

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 131..... of 1997

DATE OF DECISION. 23.12.1999.....

Shri M. Das and Shri D. Sen

PETITIONER(S)

Mr B.K. Sharma, Mr M. K. Choudhury
and Mr S. Sarma

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.131 of 1997

Date of decision: This the 23rd day of December 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. Shri Monoranjan Das,
Programme Executive,
All India Radio,
Shillong.

2. Shri Dibakar Sen,
Programme Executive,
All India Radio,
Guwahati.

.....Applicants

By Advocates Mr B.K. Sharma,
Mr M. K. Choudhury and Mr S. Sarma.

- versus -

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

2. The Director General,
All India Radio,
New Delhi.

3. Shri M.D. Samel,
Programme Executive,
Presently posted at All India Radio,
Bolangir, Orissa.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

In this O.A. the applicants have challenged the Annexure 9 order dated 19.6.1996 issued by the Director General, All India Radio, rejecting the representation dated 30.4.1991, filed by the applicant No.1, and holding that the action taken by the Department in preparing the Eligibility List as on 1.1.1982 and holding of the special review DPCs on 25.8.1987 and 26.8.1987 and the subsequent promotions to the grade of Programme Executive was



correctly made in strict compliance of the judgment dated 5.3.1987 of the Jabalpur Bench of the Tribunal.

2. The facts are:

Both the applicants, at the time of filing of this application were serving as Programme Executive and posted at All India Radio (AIR for short), Guwahati. They joined AIR on 10.5.1976 as Transmission Executive. They were direct recruits on regular basis. They claim that they have unblemished service career and no adverse remark was ever communicated to them. The 3rd respondent joined the post of Transmission Executive on 19.8.1976 as an ad hoc promotee. Subsequently he was regularised on 25.11.1976 with effect from the date of his ad hoc appointment, i.e. 19.8.1976. Accordingly to the applicant the 3rd respondent is junior to them. The applicants have further stated that the post of Programme Executive is a Gazetted Group 'B' post, and as per the set of rules notified for recruitment to the post, 75% of the posts are to be filled up through the Union Public Service Commission and 25% of the posts are to be filled up from amongst the Transmission Executives having five years qualifying service in the grade. Prior to that the cadre was centralised and seniority was determined on centralised basis. All the Transmission Executives who were appointed on the basis of centralised cadre have since been promoted to the grade of Programme Executive of AIR. In 1974 the cadre of Transmission Executive was decentralised into 24 recruiting zones. Till 1982 the selection and appointment to this grade were being done by the Head of the 24 Stations of AIR. Seniority list was prepared for each zone separately.

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3. The applicants have further stated that with a view to granting promotion to the Transmission Executives, after the cadre was decentralised, to the grade of Programme Executive against the 25% departmental promotion quota it was decided to draw up an All India List of Transmission Executives. The matter was thereafter referred to the Department of Personnel and the said department recommended that the only feasible course was to draw up an All India Eligibility List of Transmission Executives who were appointed/promoted after the revision of the recruitment rules on the basis of length of continuous regular service in that grade. In other words it was recommended that the names should be arranged in order of seniority based on the date of appointment. Accordingly an All India Eligibility List of Transmission Executives as on 31.12.1981 was published by the Director General on 21.6.1982. In the said Eligibility List the name of the 3rd respondent was shown at serial No.11 and his date of continuous appointment to the grade as well as the date of regular appointment in the grade was shown as 19.8.1976. On the other hand the name of the 1st applicant was shown at serial No.117 and that of the 2nd applicant at serial No.125, even though, according to the applicants, the date of their continuous appointment as well as regular appointment to the grade was shown as 10.5.1976. According to the applicants, although the 3rd respondent was junior to them as regards his date of joining the cadre he was wrongly shown as senior to them and he was assigned a wrong seniority position. There had been numerous anomalies and errors in the said list. However, according to the applicants, the Director General did not make any endeavour to correct the same. While issuing the said

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list, the Director General advised the Heads of main station of AIR to consolidate the objections/representations filed by the Transmission Executives and to send those objections with their comments to the Director General. A large number of objections and representations were filed by the Transmission Executives including the present applicants. Thereafter a revised All India Eligibility List of Transmission Executives of AIR and Doordarshan as on 1.1.1982 was published. In this list the name of the 1st applicant appeared at serial No.203 and that of the 2nd applicant at serial No.202. But, the name of the 3rd respondent did not figure in the said list. Meanwhile, the respondents held a DPC for promotion of Transmission Executives to the post of Programme Executive on the basis of the 1981 eligibility list. Because of the wrong seniority position, the 3rd respondent was promoted alongwith others, but the applicants were not considered for promotion, even though the 3rd respondent was much junior to the applicants. He was promoted to the grade of Programme Executive with effect from 18.4.1983 by virtue of wrong assignment of seniority in the 1981 list.

