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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00459/2018

Date of order: 7th May 2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

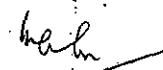
Arya Chaudhuri,
 Son of late Dr. Tarini Charan Chaudhuri,
 Residing at CIT Flat No. 4/8,
 114/A, Lake-Gardens, P.S. Lake,
 Kolkata – 700 045.

..Applicant

VERSUS -

1. The Union of India,
 Service through the Secretary,
 Ministry of Information and Broadcasting,
 "Shashi Bhawan",
 Dr. Rajendra Prasad Road,
 New Delhi – 110 001;
2. Prasar Bharti (Broadcasting Corporation
 Of India),
 Having its Head Quarters at
 PTI Building,
 New Delhi – 110 001;
3. The Director General,
 All India Radio,
 (S-8 Section),
 Prasar Bharati,
 Parliament Street,
 New Delhi – 110 001.
4. The Station Director,
 All India Radio,
 Prasar Bharati,
 Aakash Bani Bhawan,
 Eden Gardens,
 Kolkata – 700 001.

.. Respondents



For the Applicant : Mr. B. Bhushan, Counsel

For the Respondents : Ms. M. Bhattacharyya, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant, in the instant O.A., had a chequered history of litigations and has presently approached the Tribunal in the instant Original Application in the third stage litigation praying for the following relief:-

"(a) Quashing of order dated 26th February, 2018 passed by the respondent No. 2 whereby the applicant allegedly not fit for promotion to Group-II on 1st October, 1994 and Group-I on 1st October, 1999 respectively;

(b) Directs upon the respondents to produce the records of ACR of the applicant from 1993 onwards and also provide a copy in the reply after admission of the instant application;

(c) Specific direction may be given to the respondents to promote the applicant to Group-II on and from 1st October, 1994 upon perusal of the records and to provide all financial benefits thereto including arrears and refixation of pension;

(d) Specific direction may be given to the respondents to promote the applicant to Group-I on and from 1st October, 1999 upon perusal of the records and to provide all financial benefits thereto including arrears and refixation of pension;

(e) An order directing the respondents to produce/cause of production of relevant records;

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

2. Heard both Ld. Counsel, perused pleadings and documents on record.

Upon direction, Ld. Counsel for the applicant had produced the Minutes of DPC dated 22.1.2018 conducted in compliance to Tribunal's order in O.A. No. 283 of 2012 along with ACRs which were referred to in the said DPC.

3. The applicant's submissions, in the instant Original Application, is that he had joined the respondent organization as a Music Composer in the year 1976, subsequently promoted to the post of Music Composer Group-III in the year 1984 and, that, despite the fact that there were vacancies in the post of Music Composer Group-II as well as Group-I, the applicant was not promoted to the said posts, namely, as Music Composer Gr.-II on 1.10.1994 and as Music Composer Group-I on 1.10.1999 respectively.

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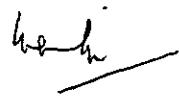
In an earlier O.A. No. 283 of 2012, the applicant had, inter alia, prayed for convening of DPC and for consequent financial benefits. That the Tribunal allowed the said prayer and, accordingly, DPC was convened to consider the proposal for his promotion to Music Composer Gr. II and from Gr. II to Gr. I. According to the applicant, despite the fact that he had fulfilled the requisite criteria for the said promotion, the Departmental Promotional Committee did not find him fit and the respondent authorities rejected the proposal for his promotion by an order dated 26.2.2018. Hence, being aggrieved, the applicant has approached the Tribunal in the instant Original Application.

The applicant had advanced the following grounds, inter alia, in support of his claim:-

- (a) That, the documents of the DPC which would justify their decision with respect to the applicant had not been incorporated or disclosed.
- (b) That, the applicant fulfilled all parameters for Gr. III to Gr. II and that although the applicant was the senior-most Composer in Gr. III, his promotion has been denied to him without any reason.

4. The respondents, per contra, have controverted his claims stating that the applicant suffers from misunderstanding as promotion can be claimed only in terms of recruitment rules and not on the basis of any transfer policy as claimed in the Original Application. The respondents have further contended that the DPC has scrutinized his service records but his AGR gradings failed to satisfy the bench mark and hence he was not considered fit for promotion to Music Composer Gr. II and as he was not ab-initio considered for promotion from Gr. III to Gr. II, the scope of his further promotion from Gr. II to Gr. I did not arise.

