

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

Original Application No. <sup>948</sup>~~199~~/<sup>98</sup>1999.

Dated: 02.06.2000.

Jose Maria De Jesus

Applicant.

Mr. V.B. Nadkarni

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. G.R. Sharma

Advocate for  
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S.Baweja, Member (A).

- (1) To be referred to the Reporter or not? *yes*  
(2) Whether it needs to be circulated to  
other Benches of the Tribunal? *no*  
(3) Library?

*R.G. Vaidyanatha*  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN

B.

**N O T E**

1. This OA viz. OA No.948/98 was heard at Panaji, Goa on 27.04.2000 and was reserved for orders.
2. The Judgment in this O.A. is delivered to day the 2nd June, 2000 at Mumbai.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

Original Application No. 104/2000  
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Dated: 02.08.2000.

<u>Applicant.</u>	Jose Maria De Jesus
<u>Advocate for Applicant.</u>	Mr. V. B. Narkar
	<u>Versus</u>
<u>Respondent(s)</u>	Union of India & Ors.
<u>Advocate for Respondent(s)</u>	Mr. G. R. Sharma

CORAM :

Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S. Bawja, Member (A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library?

(R.G. VAIDYANATHA)  
VICE-CHAIRMAN

NOTE

1. This OA viz. OA No. 948/98 was heard at Panaji, Goa on 27.04.2000 and was reserved for orders.

2. The Judgment in this O.A. is delivered to day the 2nd June, 2000 at Mumbai.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. <sup>948</sup>~~123~~/99. <sup>98</sup>

this the 2<sup>nd</sup> day of June 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S.Baweja, Member (A).

Jose Maria De Jesus,  
Geraldo Godinho,  
C-55, Government Quarters,  
Altinho,  
Panaji,  
Goa - 403 001.  
(By Advocate Mr.V.B.Nadkarni)

...Applicant.

Vs.

1. Union of India through  
Secretary, Ministry of  
Information and Broadcasting,  
Government of India,  
New Delhi.
2. The Chairman,  
Prasar Bharati,  
Broadcasting Corporation  
India, Akashvani Bhavan,  
All India Radio,  
New Delhi.
3. The Director General,  
Akashvani Bhavan,  
All India Radio,  
New Delhi.
4. The Station Director,  
All India Radio,  
Altinho, Panaji,  
Goa - 403 001.
5. The Station Director,  
Doordarshan Kendra,  
Altinho,  
Panaji,  
Goa - 403 001.

...Respondents.

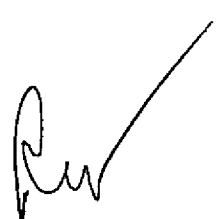
(By Advocate Mr.G.R.Sharma)

**ORDER**

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard Mr.V.B.Nadkarni, the learned counsel for the applicant and Mr.G.R.Sharma, the learned counsel for the respondents.

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2. The facts necessary for the disposal of this application are as follows.

The applicant was originally working at Goa under the erstwhile Portuguese Administration. After the liberation of Goa, the applicant continued functioning in the All India Radio. The applicant's pay prior to liberation was Rs.256.66 paise. But, after the liberation of Goa, the applicant's post was equated to the post of Clerk Gr.II in the pay scale of Rs.110-180 from 1.2.1966. The applicant was not satisfied either by the equation of post or by the pay scale given to him. He, therefore, filed a Writ Petition No.9/1974 in the Court of Judicial Commissioner, Panaji for certain reliefs. The Writ Petition was partly allowed by Judgment dt. 1.12.1978 with a direction to the Government to equate his pay by taking into consideration the amount of salary of Rs.600/- drawn by him under the old Portuguese Regime. Then, subsequently a Government Order dt. 10.7.1981 was issued purporting to give effect to the Judgment dt. 1.12.1978. Being not satisfied with the government order dt. 10.7.1981, the applicant preferred a Contempt Petition before the Judicial Commissioner's Court, which came to be dismissed. Then, subsequently applicant preferred OA 655/89 before this Tribunal, but the OA came to be dismissed by order dt. 13.9.1991. Since there was an apparent error on record in the order of the Tribunal, the applicant preferred a Review Application No.22/92. The Tribunal allowed the Review Application by order dt. 17.6.1994 giving a direction to the Government to refix the pay of the applicant in the pay scale of Rs.210-380 with a condition that his earlier pay of Rs.600/- p.m. should be protected and this order was given effect to w.e.f.

...3.



1.2.1966. The State carried the matter in appeal to the Supreme Court which came to be dismissed. Then, in pursuance of the order in the Review Application, the Government issued an order dt. 8/9.4.1997 fixing the pay of the applicant in the pay scale of Rs.210-380 and his pay was fixed at the maximum of Rs.380/with personal pay of Rs.220/- w.e.f. 1.2.1966. The applicant worked in All India Radio up to 31.8.1990 and then was promoted as Head Clerk/Accountant. The applicant has received arrears of pay and allowances under protest. The applicant has <sup>not</sup> been given promotions and has not been given appropriate pay scale subsequently, which ought to have been given to him. The fixation of pay of the applicant from time to time is not in accordance with law and applicant has not been given promotions as and when due. He has not been given consequential benefits as a result of the judgment of this Tribunal in the Review Application. Hence, the applicant has approached this Tribunal to give a direction to Respondents to implement the Judgment of this Tribunal dt. 17.6.1994 in the Review Application No.22/92, that applicant should be given promotions from time to time and give higher scales of pay from time to time and on that basis his pensionary benefits should be revised.

