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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No. 283 of 2012

Date of order: 26/09/2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDL MEMBER

THE HON'BLE MS. JAYA DAS GUPTA, ADMIN. MEMBER

.....

Shri Arya Chaudhuri, son of Late Dr. Tarini Charan Chaudhuri residing at C.I.T, Flat No. 4/8, 114/A, Lake Gardens, PS. Lake, Kolkata-700045.

.....Applicant

-Versus-

For the Applicant - Ms.G.Mukherjee, Counsel

1. Union of India through the Secretary, Ministry of Information & Broadcasting, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001.
2. Prasar Bharati Broadcasting Corporation of India, having its Headquarters at PTI Building, New Delhi-110001.
3. The Director General, All India Radio, Akashvani Bhavan, Parliament Street, New Delhi-110001.
4. The Station Director, All India Radio, Akashvani Bhavan, Eden Gardens, Kolkata-700001.

.....Respondents

For the Respondents - Ms.M.Bhattacharyya, Counsel



ORDERJUSTICE V.C.GUPTA, JM:

Heard the learned counsel for both sides and perused the records.

2. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) An order holding that non consideration of the promotion of the applicant from Music Composer Grade-II to Grade – II and Music Composer Grade-II to Grade-I is totally arbitrary and unlawful;

b) An order directing the respondents to consider and give above the promotion with all other consequential benefit including re fixation of his pensionary benefit forthwith since the applicant superannuated more than eleven years ago;

c) An order directing the respondents to produce/cause of production of all relevant records;

d) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper."

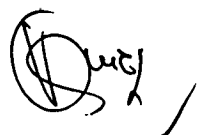
3. The brief facts for deciding this case are that the Applicant was a folk singer since 1960 in Kurseong station of All India Radio. He subsequently, joined in All India Radio, Calcutta as a staff Artist with effect from 01.10.1975 as a Jr. Music Composer on monthly contact basis. Thereafter, he was appointed as Staff Artist (Music Composer Jr. Grade) w.e.f. 16.07.1976 and promoted to the post of Music Composer (Sr. Grade III) with effect from 04.10.1983. While continuing as such, he was involved in a Criminal case under Prevention of Corruption Act and therefore, was placed under suspension. The said criminal case was ended



in conviction vide order dated 29.06.2000. Following to the order of conviction the opencast was dismissed from service. But in appeal preferred against the said order of conviction the Hon'ble High Court vide order dated 24.02.2006 set aside the order of conviction and honourably acquitted the applicant. The Applicant in the meanwhile attained the age of superannuation in the year 2001. After acquittal, the applicant was also extended all service and consequential benefits by allowing him full pay and allowances for the period of suspension. He was treated on duty for all practical purposes during the period of suspension and the entire back wages from the date of dismissal till the date of retirement was also paid to him.

4. The grievance of the Applicant is that though he was entitled to promotional benefits which he would have been entitled to had he been continued in service, were granted to him. Being aggrieved, he filed OA No. 571 of 2009 before this Bench which was disposed of on 20.05.2011. Relevant portion of the order reads as under:

"19. The Apex Court has held in FCI vs PD Bansal, 2008 (2) SLR that promotion increases efficiency and that there should be provision for promotional avenues. The same has been held in Ujagan Prints vs UOI, AIR 1989 SC 972 and CSIR vs K.G.S.Bhatt 1989 4 SCC 635, I therefore, direct the respondents to consider the case of the applicant for promotion to the above two grades. For this purpose the applicant will file a comprehensive representation. In dispose of the representation by a speaking order the respondents would make it clear (i) as to why DPC meetings were not held during the years 1994-2001



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year by years for the entire seven years for the two pots as may be applicable and whether or not certificates were issued each year as to why DPC meetings were not held as enjoined by DOPT instructions. In case, however, if DPC meetings have been held, then the respondents have to state as to why sealed cover procedure in case of the applicant was not resorted to as required. A speaking order should be given by the respondents within a period of three months from the date of representation of the applicant is received. I reiterate that in disposing of the representation all the points made out above in my order should be comprehensively covered and reasons given."

5. In pursuance thereof, a speaking order has been passed on 12th September, 2011 which was subsequently amended vide order dated 21st October, 2011. The perusal of reveals that on account of not holding the DPC promotion of the applicant could not be considered and it was intimated that the case of the applicant shall be considered along with others as and when DPC will be held after completion of requisite process. Our attention has been drawn towards paragraph 15 of the reply filed by the respondents wherein it has been mentioned that the Departmental Promotion Committee prepared the service records of the applicant and found him eligible for promotion to the post of Music Composer Gr. II with effect from 01.10.1994 but his ACR dossiers remained incomplete during 1987 to 1993 and for the period of suspension. So his case could not be considered. It is the case of the Respondents that DPC has not been held. It is a fact that no DPC has been held from 1994 to 2001 and no certificate was issued.



6. It is not in dispute that the Applicant was involved in Criminal case and was placed under suspension and was convicted in the criminal case and the order of conviction was set aside in appeal preferred by him. However, in the meantime he attained the age of superannuation. In view of the above, when all other benefits have been granted to the applicant as stated in the earlier paragraphs, the applicant ought to have been given the benefit of notional promotion which he was otherwise entitled to during his period of service. As it is the case of the Respondents that DPC has not been held to consider the case of the applicant, so we are of the view that we should not make any order on merit regarding grant of promotion to the Applicant.

7. In these circumstances, this OA is finally disposed of with direction to the Respondents to hold the DPC to consider the promotion of the applicant from Gr. III to Gr. II and from Gr. II to Gr. I within a period of three months from the date of communication of this order and the result of the DPC should be communicated to the applicant. In case the applicant is found to be entitled to promotion he shall be given all consequential benefits including monetary benefits in pursuance of that promotion within a further period of three months from the date of holding the DPC. There shall be no order as to costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C. Gupta)
Member (Judl.)