

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00828/2014

Monday, this the 19th day of February, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Thomas John, Assistant Research Officer Gr. I,
Dooradarshan Kendra, Thiruvananthapuram – 695 043,
Mob: 9446215125, Residing at : KNRA 19, Golflings Road,
Kawadiar PO, Thiruvananthapuram-695 003. **Applicant**

(By Advocate : Mr. P. Santosh Kumar)

V e r s u s

1. The Union of India, represented by the Secretary,
Ministry of Information & Broadcasting, New Delhi-110 001.
2. The Director General, Office of the Director General,
Doordarshan, Doordarshan Bhavan, Mandi House,
New Delhi – 110 001.
3. The Director General, All India Radio,
Akashawani Bhavan, Parliament Street, New Delhi – 110 001.
4. The Director, Audience Research & Cadre Controlling Authority,
All India Radio, Akashawani Bhavan, Parliament Street,
New Delhi – 110 001.
5. The Director, Audience Research, All India Radio,
Doordarshan Bhavan, Mandi House, New Delhi – 110 001.
6. The Director, Doordarshan Kendra,
Thiruvananthapuram – 695 043. **Respondents**

[By Advocate : Mr. N. Anilkumar, Sr. PCGC (R)]

This application having been heard on 25.01.2018, the Tribunal on
19.02.2018 delivered the following:

ORDER

Hon'ble Mr. U. Sarathchandran, Judicial Member –

Applicant was initially appointed as an Investigator in National Sample Survey (for short, NSS) on 22.4.1981. He was selected by the UPSC for the post of Research Assistant in All India Radio and Doordarshan in 1989 and he joined Doordarshan Kendra on 26.5.1990. The service rendered in the NSS was granted acknowledged in his service records. The next promotion he is entitled to get in the hierarchy is Audience Research Officer (for short, ARO). The qualification for ARO, as per the Recruitment Rules, is 5 years service as Research Assistant. Applicant's grievance is that though he became eligible for the above promotion on 26.5.1995 he was not considered for promotion till date. He points out that he was due to retire on superannuation on 31.10.2014. (The OA was filed on 1.10.2014.)

2. Applicant alleges that the last DPC for promotion to the post of ARO was held on 14.7.1997 and thereafter no DPC was convened despite the requirement of convening DPC every year. He further states that as there were two separate seniority lists existed in 1997 for promotees and direct recruits, his three juniors who were promotees have been considered for promotion by DPC in the year 1997. Though he had submitted Annexure A1 representation no action was taken by the respondents. After 1997 the promotees and direct recruits were integrated together and an integrated seniority list vide Annexure A2 was published on 1.1.2000. Despite respondent No. 3 making Annexure A3 proposal for convening a new DPC for promotion to the post of ARO under promotion quota in January, 2011,

no steps were taken by the Department for convening DPC although 30 vacancies were available for promotion as on January, 2011.

3. Applicant states that he is the senior most ARO eligible for promotion with effect from 14.7.1997 and that if he was granted the promotion due in 1997 as ARO on completion of five years, he would have been by now promoted as Deputy Director. He again submitted representations on 9.1.2014 vide Annexure A5 letter and also on 30.5.2014 vide Annexure A5 no action was taken. Alleging that the delay on the part of the respondents in convening DPC after 1997 is illegal and arbitrary, he seeks relief as under:

- “(i) to direct the respondents to promote the applicant as ARO with effect from 14.07.1997, the date of the last DPC conducted for promotion to the post of ARO with all consequential benefits since there were sufficient number of vacancies available as on that date;
- (ii) to declare that the applicant is entitled for promotion as ARO with effect from 14.07.1997 as he has got necessary qualifying service in the category of Research Assistant as prescribed in the Recruitment Rules; and
- (iii) to grant such other reliefs as may be prayed for and the court may deem fit to grant.”

