

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/856/2012

Date of CAV: 09.01.2019

Date of Pronouncement: 07.02.2019

Between:

P. Rama Manohara Rao, S/o. Venkanna Dora,
Aged about 52 years, Occ: Senior Branch Manager,
Distribution Branch Officer, Films Division,
Ministry of Information and Broadcasting,
Government of India, Hyderabad.

... Applicant

And

1. Union of India, represented by its Secretary,
Ministry of Information & Broadcasting,
Government of India, Shastri Bhavan, New Delhi.
2. The Secretary, Union Public Service Commission,
Dholpur House, New Delhi.
3. The Liaison Officer (for SC/ST),
Reservation Cell, O/o. The Secretary,
Ministry of Information & Broadcasting,
Government of India, Shastri Bhavan, New Delhi.
4. The Director General, Films Division,
Ministry of Information & Broadcasting,
Government of India, Dr. Gopalrao Deshmukh Marg, Mumbai.
5. Suresh Menon, S/o. Not known,
Aged about not known,
Occ: Director (Film-maker), Films Division,
Ministry of Information & Broadcasting,
Government of India, Dr. Gopalrao Deshmukh Marg, Mumbai.
6. Sri Anil Kumar.N, S/o. Not known,
Aged about not known,
Occ: Officer-in-Charge of Distribution,
Films Division, Government of India,
Ministry of Information & Broadcasting,
Dr. Gopalrao Deshmukh Marg, Mumbai.

... Respondents

Counsel for the Applicant	...	Dr. A. Raghu Kumar
Counsel for the Respondents	...	Mrs. K. Rajitha, Sr. CGSC
		Mr. B.N.Sharma, SC for UPSC

CORAM:***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)******Hon'ble Mr. B.V. Sudhakar, Member (Admn.)*****ORDER*****{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. The applicant challenges the promotion of the 6th respondent to Group A cadre and allowing him to be the reporting officer of the applicant.

3. Applicant, who belongs to the Scheduled Tribe, joined the respondents organisation on 3.4.1990 as Transmission Executive in A.I.R. Subsequently on being selected as Branch Manager in Films Division, he gave technical resignation to the earlier post. In 2004, the Respondents created the post of Senior Branch Manager in the Non Functional Grade in Films Division for which the applicant was selected. The next higher grade post in the Group A cadre is the Officer-in-Charge of Distribution (for short "OCD") in Films Division. Applicant is aggrieved that the 6th respondent has been selected as OCD against prevailing rules without considering the eligible candidates. Hence the OA.

4. The contentions of the applicant are that the 6th respondent has been favoured by not following SC/STs reservation policy in public employment. The 6th respondent's service in the State Govt has been considered to show him as senior to the applicant which is incorrect. The names of the 6th respondent and that of Sri M.A. Selvam were forwarded for consideration of the DPC without following the rule in regard to zone of consideration. Even the conduct of the DPC was against rules as it was based on recruitment rules of 2003 which were never circulated. Further the DPC findings were based on CRs which were not communicated. Albeit the 6th respondent and the applicant were in the same

cadre, the former was allowed to write the CR of the later which is irregular. The applicant cited the judgments of the Honourable Supreme Court in *State Bank of India v Kashinath Kher* (AIR 1996 SC 1328), *Collector of Central Excise v New Tobacco Company* (AIR 1998 SC 668), *Dev Dutt v Union of India and ors* (CDJ 2008 SC 975; 2008 (8) SCC 725 and *Abhijit Ghosh Dastidar v U.O.I and ors* (CDJ 2008 SC 2359) in support of his contentions. Based on the above contentions the applicant claims that the respondents promoting 6th respondent without considering other eligible candidates is against rules and illegal.