3. The respondents in their affidavit in reply have taken the stand that the application is not maintainable and is totally mis-conceived. It is also barred by principles of res judicata. It is stated that the respondents have strictly complied with the order of this Tribunal in the Review Application. It was a case of giving appropriate pay scale to the applicant and not appropriate post to the applicant. The Tribunal never gave any direction that the applicant should be given any particular post.

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The Tribunal only gave a direction that applicant's pay should be protected and his pay should be fixed in the pay scale of Rs.210-380. The applicant's claim that he should be given appropriate post equivalent to the pay scale is not correct. The applicant is not entitled to any of the reliefs prayed for.

4. At the time of arguments, Mr.Nadkarni, the learned Senior Counsel appearing for the applicant contended that applicant should be given the proper post on the basis of the pay scale given to him as per the orders of the Tribunal. That even if the applicant was placed in the post of Head Clerk, then he should have been promoted as Senior A.O. after two years, he should have been promoted as Inspector of Accounts after two years and then he should have been promoted as Dy. Director of Administration after two years and given the respective pay scales in the relevant grades. Though it was argued that applicant is entitled to these benefits and promotions from 1969, alternately it was submitted that the applicant should at least get this benefit from 1966 and onwards, that means the applicant should get promotion as Administrative Officer by 1973, Senior A.O. by 1.7.1975, Inspector of Accounts by 1.7.1977 and Dy. Director of Administration by 1.7.1979. The learned counsel for the respondents maintained that the dispute was only regarding pay scale and protection of pay and not about any particular post. He also placed reliance on the order of the High Court dt. 29.7.1992 in the Review Application. It was argued that the applicant was not entitled to any of the reliefs prayed for.

5. The argument that further promotions should be given by implementing the judgment of the Tribunal dt. 17.6.1994 in R.P. No.22/94 does not appeal to us. We have carefully perused the

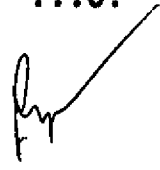
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judgment dt. 17.6.1994 in the Review Petition and it does not speak about subsequent promotions. It only speaks about fixing the applicant's pay in the pay scale of Rs.210-380 with further condition that existing pay of Rs.600/- should be protected. It does not speak about applicant being given consequential promotions. Therefore, the question of promotions does not flow from the order passed in the Review Application. If that is so, the applicant now cannot claim promotion either from 1959 or 1966 and further promotions in 1973, 1975, 1977 and 1979 as argued before us. The reason is that the present application is filed in 1998. Now, applicant cannot set the clock back by 30 years and ask us to give him first promotion as Head Clerk either in 1959 or alternately in 1966 and further promotions in 1973, 1975, etc. Therefore, the whole claim seeking further promotions is mis-conceived and cannot be accepted, particularly in view of delay, laches and besides the claim being hit by limitation. This Tribunal came into existence in 1985. As provided in the Administrative Tribunals Act, 1985, our jurisdiction is only from 1985 and three years prior to the date of commencement of the Act. Hence, this Tribunal has no jurisdiction to give a direction about promotions in 1959 or 1966 or 1973, 1975 etc. as argued before us.

6. Even otherwise, the argument about promotions from different years as pressed before us cannot be granted on the available pleadings and materials before us. For example, applicant wants that he should be treated as Head Clerk either from 1959 or alternately from 1966. As could be seen from the cadre strength of this particular office, which is at pages 26 to

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28 of the paper book, there were only two posts of Head Clerks. How can the applicant be promoted as Head Clerk unless there was a vacancy. He might get a particular scale of pay by virtue of the order of the Tribunal, but the question is whether he can get the post of a Head Clerk or not. If there were no vacancy in the post of a Head Clerk in 1959 or 1966, the question of promoting the applicant as Head Clerk does not arise. Even if there is a post of Head Clerk either in 1959 or 1966, the further question would be whether the applicant was the seniormost to be promoted as Head Clerk from the feeder cadre. In this case there is no pleadings and no material to show that there was a vacancy in the post of a Head Clerk either in 1959 or 1966. Further, there is neither pleadings nor any document to show the seniority position of the applicant either in 1959 or 1966 for being promoted to the post of Head Clerk. If there are some seniors above the applicant, then applicant cannot be promoted to the post of Head Clerk at all, even if there is a vacancy. We are mentioning the two years viz. 1959 and 1966 since the learned counsel for the applicant pressed that he should get promotion in the first instance from 1959 or at least alternately from 1966. The applicant has nowhere pleaded and has not produced any materials to show that there was a vacancy in the post of Head Clerk in 1959 or 1966. Then, even if it is presumed that there was a vacancy, there <sup>is</sup> was nothing to show that the applicant was seniormost in the feeder cadre for being promoted to the post of Head Clerk.

