

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 3rd day of ^{Feb} January, 2010

Original Application No.234/2005

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

1. Pavana Khatri w/o Ramesh Chand Khatri, aged about 48 years, r/o 86/189, Pratap Nagar Housing Board, Sanganer, Jaipur.
2. R.C.Khatri s/o Om Prakash Khatri, aged about 45 years, r/o 86/189, Pratap Nagar Housing board, Sanganer, Jaipur.

.. Applicants

(By Advocate: Shri Prahlad Singh)

Versus

1. Union of India
through the Secretary to the Government of India,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi.
2. Prasad Bhatni Broadcasting Corporation
Through this Chief Executive Officer,
Press Trust of India Building,
Sansad Marg,
New Delhi.
3. Director General, All India Radio,
Sansad Marg,
New Delhi.
4. Station Director, All India Radio,
5, Park House,
M.I.Road,
Jaipur.

5. Shri H.S.Vyas,
s/o Shri Ram Jeevan Vyas,
presently posted as Programme Executive,
All India Radio,
5, Park House,
M.I. Road, Jaipur.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma for Resp. 1 to 4))

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicants have filed this OA thereby praying for the following reliefs:-

- i) The entire record relating to the present case may kindly be summoned from the non applicants.
- ii) The final inter zonal seniority/eligibility list issued on 25.7.2005 (anx.A-24) by the respondents may kindly be held as violative of latest policy decision dated 9.6.1999 (Anx.A-11) and the same may kindly be quashed accordingly similarly the promotion order dated 25.7.2005 (anx A-25) may also kindly be quashed because the same is based on illegal inter zonal eligibility/seniority list dated 25.7.2005.
- iii) The respondents may kindly be directed to prepare a fresh inter zonal seniority/eligibility list according to the principles laid down in the policy decision dated 9.6.1999 (anx A-11) there by delinking the eligibility list from the zonal seniority list. Thereafter only, the promotion orders directed to be issued for the next grade for Pex.
- iv) The applicants ought be placed in the final zonal seniority/eligibility list according to date of regular appointment in the grade of Trex's i.e. date of joining of 27.10.1990 and 4.11.1990 while doing so, their positions be decided by giving due consideration of 15% quota for departmental promotees and according they ought to be promoted as programme Executive with all consequential benefits.

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2. Briefly stated, facts of the case are that the applicants were initially appointed as Junior Librarian. Next promotional avenue from the post of Junior Librarian was to the post of Transmission Executive (TREX). Applicants were promoted on the said post alongwith one Shri H.S.Vyas (respondent No.5) in the year 1990 and accordingly applicant No.1 joined the said post on 28.10.1990 whereas applicant No.2 jointed on 4.11.1990. However, Shri H.S.Vyas joined earlier to the applicants on 26.10.1990. Accordingly seniority list was issued on 31.12.1991 whereby respondent No.5 was shown senior to the applicants. The applicants also made representation. However, thereafter the applicants did not raise the issue except by filing this OA after a lapse of 15 years. One of the grievances of the applicants in this OA is regarding seniority over and above respondent No.5. Another grievance of the applicants is regarding the Satellite Message Ann.A/1 wherein it has been stated that seniority of the TREX who have been transferred from one zone to another in public interest by administrative authority without asking for and considering request of such officer, shall be resorted to their original recruitment zone. However, in the case of inter zonal transfers ordered on personal request of officials, they will continue to be junior most in the new zone as on date of transfer. It may be stated here that the applicants requested the department for their transfer to All India Radio, Indore. After considering request, the Director General, All India Radio, New Delhi issued a transfer order for All India Radio, Indore vide order No.45/1992 dated 25.9.1992.

