

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.210/000278/2016

Dated this Tuesday, the 22nd day of October, 2019

CORAM: R.VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

Smt. Lata Satyanarayan Kamath W/o. Shri Satyanarayan, Age : 60 yrs.,
 Assistant Research Officer Grade-1 (Retd). Doordarshan,
 Presently residing at : B/703, Akansha Co. Op. Society,
 Goregaon West, Mumbai 400 104. *Applicant*
(By Advocate Ms. Annie Nadar)

VERSUS

1. The Union of India, through The Secretary,
 Ministry of Information and Broadcasting,
 Sansad Marg, New Delhi 110 001.
2. The Director General, All India Radio,
 Akashwani Bhawan, Sansad Marg, New Delhi 110 001.
3. The Director General, Doordarshan, Copernicus Marg,
 New Delhi 110 001.
4. The Chief Executive Officer, Prasar Bharti,
 Akashwani Bhawan, Sansad Marg, New Delhi 110 001.
5. The Additional Director General, Doordarshan Kendra,
 Worli, Mumbai 400 030. *Respondents*

(By Advocate Shri R.R.Shetty)

ORDER (Oral)

Per : R.Vijaykumar, Member (Administrative)

Heard Ms. Annie Nadar, learned counsel
 for the applicant and Shri R.R.Shetty,
 learned counsel for the respondents.

2. This application has been filed on 09.03.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking

the following reliefs :-

“8(a). To allow the Application,

8(b). To direct the Respondents to convene review DPC meeting to prepare review/additional select panel considering that seven vacancies of Audience Research Officers were available in 2015, for the said post.

8(c). To direct the Respondents to consider the candidature of the Applicant by review D.P.C. along with other eligible officers for promotion to the post of Audience Research Officers, and if found fit to promote her to the aforesaid post from the date of occurrence of vacancy, in 2014-2015.

8(d). To direct the Respondents to fix Applicant's pay in the promotional post of Audience Research Officer, and also to refix her pensionary benefits including arrears of difference of pay and retirement entitlements.

8(e). To grant all consequential benefits.

8(f). To pass any other orders which may be just and equitable in the facts and circumstances of the case.

8(g). To award the cost of application.”

3. The applicant was serving with the respondents as Assistant Research Officer Grade II by virtue of her promotion to that capacity on 12.10.2007 and submits that she was eligible for consideration for the post of Audience Research Officer in terms of the extant rules when the DPC was held for the years 2008-2009 to 2014-2015 on 15.05.2015 (Annexure R-5) and for which office orders were issued on 21.05.2015 conveying the

orders of promotion (Annexure R-7). During this DPC, the applicant was not considered and she was overlooked for promotion with the result that she superannuated in the normal course on 30.09.2015 and as a result, has been deprived of her right to be considered for promotion which the applicant claims to be her fundamental right. She admits that no junior has been promoted by the said DPC.

4. The respondents have produced the Minutes of the DPC meeting dated 15.05.2015 and it is noted from these minutes that there were a total number of seven vacancies available for promotion from the years 2008-2009 to 2014-2015 of which three vacancies pertain to the years 2012-2013, 2013-2014 and 2014-2015.

5. The respondents have considered all the persons in the feeder category up to the immediate senior of the applicant namely, Shri M.L.Acharya, for promotion and for the years 2014-2015 based on the available vacancies, they have promoted seven persons which includes Shri M.L.Acharya who was declared fit and promoted in lieu of one

Shri M.Chandra Shekhar who retired on 30.06.2014 prior to conduct of DPC and, therefore, that vacancies was available for filling up and was filled by the promotion of Shri M.L.Acharya. For the Assessment year 2014-2015, two more vacancies were anticipated or became available by the date of belated DPC on 15.05.2015 in respect of Shri A.H.Bangai who retired on 31.03.2014 with vacancy from 01.04.2014 and of Shri Thomas John who retired on 31.10.2014.

