

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.No.31507 of 2013
and
M.P.No.1 of 2013

B.Sundaresan

... Petitioner

vs.

1. Union of India
rep.by the Director General
All India Radio
Prasar Bharti (BCI)
Akashvani Bhawan
Parliament Street
New Delhi 110 001.
2. The Deputy Director General (P)
Prasar Bharti (BCI)
All India Radio
Chennai 600 004.
3. The Deputy Director General (Engg.)
Prasar Bharti (BCI)
External Services Division
All India Radio
Tuticorin 628 008.
4. The Deputy Director (Programme)
Commercial Broadcasting Service
All India Radio
Chennai 600 004.
5. The Registrar
Central Administrative Tribunal
Chennai Bench, High Court Compound
Chennai 600 104.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records from the files of the fifth respondent Tribunal in O.A.No.776 of 2012 and to quash the order date 09.10.2013 made therein.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.A.S.Vijayaraghavan
for RR1 to 4 Senior Central Government
Standing Counsel

R-5 - Tribunal

ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN, J.)

The petitioner, whose promotion to the post of UDC was cancelled on the ground that he did not join the promoted post within the stipulated time and whose application before the Central Administrative Tribunal challenging the said order got dismissed, has come up with the above writ petition, challenging the order of the Central Administrative Tribunal.

2. Heard Mr.K.M.Ramesh, learned counsel for the petitioner and Mr.A.S.Vijayaraghavan, learned Senior Central Government Standing Counsel for the respondent.

3. The petitioner was originally appointed as LDC in the All India Radio on 24.10.1988. After completion of nearly 23 years of service, the petitioner became eligible for promotion to the post of UDC. He was found suitable for promotion and an order of promotion was issued on 16.01.2012. He was posted on promotion to All India Radio, Tuticorin.

4. By a subsequent order dated 19.01.2012, the petitioner was directed to report for duty on 06.02.2012, with a warning that he will be debarred from promotion for one year, if he failed to join duty on or before 06.02.2012.

5. However, by a letter dated 31.01.2012, the petitioner made a request for giving him two months' time to join the promoted post at Tuticorin, due to the illness of his mother. This request was also duly recommended by the local office at Chennai, not only out of any sympathetic consideration for the petitioner, but also out of the work load in the Chennai Office itself, as seen from the letter dated 01.02.2012 sent on behalf of the Station Director, Chennai to the Deputy Director General [Engg.] at Tuticorin.

6. Considering both the request of the petitioner and the problems highlighted by the local office, the Deputy Director General (Engg.), Tuticorin Division sent a letter dated 03.02.2012, giving time upto 24.02.2012 to the petitioner to join duty. Upon receipt of this letter, the local office at Chennai sent a communication dated 21.02.2012 refusing to relieve the petitioner until 31.03.2012 due to the heavy work load.

7. Not satisfied with the said request and not even referring to the said letter of the local office dated 21.02.2012, the third respondent passed an order dated 27.02.2012 cancelling his promotion and debarring him for a period of one year.

8. Aggrieved by the said order, the petitioner filed an application in O.A.No.776 of 2012 on the file of the Central Administrative Tribunal, Madras Bench. The said application was dismissed by the Tribunal by an order dated 09.10.2013. Challenging the said order, the petitioner is before us.

9. It is clear from the sequence of events narrated above, about which, there is actually no controversy, that the original request of the petitioner for granting him two months' time to join duty was favourably considered by the third respondent by a letter dated 03.02.2012. It is significant to note that the said consideration was not merely by way of sympathy to the petitioner, but also taking into consideration, the request of the local office.

10. It is necessary to extract the two letters sent by the Station Director, Chennai to the third respondent herein, who is the Controlling Authority at Tuticorin. The letter dated 01.02.2012 of the local Station Director to the Tuticorin Office reads as follows:

"Sir,

Please find enclosed the representation submitted by Shri.B.Sundaresan, LDC of this office requesting two months time to join as UDC at your office due to family problems.

Since this office is also facing shortage of LDCs and the financial year end is also nearing more work load is there in this office. Shri.B.Sundaresan's service is needed at this time for our office and considering his personal problems also his request may kindly be considered favourably."

11. It is only upon the consideration of the request of the petitioner as well as the request of the local office that the petitioner was granted time till 24.02.2012 to join duty at Tuticorin. This can be seen from the communication contained in the

reference column of the letter dated 03.02.2012. Therefore, it is clear that the petitioner had a right to join duty upto 24.02.2012.

12. But unfortunately, the Station Director, Chennai sent a communication to the third respondent on 21.02.2012, which reads as follows:

"Sir,

With reference to the letter No.cited above, it is to inform you that, Shri.B.Sundaresan, LDC of this office is looking after Stationary, Stores and AC[PC] Billing Section which involves closing of accounts and also opening up of new ledgers. As such this office is not in a position to relieve him before 31st of March 2012 due to shortage of staff.

