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W.P.No.14740 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.14740 of 2017 and

WMP No.15970 of 2017

- 1.The Secretary to Government,
Government of India,
Ministry of Information and Broadcasting,
Shastri Bhavan, Ashoka Road,
New Delhi 110 001.
2. The Chief Executive Officer,
Prasar Bharathi, PTI Building,
Sansad Marg, New Delhi 110 001.
3. The Director General, All India Radio,
Akashvani Bhavan, New Delhi 100 001.
4. The Director General,
Doordarshan, Mandi House,
Copernicus Marg, New Delhi 110 001.

... Petitioners

Vs.

1. K.P.Srinivasan
2. The Chairman, Union Public Service Commission,
Dholpur House, Shajahan Road,
New Delhi 110 011.



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3. The Central Administrative Tribunal,
Rep. by its Registrar,
Madras Bench, High Court, Chennai 600 104.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records relating to the order passed by the third respondent in O.A.No.310/00653/2014, dated 17.11.2016 and quash the same.

For petitioners : Mr. AR.L.Sundaresan,
Assistant Solicitor General
for Mr.Venkataswamy Babu,
Senior Panel Counsel

For Respondents : Mr.S.T.P.Kuilmozhi for first respondent
Mr.V.Chandrasekaran for third respondent

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

Challenging the orders passed by the Tribunal in O.A.No.310/00653/2014, dated 17.11.2016, in and by which, *the fourth petitioner herein was directed to complete the exercise of regular promotion of the first respondent herein from the date of vacancy, subject to eligibility and fitness and pass orders within six weeks*, this writ petition has been filed.



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2. The brief facts leading to the filing of writ petition is as follows.

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The first respondent herein was selected through Union Public Service Commission (UPSC) and was appointed to the Group A post of Junior Time Scale (JTS) in the Doordarshan Programme Production Cadre of Indian Broadcasting (Programme) Service on 29.11.1990. Subsequently, he was promoted to the post of Senior Time Scale on 31.03.1997 and then, Junior Administrative Grade on 12.10.2004 and selection grade (non functional) was granted on 06.05.2005. Thereafter, as per proceedings dated 4.1.2003, without any monetary benefit, he was posted to incharge of Additional Director General (Programme) of All India Radio, on condition that the same will not confer any right to claim for regular appointment. According to the first respondent, he was appointed to the Group A post in the year 1990 itself and had completed 17 years of regular service in the year 2007 and had also completed 4 years of service in Junior Administrative Grade in the year 2008. Therefore, he was fully eligible for promotion to the post of Senior Administrative Grade in the year 2008 itself, as per Rules. However, he was not considered for promotion, despite availability of vacancy on 31.05.2013 in the programme production cadre of



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schedule-II, on retirement of one H.N.Navarang, whereas, number of juniors have been given promotion overlooking the first respondent. Therefore, he made representations to the petitioners, requesting regular promotion to the cadre of SAG in the ensuing vacancy, as early as on 05.04.2013. But it was not considered. Hence, he filed original application before Tribunal to direct the respondents to promote him to the post of Additional Director General (Programme) on regular basis on par with junior or atleast with effect from 01.06.2013, in the regular vacancy, with all consequential and attending benefits.

2.1. In reply to the above application, the petitioners herein have filed the reply statement before the Tribunal, stating as follows.

The first respondent was appointed in the cadre of Junior Time Scale of IB(P)S on 29.11.1990 and he opted for programme production cadre of IB(P)S in Doordarshan. Subsequently, he was promoted to the post of Senior Time Scale, Junior Administrative Grade, Junior Administrative Grade (Non functional Selection Grade) w.e.f. 31.3.1997, 12.10.2004 and 06.05.2005 respectively. The first respondent had completed the prescribed



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minimum qualifying service for promotion to Senior Administrative Grade on 12.10.2008, however, he being the junior most in the seniority list of JAG officers, he was not considered for promotion for the vacancy arose in the years 2009-2010, 2010-2011 and 2011-2012 and he came in the zone of consideration for promotion to SAG grade only for the vacancy arose in the year 2012-2013. However, as against the two vacancies for the year 2012-2013, seniors to the first respondent were promoted.