6. The learned counsel for the applicant submits that the applicant was also eligible to be considered for the vacancy year of 2014-2015 which was the last year considered by the DPC held on 15.05.2015. However, for the calendar year 2014-2015, the DOPT in OM No.22011/9/98-Estt(D) dated 08.09.1998 read with DOPT OM dated 28.05.2014 has directed that the DPC should be held during August, 2013 to January, 2014. Therefore, the applicant's contention is that if the applicant had been considered against the available vacancies for 2014-2015 as evaluated in accordance with laid down rules, she should have received the benefit

of promotion prior to her superannuation on 30.09.2015. She has further relied on the judgment of the Hon'ble High Court in **Dr. Sahadeva Singh Vs. Union of India and others, 2012 SCC Online Del 1199 in WP (C) No.5549/2007** which, in paragraph Nos.13 to 16 holds as under:

“13. In the case before this Court, the Recruitment Rules are silent as to at what intervals the DPC should meet and make recommendations for promotion against existing/anticipated vacancies. We are not dealing with a case, where there is no Rule or instruction, fixing a schedule for convening DPC and finalizing the promotions. We have, before us, a case where instructions have been issued by the Government, for making promotions in terms of a particular calendar. In our opinion, in the absence of any rules to the contrary, the OMs issued by DoP&T on the subject, from time to time, including the OM suggesting the Model Calendar for DPCs, became applicable and, therefore, it was obligatory for the respondents to adhere to the time schedule laid down in the Model Calendar circulated by DoP&T, for making promotions against the vacancies occurring during the course of a year. The OM, issued by DoP&T enjoined upon the respondents to initiate action, in advance, to fill up the vacancies arisen during the course of the vacancy year. The obvious purpose behind issue of the OMs is to ensure that the work of the Government does not suffer due to the posts remaining vacant, without any reasonable justification.

14. This is not the case of the respondents that OMs dated 08.09.1998 and 13.10.1998, issued by Government of India are not binding on them. The OMs, which reflect the consistent policy of the Government, require all the Ministries/Departments to take note of the instructions contained therein for strict compliance so that the objective of convening DPC meeting and preparing approved select panels as per the prescribed time-frame may be achieved. The

concern of the Government on account of delay in convening DPC was conveyed to all the Ministries and Departments vide OM No. 22011/9/98-Estt.(D) dated 14.12.2000 and they were also directed that in case of non-adherence to the prescribed time-frame, steps should be taken to fix the responsibility for the lapse in this regard. Such instructions issued by the Government are meant for compliance and not for being ignored in an arbitrary manner and unless repugnant to the Recruitment Rules, they supplement the Recruitment Rules and, therefore, have a binding force. The mandatory nature of the OMs can also be gathered from the instruction to fix responsibility for non-adherence to the time schedule fixed therein. We also take note of the view taken by Supreme Court in N.R. Banerjee (supra) that in the absence of a certificate from the appointing authority that no vacancy would arise or no suitable candidate was available, the preparation and finalization of the yearly panel is a mandatory requirement.

15. We are unable to accept the contention that failure of the respondents to adhere to the Model Calendar suggested in the OMs dated 08.09.1998 and 13.10.1998, would not entitle an employee to seek directions for considering him for promotion as per the time schedule stipulated in the Model Calendar, even if there is no justification for not convening the DPC in terms of the Model Calendar. In our view, if the Department is able to justify the delay in convening the DPC as per the schedule laid down in the Model Calendar, an employee would not be entitled to seek a direction to consider him for promotion in terms of the time schedule stipulated in the Model Calendar. But, if there is no explanation given by the Department for not convening the DPC within the time stipulated in the Model Calendar or the explanation given by the Department is not found acceptable, there would be no justification for making the employees suffer merely on account of inaction or delay on the part of the Department for not convening the DPC and postpone his promotion till the DPC actually met. In our view, in such a case, an employee is entitled to approach the Tribunal or the Court, as the case may be, for a direction to the Department to convene DPC for the relevant vacancy year and in case he is eligible and falls in the zone of consideration, to consider him for promotion, in the year in which the vacancy against

which he was eligible, arose. It is true that no employee has no vested right for promotion, but, the respondents cannot act arbitrarily and without any reasonable excuse defer the meeting of DPC and thereby deprive the employee of his legitimate expectations for being considered for promotion to a post to which he is eligible for being promoted. In such a case, the Tribunal or the Court, as the case may be, ought to step in and direct the respondents to convene DPC for the vacancy year and consider the petitioner if otherwise eligible and falling in the zone of consideration for promotion against the vacancies arise in the vacancy year. Any other view would negate the policy of the Government to prepare the Select List well in advance demoralize the employees and also result in the vacancies remaining unfilled without any reasonable excuse.

