

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 384

OF 199 2001.

Applicant(s) S. K. Oberoi

Respondent(s) U.O.I. & Ors.

Advocate for Applicant(s) A.

Advocate for Respondent(s) C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
<p>DIS. applic. but not in form Petition No. 7 M. P. No. X for Rs. 10/- depo. filed vide IPO/B/ No 76385683 Date 14.9.2001</p> <p>to in form application vide C.P. arbitrary and discriminatory action of the respondents. The applicant initially worked as a Staff Artist. The Staff Artists were declared regular Government servant after due process. The main grievance of the applicant is that despite his seniority in service he was not given higher pay whereas persons Junior to him were favoured with. The grievance raised by the applicant requires to be considered by an assessment of facts departmentally, who are best suited to look into the matter and take care of the situation.</p> <p>On perusal of the application and upon hearing Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents, the applicant is ordered to</p> <p>28.9.01</p> <p>Present : The Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman. The Hon'ble Mr. K.K. Sharma, Administrative Member.</p> <p>This is an application under Section 19 of the Administrative Tribunals Act 1985 assailing arbitrary and discriminatory action of the respondents. The applicant initially worked as a Staff Artist. The Staff Artists were declared regular Government servant after due process. The main grievance of the applicant is that despite his seniority in service he was not given higher pay whereas persons Junior to him were favoured with. The grievance raised by the applicant requires to be considered by an assessment of facts departmentally, who are best suited to look into the matter and take care of the situation.</p> <p>On perusal of the application and upon hearing Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents, the applicant is ordered to</p> <p>20/9/2001</p> <p>20/9/2001</p>	28.9.01	<p>Present : The Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman. The Hon'ble Mr. K.K. Sharma, Administrative Member.</p> <p>This is an application under Section 19 of the Administrative Tribunals Act 1985 assailing arbitrary and discriminatory action of the respondents. The applicant initially worked as a Staff Artist. The Staff Artists were declared regular Government servant after due process. The main grievance of the applicant is that despite his seniority in service he was not given higher pay whereas persons Junior to him were favoured with. The grievance raised by the applicant requires to be considered by an assessment of facts departmentally, who are best suited to look into the matter and take care of the situation.</p> <p>On perusal of the application and upon hearing Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents, the applicant is ordered to</p>

contd/-

N

Notes of the Registry	Date	Order of the Tribunal
<p>Pl. Comply order Dtd 31.9.2001</p> <p>AB 5/10/2001</p>	27.9.01	<p>submit a detailed representation before the Director within one month from the date of receipt of this order. If the applicant submits representation, the Director shall examine the same and pass necessary order as per law. It is expected that the authority shall complete the exercise preferably within 3 months from the date of receipt of the representation.</p> <p>The application thus stands disposed.</p> <p>No order as to costs.</p>
<p>12/10/2001</p> <p>Copy of the order has been sent to the Officer for issuing the same to the Applicant as well as to the Add. Csec. for the Regd.</p> <p>SL</p>	mb	<p>K K Shrivastava Member</p> <p>Vice-Chairman</p>

Court Copy - I

IN

THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BRANCH
GUWAHATI

19 SEP 2001

Guwahati Court No.
Guwahati Branch

284

284

Guwahati
Guwahati Court No.
Guwahati Branch

IN THE MATTER OF

S.K. OBEROI

APPLICANT

V/S

UNION OF INDIA AND ORS.

RESPONDENTS

I N D E X

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S.K. Oberoi
APPLICANT
DOUBLE M.A., LLB 14/9/01

Recd. by post.
S.C.T.
17/9/01

Mn. Dutta
Pl. authenticity examined
before signature.
W.S.
13/9/2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BRANCH
GUWAHATI

O.A.NO....384....| 2001

BETWEEN :

SHRI S.K. OBEROI

APPLICANT

VERSUS

UNION OF INDIA & ORS.
(THROUGH)

1. SECRETARY, MIN. OF I&B
SHASTRI BHAWAN,
NEW DELHI - 1
2. DIRECTOR,
DOORDARSHAN,
PARLIAMENT ST. NEW DELHI-11
the P art
3. SHRI S.M. HAIDER, PEX(AD-HOC),
DOORDARSHAN,
PARLIAMENT ST. NEW DELHI-11
4. DIRECTOR,
DOORDARSHAN, ITANAGAR,
ARUNACHAL PRADESH-791 111

... RESPONDENTS.