4. Respondents filed reply stating that on the recommendation of the Vth Central Pay Commission (for short CPC) the posts of the Audience Research Cadre were restructured merging the posts of Senior Investigator/Research Assistant of AIR/Doordarshan. 13 posts were placed in the higher pay scale of Rs. 7,500-250-12,000/- and re-designated as Assistant Research Officer Grade-I and the remaining 25 posts were re-designated as Assistant Research Officer Grade-II in the pay scale of Rs. 6,500-200-10,500/-. In this process the applicant was re-designated as

Assistant Research Officer, Grade-I. As no revised Recruitment Rules were made no DPC was convened. The respondents admit that the last DPC for the ARO was held on 14.7.1997. According to them thereafter no DPC was convened for promotion to the post of ARO because one Assistant Research Officer Grade-I had filed court cases disputing the seniority assigned to them, before the High Court of Jammu & Kashmir in 1999. After the judgment of the Jammu & Kashmir High Court in January, 2000 the seniority list was revised on 29.2.2000. Subsequently one promotee Assistant Research Officer filed Writ Petition before the Jammu & Kashmir High Court which was dismissed on 21.7.2005. Though the applicant was eligible for promotion to the post of ARO in the year 1996, due to non-availability of sufficient number of vacancies he could not be promoted by the DPC meeting held in 1997. No officers junior to the applicant was promoted as ARO. Although the 1st respondent Ministry had forwarded a proposal to the UPSC for convening DPC, the UPSC returned the proposal with remarks that Recruitment Rules for the post of ARO became unworkable as the feeder cadre of the post has merged and certain number of posts the feeder cadre are in the higher scale whereby eligibility condition has undergone a change. Accordingly, respondent No. 3 had prepared a draft Recruitment Rules and sent to the Prasar Bharati for appointment which is still under process. In the absence of revised Recruitment Rules, UPSC is not ready to convene DPC for promotion to the post of ARO. Respondents point out that after completion of 20 years of service the applicant has been granted 2nd MACP in the Grade Pay of Rs. 5,400/- in PB-2 Rs. 9,300-34,800/-. It is also stated that one Shri Gurmail

Chand, Assistant Research Officer Grade-I retired on 31.3.2015 has filed a similar case before the Principal Bench of this Tribunal wherein this Tribunal has directed the Department to hold a DPC for other similarly placed persons. Since the aforesaid Gurmail Chand was due to retire on 31.3.2015 the DPC was convened by Prasar Bharati for the post of ARO on 21/22.5.2015. In that process total 16 Senior Investigators/Research Assistants/Assistant Research Officer Grade-I have been promoted as ARO including Shri Gurmail Chand and the applicant. The applicant was promoted as ARO for the vacancy year 2012-2013 vide Annexure R1(b) order.

5. A rejoinder was filed by the applicant pointing out that the very purpose of the OA is for getting his rightful claim for promotion with effect from 14.7.1997 as there were sufficient number of vacancies existed at that time. He points out that the vacancies existed prior to 2008-09 were not included in the list for consideration in the DPC meeting held subsequent to the order obtained by Shri Gurmail Chand.

6. The main legal issue involved in this case is whether the applicant is entitled to promotion as ARO with retrospective effect soon after the completion of 5 years as Assistant Research Officer or at least from 14-7-1997 as per the then existing Recruitment Rules or not ?

7. We have heard Shri P. Santhosh Kumar learned counsel for the applicant and Shri N. Anilkumar, learned Sr. PCGC ®, counsel for the

respondents. We have perused the record.

8. At the outset of his argument Shri Anilkumar submitted that although no DPC was held after 14.7.1997 no official, junior to the applicant was promoted and hence the applicant has no reason for his grievance. He argued that as per the law laid down by the apex court in *Union of India & Ors. v. K.K. Vadera & Ors.* – 1989 Supp. (2) SCC 625 promotion is to be effective only from the date on which the official joins the promoted post, not from the date on which such post fell vacant. In *K.K. Vadera's* case the apex court held:

“5.We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant....”

9. Shri Anilkumar referred to a decision dated 9.2.2017 of this Bench of the Tribunal in OA No. 143 of 2013 wherein the entire case law on the issue has been discussed and analysed. He submitted that in that case also this Tribunal had held that an official is not entitled to get notional promotion. However, Shri P. Santhosh Kumar on the other hand was highlighting the grievance of the applicant that the promotion due to the applicant could not be enjoyed on account of the failure on the part of the respondents in convening DPC in time. To this contention the respondents state that it was on account of certain court litigations filed by some of the officials concerned the DPC was not convened and that though a proposal for convening DPC was made to the UPSC in 2013 the latter returned the

proposal pointing out the need for amending the Recruitment Rules in view of the merger of the posts in the feeder cadre with two different pay scales.