5. The main issue for adjudication in the instant O.A. is whether the applicant was entitled to promotion from Music Composer Gr. III to Gr. II and thereafter from Gr. II to Gr. I as per his claims.



6.1. At the outset, the history of the applicant requires to be placed on record. The applicant, a folk singer, was appointed by All India Radio, Calcutta as a Staff Artist in 1975 and subsequently functioned as a Sr. Grade Music Composer in 1983. Thereafter, he was directed to proceed on transfer to AIR Agartala vide orders dated 25.4.1995 in the same capacity. Although the applicant approached the Tribunal against the transfer order and the Tribunal quashed the same, ultimately the applicant moved to Agartala with the claim that he should have been moved to Agartala on promotion which was denied to him. Thereafter, the applicant was implicated in a criminal proceeding and a CBI case was instituted against him and he was taken in custody and placed on deemed suspension from 27.6.1995 which was revoked as per Hon'ble High Court's order dated 18.3.1998 as he had challenged his suspension in the said forum.

In the meantime, the applicant was chargesheeted on 4.12.95 under the Prevention of Corruption Act, 1988, convicted in a Special Case No. 23/95 of the said Act, and consequently dismissed from service on 27.12.2000. Upon dismissal, the applicant filed CRA No. 216 of 2000 before the Hon'ble High Court. The Hon'ble High Court having acquitted the applicant vide order dated 23.2.2006, set aside the dismissal order, and treated the period of date of his dismissal i.e. from 27.12.2000 to 31.1.2001 as on-duty. The applicant was given full pay and allowances for the period and his period of suspension was treated as on duty.

The applicant's grievance was that, although his retiral dues were paid when he superannuated on 31.1.2001, his promotion to Music Composer Gr. II from 1.10.1994 and Music Composer Gr. I from 1.10.1991 was wrongly denied to him along with consequent pecuniary benefits to which he claims entitlement.

Hence, the applicant had approached the Tribunal in O.A. No. 571 of 2009 praying for the following relief:-

"Order/direction be passed directing the respondents concerned to give all financial benefits to the applicant for the post of Music Composer Group II which fell due from 1st October, 1994 and for the post of Music Composer Group I which fell due from 1st October, 1999 and revise the pensionary benefits on the basis of pay scale for the post

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of Music Composer Group I as on the date of retirement of the applicant on attaining the age of superannuation and to act in accordance with law."

The Tribunal disposed of the said O.A. on 20.5.2011 directing the respondents to consider the comprehensive representation of the applicant with a speaking order with particular reference to DPC meetings. The respondents thereafter issued a speaking order dated 12.9.2011, subsequently amended vide their orders dated 21.10.2011, in which the respondents stated as follows, the relevant portion being extracted therefrom:-

PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL AIR INDIA RADIO

No. 32/8/2009-S-VIII/859

New Delhi dated 21.10.2011

Subject:- O.A. No. 571/2009 filed by Sh. Arya Chaudhuri, Ex-Music Composer, AIR Kolkata before Hon'ble CAT, Kolkata Bench at Kolkata.

AMENDMENT TO THE SPEAKING ORDER

Some amendments, addition and alteration are hereby made in the Speaking Order No. 32/8/2009-S-VIII/789 dated 12/14/09/2011.

S.N.	Para No.	Existing contents of Para	Amended Para
1	4	<p>And whereas it is observed that as per the R/Rules for the promotion of Music Composer Group-III to Music Composer Group-II the provision is that the Music Composer Group-III has to cross the floor of fee scale prescribed for Group-II Music Composer. Sh. Chaudhuri has crossed the said floor of fee scale on 1.10.1998 in pay scale of Rs 10,000-15,200/- as such he is eligible for consideration of his promotion from Group-III to Group-II and his case will be placed before DPC for which the matter is under process and the year wise vacancy position in Group-II is being ascertained from North and South zones from 1998 onwards. It may be observed that no junior of Sh. Chaudhuri has been promoted after 1998.</p>	<p>And whereas, it is observed that as per the R/Rules for the promotion of Music Composer Group-III to Music Composer Group-II the provision is that the Music Composer Group-III has to cross the floor of fee scale prescribed for Group-II Music Composer. Sh. Chaudhuri has crossed the said floor of fee scale on 1.10.1994 in pay scale of Rs 3000-100-3500-125-4500 as such he is eligible for consideration of his promotion from Group-III to Group-II and his case will be placed before DPC for which the matter is under process and the year wise vacancy position in Group-II is being ascertained from North and South zones from 1994 onwards. It may be observed that no junior of Sh. Chaudhuri has been promoted after 1994.</p>
	4	(New Para Added)	<p>And whereas no DPC meetings were held during the years 1994-2001 for promotion to the post of Music Composer Grade-I and Grade-II and no certificates were issued each year as to why DPC meetings could not be held. The case of Sh. Arya Chaudhuri shall be duly considered by the DPC to be conducted alongwith others on completion of requisite process.</p>

The applicant thereafter approached the Tribunal in O.A. No. 283 of 2012 claiming the following relief:-

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"(a) An order holding that non-consideration of the promotion of the applicant from Music Composer Grade-III 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 refixation 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."