S. K. Oberoi
Programming Executive 16/9/01
DOORDARSHAN KENDRA
ITANAGAR

2

DETAILS OF APPLICATION UNDER SECTION 19 OF ADMINISTRATIVE TRIBUNAL ACT, 1985.

1. PARTICULARS OF THE ORDERS AGAINST WHICH THE APPLICATION IS MADE :-

That the application is against the Arbitrary, Illegal and Discriminatory action of the respondents against the promotion made on Adhoc and piece meal basis violating the "Seniority" admitted by the Respondents. The action is purely on basis of favour and favouritism with colourable exercise of power.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. LIMITATION :

The Applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

THE FACTS OF THE CASE ARE GIVEN AS UNDER :

4(1) That the Applicant is a citizen of India, joined Civil Services as earatwhile Staff Artist under Respondent No.1. At that time there were two categories of employees one was called the Programme staff which comprised permanent Govt. servants with varying designation and scales of pay. The other branch was called staff Artists who were engaged on contracts of one to five years duration. But extended till they attained the age of 58 years. Different fee scales were prescribed for different categories of staff. They constituted a sort of professional class.

S. K. Bera
Programme Executive (47910)
DOCSO, Nodal Kendra
BAM/AMR

4(2) That in early 1982, the Min^{ister} of I&B took a policy decision to constitute a unified service by absorbing the erstwhile staff Artist in to regular Govt^t service & Integrating them with the regular Programme Staff accordingly, options were invited from Staff Artists and who had opted to become Govt^t Employees were screened by a screening committee they were declared regular Govt^t servant w.e.f. 6th March 1982.

4(3) That Recruitment procedure has since been revised by framing rules under provision to article 309 of the Constitution of India, in this behalf, called the All India Radio (Group 'B' posts) Recruitment (Amendment) Rules 1984 which was duly notified in Official Gazette dated 23rd Oct 1984. These Rules envisaged appointment of Staff Artists as regular Govt^t Servants on given terms and conditions.

4(4) That by this Notification Govt^t is the cadre Authority of Programme Services and the next promotional post of Programme Services i.e. Programme Executive was thrown open to the categories of Staff Artists including the post Applicant was holding alongwith the Production Assistant. Thus, the post of Property Assistant, Production Assistant has been equated with that of Transmission Executive.

4(5) That with the reorganisation of Programme service, it constitutes a well constituted service having different "Cadres" viz. Station Director, Assistant Station Director, Programme Executive and Transmission Executive. That thus Applicant is part and parcel of the Programme Service. According to F.R.9(4) "CADRE" means the strength of service or a part of a service sanctioned as a separate unit.

4(6) That the Respondents have against all service jurisprudence allowed continuance of Adhoc promotion of Juniors.

4(7) That thus due to favour & favouritism the Authorities have been making discrimination misuse and colourable exercise of power in assigning higher post of Producer (Cadre of Programme Executive) under the garb of local arrangement. The names of Sarvashri Kali Prasad (S.N. 352 in the Seniority list) and S.M. Haider (S.N. 340 in the Seniority list) worth mention.

They have been given independent charge of Producer. They have been given assistance of Production Assistant. While I was at S.NO. 114 denied the charge of higher post. Any ad-hoc or additional charge cannot be given out by Seniority. ✓

4.8) That Seniority in Service determines the order of precedence for purpose of consideration of promotion. One who is senior is entitled to be considered for promotion first before the claims of his junior can be considered. This is the substance and significance and meaning of the rule of seniority. It cannot be denied that seniority plays an important part in the career of a public servant. Promotion to the Higher ranks are made on the basis of seniority.

4.9) That the applicant resented to this discrimination being made in the notices dt. 16/6/1989 and 26/7/1988. The height of illegality has gone beyond imagination in hereby Shri Kali Prasad & Shri S.M. Haider were given independent charge of Producer.