5. Respondents confirm that the applicant was selected by UPSC in 1996 for appointment to the post of Branch Manager in Films Division along with 4 others. UPSC forwarded the inter-se seniority based on order of merit wherein the 6th respondent is shown at Sl.1 and applicant at Sl. 4. Subsequently applicant was promoted as Sr. Branch Manager on 3.11.2008. To comply with the directions of the Honourable Court of Delhi in CWP No.5976/03 the ST caste certificate of the applicant was sent for verification. The District Collector, Vizianagram District cancelled the caste certificate after due verification in 2009. Applicant moved the Honourable High Court of A.P vide WP 26714/2009 and the said writ petition was disposed on 8.12.2009 with a direction that the order of the District Collector dt.23.10.2009 shall remain suspended till the appeal preferred to the Principal Secretary, Tribal Welfare Dept, Govt. of A.P, is disposed of. Time given to dispose the appeal was 4 months. The appeal has not been disposed and the applicant is continuing in service on the basis of a cancelled caste certificate. That apart, based on the approval of Dept. of Expenditure, 17 posts of Films Division were revived on 19.5.2011 including that of OCD post. Recruitment Rules of 2003 specify the conditions of promotion to OCD. As per the recruitment rule, Officers eligible to be

considered are those who have 5 years of service in Sr. Branch Manager grade or officers with 8 years of combined service in Sr. Branch Manager and Branch Manager grade, out of which a minimum of 3 years service has to be in Sr. Manager grade. A proposal was sent to UPSC for convening a DPC to fill up the post of OCD. As per promotion procedure seniority list was issued and representations received including that of the applicant was disposed. DPC recommended the candidature of Sri Ma. Selvam but since he declined, the 6th respondent was promoted as OCD on 13.6.2012 as per DPC minutes.

6. Dr. A. Raghu Kumar, learned counsel appeared on behalf of the applicant and Mr.B. Laxman, learned counsel for Mrs. K. Rajitha, learned Senior Central Government Standing Counsel and Mr. M.C. Jacob, learned counsel for B.N. Sharma, learned Standing Counsel for UPSC represented the respondents. Arguments were heard. They were in tandem with the written submissions. Documents and material papers were perused.

7. Different issues were raised on either side, which when analysed would enable resolution of the dispute. The important issues are:

- i. Respondents claim that the applicant is continuing in service on the basis of a cancelled caste Certificate.

Learned counsel for the applicant has submitted a copy of the interim order of the Hon'ble High Court in WPMP No. 15783/2016 in WP No. 12593/2016 wherein the order of the Government of Andhra Pradesh confirming the order of the District Collector cancelling the applicant's caste certificate has been suspended till the disposal of the writ petition. Therefore, it may not be proper for the respondents to take the stance stated.

ii. Applicant claimed that the recruitment rules of 2003 have not been circulated and therefore taking them into account for processing promotion to OCD is incorrect.

Respondents have published the recruitment rules 2003 in Gazette of India on 4.12.2003. Once published in Gazette of India it is a public document accessible to anyone. While sending the notification for publication the respondents did mark a copy to the Chief Producer, Films Division and other Ministries as well. Applicant who belongs to the officer cadre claiming that it was not circulated and feigning ignorance on that count does not therefore stand to reason.

ii. Sixth respondent as in-charge OCD, writing the CRs of the applicant is incorrect as he belongs to the same cadre as that of the applicant.

6th respondent based on his seniority was posted as in-charge OCD. His job is to supervise the distribution network consisting of 10 branch offices spread across the country. Consequently he personally monitors the work of the staff and officers working in these branches. Thus 6th respondent, being the Head of the Office, has to initiate the ACRs as reporting officer in accordance with Govt. of India, CS-OM dt 20.5.1972 (R-20). Accordingly he did in regard to the applicant. Incidentally there were no adverse entries made against the applicant to attribute any malafide to the 6th respondent. Even in such an eventuality of any such adverse remark being made, the system provides for a Reviewing Officer to verify the validity of such a remark and make appropriate remarks. 6th Respondent did write the ACRs of other Sr Branch Managers and there were no

complaints from them. Respondents cannot therefore be faulted on this count.

iii. Group A posts revived were 17 and hence reservation roster has to be maintained for all the posts together and not just for OCD post.

