

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.**

O.A.211/00066/2016

Dated this 09 the ____ day of October, 2017.

**Coram : Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Shri R. Vijaykumar, Member (A).**

Suklal Punaodas Nandanwar
S/o Punaodas Nandanwar,
Head Clerk, All India Radio,
Nagpur.
R/o. 18-A Dhawantri Nagar,
Ramana Maroti Last Bus Stop,
Behind S.M. Convent,
Nagpur - 440 009. .. Applicant.

(By Advocate Shri R.K. Shrivastava).

Versus

1. The Union of India, through
the Secretary,
Ministry of Information and
Broadcasting,
New Delhi - 110 001.
2. The Director-General,
All India Radio,
Akashwani Bhavan,
Parliament Street,
New Delhi - 110 001.
3. The Additional Director
-General (W.R.),
All India Radio,
Akashwani Bhavan,
New Broadcasting House,
Backbay Reclamation,
Churchgate,
Mumbai-400 020.
4. The Dy. Director-General
(Eng/IC),
National Channel,
Super Power Transmitter,
All India Radio,
Near T.V. Tower,
Seminary Hills,
Nagpur - 440 006. .. Respondents.

(By Advocate Shri R.G. Agrawal).

Order reserved on : 21.09.2017
Order delivered on : 09.10.2017

O R D E R
Per : R. Vijaykumar, Member (A) .

In this O.A. filed on 10.02.1016, the applicant has sought the following reliefs:-

"1. To quash and set aside the impugned order dated 04.01.2016.

2. To direct the Respondents to give him Promotion to the post of Administrative Officer in the vacant post at All India Radio, Nagpur.

3. To promote him from the date from which his juniors Shri G.G. Jadhav and Shri D.L. Shende has taken over the charge.

4. To fix his pay in the Promotion Post and Pay him the Arrears of Pay and Allowances.

5. Any other consequential Relief including cost of O.A."

2. The applicant was appointed on 01.11.1983 as L.D.C. and eventually was considered for promotion as Head Clerk on 18.02.2008 and posted at All India Radio, Ahmednagar. He was transferred to Nagpur on 03.11.2009 and has held since then, three posts at Nagpur in All India Radio and Doordarshan Kendra. The respondents circulated the final eligibility list for promotion of Head Clerk to Administrative Officer on 01.04.2015 and as per that list, the applicant was seniormost amongst three eligible candidates who were

then posted at Nagpur. All three were appointed as Head Clerk on the same date on 18.02.2008 and their dates of birth were; Applicant 09.10.1961, Shri D.L. Shende on 27.01.1961 and Shri G.G. Jadhav on 16.04.1957. On this basis, orders were issued by the respondents on 27.11.2015, posting the applicant to Mumbai while the other two juniors were retained at Nagpur. The applicant has urged that Shri Jadhav who was the junior-most of the three had worked initially for 15 years at Nagpur and on return in 2009, was continuing in Nagpur and had now been promoted at Nagpur itself. In response to his representations requesting preference over the juniors and for retention in the vacant post at Doordarshan Kendra, Nagpur the Respondent No.2 has declined the request due to administrative reasons and warned the applicant to report at Mumbai on promotion failing which he would be debarred for one year.

3. The applicant has argued the above matter and stated that he has a heat condition and any dislocation would affect his health. He has emphasized his seniority amongst the three persons available in Nagpur, the long duration of service at Nagpur of Shri Jadhav and the availability of vacancy at Doordarshan Kendra, Nagpur. He has also referred to the order of the Allahabad Bench of this Tribunal

in O.A.No.461/2012 Jeewanti @ Jeewa Devi Vs. Union of India dated 28.04.2015 where it was held that not giving the same treatment in similarly placed cases is discrimination.

4. The respondents argued that the applicant's representation was received much earlier on 09.07.2015 prior to his transfer order on 27.11.2015 in which 16 Head Clerks / Assistants were transferred. This order was balanced without favouring any person and the applicant had been posted in his own State. It is also mentioned that two junior officials at Nagpur Shri Shende was retiring on 31.01.2021 and Shri Jadhav on 30.04.2017 and both had less service than the applicant who retires on 31.10.2021. Since he failed to obey the orders on transfer-cum-promotion, he has been debarred from 01.03.2016 or until vacancy arose. They have asserted that seniority is maintained zone-wise and even a senior, Shri Burande who retires on 30.06.2021, was transferred on promotion from Yavatmal out of the State to Gulbarga, whereas the applicant was retained in the home State. The applicant's request for retention in All India Radio, Nagpur was not feasible since no posts were available. Moreover, the Director General had considered his request for retention in Doordarshan Kendra at Nagpur but this could not be accepted for administrative reasons.

