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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Calcutta Bench, Calcutta

O.A. No. 350/903 of 2006

In the matter of :

Chandan Kumar Das,

son of late S. K. Das, aged about 46
years, working for gain as Technician at
a T.V. relay Centre, Malda under the
Assistant Engineer, Doordarshan, D.D.M.
Darjeeling, residing at Krishnakalitala
P.O. Mukchumpur, District - Malda.

... Applicant

- Versus -

1. Union of India,

through the Secretary, Ministry of
Information & Broadcasting, ^{Shashi Bhawan} ~~Mandi House~~
~~Copernicus Marg~~, New Delhi - 1.

2. The Director General, Doordarshan,
^{Copernicus Marg} ~~Mandi House~~, New Delhi.

3. The Chief Engineer (East Zone),
All India Radio & Television,
Akashvani Bhawan, Eden Garden,
Kolkata - 700 001.

5. The chief executive officer,
Prasar Bharati Corporation
of India, Prasar Bharati House,
Copernicus Marg,
New Delhi - 110001.

Respondent no 5 (add)
as per order dated of the Hon'ble
Tribunal vide order dt - 30.8.2018.

4. The Station Engineer,
Deordarshan Maintenance Centre,

Rook Valley Road, Darjeeling - 73

... Responde

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A/350/903/2006

Date of Order: 08.08.2019

**Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member**

**CHANDAN KUMAR DAS
VS.
UNION OF INDIA & OTHERS
(DOORDARSHAN)**

For the applicant : Mr. B. Chatterjee, counsel
For the respondents : Ms. R. Basu, counsel

ORDER

Bidisha Banerjee, Member (J):

In this O.A. the applicant has sought for the following reliefs:-

- "i) To pass an appropriate order directing the respondent to quash and set aside the impugned speaking order dated 22.6.06 being No.Z/Cadre-23(1)/2004(court) passed by Chief Engineer(East Zone);
- ii) An order do issue to direct the respondent to extent all the consequential benefit as per Mr. Ali's court's order being O.A.1089 of 1992;
- iii) An order to issue to direct the respondents to give all consequential benefits to the applicant as per the observation made by this Hon'ble Tribunal in earlier O.A. being No.1156 of 1996 filed by your applicant;
- iv) An order do issue directing upon the respondents to give your applicant the same pay scale (5,500/-) like Mr. Ali and also arrears from 13.6.96 as because your applicant's case was considered in light of the judgment and order passed in Mr. Ali's case;
- v) An order do issue to direct the respondent to grant actual pay benefit in favour of your applicant;
- vi) An order do issue directing upon the respondent to fix the pay scale of your applicant with effect from the date Mr. Ali was granted and to grant all the arrears benefit with effect from 13.6.1996;

vii) An order do issue to direct the respondents to consider your applicant's representation dated 20.7.2004 and 17.1.2005;

viii) To produce all records of the case before this Hon'ble Tribunal;

ix) And to pass such other order or orders, direction or directions as your applicant may deem fit and proper;

x) Costs."

2. The Id. counsels were heard and materials on record were perused.

3. It transpires from the record that the applicant had assailed one memo dated 25.07.1996 rejecting his representation in O.A.No.1156/1996 and prayed for extension of the benefit of order and judgment dated 24.04.1996 passed by this Tribunal in O.A.No.1089/1992 in case of one, Abdul Kaiyum Ali. He claimed parity with Ali on the ground that both of them served as labours in T.V. Relay Centre, Malda. They were called for interview for the posts of Technician along with other candidates sponsored by Employment Exchange which matter when referred to higher officials was declared void as they lacked essential qualifications. Sri Abdul Kaiyum Ali preferred O.A.No.1089 of 1992 which was disposed of by this Tribunal on 24.04.1996 with the following order:-

"5. The respondents have also contended that there is avenue for promotion under the promotional quota as well. But when we look into the recruitment rules, we find that the appointment is made 100 on the basis of direct recruitment and there is no scope for promotion at all from the feeder grade. It is also not at all clear to us, whether there was at all any feeder grade from which the said two persons were given promotion. It appears, therefore, that there was some anomaly, if not favouritism, in the matter of giving appointment to those two persons. Although one wrong may not justify the other, we are constrained to observe that since that the applicant is similarly circumstanced like those two persons and the respondents have not taken the plea before us that the appointment of those two persons have been given wrongly, it shall amount to discrimination if the case of the applicant is also not considered for giving appointment in the post of Technician favourably. Apparently, as it stands, it appears that the said two

persons have the same qualification as the instant applicant. We are not aware whether any action has been initiated in the matter, if at all wrongly some appointment has been given to those two persons. It is however, a different matter if, in the meantime, the respondents had taken any action in the matter. In our view, if the qualifications of S/Ardhendu Sekhar Haldar and Sujit Kr. Nandy are good enough for giving appointment to the post of Technician, the applicant being similarly circumstanced, also cannot be denied such appointment since his similar qualification should also be good enough for such appointment.

