 has been fully complied with. The Tribunal had only stayed the implementation of the seniority list dated 25.07.2005 with its consequential effect on the adhoc promotion to PEX vide order dated 25.2.2005. The impugned seniority list dated 26.04.2007 has been issued in accordance with rules and also on the basis of direction given by this Tribunal in its judgment dated 07.12.2004 passed in O.A.No.57/2004.

7. The applicants have filed their Rejoinder Affidavit and Supplementary denying the averments made in the Counter Affidavit and more or less reiterating their contentions as raised in the OA. The applicant no.1 has additionally confirmed that he is posted at Lucknow and the others are posted elsewhere. He has stated that he was recruited by SSC as per requisition sent by Department on 19.1.1990 for vacancy year 1990. The advertisement was issued in the year 1991 and the applicants and other applicants were issued with appointment orders on 4.5.1992. As per applicant no.1, his recruitment year is to be taken as 1990. As per the information received by him, in reply to an RTI query, no joint seniority list can be prepared for different cadres. As per G.O.I. orders dated 10.9.1985 and 12.12.1988 each cadre is having a different channel of promotions. Further, they have enclosed minutes of the meeting held on 14.7.2008 in which it has been acknowledged that prior to merger of cadres in 1992 the rules of promotion for FRRs to PEX were different.

8. During the course of hearing and though the Supplementary Affidavit, the applicants have placed reliance upon the following case laws for preparation of separate seniority list.

(i) Union of India & Others Vs. V.K. Krishnan & Others (Civil Appeal No. 2532 of 2010) in which the Hon'ble Supreme Court has held as under:-

"19. So far as maintenance of seniority is concerned, para 320 stipulates that there would be different seniority lists for persons who are in equivalent grades. It may happen that different persons might be working

J. Chandra

in different branches or different units doing different type of work, but they are in one grade, i.e. in one pay scale and a seniority list for those persons working in one particular grade would be a common seniority list. Thus, it is very clear that seniority list shall be different for each grade and in that event a person working in one particular grade would be promoted to the higher grade on the basis of his seniority in that particular grade."

(ii) Union of India & Others Vs. N.R. Parmar & Ors. (Civil Appeal No. 7514-7515 of 2005) in which the Hon'ble Supreme Court has held as under:-

"Having interpreted the effect of the OM's dated 7.2.1986 and 3.7.1986 (in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a "later" examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter-se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the "rotation of quotas" principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year."

9. We have heard the learned counsel for both the parties and perused the material available on record.

10. The question of maintainability is being decided first. The Rule 6 of CAT (Procedure) Rules, 1987 provides as under:-

"An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

- (i) the applicant is posted for the time being, or*
- (ii) the cause of action wholly or in part, has arisen"*

Liberty to file an application at their place of residence is given under rule 6(ii) of the same only to the persons who have ceased to be in service by reason of retirement, dismissal or termination of service.

The applicants have chosen to file this O.A. from their residential addresses, although they were all in service at the time of filing of O.A. The applicant no.1, has disclosed himself, to be resident of District Jaunpur, applicant no.2 has been shown to be resident of Mathura, while the applicant no.3 is of District, Sultanpur, applicant no.4 is of Rampur, applicant no.5 is of

J. Chandra

Lucknow and applicant no.6 has been shown to be resident of district Lucknow. The Registry of the Tribunal, while scrutinizing the application under Form no.2 appended with the O.A. has failed to note that the applicants are not retired persons, but even from the addresses disclosed the districts Jaunpur, Mathura and Rampur do not fall within the territorial jurisdiction of this Bench of the Tribunal, yet such error has not been pointed out. Rule 5 of CAT (Procedure) Rules, 1987 provides that Registrar or the officer authorized by him under Rule 4 is required to check the application filed in the Registry for any error. These errors from the check list includes such checking whether all necessary parties have been impleaded; (ii) legible copies of Annexures duly attested is filed and further the applicant has exhausted all the available remedies and any other point. Such check list would inter-alia include the correctness of place of filing in terms of Rule 6 of CAT (Procedure) Rules, 1987. The O.A. does not disclose the places of posting of the applicants. It is only from the impugned list dated 26.4.2007, it is seen that the applicant no.1, 5 and 6 were posted at Lucknow; while the applicant nos. 2, 3 and 4 were posted at Mathura, Varanasi and Rampur respectively and as such in terms of Rule 6 of CAT (Procedure) Rules, 1987 this O.A. is not maintainable in respect of applicant nos. 2, 3 and 4. The cause of action too "does not in wholly or in part" arisen within the jurisdiction of this Bench of the Tribunal. The various seniority lists/promotion orders etc. are of Delhi offices of the respondents. The joint application no. 1330/07 was allowed vide order dated 31.5.2007, but in the application, it was not disclosed by the applicants that atleast some of them were not posted at a places lying within the jurisdiction of this Bench, nor was the fact pointed out by the respondents' counsel. This shows negligence and casual manner on the part of both Registry and the respondents. However, this Court has inherent powers to correct an error anytime during the course of this case. However, the O.A. is being dismissed in so far as it pertains to applicant nos. 2, 3 and 4.

11. By virtue of this O.A., the applicant nos.1, 5 and 6 have claimed quashing of impugned order in so far as it pertain to them and also to direct the respondents to draw the fresh seniority list

J. Chandra

it is mentioned in the covering note of the list dated 26.4.2007 that this list is the final outcome of two earlier draft lists (of position as on 1.1.2006) circulated vide letter dated 18.9.2006 and 8.1.2007 by which objections were invited and the same were considered on merit. Therefore, the third draft list was circulated on 23.3.2007 again inviting objection. The applicants have enclosed copies of representations dated 14.6.2005 and 30.5.2005 which cannot be against the impugned list as circulated on 23.3.2007/26.4.2007. Thus, they have not complied with requirement of Section 20 of CAT Act, 1985 which requires that the applicant exhaust all the departmental remedies.