10. In a recent ruling by the Hon'ble Supreme Court in *Nirmal Chandra Sinha v. Union of India & Ors.* - (2008) 14 SCC 29 the apex court reiterated the earlier decisions of the apex court. In *Nirmal Chandra Sinha* the apex court ruled:

“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide *Union of India and others vs. K.K. Vadera and others* 1989 Supp (2) SCC 625, *State of Uttaranchal and another vs. Dinesh Kumar Sharma* 2007 (1) SCC 683, *K. V. Subba Rao vs. Government of Andhra Pradesh* 1988(2) SCC 201, *Sanjay K. Sinha & others vs. State of Bihar and others* 2004 (10) SCC 734 etc.”

11. The applicant has no case that an official junior to him in the seniority list was promoted and thereby has stolen a march over him. He has no grievance relating to Annexure A2 seniority list a copy of which has been produced by him in this case. In the light of the law laid down by the apex court in the aforecited decisions, we are of the opinion that there is no right vested in the applicant to have retrospective promotion or the benefits of his promotion from a retrospective date when the vacancy arose.

12. Accordingly the OA is dismissed. Parties shall suffer their own costs.

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00828/2014

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of representation dated 24.10.1997 of the applicant to the 4th respondent.
- Annexure A2** – True copy of seniority list of Senior Investigators/Research Assistants as on 1.1.2000.
- Annexure A3** – True copy of proposal of the 3rd respondent for filling up the post of AROs under promotion quota.
- Annexure A4** – True copy of memorandum dated 20.5.2014 and final seniority list of all categories in Audiene Research Wing issued by the 3rd respondent.
- Annexure A5** – True copy of representation dated 9.1.2014 of the applicant to the respondents.
- Annexure A6** – True copy of representation dated 30.5.2014 of the applicant to the respondents.
- Annexure A7** – True copy of the seniority list with No. 7/11/92-AR, dated 26.6.1992.
- Annexure A8** – True copy of the combined seniority list of the cadre of Research Assistants/Sr. Investigators dated 29.2.2000.
- Annexure A9** – True copy of the judgment dated 15.5.1986 in the Writ Petition No. 1888 of 1978 in P. Paramesshwaran & Others v. the Secretary to the Government of India.
- Annexure A10** – True copy of the DOPT office memorandum No. 22011/10/84-Estt.(D) dated 7.2.1992 on the subject.
- Annexure A11** – True copy of the judgment of the Hon'ble High Court of Kerala in OP No. 17950/2001 dated 18.10.2006.
- Annexure A12** – True copy of the representation 29.5.214, submitted by the applicant to the 1st respondent before his retirement for implementing Annexure A11 judgment.
- Annexure A13** – True copy of the reminder dated 05.10.2015 to the 1st respondent.
- Annexure A14** – True copy of the DG AIR order No. 5/2002-AR dated 12.6.2002 allowing ACP to members of the Cadre of Research Assistants.

- Annexure A15** – True copy of the DDK Thiruvananthapuram order restructuring the pay of the applicant.
- Annexure A16** – True copy of the office order No. 1(5)2014-A1/DKT dated 28.10.2014 deducting the applicants DCRG.
- Annexure A17** – True copy of the representation submitted to the Director General AIR dated 11.9.2015.
- Annexure A18** – True copy of the relevant portion of the DPC proposal sent to the Ministry of Information and Broadcasting through DG : AIR letter No. 32013/3/2004-BA(P) dated 23.12.2010 for filling up vacant post of Audience Research Officers under promotion quota.
- Annexure A19** – True copy of the judgment of CAT (PB) Bench, Delhi in OA No. 596 of 2014.
- Annexure A20** – True copy of the promotion order issued by DG AIR, vide office order No. 12/2015/ARU dated 21.5.2015.
- Annexure A21** – True copy of the office communication with No. 9(1)2015/A1/DKT(TJ)7762 dated 10.9.2015 issued by 6th respondent.
- Annexure A22** – True copy of the office order No. PF/1146/S-V dated 11/06/2015 issued by DG. Doordarshan allowing Shri Gurmail Chand promotion.
- Annexure A23** – True copy of the office order No. 7/13/97-AR dated 2/9/2002 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

- Annexure R1(a)** – True copy of the seniority list dated 1.1.1995.
- Annexure R1(b)** – True copy of the order dated 21.5.2015.
- Annexure R1(c)** – True copy of the order No. 7(13)97-Ar dated 20.9.2000.
- Annexure R1(d)** – True copy of the relevant portion of clarification form DoP&T.
- Annexure R1(e)** – True copy of the order dated 18.3.2016.

Annexure R1(f) –

True copy of the relevant portion of noting of the concerned file and the DG:AIR's revised vacancy statement.

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