

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH AT BANGALORE**

ORIGINAL APPLICATION NO.170/00547/2019

DATED THIS THE 30TH DAY OF OCTOBER, 2019

**HON'BLE DR K B SURESH....MEMBER (J)
HON'BLE SHRI C V SANKARMEMBER (A)**

1. Doordarshan Program Professionals
Association (DDPA)
Represented by its General Secretary,
Sri.P.J.Francis, S/o Late P.V.Joseph,
Aged 56 years, Working as Cameraman Grade-1,
Doordarshan Kendra,
P.B.Marg, Worli,
Mumbai-400 030.

2. Rajaram K V
S/o K Venkatachalaiah,
Aged 59 years, working as
Video Executive,
Doodarshan Kendra,
J.C Nagar, Bengaluru-560 006,
Residing at No.91, 3rd Cross,
Akashwani Layout,
Dasarahalli, Hebbal,
Bengaluru-560 024.

...Applicants

(By Advocate Shri.A R Holla)

Vs.

1. Union of India,
by Secretary,
Ministry of Information and Broadcasting,
Shastri Bhavan, Dr.R.P.Road,
New Delhi-110 001.

2. The Chief Executive Officer,
Prasar Bharati Broadcasting Corporation of India,
P.T.I Buildings,
Parliament Street, New Delhi – 110 001.

3. Dr.Rajkumar Upadhyay,
Additional Director General (South Zone)
Doordarshan Kendra,
R.C.Nagar,
Bengaluru-560 006.

...Respondents

(By Advocate Shri Vishnu Bhat, Senior Panel Counsel)

ORDER (ORAL)

HON'BLE DR K B SURESH, MEMBER (J)

Apparently the matter is covered by an order of co-ordinate Bench at Guwahati in OA No.364/2018 dated 06.05.2019 which we quote:

ORDER

MANJULA DAS, JUDICIAL MEMBER:

As the reliefs sought for by the applicants against the same respondents are common, hence prayer to move the instant application jointly in a single application is allowed under Section 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

Being aggrieved with the letter dated 05.10.2018 by which Shri.Thaiu Mag ITS (respondent No.6) was selected for the post of Additional Director General (Programme) in Prasar Bharati, Guwahati, on deputation basis for a period of three years or till filling up to the post on regular basis, the applicants approached before this Tribunal under section 19 of the Administrative Tribunal Act with the following reliefs:

"8.1] To direct the Official Respondents to set aside and quash impugned letter bearing No.A-10013/4/2017-PPC(Vol.II) dated 05.10.2018.

8.2] To direct the Official Respondents to hold Departmental Promotional Committee of the applicants as being eligible for promotion to the rank of Additional Director General (Programme) as per the provision prescribed in the Indian Broadcasting (Programme) Service Rules 1990.

8.3] To pass any other appropriate orders(s) as to my deem fit and proper in the facts and circumstances of the case.

8.4] Cost of the application

8.5] Any other relief(s) that the Applicant may be entitled to.”

2. Written Statement has been filed on behalf of the respondents No.1 to 5 and no written statement has been filed by the respondent No.6. Despite notice has been served by the postal receipt No.958 dated 13.11.2018. However, the respondent No.6 restrained himself for filing the same. No rejoinder has been filed on behalf of the applicants. Mr.A.Ahmed learned counsel for the applicants submitted before the BAR on 11.03.2019 that the applicants were not interested to file any rejoinder.

As the both parties agreed, matter was fixed for hearing on 13.03.2019.

3. Vide order dated 13.03.2019 this Tribunal in the interest of justice had given liberty to the respondent No.6 to file written argument if any within a period of seven days. However, the respondent No.6 failed to do the same.

4. Heard Mr.A.Ahmed, learned counsel for the applicants and Mr.R.Hazarika, learned Addl. CGSC for the respondent. Perused the pleadings and material placed before us.

5. All the applicants are working as Assistant Director (Programme) in Doordarshan Kendra, Guwahati which is a Group 'A' post of Programme Cadre of All India Radio (AIR) and Doordarshan (DD).

6. The applicant No.1, Shri.Mukul Talukdar was recruited as Producer Grade II, in the year 1984 through Doordarshan and subsequently promoted in the year 1999 to the post of Assistant Director (Programme), Doordarshan. The applicant No.2, Shri.Deepak Sarmah was recruited as Programme Executive (Group B Gazetted), Doordarshan directly through Union Public

Service Commission (UPSC in short) in the year 1988 and subsequently promoted in the year 2013 to the post of Assistant Director (Programme), Doordarshan and the applicant No.3, Shri.Atanu Saikia was recruited as Programme Executive (Group B Gazetted) Doordarshan directly through UPSC in the year 1991 and thereafter promoted in the year 2016 to the post of Assistant Director (Programme), Doordarshan. All the three applicants were promoted as such on ad-hoc basis.

