

S. L. Kaul and Others

Vs

Secretary To Government of India Ministry of Information and Broadcasting, New Delhi and Others

Civil Appeals Nos. 3800-02 of 1988

(M. M. Dutt, S. Natarajan JJ)

31.10.1988

JUDGMENT

DUTT, J. –

1. Special leave is granted in all the matters. Heard learned counsel for the parties.
2. These appeals are directed against the judgment of the Central Administrative Tribunal, Principal Bench, Delhi, whereby the Tribunal directed that the seniority of the appellants in Grade IV of the Central Information Service (hereinafter referred to as 'the CIS') as Simla Monitors/Information Assistants/Sub-Editors, as the case may be, should be counted only from the dates the posts held by them were included in Grade IV of the CIS.
3. The appellants had been working as Monitors in All India Radio since March 1959. As the appellants had been performing the same duties as performed by the officers in Grade IV of the CIS, the government decided on the basis of the report of the Working Group that the pay scale of the Monitors should be revised so that the same might be brought at par with Grade IV of the CIS. Accordingly, the pay scale of Monitors was revised from Rs. 210-425 to Rs. 270-485 by the government order dated June 29, 1968. The posts of Monitors were also redesignated as Sub-Editors (Monitoring). In other words, the posts of Monitors were brought at par with those in Grade IV of the CIS.
4. At this stage, it is necessary to refer to Rule 6-B of the Central Information Service Rules, 1959, hereinafter referred to as 'the Rules', which provides as follows :

6-B. Inclusion and Exclusion of posts.-(1) The government may, in consultation with the Commission include in the service any posts other than those included in Schedules I to VII or exclude from the Service a post included in Schedule I to VII from time to time, by way of amendment of the relevant Schedule and when a schedule is so amended, any reference to that schedule in these rules shall be construed as a reference to such schedule as so amended.

(2) The government may, in consultation with the Commission appoint an officer, the post held by whom is included in the Service, under sub-rule (1), to the appropriate grade of the Service, in a temporary capacity or in a substantive capacity, as may be deemed fit and fix his seniority in the grade, again in consultation with the Commission whereupon such a post shall not be reckoned for determining the number of posts to be filled by promotion or by direct recruitment, under Rule 6 :

Provided that the officer was appointed to the post either on the recommendations of the Commission or of the Departmental Promotion Committee concerned or in accordance with the rules of recruitment applicable to the post, as the case may be.

5. It appears from sub-rule (1) of Rule 6-B, as extracted above, that the inclusion or exclusion of any post in the CIS may be made by way of amendment of the relevant Schedule. Under sub-rule (2) of Rule 6-B, after a post is included in the CIS under sub-rule (1), the government may appoint an officer in such post and fix his seniority in the grade. Although the posts of Monitors were redesignated as Sub-Editors (Monitoring) and pay scale attached to the posts was enhanced to that of Grade IV of the CIS with a view to including the posts of Monitors so redesignated in the CIS as Grade IV, such inclusion was not actually made by the amendment of relevant Schedule, as required under sub-rule (1) of Rule 6-B. Such amendment was, however, made some time in 1971 and by a government notification dated May 9, 1972, the appellants and others were appointed in officiating capacities to Grade IV posts in the CIS with effect from November 6, 1971 until further orders. The notification further directed as follows :

The above officers will be placed en-bloc after 1965 batch and above 1969 batch i. e. below Shri R. C. S. Mohapatra and above Shri S. Sivasankara Pillai.

6. The inter se seniority of the Monitors inducted into Grade IV of the CIS, was fixed after obtaining the approval of the Department of Personnel and of the Union Public Service Commission. In view of the said notification, the seniority of the Monitors, including the appellants, would be counted from June 29, 1968, that is, the date on which the pay scale of the post was brought at par with Grade IV of the CIS and the post was redesignated as sub-Editor (Monitoring).

7. Respondents 3 to 8, who were appointed to Grade IV posts of the CIS as direct recruits, filed a writ petition in the Delhi High Court, which was subsequently transferred to the Central Administrative Tribunal, Principal Bench, Delhi. In the writ petition, the said respondents challenged the legality of the inclusion of the posts of Monitors redesignated as Sub-Editors (Monitoring) in the CIS as Grade IV posts by the amendment of the Schedule under sub-rule (1) of Rule 6-B of the Rules and also the fixing of the seniority of such Monitors with effect from June 29, 1968. The Tribunal, by its judgment dated September 11, 1987, overruled the contention of respondents 3 to 8 that the inclusion of the posts of Monitors in the CIS as Grade V posts was illegal. The Tribunal, however, held that the seniority of the Monitors in Grade IV posts of the CIS should be computed from the date the posts were included in Grade IV of the CIS, that is to say, from November 6, 1971. Hence these appeals.

8. It is not disputed that the posts of Monitors were Class III posts and the Grade IV posts in the CIS were class II posts. According to the Tribunal, so long as Class III posts of Monitors are not upgraded to Class II posts after the inclusion of the posts of Monitors by the amendment of the Schedule, as required by sub-rule (1) of Rule 6-B, as Grade IV posts in the CIS, the appellants cannot claim that their seniority should be computed from the date on which the pay scale of the posts of Monitors was enhanced and brought at par with Grade IV posts in the CIS. It has been already noticed that the Monitors have been doing the same duties as the holders of Grade IV posts in the CIS. In this respect, we may refer to the findings made in paragraph 5 of the report of the Working Group on Reorganisation of Monitoring Service, All India Radio, Simla. Paragraph 5 of the report is as follows :