16. In the case before us, admittedly, there were two vacancies in the cadre of Deputy Commissioner (Crops) as on 01.01.2005. No decision was taken by the rule making authority to amend the Recruitment Rules for the post of Deputy Commissioner (Crops). No decision was taken by the appointing authority, to withhold promotions against the vacant post of Deputy Commissioner (Crops) till there was amendment to the Recruitment Rules. The impression we gather from the counter-affidavit of the respondents is that though a proposal was mooted by someone in the Department, to amend the Recruitment Rules, it was not approved by the Competent Authority. Hence, in terms of the time schedule laid down in OMs, the DPC, to make recommendations in respect of the vacancy year, 2005, ought to have met by October, 2004 and the promotion ought to have been finalized by 31.12.2004. Had the respondents adhered to the time schedule laid down in the Model Calendar, the petitioner would have been considered for promotion, for the vacancy year, 2005 sometime in the year 2004 and since he has been found fit for promotion, had the DPC been held in the year 2004, he would have been granted promotion w.e.f. 01.01.2005 which was the crucial date to determine the eligibility for the vacancy year 2005.”

7. The learned counsel for the applicant submits that in view of the aforesaid OMs,

the law and principles of law laid down by the Hon'ble High Court in **Dr. Sahadeva Singh** supra, the claim of the applicant for being considered as per the model calendar has been ignored by the respondents.

8. The respondents have passed speaking orders following the directions of this Tribunal passed in OA No.467/2015 in which they have conveyed the information that Shri Gurmail Chand had succeeded in obtaining directions of the Principal Bench of this Tribunal in OA No.596/2014 following which the DPC which was convened on 15.05.2015 for the vacancy years upto 2014-15 and he was granted promotion. Further, that only her senior who was still in service had been promoted for the vacancy year 2014-15 and no officer junior to her had received such a benefit. They have further affirmed that there was no vacancy of Audience Research Officer nor was any post was likely to come by 30.09.2015, the date of her superannuation.

9. The respondents have filed their reply to the OA. The learned counsel for the

respondents contends, on behalf of the respondents, that the aforesaid Shri Gurmail Chand was considered and given promotion with retrospective effect keeping in view the judgment of the Principal Bench of the Tribunal dated 24.03.2015 in OA No.596/2014 in **Gurmail Chand Vs. Union of India and others.** We have perused the aforesaid order dated 24.03.2015 of this Tribunal in **Gurmail Chand** supra and the operative portion of the judgment reads as under :-

“3. In our considered view, because of the contrary stands taken by the respondent department and the UPSC, the applicant should not be made to suffer, if he is otherwise entitled for promotion. Moreover, since the applicant has been on deemed deputation with Prasar Bharati, there is no impediment in holding the DPC by themselves for his promotion in their own organization as per the existing rules on the subject. It is in the above background that the UPSC has not agreed to hold the DPC for appointment of similarly placed persons as stated by them in their aforesaid letter dated 06.01.2015.

4. In view of the above position, we direct the department-Prasar Bharati to hold DPC in the case of applicant and other similarly situated placed persons within a period of two months from the date of receipt of a copy of this order. However, since the applicant is going to retire from service on 31.03.2015, he shall also be considered for promotion and if he is found fit, he shall also be given promotion, as per rules.

5. With the above directions, this OA is disposed of. There shall be no order as to costs.”

10. From the aforesaid facts, it is evident that Tribunal has directed the respondents to consider the claim of the said Shri Gurmail Chand in accordance with the relevant rules.

11. The rules governing this process are contained in OM No.22011/5/86-Estt.(D) dated 10.04.1989 and OM No.22011/4/98-Estt.(D) dated 12.10.1998 on the conduct of DPC, the first containing consolidated instructions and the later OM conveying the following instructions relevant to the present matter:

“.....There is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places), who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant Year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s) may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/8/87-Estt. (D) dated April 9, 1996.”

12. These rules were considered by the

Hon'ble High Court of Delhi in **Ranvir Singh**
Vs. Government of NCT of Delhi and Ors in WP
(C) No.2969/2012 dated 24.05.2013 and in
Union of India and Another vs. B.P.Gairola
and others in WP (C) No.6708/2013 dated
04.08.2014 which refer to the earlier
decision in **Union of India & Another vs.**
K.L.Taneja and Another in WP (C)
No.8102/2012 dated 12.04.2013. The judgment
in **Ranvir Singh** supra refers to its earlier
judgment in K.L.Taneja to summarise the case
law as:

“5(i). Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.

(ii). If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

(iii). Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv). If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.”

13. The Hon'ble Court also refers to the judgment in **Dr. Sahadeva Singh** supra to observe that the case of Dr. Sahadeva Singh differed on facts in that the petitioner therein was still working and had not retired. The Hon'ble Court also notes that the Principal Bench of the Tribunal had relied on WP (C) No.20812/2005, **Union of India Vs. Rajinder Roy** wherein the Court had rejected a similar plea on the ground that none of the juniors to the respondents was promoted before his retirement.