5. In his rejoinder, the applicant has reiterated his personal family and health problems and long distance of 850 kms. between Mumbai and Nagpur. The applicant has also pointed to the arrogant behaviour of Shri Shende which was being tolerated by his retention at Nagpur. He has also asserted the availability of 3 posts of Administrative Officer at All India Radio, Nagpur, National Channel-Super Power Transmitter and Doordarshan Kendra and has referred to Order No.43/2011 dated 16.11.2011 and the seniority list of 01.01.2012 in this regard.

6. In the sur-rejoinder, the respondents have argued that transfer is an incident of service and in All India Radio and Doordarshan Kendra, services of Administrative Officers and above are liable to be transferred anywhere in India. However, the applicant was transferred within his home State and yet he failed to comply with the instructions. They have also emphasized that no complaint was received against Shri Shende and he was cleared from Vigilance angle. In response to his claim of there being three posts of Administrative Officers at Nagpur, they have referred to the statement of sanctioned strength of All India Radio and Doordarshan Kendra totalling 102 (Annexure R-1) which shows that there is one post of SPT, All India Radio, Nagpur and one at Doordarshan Kendra,

Nagpur totalling two posts. They have conceded that the person shows as posted at All India Radio, Nagpur in the list referred by the applicant might have been a shifted post which is inadvertently being shown in the list. They have asserted that there is no legal infirmity in the transfer which has been issued on administrative grounds and public interest.

7. On 09.06.2017, the respondents had filed the M.A. stating that the applicant has been transferred as Administrative Officer at Doordarshan Kendra, Nagpur vide order dated 30.03.2017 and has joined on 31.03.2017 and requested dismissal of the application. In response, the applicant has urged that his promotion should be given backdated to the date on which his two juniors took charge by quashing the order of the Director General, All India Radio Order No.A-12011/30/2015-S-II/10611 dated 04.01.2016 by which he was debarred from promotion for one year. He has alleged that the respondents have accommodated him by shifting one post of Administrative Officer from Doordarshan Kendra, Gorakhpur to Nagpur on 30.03.2017 and this post was returned to Gorakhpur on 01.05.2017 when the Nagpur incumbent retired on 30.04.2017.

8. In this case, the applicant had initially refused his transfer and when the post was created and he was posted back at Nagpur, he has joined. This was

possible apparently because Shri G.G. Jadhav who was one of the juniors mentioned by the applicant and who had been retained at Nagpur at Doordarshan Kendra retired recently and it was possible to make a temporary adjustment between Gorakhpur and Nagpur by the respondents. What remains in this matter are the allegations of malafide and bias against the respondents, the issue of debarment, loss of seniority, and non payment of wages for the period during which the applicant failed to report at Mumbai and finally joined at Nagpur.

9. On the issue of bias and malafide, it is necessary for the applicant to establish that there is a reasonable suspicion of bias. The applicant has compared a situation of a case which dealt with persons who had applied for release of family pension and compassionate appointment for casual labour employees who had attained temporary Group 'D' status. The comparisons are clearly inappropriate. On the issue of bias, the respondents have argued that the two juniors retired prior to the applicant. In fact one of them retired in 2017 and the applicant has been adjusted in his position. In the other case, as on date of transfer the applicant had 6 years of service left while the immediate junior had 5 $\frac{1}{2}$ years of service. It may be argued that with at least 5 years

left for retirement, either of them could have been shifted and in that consideration, the senior could have been retained. However, this ventures into the administrative discretion of the authority concerned and we might only surmise some preference but this does not lead to a reasonable suspicion of bias, let alone malafide.

10. In the circumstances, the applicant has to bear the loss for his actions in not reporting to the place where he was posted. He cannot now insist on getting back his seniority and obtain wages for the period when he did not work.

11. In the circumstances, the impugned order dated 04.01.2016 will stand and the applicant's request for granting him promotion with effect from the date on which his juniors took charge is not allowed. Resultantly this O.A. is dismissed. There will be no order as to costs.

(R. Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J).

H.