This is for your kind information."

13. In the light of the above order, the petitioner was actually prevented from joining duty at Tuticorin on or before 24.02.2012. But unfortunately, without even a reference to the aforesaid letter dated 21.02.2012, the order dated 27.02.2012, impugned in the Original Application came to be passed. The said order does not even take note of the letter of the local office dated 21.02.2012. In the reference column of the impugned order dated 27.02.2012, there is no indication of the letter of the local office at Chennai dated 21.02.2012.

14. After having granted time to the petitioner upto 24.02.2012 to report for duty and after finding that his local office refused to relieve him to enable him to join duty at Tuticorin, it was not open to the third respondent to cancel the promotion. The petitioner was not at fault for not joining duty on or before 24.02.2012. If he had not obtained a relieving order from the local office and had reported for duty at Tuticorin, he would have been held guilty of a misconduct by his local office. The third respondent himself would not have permitted him to join duty without the proper relieving order from the Chennai office.

15. But unfortunately, the Tribunal had overlooked the above aspects and has gone by the past conduct of the petitioner. It appears that the petitioner was promoted on an earlier occasion in the year 2010 and he declined the offer of promotion. That could not have been put against the petitioner. In fact, the decline to take promotion in 2010, costed the petitioner a period of two years to again regain promotion. Therefore, on the facts and circumstances, the Tribunal had not appreciated the predicament of the petitioner in the correct perspective. Hence, the order of the Tribunal is liable to be set aside.

16. In view of the above, the impugned order of the Tribunal is set aside and the Original Application filed by the petitioner is liable to be allowed.

17. It appears that the petitioner was subsequently promoted in the year 2014. Therefore, the question of granting him promotion as of today does not arise. However, he will be entitled to the benefit of fixation of seniority in the cadre of UDC from the date of his original promotion dated 16.01.2012; but without entitling the petitioner to claim wages in the promoted post from 2012 upto the date of his joining duty as UDC on promotion.

18. Accordingly, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

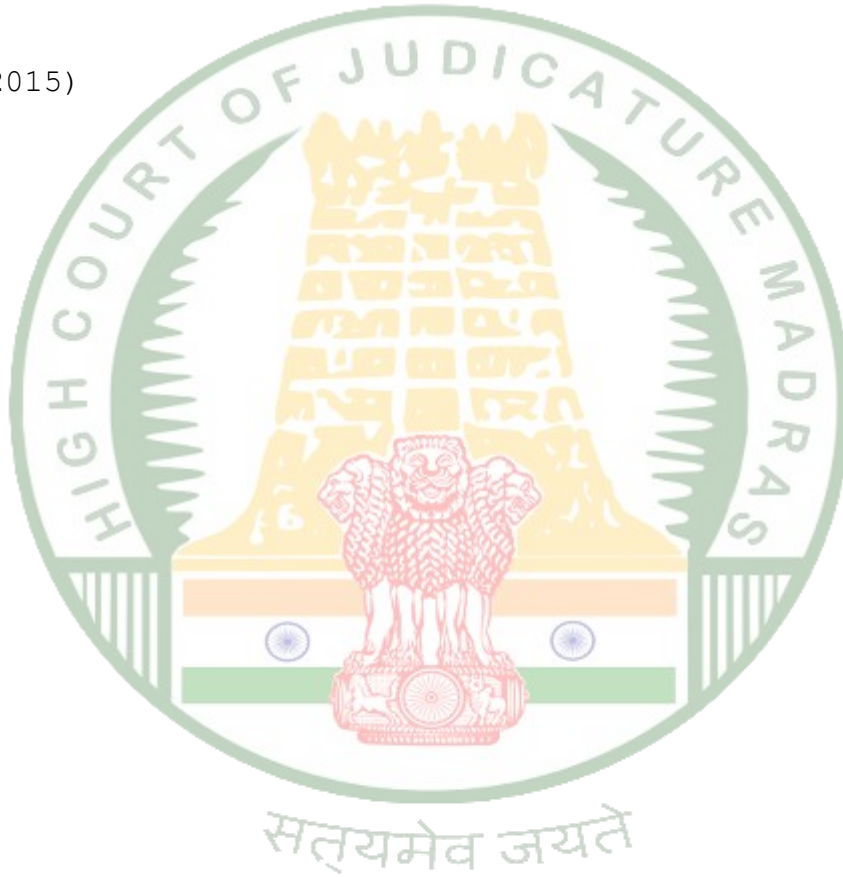
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Chennai Bench, High Court Compound
Chennai 600 104.

+1cc to Mr.A.S.Vijayaraghavan, Advocate, S.R.No.17138
+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.17110

W.P.No.31507 of 2013
and
M.P.No.1 of 2013

KSJ(CO)
CA(10/04/2015)



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