7. Similarly, the argument that after 7 years the applicant should have been promoted as Administrative Officer by 30.7.1973 has also no merit. Let us assume for a moment that applicant

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should be deemed to be a Head Clerk and had put in 7 years as a Head Clerk and therefore, was eligible to be considered for promotion to the post of Administrative Officer after the expiry of <sup>7</sup> 8 years from 1.6.1966. Then, the question is whether by 30th June, 1973 or thereafter, there was a vacancy in the post of Administrative Officer. Even if the applicant is eligible for promotion and had put in sufficient number of years service in the feeder cadre, he cannot get promotion unless there is a vacancy in the post of A.O. Let us illustrate; a Lower Division Clerk (LDC) is eligible for promotion as a Upper Division Clerk (UDC) after one has put in minimum 8 years of service in the feeder cadre. That does not mean that all the LDCs will automatically get promotion as UDCs after the expiry of 8 years. Even though, an LDC has put in 8 years service and becomes eligible to be considered for promotion, he will not get promotion unless there is a vacancy in the grade of UDC. Therefore, the basic requirement to claim promotion is vacancy in the post. There may be cases where an LDC may not get promotions even after 10 or 12 years if there is no vacancy. Therefore, even though the applicant became eligible, he is entitled to be considered for promotion to the post of A.O. he cannot get promotion unless he can plead and prove that at least in 1973 or 1974 there was a vacancy of an A.O.

Now, let us go one step further. Let us assume for a moment that there was a vacancy of A.O. on 1.7.1973 or thereafter, even then, the applicant cannot get promotion automatically. Even if there is a vacancy, the applicant must be seniormost to get that promotion. There is no pleading nor any material to show the seniority position of the applicant in

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the feeder cadre of Head Clerks as on 1.7.1973 or thereafter. If there are four Head Clerks above him, then he will not get promotion as A.O. even if he is eligible for promotion after seven years.

Now, going back to the illustration given above, there may be 10 Lower Division Clerks in an office and all of them have put in eight years service and eligible for next promotion as UDC. But, there are two vacancy of UDCs in a particular year. It is only the first two LDCs who will get promotion as UDC and other eight LDCs will not get promotion since they are not senior enough for promotion there being only two vacancies.

The applicant has neither pleaded nor produced any material to show that he was the seniormost Head Clerk as on 1.7.1973 to get promotion.

Similarly, the further argument that two years after 1.7.1973, applicant should have been promoted as Senior A.O. by 1.7.1975, Inspector of Accounts by 1.7.1977 and Dy. Director by 1.7.1979 has no merit and the above reasoning holds good here also. First, there must be pleadings and proof that there was a vacancy for the post of A.O., Senior A.O., Inspector, Dy. Director on the relevant dates. Even if it is established that there was such a vacancy, it must be further pleaded and proved that the applicant was seniormost in the feeder cadre to get that promotion. There is neither pleading nor material either regarding position of vacancy or the seniority position of the applicant to get those promotions. Now, after 30 years we cannot give a bald direction to the administration to consider the case of the applicant for promotion during those years in the

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absence of material particulars and pleadings. We may notice that applicant has retired from service on 30.6.1996. He has filed this application two years after his retirement. Now, he wants us to give a direction about his promotion in different cadres in 1966, 1973, 1975 etc. We have already pointed out that there is no pleading about the relevant post being vacant on the relevant dates. There is no pleading and no material to show that applicant was seniormost to be considered for promotion. There is neither material nor even an allegation that any of the applicant's juniors have been promoted by ignoring the claim of the applicant. Therefore, in the circumstances of the case, we cannot give any blanket direction as argued before us in the absence of materials and particulars regarding vacancy position, seniority position, promotion of juniors superceded the applicant etc. That too the applicant is seeking all these directions about retrospective promotion since about 30 years back by filing an application two years after his retirement. In view of the above facts, no reliefs can be given to the applicant on the available materials on record. 8. In the view we have taken as above, we need not consider the respondents contention that in view of the Judgment of the High Court dt. 29.7.1992 in the R.P. the applicant cannot claim any relief. We also need not go into the question whether the claim is barred by res judicata since no such relief was granted to the applicant about promotions in the order of this Tribunal dt. 17.6.1994 in R.P. No.22/92. We also need not consider the plea about limitation, delay and laches. We feel that on the available pleadings and materials and in the absence of material particulars regarding vacancy position and

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seniority position, no relief can be given to the applicant and that too when he has approached this Tribunal two years after his retirement.

9. In the result, the application is dismissed. No order as to costs.

  
(D.S. BAWEJA)

MEMBER(A)

  
2-6-2000  
(R.G. VAIDYANATHA)

VICE-CHAIRMAN

B.