7. The basic grievance highlighted by the applicants are that as per statutory provision of Indian Broadcasting programme Service Rules 1990, a Programme Executive is entitled for promotion to the higher grade of the IBPS as under;

- i) After 3 years as Programme Executive to the JTS grade*
- ii) After 4 years in the JTS grade to the STS grade*
- iii) After 4 years in the STS grade to the JAG grade*
- iv) After 8 years of the JAG grade of 17 years in the JTS grade to the STS grade.*

Thus, a Programme Executive in their 20 years of regular service is entitled for promotion to SAG grade of India Broadcasting Programme Service (IBPS). The applicants No.1 & 2 had completed their 30 years of service while applicant No.3 had completed 28 years of service in the grade of Programme Executive without a single promotion on regular basis. Had there been timely and regular DPC held by the respondents as per rules, they would have been clearly entitled for promotion to the vacant SAG posts of IBPS.

8. Upto 1984, All India Radio and Doordarshan had two modes of recruiting programme professionals i.e. through National Selection by SSC /UPSC as per Recruitment Rules framed under Article 309 of the Constitution of India and also partly on contract basis for meeting the special recruitment of the AIR & DD at state/ local levels. In 1984, contractual engagement was completely done away with and statutory Recruitment Rules were framed for recruitment to the senior post of programme cadre in Group 'A' & 'B' categories. All Groups 'A' posts Recruitment/Appointment/Promotion are governed by Indian Broadcasting (Programme) Service Rules 1990. These are statutory Rules.

9. Prasar Bharati Act came into force on 12.09.1990, All India Radio & Doordarshan got merged into an autonomous corporation i.e. India Broadcasting Corporation. Section 9 of the Act lays down that appointment by Prasar Bharati can be made after

consultation with the Recruitment Board but till date no such Recruitment Board has formed by Prasar Bharati.

10. Both 1984 and 1990 Recruitment Rule prescribed specialised qualifications which are distinct from other organized service like IAS, PPS, IRS etc., Section 11 B mentioned that all post of erstwhile Akashvani and Doordarshan shall be deemed to have been transferred to the Prasar Bharati Corporation w.e.f. 01.04.2000.

The Service rules of Indian Broadcasting (programme) and Indian Broadcasting (Engineer) services which are statutory in nature provided DPC composition with Chairman/Member of UPSC as Chairman of DPC. So, Officer's transferred on deputation to Prasar Bharati continues to be Government servants and holding the civil posts till their retirement. These rules had no provisions for any lateral entry into the service/cadre by way of deputation from other services.

11. Undisputedly the Departmental Promotion Committee (DPC) had not been held for last 18 years for the post of Junior Time Scale, Senior Time Scale, Junior Administrative Grade and Senior Administrative Grade, as a result, large number of vacancies exist in the grade of Junior Time Scale, Senior Time Scale, Junior Administrative Grade and Senior Administrative Grade of Indian Broadcasting (Programme) Service due to retirement, death, resignation, etc. Moreover a large number of eligible and qualified employees are languishing without any promotion. Applicant's side contention is that some of the promotions were made on ad-hoc basis which are continuing for years together without holding any DPC for regularization of the same amounting to violation of basic principle of service jurisprudence. For which similarly situated employees as the applicants had earlier approached the Central Administrative Tribunal, Principal Bench vide OA No.243/2002 whereby the Central Administrative Tribunal, Principal Bench vide order dated 29.01.2002 passed the order as hereunder:

"Having regards to the claims made here, we find that interest of justice would be adequately met by disposing of the present on at this stage itself by issuing a direction to the respondents to hold the relevant DPC meetings as early as possible and preferably within a period of four months from the date of receipt of a copy of this order to consider the cases of the applicants along with other eligible persons for promotion to JTS, STS, JAG & SAG and pass suitable orders in accordance with law."