4. The applicants have further stated that they filed representations raising various grievances against the promotion of the 3rd respondent in total disregard to the seniority positions. According to the applicants there were many other Transmission Executives with similar grievances. However, all those grievances were not considered by the respondents. Being aggrieved by the action of the respondents, one V.L.N. Rao, Transmission Executive filed an application before the Allahabad Bench of the Tribunal challenging the 1981 All India Eligibility List and the promotions made on the basis of the said

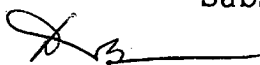
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list. The said V.L.N. Rao was subsequently transferred to Jabalpur. The application was also transferred to the Jabalpur Bench of the Tribunal. An order was passed by the Jabalpur Bench restraining the respondents in that case to hold any DPC based on the impugned eligibility list. As a result the DPC for promotion to the grade of Programme Executive was not held from 1983 to 1987. Later on, the Jabalpur Bench delivered the judgment in V.L.N. Rao -vs- Director General, AIR, New Delhi (T.A.No.104/86). The Tribunal by its judgment and order dated 5.3.1987 quashed the eligibility list of 1981 and directed the respondents to prepare a revised Eligibility List following the principles laid down in its judgment. Thereafter, in terms of the judgment of the Jabalpur Bench a revised All India Eligibility List of Transmission Executives of AIR and Doordarshan as on 1.1.1982 was prepared and circulated on 2.8.1988. In the said list the name of the 1st applicant appeared at serial No.200 and that of the 2nd applicant at serial No.199. The name of the 3rd respondent appeared at serial No.235.

5. The applicants have further stated that a special DPC was held on 25.8.1987 and 26.8.1987 in pursuance to the judgment of the Jabalpur Bench of the Tribunal and on the recommendation of the special DPC a total of 117 Transmission Executives were promoted to the grade of Programme Executive by order dated 28.8.1987. The order specifically stated that the persons shall be deemed to have been promoted with effect from 18.4.1983, the date on which their junior started officiating as Programme Executive. The names of the applicants, however, did not figure in the list since only 117 Transmission Executives had been promoted and since the applicants' names appeared at serial Nos.199 and 200 in the revised eligibility list.

Subsequent.....



Subsequent to this, another promotion list was issued sometime in November 1988 promoting about 67 Transmission Executives to the grade of Programme Executive. As per Annexure 6 Notification dated 21.4.1989 their promotion was given effect from 18.4.1983. The applicants' case was, however, not considered. The grievance of the applicants is that they were not considered for promotion in 1987-88 though they became eligible for promotion in 1981 as per the rules. The applicants further submitted that by an order dated 27.10.1989 40 Transmission Executives including the applicants were promoted to the grade of Programme Executive, but they were not given retrospective effect of promotion. According to the applicants, as the eligibility list of 1981, based on which the 3rd respondent was erroneously promoted, had been quashed by the Jabalpur Bench of the Tribunal, the applicants deserved to be promoted to the grade of Programme Executive with effect from 1983 after placing them above the 3rd respondent in the eligibility list under the next below rule since the date their junior had been promoted. The applicants submitted several representations stating their grievances and seeking similar treatment in the line of the order passed by the Jabalpur Bench of the Tribunal. However, nothing was done. Thereafter, the Director General- 2nd respondent, by order dated 4.2.1991 in response to several representations sought particulars of the juniors in the cadre of Transmission Executives who had been promoted earlier. Accordingly the applicants in their detailed representation dated 30.4.1991 furnished the details sought for, but the said representation was not disposed of. Being aggrieved, the applicants approached this Tribunal by filing O.A.No.163 of 1992 seeking.....

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seeking inter alia that their promotion to the grade of Programme Executive be given with retrospective effect from 18.4.1983, the date when their junior had been promoted with all consequential benefits including correct fixation of interse seniority. This Tribunal, by order dated 7.12.1995 disposed of the said application with direction to the 2nd respondent to dispose of the representation dated 30.4.1991 on merits and convey the decision to the applicants within three months from the date of receipt of the said order. However, by Annexure 9 order dated 19.6.1996, the 2nd respondent rejected the representation filed by the 1st applicant. However, there is no such disposal in case of the 2nd applicant. The applicants submitted that the ground on which the representation was rejected was wholly untenable having no nexus with the principles laid down by the Jabalpur Bench of the Tribunal. The contention of the applicants is that they should get the same treatment as enunciated by the Jabalpur Bench which was, however, denied to them. Hence the present application.

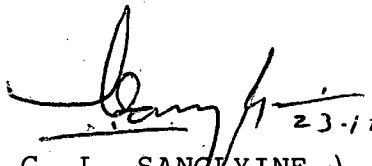
6. In due course the respondents have entered appearance. In spite of several adjournments the respondents have not filed any written statement.


7. We heard Mr S. Sarma, learned counsel for the applicants and Mr A. Deb Roy, learned Sr. C.G.S.C. We have also perused the Annexure 9 order dated 19.6.1996 passed on the representation dated 30.4.1991 submitted by the 1st applicant. We find that the entire matter was not considered. In the absence of the written statement it is difficult for this Tribunal to decide the matter. Besides, the records have also not been produced.



8. In view of the above we direct the respondents to reconsider the case of the applicants. While considering the matter the respondents, specifically the 2nd respondent, shall consider whether the case of the applicants were considered at the time when the second batch of promotions had been made as the applicants were placed at serial Nos.200 and 199 respectively in the eligibility list. If they were considered on what ground their case was rejected and whether any junior had been promoted at the time of giving promotions to the said second batch, i.e. of 67 persons. Thereafter, the respondents shall dispose of the entire matter by passing a reasoned order. The applicants may also file a fresh representation within one month from today and if such representation is filed the respondents shall consider that also and dispose of the same by a reasoned order within three months from the date of the receipt of the fresh representation and communicate the decision to the applicants. If the applicants are still aggrieved they may approach the appropriate authority.

9. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.


(G. L. SANGLYINE)
ADMINISTRATIVE MEMBER


(D. N. BARUAH)
VICE-CHAIRMAN