6. In view of the above discussion, the application is disposed of with the direction that the respondents shall consider the case of the applicant for giving appointment as Technician in the light of the above observation and they shall pass appropriate order within a period of 2 months from the date of communication of this order. We further direct the respondents not to fill up one post, which has been kept vacant pursuant to the Interim Order, passed by this Tribunal on 30.1.95 till the matter is disposed of by passing appropriate order, as we have directed. The MA. 219/95 is also disposed of. We pass no order as to costs."

Sri Ali was granted appointment on probation w.e.f. 13.06.1996

pursuant to the direction of this Tribunal. On 19.06.1996 the applicant in this O.A. preferred a representation requesting treatment on par with Sri Ali. His request was rejected on 25.07.1996 which he challenged before this Tribunal in O.A.No.1156/1996. The said O.A. was disposed of on 03.11.2003 with the following order:-

"6. In view of the observations made above the O.A. is allowed and the respondent authorities, more particularly, respondent no.03 are/is directed to consider the representation of the applicant dated 19.06.1996(Annexure-F) treating this O.A. as a part thereof, keeping in view the order/judgment dated 24.4.1996 passed in O.A.No.1089 of 1992, and pass a reasoned/speaking order within a period of 02 months from the date of communication of this order and communicate the decision to the applicant within 02 weeks thereafter and in case the decision goes in favour of the applicant then to extend all the consequential benefits within a period of one month from the date of the order.

7. It is made clear that in case there is a separate Director Doordarshan at Darjeeling where the applicant is presently working then the applicant's representation along with all documents shall be forwarded to him by the respondent no.03, who shall consider the representation of the applicant as directed above, within the same period as stated above. However, there shall be no order as to costs."

There was no mandatory direction from this Tribunal to grant consequential benefits retrospectively. Pursuant thereto he was

appointed to the post of Technician w.e.f. 01.06.2004 at Alipurduar against a vacancy under Schedule Caste quota in the scale of Rs.4000-6000, on probation for 2 years. On 20.07.2004 the applicant claimed benefit on par with Ali and requested the same pay scale as given to Ali along with arrears from 13.06.1996 i.e. the date Ali was appointed as Technician LPT, Malda. He even preferred O.A.No.1114/2005 seeking disposal of his representation which was disposed of on 22.11.2005 with the following order:-

"2. Ld. Counsel for the applicant stated that the applicant would be satisfied if respondents consider the applicant's representation dt. 17.1.2005(Annexure-J) by passing a detailed and speaking order.

3. Having regard to the directions contained in the order dated 31.1.2003 in O.A. at this stage itself in our considered view this OA. Can be disposed of while rights of the respondents shall not be prejudiced by directing the respondent No.3 to decide applicant's representation dated 17.1.2005 by passed a details and speaking order expeditiously and preferably within a period of three months from the date of communication of this order. The present OA. Shall also be considered by the respondent No.3 as supplementary representation of the applicants ordered accordingly."

Once again there was no mandatory direction to grant the benefits retrospectively. Pursuant thereto a detailed speaking order was issued on 22.06.2006 which is under challenge in the present O.A. The speaking order dated 22.06.2006 reads as under:-

"Sub : Detailed & speaking order pursuant to the order passed by Hon'ble Central Administrative Tribunal Calcutta Bench on 3.11.03 & 22.11.05 in O.A.No.1156/96 & O.A.No.1114/2005 in respect of Sri Chandan Kr. Das, former Helper at LPT, Malda.

In compliance with the Hon'ble CAT Calcutta's order dated 22.11.05 in OA No.1114/05 filed by Sri Chandan Kr. Das, Technician, LPT, Malda under DDMC Darjeeling, West Bengal Sri Das is informed the following:

- i) *Md. Abdul Kaiyum Ali & Sri Chandan Kr. Das have been appointed as Technicians pursuant to two different court orders. Md. Ali was appointed as Technician on 13.6.96 on the basis of the Hon'ble Tribunal's order dated 24.4.96 in OA No.1089/92. Sri Das was not a*

party in the said O.A. and also the direction of the Tribunal was in respect of Md. Ali only.