The respondents controverted his claims. In their written statement they have disclosed an order of the respondents dated 10.5.2012 stating that, in compliance to the Tribunal's order dated 25.2.2011 in O.A. No. 575 of 2009, a Departmental Promotion Committee was duly constituted for considering the promotion of the applicant from Music Composer Group III to Music Composer Group II and the DPC, after careful consideration, and, after scrutiny of his ACRs, did not find the applicant fit for promotion to the post of Music Composer Group II. The said decision was directed to be communicated to the applicant accordingly. As the respondents had disclosed the ACR gradings and the decisions of the DPC held in 2012 in their reply to O.A. No. 283 of 2012, it is relevant to examine the applicant's rejoinder thereto in which his comments on his ACR are as follows:-

(a) That, although the applicant was allegedly guilty of non-submission of his ACRs, as he has been receiving his pension, the ACRs cannot be presumed to have remained incomplete in his service career.

(b) Regarding the ACRs from 1987 to 1993, the applicant questioned the frequency and non-recording of reasons for irregular reporting.

(c) Regarding the ACR from 1.4.1992 to 30.9.1992, the applicant stated that he received the said adverse ACR after a delay of 17 months and represented on 23.2.1994 with a reminder dated 14.9.94 against the same.

At no stage, during pendency of O.A. No. 283 of 2012, the applicant chose to amend the Original Application in challenging the findings of the DPC dated

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10.5.2012. The O.A. No. 283 of 2012 was thereafter disposed of on 26.9.2016 by the Tribunal as follows:-

"7. In these circumstances, this O.A. 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."

The respondents sought a review to the said order bringing before the Tribunal the fact that a DPC had been held as early as on 2012 but that the applicant was not found fit for Music Composer Group - II. The Tribunal, however, rejected the review application on the grounds that the Tribunal had not directed promotion of the applicant but only directed consideration of his case as per rules.

The respondents thereafter issued a speaking order on 26.2.2018 after conducting another DPC on 22.1.2018 and the said DPC, which was held on 22.1.2018, scrutinized the service records of the applicant for the relevant period and did not find him fit for promotion to the post of Music Composer Group II. The recommendations of the DPC were accepted by the competent authority and the decision was communicated to the applicant by a speaking order dated 26.2.2018. The applicant has approached the Tribunal in the instant O.A. challenging said speaking order.

6.2. In the instant Original Application, the applicant has insisted on production of the records his ACR from 1993 onwards. The respondents had made it clear in the reply to the earlier O.A. No. 283 of 2012 that the ACRs of the applicant beyond the period 1993 was not available in his dossier. It is also seen from the list of dates of events that the applicant was in custody from 14.6.1995 onwards. The applicant has defended non-submission of his ACRs on the ground that his pensionary benefits had been granted after verification of his Service Book and hence his ACRs are presumably up to date and complete. It is noted here that ACRs are essentially related to promotion and reflect the quality of performance

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of an incumbent so as to decide his eligibility for forward movement in the career ladder. Verification of service book, on the other hand, is mostly done by the Drawing & Disbursing Officer on the basis of payments disbursed to an employee. Pensionary benefits are decided after verification of the service records in accordance with emoluments drawn on a regular basis by the employee concerned. Hence, the fact that his Service Book was verified for the purpose of his pension does not necessarily prove that his ACRs were complete and up to date till his superannuation in 2001. As the ACRs are to be initiated by the incumbent concerned and thereafter submitted to the reporting and reviewing authorities, the primary responsibility of ACR submission lies with the concerned employee and in this case, the applicant has not been able to establish that he himself had furnished ACRs to the reporting authority from 1993 to his superannuation in 2001.