5. A close scrutiny of the qualifications and job requirements of the Monitors lead to

the irresistible conclusion that the skills required for a Monitor were not merely those required of an officer of the Grade IV of CIS, but included the additional qualifications of shorthand and typewriting, alertness to and awareness of world developments, initiative in taking up news or utility of NSD, a sense of continuity of publicity and propaganda approach of Radio Stations of different countries towards India and towards major international events of interest to India. These qualities so essential to making a good Monitor are certainly not required in that magnitude for several jobs in the present CIS Grade IV viz. Reference Assistant, Exhibition Assistant, the Field Publicity Officer and even the bulk of Information Assistants. In fact in comparison to a language Sub-Editor of NSD itself, the job of a Monitor is more onerous. The exclusion of the Monitor from CIS, while at the same time including the next higher post of Sub-Editor in Monitoring Service in CIS Grade IV, naturally resulted in complete stagnation of Monitors quite a few of whom have reached the maximum in their scale for quite some time. Even the small benefit of changes of promotion to the post of Sub-Editor was denied to Monitors after the inclusion of Sub-Editor in CIs. One can easily imagine how frustrating, how enervating and how corrosive of initiative such service prospects can be for any employee, more so as employee in the post of Monitor where a single slip by him can not only cause an awkward situation for AIR in its news broadcasts but also - what is more important - lead to diplomatic misunderstanding with foreign countries.

9. The Union of India also filed an affidavit before the Tribunal opposing the contentions of respondents 3 to 8. In that affidavit, after referring to the approval given by the Union Public Service Commission to the inclusion of the posts of Monitors in the CIS and computation of the seniority of such Monitors with effect from June 29, 1968, it has been averred that this is quite in keeping with justice and equity insofar as the inducted officers are concerned. Further, it has been averred that all these officers had worked on regular basis on equivalent posts from dates prior of 1969 and they were all placed en-bloc senior to the officers recruited on the basis of the examinations held in 1969 and 1970. It is submitted that after the posts of these Monitors were redesignated as Sub-Editors (Monitoring) and included in the CIS along with the incumbents thereof, these officers were given seniority in equivalent posts with effect from June 29, 1968, that is, the date on which the posts of Monitors were converted into Class II posts with the designation of Sub-Editor (Monitoring).

10. The stand taken by the Union of India in the affidavit is that the Monitors had been holding posts equivalent to Grade IV posts in the CIS and, as such, they were placed as seniors to respondents 3 to 8 recruited in 1969 and 1970.

11. Although the Union of India fully supported the appellants before the Tribunal, an altogether different stand has been taken before us. Mr. Kuldip Singh, learned Additional Solicitor General appearing on behalf of the Union of India, submits that they have accepted the view expressed by the Tribunal that the seniority of the Monitors cannot be computed from a date prior to such inclusion of the posts of Monitors in the CIS by the amendment of the Schedule. Mr. N. Kumar, learned counsel appearing on behalf of respondents 4 to 8 adopts the contention made by the learned Additional Solicitor General and submits that the Tribunal has correctly held that the seniority of the as should be counted from the date of the posts were inducted into the CIS by the amendment of the Schedule. Respondent 9, who appears in person, besides supporting the judgment of the Tribunal on the question of seniority of the appellants, challenges the inclusion of the posts of Monitors in the CIs.

12. On the other hand, Mr. Venkatesh Rao, learned counsel appearing on behalf of the appellants, has urged that as the appellants were holding equivalent posts and performing the same duties as of Grade IV in the CIS, their seniority should be counted with effect from the date their scale of pay was brought at par with the Grade IV posts in the CIS.

13. It is true the actual inclusion of the posts of Monitors in the CIS was made much later. But the fact remains that they were, to all intents and purposes, treated as Grade IV posts in the CIS. The decisive factor is whether the posts of Monitors when redesignated with a revised pay scale of Rs. 270-485 became equivalent to Grade IV in this CIS. In this connection, we have referred to the affidavit of the Union of India filed before the Tribunal. We have also referred to findings of the Working Group as regards the nature of duties performed by the Monitors. There can be no doubt that the posts of Monitors, after they were redesignated as Sub-Editors (Monitoring) with the revision of pay scale as Rs. 270-485 with effect from June 29, 1968, became posts equivalent to Grade IV in the CIS, regard being had to the fact that the Monitors had been performing the same duties as performed by the holders of Grade IV posts in the CIS. It may be that the actual inclusion was made at a later date, but the Union of India was quite justified in fixing the inter se seniority of the Monitors with effect from June 29, 1968 when the posts were upgraded and became equivalent to Grade IV posts in the CIS. In our opinion, on account of the lapse of the government, the appellants cannot be made to suffer. While we agree with the Tribunal that the inclusion of the posts of Monitors in the CIS was legal and valid, we are of the view that the Tribunal has not taken into its consideration the most crucial fact that the posts of Monitors became, for all practical purposes, equivalent to Grade IV posts in the CIS with the revision of the pay scale and redesignation of the posts. The Tribunal has taken a very technical view in the matter without giving due weight and importance to the fact that the Union Public Service Commission had given their approval to the computation of seniority of the Monitors in the manner as directed in the impugned notification dated May 9, 1972. In our opinion, to deny the appellants seniority with effect from June 29, 1968 solely on such a narrow and technical ground the meantime, been promoted to Grade I and if their seniority is now counted from the date of their actual induction into the CIS, they would be reverted to Grade IV to their loss and prejudice.

14. In the circumstances, we set aside the judgment of the Tribunal insofar as it directs that the seniority of the appellants shall be computed from the dates the posts held by them were included in Grade IV of the CIS. The impugned notification dated May 9, 1972 granting seniority to the Monitors with effect from June 29, 1968 is held to be quite legal and valid and is upheld.

15. These appeals are allowed. There will, however be no order as to costs.

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