- ii) Sri Das was appointed as Technician on 1.6.2004 on the basis of the Tribunal's order dated 3.11.03 in OA No.1156/96. As such, the request of Shri Das for Pay & Arrears from the date of Md. Ali was appointed cannot be acceded to. Moreover Sri das is not entitled for the Pay & Allowances of the post of Technician for the period he did not perform the duties attached to the post.
- iii) The upgraded pay scales given to certain categories of employees working in Prasar Bharati vide Ministry of Information & Broadcasting's order No.310/173-197-B(D) dated 25.2.99 were made available to the then existing incumbents only. Those new direct recruits who joined after the issuance of the order were not entitled to the upgraded scales but were to be governed by the pay scales recommended by 5th Pay Commission. Since Sri Chandan Kr. Das was appointed as Technician on 01.06.04 i.e. much after the issuance of the Ministry of I & B's order is not entitled for the upgraded scale given to certain categories of employees of Prasar Bharati in pursuance of Ministry of I&B order dated 25.2.99.
- iv) This issues with the approval of the competent authority.

(G. Biswas)
Chief Engineer(East Zone)"

4. The present O.A. was dismissed by an order dated 01.06.2010 with the following directions:-

"13. In view of the foregoing discussions the O.A. is bad for non-joinder of Prasar Bharati. Even on merits the applicant has no case."

This order was assailed before the Hon'ble High Court at Calcutta and the order of this Tribunal was set aside by the Hon'ble High Court on 11.08.2015 in WPCT. No.281 of 2010. The order of the Hon'ble High Court at Calcutta dated 11.08.2015 would run thus:-

".....the Tribunal has erred in law in not affording any opportunity to the petitioner for moving an application for impleadment to implead Prasar Bharati as one of the party respondent.

Thus the Central Administrative Tribunal had erred and, as such, the instant writ petition is hereby allowed.

The order passed by the Central Administrative Tribunal is hereby set aside and the matter is remitted back to the Tribunal.

We make it clear that all points are kept open to be decided by the Tribunal at the time of final hearing."

5. Pursuant to the aforesaid order of the Hon'ble High Court remitting the matter back the matter is taken up for hearing afresh.

At the outset, Id. counsel for the applicant would bring to our notice a memo dated 18.11.1991 wherefrom it appears that both Chandan Kumar Das and Abdul Kaiyum Ali who served as Helpers in T.V.R.C., Malda were called for interview for the posts of Technician which interview was subsequently declared void due to non-fulfilment of qualification as required for the post of Technician. Sri Ali preferred O.A.No.1089 of 1992 to seek the benefits on par with one Ardhendu Sekhar Haldar and Sujit Kr. Nandy who were directly recruited as Technicians with only a certificate of Wireman. Sri Ali was lucky enough to obtain an interim order on 30.01.1995 on the respondents to keep one post vacant and so he was favoured with an appointment pursuant to a direction of this Tribunal upon the respondents to consider his representation on the basis of its observation which is as under:-

"5.In our view, if the qualifications of S/Ardhendu Sekhar Haldar and Sujit Kr. Nandy are good enough for giving appointment to the post of Technician, the applicant being similarly circumstanced, also cannot be denied such appointment since his similar qualification should also be good enough for such appointment.

6. In view of the above discussion, the application is disposed of with the direction that the respondents shall consider the case of the applicant for giving appointment as Technician in the light of the above observation and they shall pass appropriate order within a period of 2 months from the date of communication of this order. We further direct the respondents not to fill up one post, which has been kept vacant pursuant to the Interim Order, passed by this Tribunal on 30.1.95 till the matter is disposed of by passing appropriate order, as we have directed. The MA. 219/95 is also disposed of. We pass no order as to costs."

6. It is quite unfortunate that the present applicant had not approached this Tribunal immediately after the interview was treated as void, rather he chose to be a fence sitter until the O.A.1089/1992 was decided on 24.04.1996 whereafter he preferred the O.A.No.1156/1996. Even thereafter he was not vigilant enough of his rights. He allowed the matter to be decided in November, 2003 after long 7 years whereafter he was granted appointment in May, 2004, but never sought for a retrospective benefit.

7. We note that neither Sri Abdul Kaiyum Ali nor the present applicant in their respective O.As had sought for appointment from the date of interview. The O.A.No.1156/1996 filed by the present applicant was decided without deliberating upon the date of effect or retrospectivity of the benefit to be accorded upon appointment.

8. We further note that the applicant has placed reliance on **Sanjay Dhar vs. J&K Public Service Commission and Another** reported in **(2000)8 Supreme Court Cases-182** which is a judgment where the appellant was held entitled to notional seniority consistent with the order of merit in the earlier selection whereas in the present fact situation no such merit position could be ascertained to decide whether the applicant deserved notional seniority on par with others. Therefore, we are unable to apply to the ratio to the present case.

9. In view of such, we are unable to hold that the applicant who was a fence sitter until Abdul Kaiyum Ali approached this Tribunal and

obtained an order in his favour in 1996, is entitled to the reliefs on par with Ali.

10. Accordingly the O.A. is dismissed. No costs.

(Dr.Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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