Reservation roster is maintained for a post in a given cadre. Separate rosters are maintained for different cadres. The number of posts in the cadre of OCD being one, model roster was followed as per DOPT letter dt 2.7.1997. The liaison officer for SC/ST was also aware of the same through Admin-I Section of the Ministry. Maintenance of roster for all Group A posts together has not been prescribed nor did the applicant produce any rule supporting his contention.

iv. Reservation norms prescribed were not followed in filling up the post of OCD

Mr P.S Rawtel, ex Branch Manager belonging to scheduled tribe was promoted as OCD on 8.8.1997 against the model roster point no 1 (UR). It was indicated in the roster that it was used for ST. On rotation the next roster point is UR. Mr P.S.Rawtel retired on 31.10.2005. DPC met and selected Sri Ma Selvam (SC) but since he declined, the 6th respondent who is an UR candidate was picked up from the extended panel and promoted as OCD. The Director General and Liaison Officer (SC/ST) has issued a certificate on 5.12.2011, which was appended to the proposal sent to the UPSC, stating that the number of posts reserved for SC/ST have been checked from the reservation roster for the post of OCD and found it to be in order. As such no irregularity in following the reservation norms has been noticed.

v. Rule regarding zone of consideration was not followed while sending the proposal to UPSC

As per DOPT memo dt 6.1.2006 the number for zone of consideration is 5 for every vacancy. The respondents considered and accordingly found only two officers eligible who come under of zone of consideration. This fact was brought to the notice of the UPSC too. Only those who are eligible can only be taken into the zone of consideration and not others.

vi. The applicant has also made other averments in regard to composition of the DPC, grant of ACP, integrity certificate, applicant working as Presenting Officer, seniority etc. We have gone through the rejoinder and the additional reply filed and all the material papers submitted in depth. Relevant rules and memos were carefully studied in the context of issue on hand. Only those relevant have been discussed. For example the composition of the DPC is proper and is as per para 15 of DOPT memo dt 10.4.1989. In regard to the issue of ACP it has no relation to the present case. The issue of integrity certificate has not prejudiced the assessment of officers in the DPC. In fact issue of integrity certificate has been dispensed by the UPSC from May 2012. The applicant working as Presenting Officer in some case has nothing to do with the present OA. The averments made therein are only presumptions of the applicant. Representations in regard to seniority have been comprehensively responded to by the respondents and that too, before the DPC met for OCD promotion.

vii. Further, the Supreme Court judgments cited by the applicant are not relevant to issue adjudicated. For eg. the *Dev Dutt and Abhijit Ghosh Dastidar* Judgments cited are not applicable as there was nothing adverse about the applicant to be communicated or anything about the ACR which required to be examined as per the material papers submitted. Coming to the Honourable Supreme Court judgment in *SBI v Kashinath Kher* (AIR 1996 SC 1328), it is not relevant since the 6th respondent is senior and holding a higher position of OCD and hence he is not of the same rank of the applicant. Similarly the judgment of the Apex Court in *Collector, Central Excise v New Tobacco Company* (AIR 1998 SC 668) is not applicable as the copy of the notification was circulated to the Chief Producer, Films Division and other Ministries/UPSC/Parliament Library etc on 4.12.2003. Therefore it was very well in the public domain. The applicant being an officer and knowledgeable as seen from the elaborate facts submitted by him, it would be difficult to accept that an important change in regard to recruitment rules is not in his knowledge.

Thus after detailed examination of all the rules and regulations quoted by both the sides and also the judgments cited, this Tribunal based on the aforesaid analysis of facts and law comes to the conclusion that there is no merit in the case deserving intervention on behalf of the applicant. The action of the respondents is as per rules and law. Hence the OA is dismissed. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 7th day of February, 2019

evr