6.3. The applicant was declared unfit on the basis of his ACR gradings which was disclosed to him earlier in the respondents' reply to O.A. No. 283 of 2012. The applicant has responded to his ACRs between 1987 to 1993 only by questioning the frequency of reporting in the ACRs. The ACR which graded him as "average" with the remarks that "he was a danger to the institute" for the period 1.4.1992 to 30.9.1992 was communicated to him and, according to the respondents, although he had represented against the same, the comments were not expunged subsequently and, accordingly, the said adverse ACR continue to be retained in his service record.

Hence, the DPC which had met in 2012 in compliance to Tribunal's orders in O.A. No. 571 of 2009 along with the DPC which met in 2018 in compliance to the orders of the Tribunal in O.A. No. 283 of 2012, examined his ACRs for the period 87 to 93 and found his overall gradings to be below bench mark and thereby declared him unfit for promotion to Music Composer Group II. Logically, unless the applicant was promoted to the post of Music Composer Gr. II, he

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cannot rightfully claim to be considered as Music Composer Group I which is a promotional post to Music Composer Gr. II.

6.4. The respondents have produced documentary evidence that DPC had been conducted in 2012 and in 2018 in compliance with directions of the Tribunal in two subsequent O.A.s of 2009 and 2012 respectively. The applicant, however, neither by an amendment application in O.A. No. 283 of 2012, nor in the instant O.A., has challenged the findings of the DPC which was held in 2012 although the findings of the DPC was disclosed by the respondents in O.A. No. 283 of 2012.

6.5. The applicant has repeatedly referred to production of records relating to his service and/or the directions of the Tribunal; the respondents have produced his ACRs while were taken into consideration by the DPC. Such records do not reveal any additional information beyond what was disclosed by the respondents in their counter-statements in the earlier O.A.s and in the present O.A. The applicant, however, had repeatedly insisted on conduct of DPC to consider his case without challenging the findings of the earlier DPC which had found him unfit although the results of the DPC of 2012 and that of 2018 were duly conveyed to him by the respondent authorities.

6.6. In *Om Prakash Asali v. State of UP* 2012 (5) SCC 552 and in *N.C. Das v. Gauhati High Court Thr. Registrar*, 2012 (2) SCC 321 the Hon'ble Apex Court did not agree to interfere with the impugned order denying promotion to the petitioner, as his 4 annual reports assessed the work and conduct of petitioner as average.

Herein also, the applicant has been graded as "average" in three of the years during the period under review.

In *State of M.P. v. Srikant Chaphekar*, Air 1993 SC 1221 the Hon'ble Apex Court ruled that the Tribunal fell into patent error in substituting itself for the Departmental Promotion Committee. Holding that the remarks in the annual confidential report are based on the assessment of the work and conduct of the

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official/officer concerned for a period of one year, the Hon'ble Court ruled that the Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Deputy Director. The Hon'ble Court further held that it was not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis. It was for the Departmental Promotion Committee to evaluate the same and make recommendations based on such evaluation. The Hon'ble Supreme Court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was not considered for promotion or the consideration was illegal then the only direction which can be given was to reconsider his case in accordance with law. It was not within the competence of the Tribunal, in the facts of Srikant (supra) to have ordered deemed promotion to the respondent.

6.7. In the instant matter, we find that:

- (a) The applicant could not establish that all his ACRs, particularly those from 1993 to 2001, were furnished to the superior authorities for reporting and review of his performance.
- (b) The ACRs from 1.4.87 to 31.3.93 (barring those between 1.4.89 – 31.3.90) were available for review of his performance by DPC. Of these, ACRs for 1987-88, 1991-92 and that for 1992-1993 (with remarks as Danger to Institute) were graded as average. Hence, the applicant failed to meet the bench mark for promotion.
- (c) The applicant did not challenge the recommendations of DPC of 2012.

7. The recommendations of DPC which found the applicant, *prima facie*, unfit for promotion to Music Composer Group II remains unchallenged, despite passage of long intervening years thereafter. The applicant's prayer for consideration of his promotion on perusal of records does not merit consideration

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as examination of such records do not support the claim of the applicant for promotion. Two DPCs have examined the promotional proposal of the applicant, in abidance to directions of the Tribunal in two O.A.s of 2009 and 2012. There are no cogent grounds to direct any further consideration by a DPC and this Tribunal, following the ratio in **Srikant (supra)**, cannot substitute itself to the Departmental Promotion Committee. Hence, in our considered view, there is very little to adjudicate further in this matter which, in terms of facts and law, fails to substantiate itself on merit.

8. Accordingly, the O.A. is dismissed on merit. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP

(Bidisha Banerjee)
Judicial Member