4.10) That such discrimination goes a long way to affect the career of senior incumbents who are denied opportunities and as a result thereof the character rolls does not show or express their qualities and abilities in them. It is a rule of service jurisprudence that any casual charge of higher post is strictly to be given by seniority. In the present case, this does not only been given for favour and favouritism, but also by surpassing the person in the higher cadre whose strength was full : Those holding higher position out of them, under law of equal pay for equal work, claimed and got the pay of the higher post vide Doordarshan, Delhi Order No.19 (SMH) 79-S dated 16/1/801. Annexure - A-I.

4.11) That the rule of Service jurisprudence is that wherever a junior is considered, Senior should also be considered. There is no room for pick and choose and authorities have no right to mal-administration.

S. K. Berau
14/9/01

4(12) That the applicant brought this to the notice of higher officers, these matters of favour and favouritism. In reply thereto had given a cryptic reply saying that Sh. Kali Prasad/S.M. Haider has not been appointed or promoted as Producer so far.

4(13) That in the circumstances the applicant had no other course left but to approach the Hon'ble Tribunal (Delhi).

4(14) That, the matter was agitated by me in O.A. No 2533/89 in which the respondents categorically stated that

"They are still being paid as Production Assistants and hence no favour has been given to them and denying the same to the applicant as alleged".

(Para 4(15) of the counter reply to the O.A. 2533/89 (P.B. N. Delhi)

5. GROUNDS FOR RELIEF :

A) Because as Sh S.M. Haider has been given the scale of PEX/Producer w.e.f. 26/5/86 and arrears paid to him vide order No 19(SMH) 79-S dt 16/1/81, I am also entitled for the same because I was not allowed to work on the higher post though represented and even filed a case in the PB N.Delhi

B) Because it is an admitted principle of law that promotion is a fundamental right. Further even for ad-hoc promotion seniority cannot be ignored.

C) Because discrimination has been admitted as the worst form in the services under U.O.I. and against constitution and conduct rules.

D) Because the colourable exercise of power, discrimination is well established by document.

6. DETAILS OF THE REMEDIES EXHAUSTED :

That applicant declares that he has availed of all the remedies available to him under the relevant service rules (Annexure A-2)

S. K. Haider (14/9/0)

7.

MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY COURT OF LAW :

The applicant further declare that he had previously filed an application with PB New Delhi (2533/89) while I was posted there and the matter could not be decided on merits as the Respondents took the plea that Shri S.M. Haider was not being paid the salary of the Producer (Higher Post)

8.

RELIEF SOUGHT :

In view of the facts mentioned in para 4 & 5 above, the applicant prays for the following relief:

- i) That the application may be admitted with costs.
- ii) The respondents be directed to give scale of PEX|Producer to the applicant with effect from 26/5/86 on which Sh. S.M. Haider (Junior) was allowed with all consequential benefits including arrears.
- iii) That Hon'ble Tribunal may issue such other appropriate order or orders, direction or direction as deemed fit and proper by this Hon'ble Tribunal to meet the ends of justice.

9.

Interview relief if any prayed for "NIL"

10.

Date of Hearing by Post :- Case may be decided on Merits (in absentia)

11.

Particulars of the postal order in respect of the application fee :

A Postal Order No. 7G 385683 dated 14/9/2001 of Rs.50/- issued from the Itanagar Post Office is annexed hereto.

S. K. Bera
14/9/01

12. LIST OF ENCLOSURES : AS PER INDEX

PLACE : ITANAGAR

DATED : 14.9.01

Surinder
APPLICANT
DOUBLE M.A., LLB

VERIFICATION

I, Surinder Kumar Oberoi S/O Shri J.L. Oberoi, R/O C-II/7, Doordarshan Colony, Itanagar, aged around 49 years, working as Programme Executive in the Doordarshan Kendra, Itanagar, do hereby verify the Contents of the Para 1 to 4, 6 to 7, 8 to 12 to be true and correct to my personal knowledge and para 5 true based on the legal advice and that I have not suppressed any material fact.

14.9.01
DATED : 14.9.01

Surinder
APPLICANT
DOUBLE M.A., LLB.