12. Coming to the merits of the case, the applicants (1 and 6 only) had challenged the final seniority list notified on 25.7.2005, which determines the inter-se seniority position of TREX, Farm Radio Reporter/Transmission Executive as on 1.1.2004 by means of O.A. No. 371 of 2005. This seniority list was stayed by order dated 4.8.2005. The said interim order reads as under:-

"Considering the facts and circumstances of the present case, we also feel inclined that, if the status quo, with regard to the impugned seniority list dated 25.7.2005 is ordered, it shall not cause any prejudice to the respondents, who be noticed to file CA/objection, if any, against the present O.A. It is accordingly ordered that the implementation of the impugned seniority list dated 25.7.2005 (Annexure A-1) shall remain stayed till the next date. Steps for notices be filed forthwith and respondents shall file CA/objection within one week to which RA, if any, be filed within three days thereafter."

13. The applicants have not subsequently clarified the position with regard to status of O.A. no. 371 of 2005, nor have the respondents clarified the position, The said O.A. was disposed of on the request made by the applicant by order dated 26.3.2009 with following directions:

"M.P. is allowed and O.A. is disposed of with a direction to the respondents to consider the claim of the applicants for their promotion to the post of Farm Radio Operator/Programme Executive (F&H) basing on the seniority list dated 4.9.2008 of Farm Radio Operator with reasoned order within a period of three months from the date of receipt of copy of the order. No costs."

Further the impugned list comprises of directly recruited TREX, promoted FRR, compassionate appointee and 'erstwhile

J. Chandra

Staff Artists' categories required upto February, 1985. The earlier list of 25.7.2005 apart from being respective of position as on 1.1.2004 also does not make any mention of inclusion of Staff Artist categories recruited upto February, 1985. This list has ~~been~~ ^{become I th.} final in view of the order dated 26.3.2009 passed in O.A. no. 371 of 2005.

Although the applicants have not claimed a separate placement in the impugned seniority list, they are certainly seeking some displacement on the ground of their being recruited directly through SSC on the erstwhile post of FRR (renamed as TREX). The question of necessary parties in a case of a challenge to a seniority list came up before the Apex Court. The Hon'ble Supreme Court in State of Uttranchal & Another Vs. Madan Mohan Joshi & Others reported in (2008) 6 SCC 797 held that seniority or inter-se seniority is not a fundamental right, but a civil right. Hence the right of parties must be determined in the presence of some representative atleast of different groups whose positions may be revised.

14. The ground for challenging the seniority list of 26.4.2007 are (a) common of seniority list when the channel of promotion from various categories of posts were different; (b) down grading of the seniority of the applicant no.5 on the basis of inter zonal transfer is wrong a seniority of Farm Radio Reporter/Transmission Executive is All India seniority basis; (c) change in recruitment year has been done without considering the fact that the recruitment year is an year in which requisition for filling up number of vacancies have been given to the recruitment agency. The applicants have submitted Recruitment Rules by way of Annexure-2, which is a copy of Schedule 7 of Recruitment Rules of various posts of AIR. This extract relates to recruitment of Farm Radio Officers. The application year of this Schedule is not clear from the extract. However, point no.12 of the same shows that recruitment to the post of Farm Radio Officer may be made by promotion from the post of Farm Radio Reporter with 6 years of service in the grade rendered after appointment thereto on a regular basis. The

J. Chandra

applicants were specifically asked to provide a copy of their appointment letter as to determine the nature of their appointment whether it is on regular basis as Farm Radio Operator, but they have failed to do so. The applicants have also made a statement that they have been issued appointment letter in 1992 but in absence of appointment order, it is not clear whether the appointment was temporary on probation basis or straightway regular.

15. Further, by their own averments, the applicants have stated that there were certain changes in the nomenclature of some categories of posts in the year 1992. Once-again, they have failed to produce any departmental circular etc., which would help us in determining whether the said changes made as stated in the O.A. on 29.4.1992 were merely change in nomenclature or they more far reaching such as changes in service conditionalities by the way of merger of ^{posts J. A.} posts etc. Copy of a notification provided by the applicant as Annexure no.3 is not a copy of the said order. It is a copy of O.M. dated 11.5.1992 which incorporate the list as mentioned in para 3 above. Para 2 of the O.M. clearly states that the revised recruitment rules will be sent as soon as they are notified by the Ministry of I & B.

16. The applicants have not produced copy of the recruitment rules etc. In support of their averments that no combined seniority list could be drawn up as the various posts constituted various different cadres. This contention is also difficult to accept in view of the fact that the applicants had no grievance against the first combined list of TREX dated 2.2.2005 specially as the same was followed by the order dated 25.2.2005 by which the applicants were promoted to the post of Programme Executive and continued to remain so by virtue of interim orders passed in O.A. no. 371 of 2005 and later in the present O.A. Their main grievance against the impugning the list is their placement in the seniority list of 26.4.2007. This also become infructuous in the face of the order dated 26.3.2009 passed in O.A. no. 371 of 2005 by which the respondents were directed to consider the claim of the applicants

J. Chandra

for promotion based on the later seniority list of 4.9.2008. The rulings relied upon by the applicant in the face of discussions made above and the facts & circumstances being different render no assistance to the applicants.

17. Based on the above discussions, we find that the applicants failed to make out any case for interference of this Tribunal. Accordingly, O.A. is dismissed. No costs.

J. Chandra

(Ms. Jayati Chandra)
Member-A

Navneet Kumar

(Navneet Kumar)
Member-J

Girish/-