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Central Administrative Tribunal
Principal Bench

O.A.No.465/2002

Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 2nd day of July, 2003

Mrs. Omana Nair
w/o Shri T.V.Nair
r/o BD/901, Sarojini Nagar
New Delhi - 110 023, working
as General Assistant
National Channel
All India Radio
New Delhi.

... Applicant

(By Advocate: Sh. S.Y.Khan)

Vs.

Union of India through

1. Secretary
Ministry of Information & Broadcasting
Shastri Bhawan
New Delhi.
 2. Chief Executive Officer
Prasar Bharati
Mandi House
New Delhi.
 3. Director General
All India Radio
Akashvani Bhawan
Sansad Marg
New Delhi.
- .. Respondents

(By Advocate: Sh. A.K.Bhardwaj, through Shri M.K.
Bhardwaj)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant, who has retired on superannuation, has sought promotion from the post of General Assistant to Transmission Executive by claiming benefit of the Judgement of Mumbai Bench of this Tribunal in OA 1335/1995 (Jayant V. Nabar & Others v. Union of India & Others), decided on 26.7.2001.

2. Applicant, who was appointed as General Assistant on 1.6.1959, had opted to remain in the Administrative Cadre as General Assistant and was promoted as UDC, Accountant and Head Clerk.

3. In the year 1992, The Recruitment Rules of TREX were notified where General Assistants were to be promoted and these rules were amended in 1994.

4. In OA 309/1989, decided on 27.2.1991, the amended rules have been observed to have no application and the applicants were entitled to be promoted as General Assistants, Senior Cadre and Programme Assistants. Accordingly, in the year 1994 large number of juniors of the applicant have been promoted to the post of TREX.

5. By an order dated 26.7.2001 in OA 1335/1995 directions have been issued to consider the promotion of General Assistants as TREX, till the recruitment rules were amended in 1992/1994 as per the provisions of 1976 recruitment rules. According to which the General Assistants are to be considered as TREX. As the request of the applicant was not acceded to, despite representation, the present OA has been filed.

6. MA 2514/2002 has been filed for seeking condonation of delay in filing the present OA. It is contended that benefit of the decision of this Tribunal has been sought, as the applicant has been differently treated with those similarly circumstance,

violation of Articles 14 and 16 of the Constitution of India gives a continuous cause of action to the applicant.

7. Shri S.Y.Khan, learned counsel appearing on behalf of applicant, on merits contends that as the applicant had put 31 years in the cadre of General Assistant, she has not been considered for promotion as per Recruitment Rules of 1976, and the promotion accorded to her junior, is a denial of equal treatment violative of Articles 14 and 16 of the Constitution of India.

8. It is further stated that benefit of Judgements in OA 309/1989 as well as OA 1335/1995 have not been extended to applicant despite she is in similarly circumstance.

9. In so far as her option is concerned, the same ^uwas contrary to the Rules, cannot be relied to deny her legitimate right.

10. On the other hand, Sh. A.K.Bhardwaj, through Shri M.K.Bhardwaj, vehemently opposed the MA for condonation of delay, and on merits contends that in 1982 a scheme was promulgated by the Government to convert Staff Artists into Government Servants. As General Assistant was merged with the Administrative Cadre as Clerk Gr.I and Gr.II with amendment of Recruitment Rules, on 29.10.1983. Applicant, consequent upon merger, was equated with the cadre of Lower Division Clerk Gr.II. However the aforesaid merger was assailed before the Mumbai Bench where

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directions have been issued, and in view of the Judgement, Recruitment Rules of General Assistants were amended, and those who are merged and equated with the cadre of LDC were excluded from the seniority list of LDCs and separate seniority list has been prepared, and by a notification dated 8.4.1994 options have been sought from the General Assistants to the effect, through an undertaking, that who have availed promotional avenue by opting to Administrative Cadre and those who are willing to be reverted to the post of General Assistant would forego the financial benefits. As applicant had exercised her option to remain in the Administrative Cadre, her claim for promotion to the cadre of Transmission Executive cannot be countenanced.

11. We have carefully considered the rival contentions of the parties and perused the material on record.

12. In the light of the Constitutional Bench decision of the Apex Court in K.C.Sharma v. Union of India, JT 1997(7) SC 58, we allow the MA and condone the delay in filing the OA.

13. As the merger was declared illegal by the Tribunal, in pursuance of notification dated 4.4.1994, and as per the Clause-2(VII), General Assistants who had already availed promotional avenues by opting to administrative cadre had been sought to give a clear undertaking as to their willingness to be reverted

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back to the post of General Assistant and to forego the financial benefits availed of by getting promotion to higher grades in the same cadre.

14. Applicant in pursuance thereof had exercised her option and given an undertaking to remain in the Administrative Cadre as such now at this belated stage on the guise of claiming benefit of a Judgement does not open for her to seek promotion after superannuation to a different cadre for which no option had been exercised.

15. The claim of applicant is not identical to that of applicants before the Mumbai Bench as therein they had never exercised such an option. In order to get the benefit of a judgement, it is to be established before hand that the person claiming benefit, in all fours, is identically situated.

16. In the result, having regard to the reasons recorded above, we do not find any good ground in the claim of applicant, OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

/rao/