with the instruction that they will be juniormost TRES in M.P. zone. As the applicants were transferred to M.P. zone, their names were dropped from Rajasthan zonal seniority list. Subsequently, the applicants again requested the department for their transfer from All India Radio, Rewa, M.P. to All India Radio, Banswara in Rajasthan zone and they were transferred vide order No. 27/2000 dated 12.9.2000. Since the applicants have lost their seniority on account of their own request transfer to Rajasthan zone w.e.f. 30.9.2000, they were shown junior to the persons already working as TRES in Rajasthan zone. It is however stated that while preparing seniority list in respect of Rajasthan zone, as existing on 1.1.2004 name of the applicants were shown at Sl.No. 280 and 296 respectively on the assumption that applicants were working in the Rajasthan zone from very inception without considering case of inter zonal transfer. Subsequently, this mistake was rectified and further promotion to the post of PEX was granted in the year 2002-03 whereby so called persons junior to the applicants were promoted namely Shri Mahendra Lalas and Shri Shrawan Lal. The applicants have further stated that on 25.2.2005, the respondents issued promotion order to the persons to the post of Programme Executive ignoring claim of the applicants. According to the applicants, it was not permissible for the respondents to forfeit the entire service rendered by the applicants prior to their joining the Rajasthan zone in the year 2000 and applicants are entitled to seniority from the year 1990 in terms of policy decision taken by the respondents vide order dated 9.6.1999 (Ann.A/11). It is on the basis of these averments, the

applicants have filed this OA thereby praying that respondents may be directed to prepare fresh inter zonal seniority according to Ann.A/11 and thereafter the respondents should consider case of promotion of the applicants for the post of PEX.

3. The respondents have filed reply. The facts as stated above have not been disputed. In the reply, it is categorically stated that seniority list of the applicants vis-à-vis respondent No.5 prepared on 31.12.1991 based on their joining the duties on the post of TRES was further changed in the light of the decision rendered by the Principal Bench in OA No. 57/04 dated 7.12.2004 whereby the Principal Bench has held that seniority of direct recruitee is determined according to the rank obtained in SSC examination while seniority of promotee candidate is determined on the basis of the joining the present grade. According to the respondents, the claim of both the applicants was not based on this principle and the same cannot be entertained that too after 15 years of service. According to the respondents, the so called representation made by Smt. Pawana Khatri dated 18.7.1985 is not traceable. As regards determination of seniority on the basis of Ann.A/1, the respondents have categorically stated that the applicants lost their seniority on account of the fact that firstly they requested for their transfer to All India Radio, Indore on their own request and considering the request, the Director General has issued order dated 25.9.1992 to the effect that they will be juniormost in the M.P. zone. Thus, on account of their transfer to M.P. zone their names were dropped from Rajasthan zonal seniority list issued by the All India Radio, Jaipur

w.e.f. 1.1.1993. It is further stated that the applicants again requested for their transfer to All India Radio, Banswara which request of the applicants was also accepted and they were transferred vide order No.27/2000 dated 12.9.2000, as such, they again lost seniority in M.P. zone and became junior in Rajasthan zone on account of joining in Rajasthan zone. Thus, according to the respondents, the seniority in Rajasthan zone has to be reckoned w.e.f. 30.9.2000 because they were working in the Rajasthan zone as TRES losing their seniority benefits. The respondents have stated that zonal seniority list of TRES of Rajasthan as on 1.1.2004 where name of the applicants find mention at Sl.No.280 and 296 was wrongly issued taking into consideration their entire service into account as if they were not transferred to another on account of their transfer and when this mistake came to the notice of the respondents, the said mistake was rectified. Thus, according to the respondents, the applicants are entitled to the seniority in Rajasthan zone w.e.f. 30.9.2000.

4. The applicants have filed rejoinder thereby reiterating the submissions made in the OA.

5. The first and foremost question which requires our consideration is whether the applicants are entitled to seniority from the date of joining in Rajasthan zone as TRES in the year 1990 and what is the effect where a person is transferred on ones own request, so far as consequences of loss of seniority is concerned. According to the learned counsel for the applicants, the applicants are entitled to seniority from the date of their joining on the post of

TREX w.e.f. 28.10.1990 and 4.11.1990 respectively in terms of policy decision taken by the respondents vide OM dated 9.6.1999 (Ann.A/11) which deal with the principles of preparation of eligibility list in respect of Transmission Executives and allied categories for promotion to the grade of Programme Executive.

6. We have given due consideration to the submissions made by the applicants. We are not at all impressed from the submissions so made by the learned counsel for the applicants. The law on this point is no-longer res-integra. The Apex Court has repeatedly held that where a person is transferred on his own request, in that eventuality, transferred employee will get bottom seniority in the institution where he was transferred. However, the service rendered in the previous institution/department will count for other purposes like pensionary benefits etc. and not for the purpose of seniority. Thus, according to the law laid down by the Apex Court, a person who has sought voluntary transfer, obviously he has to be placed at the bottom of the seniority list of another institution. At this stage, we wish to refer to the decision of the Apex Court in the case of K.P.Sudhakaran and Anr. Vs. State of Kerala, 2006 SCC (L&S) 1105 whereby the Apex Court in para 11 has held as under:-

"In service jurisprudence, the general rule is that if a government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the juniormost employee in the category in the new

cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service rules."