12. As the order passed by the Central Administrative Tribunal, Principal Bench was not complied with a CP No.39/2004 has been filed by the applicants. The Central Administrative Tribunal, Principal Bench vide order dated 04.11.2015 in CP No.39/2004 arising out of OA No.243/2002 directed as hereunder:

“i) The UPSC shall conduct the DPC for the purpose of consideration of the persons for promotion to the post of JTS till 31.03.2000.

ii) The Prasar Bharati shall conduct such DPC for the purpose of promotion to the post of JTS after 01.04.2000.

iii) The aforesaid DPC by the UPSC as well as by the Prasar Bharati shall be held within three months from today. Consequential orders would be passed granting all consequential benefits to the persons deserve to be promoted. The entire exercise including passing of consequential orders shall be carried out within four months from today.”

13. The respondents contended by way of reply that in pursuant said order, UPSC had conducted DPCs upto the period 31.03.2000 in the year 2018 and Prasar Bharati had also conducted DPC in the year 2018 for vacancies upto 2018.

14. It was contended by the respondents that in the Programme Cadre, there are only a few regular officers in IB(P)S and non-holding of regular DPCs for promotion to JTS is due to the circumstances which are beyond the control of Prasar Bharati. According to the respondents, apart from the officers concerned, Prasar Bharati has been a loser due to non-holding of DPCs for regular promotions as it has been starved of officers to man various posts at senior levels for running the Stations and Kendras as well as formulation and monitoring of policies at the HQs.

15. The categorical stands of the applicants are that Prasar Bharati recruitment regulations are yet to be finalized and Prasar Bharati Recruitment Board are yet not been constituted. The respondents failed to proof any evidence either by annexing any communication or any Recruitment Board's minutes. However, they stated in the written statement filed on 11.03.2019 that most of the recruitment regulation have been finalized and remaining some are pending with the government for various stages of departmental consultations and some are under finalization in Prasar Bharati.

16. As regards the Recruitment Board, it was stated in the written statement that while the same is not in place for posts below JS level in the Central Government, the Recruitment Board is in place for appointment to posts of JS level equivalent in the Central Government as per proviso to Section 10 of the Prasar Bharati Act 1990.

17. For coming to a logical conclusion we are in hand the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 where Section 9 provides as hereunder:

“(1) Subject to such control, restrictions and conditions as may be prescribed, the Corporation may appoint, after consultation with the Recruitment Board, the Director-General (Akashvani), the Director General (Doordarshan) and such other officers and other employees as may be necessary.

(2) The method of recruitment of such officers and employees and all other matters connected therewith and the conditions of service of such officers and other employees shall be such as may be provided by regulations.

And Section 10 provides as hereunder:

“(1) The Corporation shall, as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards consisting wholly of persons other than the Members, officers and other employees of the Corporation.

Provided that for the purposes of appointment to the posts carrying scales of pay which are not less than that of a Joint Secretary to the Central Government, the Recruitment Board shall consist of the Chairman, other Members, the ex-officio members, the Nominated Member and the elected Members.

(2) The qualification and other conditions of service of the members consulting the Recruitment Board and the period for which such members shall hold office, shall be such as may be prescribed.”

18. Vide Prasar Bharati (Broadcasting Corporation of India), New Delhi, Notification dated 11.11.2016 under F.No.N-10/178/2012-

PPC. In exercise of the powers conferred under section 9 and sub-section (5) of section 11 read with clause (d) of sub-section (2) of section 33 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and in supersession of-

- (i) *The Prasar Bharati (Broadcasting Corporation of India) (Junior Civil Construction Wing Posts) Service Regulations, 2002 in so far as they relate to the post of Junior Engineer (Civil) (Field/Planning), Junior Engineer (Electrical)(Field/Planning), Architectural Assistant Grade-I and Architectural Assistant Grade-II.*
- (ii) *The Prasar Bharati (Broadcasting Corporation of India) (Junior programme Posts) Recruitment Regulations, 2002, in so far as they relate to the posts of Film/Video Editor, Floor manager, Floor Assistant, Graphic Artist and Make-up Assistant.*
- (iii) *The Prasar Bharati (Broadcasting Corporation of India) (Senior Administrative and Allied Posts) Service Regulations, 2002, in so far as they relate to the post Deputy Director (Administrative Training), Staff Training School (Programme)*
- (iv) *The Prasar Bharati (Broadcasting Corporation of India) Broadcasting (Engineers) Service Regulations, 2001,*

Except as respects of things done or omitted to be done before such supersession, the Prasar Bharati (Broadcasting Corporation of India), with the prior approval of the Central Government hereby makes the following regulations, namely:-