14. We now apply the law and Rules contained in the aforesaid discussion to what transpired in the present case. The respondents assessed the following vacancies from 2008-2009 to 2014-2015 for which they could obtain data although DPC had not been held from 1997:

Vacancy Year	General	SC	ST	TOTAL
2008-09	0	0	1	1
2009-10	2	-	-	2
2010-11	1	-	-	1
2011-12	-	-	-	-
2012-13	1	-	-	1
2013-14	1	-	-	1
2014-15	1	-	-	1

15. They then proceeded to fill the vacancies by considering panels for each year from 2008-09 and then created extended panels in lieu of retirements of persons considered 'FIT' for promotion in the concerned year's panel. On this basis, Gurmail Singh (DOB 1.4.1955) was considered 'FIT' in the panel year 2013-14 against an unreserved vacancy but could not be granted retrospective promotion in view of the law laid down and Rules. However, for the panel year 2014-15 for which the model calendar prescribes conduct of DPC in 2013-14 itself, five vacancies are identified. In addition, the respondents identified the vacancy arising due to the retirement of one M.Chandrashekhar (DOB 10.06.1954) in June, 2014 and created one vacancy by way of an extended panel in which, the senior of the applicant, Shri Acharya, was accommodated. However, the vacancy arising from the retirement of Shri Gurmail Chand on 30.03.2015 which arises in 2014-2015 itself both by virtue of the fact that such retrospective promotion could not have been granted and also since he had superannuated

on that date, was not noted for creation of an extended panel. If this had happened, the applicant's next above senior, Shri S.S.Yadav (DOB 06.06.1954), who was immediate junior to Shri Acharya, would have entered the zone of consideration and on the same lines as Shri M.Chandrashekhar (DOB 10.06.1954) on whose vacancy, an extended panel had been created, a further extended panel of one post would have resulted and the applicant herself would have entered the zone of consideration for accommodation in this extended panel. In point of fact, neither of the three Shri S.S.Yadav, Shri M.Chandrashekhar and Shri Gurmail Chand, were eligible for retrospective promotion as held by the Hon'ble High Court of Delhi in **K.L.Taneja** supra and followed in **Ranvir Singh** supra. In these circumstances, the respondents had rightly to consider the applicant for the panel year 2014-2015 especially since she had already completed the prescribed period of five years of residency in the lower post of Assistant Research Officer Grade II and was still in service when the DPC was held. Instead, the

actions of respondents in regard to the three persons who retired in 2014-2015 smacks of arbitrariness and blatantly violates the instructions of the DOP&T extracted in foregoing paragraphs.

16. In view of the aforesaid facts and circumstances, discussions, OMs and the judgments of the Hon'ble High Court of Delhi, we are of the considered view that the applicant is entitled to be considered for promotion by convening a Review DPC for the vacancy year 2014-2015 and if found fit by the said Review DPC, the respondents shall give promotion to the applicant as well, with effect from the date of those orders of 21.05.2015 or from when her immediate senior namely, Shri M.L.Acharya, has been given promotion with all consequential benefits i.e. the fixation of pay in the promotional post on notional basis, and revision of pension, gratuity, commutation, etc and arrears of pension and of retiral benefits on such refixation of pension. We also observe in this context, from pleadings, that in a subsequent DPC conducted before her superannuation, the

applicant was considered 'FIT' and was promoted as Assistant Research Officer Grade I, in which capacity she superannuated. Such exercise shall be completed by the respondents within three months from the date of receipt of a certified copy of this order. Considering that the exercise of powers by respondents was blatantly violative of instructions of the DOP&T and oriented towards benefiting one Gurmail Chand in gross violation of service jurisprudence and law as laid down by the Courts, the respondents shall pay interest at GPF rate on the disbursements of recomputed pensionary benefits and pension arrears to be now made.

17. It is, however, made clear that the applicant is not entitled for any arrears of pay for the intervening period between notional promotion and her superannuation.

18. In terms of the aforesaid, the OA is allowed. Considering that we have held that the respondents acted arbitrarily in the matter and in incomplete disregard to rules and law, a copy of these orders shall be communicated by the Registry to the

Secretary, DOP&T to consider appropriate action and to issue necessary guidelines and circular instructions in the matter.

(R.N. Singh)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

*kmg**

*TD
23/10/10*