Surinder
Programme Executive
DOCK 16, ITANAGAR KENDRA
ITANAGAR
14/9/01

A-1

8

PRASAR BHARATI
BROADCASTING CORPORATION OF INDIA
DOORDARSHAN KENDRA: NEW DELHI

NO. 19(SMH)/79-S

Dated 16.1.01

ORDER

In order to comply with the Hon'ble Tribunal, Principal Bench, Order dated 31.7.2000 in O.A.No.1989/1997 dated 17.7.2000 and also the decision taken by the competent authority Directorate General, Doordarshan vide their letter No. C-17011/13/97/S-III dated 16.10.2000, the pay of Sh. S.M.Haider, Production Asstt. who performed duties on higher post i.e. Producer Gr.II for the period from 26.05.86 to 30.12.98 are given as under:-

PAY AS ON AS PRODUCTION ASSTT:Rs.2120/-

Performed duties
26.05.86 as Producer Gr.II in the pay
scale of Rs. 2000-60-2300-EB-
75-3200-100-3500/-

01.05.87
01.05.88
01.05.89
01.05.90
01.05.91
01.05.92
01.05.93
01.05.94
01.05.95

Rs. 2120/-
Rs. 2180/-
Rs. 2240/-
Rs. 2300/-
Rs. 2375/-
Rs. 2450/-
Rs. 2525/-
Rs. 2600/-
Rs. 2675/-
Rs. 2750/-

Pay w.e.f.1.5.96 in the old scale as per option
Pay fixed w.e.f.1.1.96 in the upgraded scale of
Rs. 6500-200-10500/-

Rs. 2825/-

01.05.96
01.05.97
01.05.98

Rs. 8700/-
Rs. 8900/-
Rs. 9100/-

Promoted as Pex w.e.f. 31.12.98 in the pay scale
of Rs. 7500-250-12000/-

Rs. 9300/-(Lower Scale)
Rs. 9500/-(Higher Scale)
Rs. 9750/-
Rs. 10000/-

1.12.99
1.12.2000

The above pay fixation is subject to the post
audit and over payment if any made will be recovered from him
without any intimation.

True Copy

Sh. S.M.Haider
Pex
DDK New Delhi

S. R. RANA
T.M. (9.10.)

S. R. RANA
(Z.R.RANA)
ADMINISTRATIVE OFFICER
FOR DIRECTOR

.....2.....

A-2

MOST IMMEDIATE

(9)

The Director,
Doordarshan Kendra,
New Delhi.

Dated : 9/11/2000

Subject: Pay of the higher post i.e. PEX/Producer w.e.f.
1986 Viz-a-Viz Shri S.M.Haider (Junior).

.....

Sir,

It transpires that Sh. S.M.Haider is being paid emoluments for the post of PEX/Producer w.e.f. 1986 though he was working illegally on the higher post ignoring my seniority which is a blatant violation of the statutory rules. However, the matter was agitated by me in C.A. No. 2533/89 in PB CAT N.DELHI. The matter could not be decided as the respondents made the following plea :

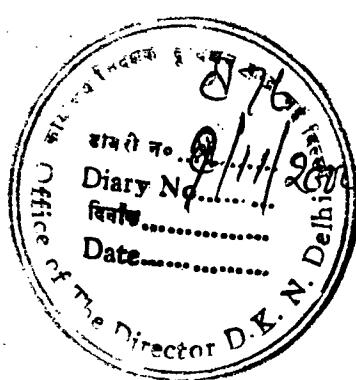
* They are still being paid as Production Assts. and hence no favour has been given to them and denying the same to the applicant, as alleged (Para 4.15 of the counter reply)

It is a settled law that a person appointing persons illegally must reimburse the amount to the exchequer.

The Officer who have appointed Sh. S.M.Haider illegally must reimburse the amount being paid to him to the exchequer.

It is abundantly clear that I was denied my legal right to officiate on the higher post ignoring my seniority. As per the seniority list dated 23rd Oct. 1986, I was at S.No. 114 while Shri Haider was at S1. No. 340.

It is requested that I may not be ignored for making payment for the higher post with consequential benefits for which Shri Haider is being paid.



S.K. Oberoi
(S.K. OBEROI)
PROGRAMME EXECUTIVE
DDK: NEW DELHI

True Copy

S.K. Oberoi
PROGRAMME EXECUTIVE
DOORDARSHAN KENDRA
ITANAGAR 14/11/2001