The view so taken by the Apex Court has also been approved by the Apex Court in the case of P.Saatyanarayana Rao and Anr. Vs. S.V.P. Sarvani and Others, (2009) 1 SCC (L&S) 196 whereby the Apex Court has held that once an application is made for transfer, such a transfer is transfer on one's own request which result in consequences of loss of seniority. Similar is the view taken by the Apex Court taken in the case of Surendra Singh Beniwal vs. Hukam Singh and Others, (2009) 2 SCC (L&S) 218 whereby the Apex Court has held that transferred employee will get bottom seniority in the new educational institution where he was transferred but service rendered in previous institution will count for other purposes like pensionary benefits etc.. It was further held that the principle of bottom seniority is to avoid heart-burning to existing employees of the transferee organisation. Thus, from the law as laid down by the Apex Court, it is clear that a person who has opted for voluntary and unilateral transfer foregoing his seniority and joined another department with open eyes, he cannot made any grievance if person senior to them has been considered for promotion and the

person has to be treated as new entrant in the transferee organization.

7. We may also advert to the contention so raised by the applicants based on OM dated 9.6.1999 for the purpose of determination of seniority. At the outset, it may be stated that the OM dated 9.6.1999 deals with the principles for preparation of eligibility list in respect of Transmission Executives and allied categories for promotion to the post of Programme Executives. The following principles shall be kept in view :-

"a) The qualifying service in the feeder grades for preparation of eligibility list shall reckon from the date of regular appointment in the grade. The zonal seniority list will henceforth be delinked with preparation of all India Eligibility List. It is clarified further that the preparation and maintenance of zonal seniority will still continue and officials on transfer to another zone will continue to lose zonal seniority. Zonal seniority list will henceforth be operative only for the purpose of transfer.

b)"

The learned counsel for the applicants has laid emphasis and contended that in view of the principles as reproduced above, the applicants are also entitled to the zonal seniority from the date of regular appointment in the grade. We fail to understand how the applicants can draw assistance from the portion as quoted above. As already stated above, the OM dated 9.6.1999 deals with the principle for preparation of eligibility list. As can be seen from the portion as quoted above, it has been specifically stated that for the purpose of eligibility, the date of regular appointment in the grade will be relevant. Regarding this aspect there is no dispute.

Admittedly, the applicants are entitled to count their regular appointment for the purpose of eligibility w.e.f. the year 1990. The later part of this portion, as quoted above, also specifically stipulates that if an official is transferred to another zone, in that eventuality, he will continue to lose zonal seniority. Para a) as reproduced above, has further been clarified by the respondents vide impugned Ann.A/1 whereby it has been clearly stated that in the case of inter zonal transfer on personal request of the officials, they will continue to be junior most in the new zone as on the date of transfer. It is further clarified that this loss of seniority from one zone to another zone will not be affected where the transfer is made in public interest by administrative authority and not on personal request. Admittedly, in the instant case the applicants have sought transfer on their own request from one zone to another zone. They were also informed about the consequences of their transfer and they have been made clear that they will lose their past seniority. With these clear stipulations the applicants were transferred from Rajasthan zone to M.P. zone and subsequently after some time they again sought transfer from M.P. zone to Rajasthan zone on their own request. Thus, according to us, the respondents have not committed any infirmity whereby the applicants have been treated as new entrants in the Rajasthan zone w.e.f. 30.9.2000 for the purpose of seniority only. According to us, the policy decision Ann.A/11 issued by the respondents is in conformity with the law laid down by the Apex Court in the case of Union of India and Ors. vs. Deo Narain and ors., JT 2008 (10) SC 294

whereby the Apex Court has held that LDCs working in one collectorate seeking transfer on the condition that they will forego their seniority and will be placed at the bottom of the list of employees in the transferred collectorate cannot make any grievance if the LDCs above them in the seniority list were considered for promotion to the cadre of UDC. It was further held that eligibility list and seniority are two distinct, different and independent to each other and thus reads:-