2.2. For the year 2013-2014, as against one vacancy, DPC proposal to consider the first respondent for promotion to SAG in Programme Production Cadre of IB(P)S in Doordarshan was submitted to UPSC under single window system on 18.09.2013. But UPSC refused to accept the said proposal, on the grounds that all civil posts in erstwhile Akashvani & Doordarshan other than those borne on the cadres of IIS, CSS and CSSS stand transferred to Prasar Bharat w.e.f. 1.4.2000, as provided in Section 11b(1) of Prasar Bharati Act. Despite written communications and meetings of officers, UPSC was not accepting the proposal. In the meantime, the first respondent was granted non functional upgradations and all financial



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benefits of SAG level of IBPS or the post of Additional Director General (Programme) w.e.f. 4.4.2012, as per the guidelines of DOPT. Subsequently, he superannuated on 30.04.2014 and hence he was not considered for further promotion. Therefore, there is no necessity to grant promotional benefits to the first respondent on the cadre of Senior Administrative Grade, as he was already settled all the monetary benefits on promotional cadre.

2.3. After hearing both sides and upon perusing the documents, the Tribunal had directed the fourth petitioner herein to give regular promotion to the first respondent from the date of vacancy, subject to eligibility and fitness. Challenging the above said order, this writ petition has been filed.

3. The learned counsel for the petitioners submitted that, the first respondent was allotted to the programme Production cadre of Doordarshan and he has not objected for his inclusion in the programme production cadre. He further submitted that, as per the recruitment rules, programme production and programme management are separate cadres in Doordarshan and the officers allocated to a particular medium or a cadre thereof, will



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continue to serve in the cadre of medium to which they have been so assigned. Therefore, the first respondent, who belonged to programme production, could be considered against the vacancies available in programme production cadre only and he cannot compare himself with the officials, who were allotted to programme management cadre. He further submitted that, in respect of Doordarshan Programme production cadre, strength of ADG post has been grossly reduced from 13 to 3 and hence, the promotional opportunity within the category is also reduced. Therefore, mere completion of 17 years of service in Group A post and completion of 4 years of service in JAD, will not give any right of promotion to him, because he was junior most officer in the seniority list of Junior Administrative Grade at that time. He also submitted that despite the fact that the issue of acceptance of DPC proposals for regular promotion of officers of DD & AIR is yet to be resolved between the UPSC and the Ministry of Information and Broadcasting, the first respondent has been granted non-functional upgradations and all financial benefits of SAG level of IBPS or the post of Additional Director General (Programme) w.e.f. 4.4.2012, as per the guidelines of DOPT.



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3.1. He also submitted that, the Tribunal has not given any finding, with regard to the entitlement of the first respondent's promotion, but directed the petitioners to grant benefit to him. Further, the Tribunal itself observed that there is a dispute between the petitioners and UPS on the DPC proposal on promotion of the first respondent. However, without considering the facts of the case in proper perspective, the Tribunal has allowed the original application, which is erroneous and hence the same is liable to be quashed.

4. The learned counsel for the first respondent has made an attempt to convince this court that the right of promotion to the first respondent was denied by the petitioners, whereas, juniors were given promotion. Therefore, the order of the Tribunal is perfectly correct and it does not warrant any interference by this Court.

5. Heard the learned counsel for the petitioners and the learned counsel for the first respondent and we have perused the materials on record.



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6. It is an admitted fact that the applicant was allotted to programme production cadre of Doordarshan as Junior Time Scale on 29.11.1990 and then he was given promotion as Senior Time Scale on 31.03.1997 and thereafter, Junior Administrative Grade w.e.f. 6.5.2005. According to the first respondent, as per Service Rules in Schedule V, on completion of 17 years of regular service in Group A post and after completion of 4 years of service in JAG, he became fully eligible for promotion to the post of Senior administrative Grade in the year 2008 itself, however, he was not considered for promotion, but juniors were promoted. But, the first respondent has not impleaded the junior officers, who were promoted overlooking him, as parties to the original application.