".... A person may be eligible, fit or qualified to be considered for promotion, fit or qualified to be considered for promotion. It does not, however, necessarily mean that he must be treated as having requisite 'seniority' for entry in the zone of consideration. Even if he fulfils the first requirement, but does not come within the zone of consideration in the light of his position and placement in 'seniority' and the second conditions is not fulfilled, he cannot claim consideration merely on the basis of his eligibility or qualification. It is only at the time when 'seniority' cases of other employees similarly placed are considered that his case must also be considered. The CAT, in our view therefore, was not right in applying Ponappan and in granting relief to the applicants."

7. Yet for another reason, the applicants are not entitled to any relief. Admittedly, the applicants are being assigned seniority in the cadre of TRES w.e.f. 30.9.2000, the date when they joined Rajasthan zone on account of their transfer from M.P. Zone whereas the applicants are claiming their seniority from their regular promotion in the year 1990. In case the applicants are assigned seniority from the date of their joining in the year 1990, the persons who have been appointed in the Rajasthan zone between October/November, 1990 till 30.9.2000 will be affected who are not parties before this

Tribunal. Thus, on this ground also, the applicants are not entitled to any relief. The Apex Court in the case of Prabodh Verma vs. State of U.P., 1984 SCC (L&S) 704 has held that no effective relief can be granted without impleading necessary parties which view was also reiterated by the Hon'ble Apex Court in the case of Ishwar Singh vs. Kuldip Singh, 1995 SCC (L&S) 373. Further, the Apex Court in the case of Arun Tiwari, and Ors. vs. Zila Mansavi Shikshak Sangh and Ors., 1998 SCC (L&S) 541 has held that because of non-impleadment of selected candidates, the entire exercise is vitiated. The aforesaid view has also been approved by the Apex Court in the case of Khetrabasi Biswal vs. Ajaya kumar Baral and Ors., 2004 (2) SCSLJ 228 whereby the Apex Court has held that procedural law as well as substantive law both mandates that in the absence of a necessary parties, the order passed is a nullity and does not have binding effect.

8. The learned counsel for the applicants while drawing our attention to Ann.A/26 which is the final eligibility list of TRES as issued vide circular dated 26.4.2007 has argued that one Reshma Khan whose name find mention at Sl.No.125 of All India Eligibility list as on 1.1.2006 (updated upto 2.4.2007) was appointed as TRES on 29.2.1988 against direct recruitment quota whereas her year of recruitment has been shown as 1986. The name of the applicant No.1 find mention at Sl.No.399 and in her case date of appointment has been shown as 28.10.1990 whereas the year of recruitment/promotion has been shown as 1989. According to the learned counsel for the applicants, in order to maintain 6:1 ratio

between direct recruit and promotee, the applicant is entitled to be placed below Reshma Khan against promotee quota which was ^{not} filled by the respondents. Similarly, name of applicant No.2 has been shown at Sl.No.464 with date of appointment as 4.11.1990 and year of recruitment is shown as 1990, whereas his name should have been shown below Shri S.D.Yadav whose name find mention at Sl.No.266 against the vacancy meant for promotee. According to us, the averments made by the learned counsel for the applicants based on the aforesaid All India Eligibility List pursuant to general circular dated 26.4.2007 deserves out right rejection as the applicants have not challenged validity of this circular in this OA. Simply because the applicants were permitted to place such circular on record will not afford any cause of action for grant of relief. It was open for the applicants either to amend the OA in view of this subsequent development or to withdraw this OA and file substantive OA thereby challenging legality and validity of the circular dated 26.4.2007. Having not done so, the applicants cannot be permitted to raise any argument based on Ann.A/26. That apart, as already stated above, in case the averments of the applicants are accepted and relief is granted to the applicants, the persons who are senior to them will be affected and who have not been impleaded party in this OA. Even on this ground the applicants are not entitled for any relief.

9. Thus viewing the matter from any angle, the applicants are not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.



10. In view of dismissal of OA, no order is required to be passed in MA Nos. 50/2006, 141/2006, 202/2006, 234/2006, 122/2007, 193/2007, 267/2008 and 10/2009, which shall stand disposed of accordingly.


(B.L. KHATRI)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

R/