7. The main contention of the petitioners is that, the first respondent has not come in the zone of consideration for promotion for the vacancy arose in the years 2009-2010, 2010-2011 and 2011-2012, because, at that time, he was most junior in the seniority list of JAG. Further, for the year 2012-2013, as against the one vacancy, as per the DPC assessment, his senior was promoted as Senior Administrative Grade. Only in the year



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2013-2014, DPC proposal to consider the first respondent for promotion to SAG in Programme Production Cadre of IB(P)S in Doordarshan was submitted to UPSC, however, it is kept pending, due to non-acceptance by UPSC. In the meantime, at the verge of superannuation, the first respondent had filed the above original application before the Tribunal, however, pending application, he superannuated on 30.04.2014.

8. At this juncture, it is relevant to mention that the second respondent, namely Union Public Service Commission, has filed the counter affidavit before this Court stating that the issue of acceptance of DPC proposals for regular promotion of officers of DD and AIR was already resolved, pursuant to the various decisions rendered by the Central Administrative Tribunals, especially on the recommendations made in OA No.4019/2014, dated 13.08.2015 by the Tribunal, New Delhi Branch. Therefore, DPC to all such promotion post were transferred to Prasar Bharati w.e.f. 1.4.2000, as such, consultation with the UPSC is not necessary and is required to be held only by Prasar Bharati/ Ministry of Information & Broadcasting. Therefore, this respondent has no role



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whatsoever to play in the issues involved in the present petition.

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9. The contention of the first respondent is that Group A posts are governed by Indian Broadcasting (Programme) Service Rules 1990, notified by Government of India on 5.11.1990 and as per the service rules, the Service comprises 4 independent cadres of group A posts, namely

- i) Programme Management Cadre of All India Radio
- ii) Programme Management Cadre of Doordarshan
- iii) Programme Production Cadre of All India Radio and
- iv) Programme Production Cadre of Doordarshan.

The next avenue of his promotion is to the post of Additional Director General (Programme) of Senior Administrative Grade(SAG).

10. In this context, it is to be noted that the first respondent himself admitted in his application before Tribunal that, " he was given incharge of Additional Director General (Programme) of All India Radio, as per the proceedings dated 04.01.2013 by the second respondent, *with condition that the same will not confer any right or claim for regular appointment in the*



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cadre and further the incharge posting is given without any monetary benefits." However, subsequently, ***the first respondent was granted non functional upgradation and all financial benefits of SAG level of IBPS or the post of Additional Director General (Programme) w.e.f. 4.4.2012, as per the guidelines of DOPT.*** The above fact was brought to the notice of the Tribunal by the petitioners herein by way of filing reply affidavit and the same is not denied by the first respondent herein.

11. Though according to the petitioners, the proposal of Departmental Promotion Committee to consider the first respondent for promotion to the post of SAG is kept pending before the UPSC, subsequently, after retirement of the first respondent, he was granted all financial benefits of SAG level of IBPS/the post of Additional Director General (Programme), w.e.f. 04.04.2012, on which date, he was not actually promoted to the said post, but his seniors were promoted. Subsequently, he attained superannuation on 30.04.2014. However, having received all the financial benefits on promotional cadre [viz., Senior Administrative Grade level of IBPS or the post of Additional Director General (Programme)], w.e.f.



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4.4.2012 itself, the first respondent asked one more promotion to the post of Additional Director General (Programme) on regular basis, on par with junior, atleast w.e.f. 1.6.2013 with all consequential benefits, without any justification. The Tribunal without considering the case in proper perspective, has passed the order, directing the authorities concerned to complete the exercise of regular promotion of the first respondent, from the date of vacancy, subject to eligibility and fitness. Therefore, we are of the view that the order passed by the Tribunal is liable to be set aside.

12. Accordingly, this writ petition is allowed and the impugned order passed by the Tribunal is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(P.D.B.J.)

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Internet: Yes/No
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