1. *Short title and commencement-(1) These regulations may be called the Prasar Bharati (Broadcasting Corporation of India) Recruitment of Officers and Employees of the Corporation Regulation, 2016.*
- (2) *They shall come into force on the date of their publication in the Official Gazette.*
2. *Application.- These regulations shall apply to the officers and employees of the Prasar Bharati Corporation, recruited after the 5th October, 2007 or who may be recruited by the Prasar Bharati Corporation hereinafter, to the categories of posts specified in Schedule-I.*

3. *Method of recruitment, age limit, qualifications, etc.- (1) The method of recruitment, age limit, qualifications and the other matters relating to the posts specified in Schedule-II shall, mutatis mutandis, apply to the corresponding posts specified in Schedule-I except, the provisions relating to consultation with the Union Public Service Commission.*

(2) The officers and employees recruited under these regulations shall be officers and employees of the Prasar Bharati Corporation.

(3) (a) There shall be a Departmental Promotion Committee for considering promotion to Group 'A' posts.

(b) For the purposes of sub-clause (a), the Prasar Bharati Board may constitute the Departmental Promotional Committee with the Chief Executive Officer or Member (personnel) of the Prasar Bharati Board as the Chairperson depending on the post for which the Committee is to be constituted.

(4) No officers or employee recruited under these regulations shall be entitled to the benefit of Non-Functional Upgradation or Non-Functional Section Grade or any other benefit available to organized Group 'A' service.

(5) The number of posts in each grade is the total number of the posts sanctioned for that grade:

Provided that the number of posts shall not exceed the aggregate number of posts occupied by the Government servants on deemed deputation to the Prasar Bharati Corporation and the officers and employees of the Prasar Bharati Corporation, as may be notified by the Prasar Bharati Corporation.

4. *Direct recruitment.- Any agency approved by the Central Government may make the direct recruitment in respect of all categories of posts of Prasar Bharati Corporation.*

19. *Now coming to the schedule-II of the said regulation where the post relates to SAG grade in Prasar Bharati (Programme)*

Service recruitment rule of the Indian Broadcasting (Programme) service rule 1990 dated 05.11.1990 which is extracted hereunder:

<i>Sl No</i>	<i>Category of Posts</i>	<i>Name of the post</i>		<i>Name of the recruitment rules concerned</i>	<i>Date of notification</i>
<i>5</i>	<i>Prasar Bharati (Programme Service)</i>	<i>3</i>	<i>Senior</i>	<i>The Indian</i>	<i>5th November, 1990</i>
		<i>0</i>	<i>Administrative Grade</i>	<i>Broadcasting (Programme) Service Rules, 1990</i>	
		<i>3</i>	<i>Junior</i>	<i>The Indian</i>	
		<i>1</i>	<i>Administrative Grade</i>	<i>Broadcasting (Programme) Service Rules, 1990</i>	
		<i>3</i>	<i>Senior</i>	<i>The Indian</i>	<i>5th November, 1990</i>
		<i>2</i>	<i>Time Scale</i>	<i>Broadcasting (Programme) Service Rules, 1990</i>	
		<i>3</i>		<i>The Indian</i>	<i>5th November, 1990</i>
		<i>3</i>		<i>Broadcasting (Programme) Service Rules, 1990</i>	

Thus, it is candidly clear that prasar Bharati regulations have not been finalised and the Indian Broadcasting (Programme) service rule, 1990 is in vogue.

20. Now we are in hand the India Broadcasting (Programme) Service Rule, 1990 formulated on 05.11.1990 where the methods of recruitment field of promotion and minimum qualifying services

in the next lower grade for appointment of officer on promotion to duty posts in the programme Management cadre of the Indian Broadcasting (programme) service are given below.

<i>Sl. No</i>	<i>Grade</i>	<i>Method of recruitment</i>	<i>Field of selection and the minimum qualifying service</i>
1.	<i>Senior Administrative grade additional Director General/ Deputy Director General Rs.5900-200-6700</i>	<i>By promotion by selection</i>	<i>Officers with 8 years regular service in the Junior Administrative grade (including non-functional selection grade) or with 17 years regular service in group 'A' post out of which at least 4 years regular should be in Junior Administrative grade</i>
2.	<i>Junior Administrative Grade (Selection Grade) Senior Director (Rs.4500-150-5700)</i>	<i>By appointment on the basis of seniority based on suitability taking into account the overall performance experience and other related matters.</i>	<i>Officer in the Junior Administrative grade (Director) who have entered the 14th year of group 'A' service on the 1st July of the year with reference to the year of examination or initial recruitment to junior time scale group 'A'.</i>

21. From reading the aforementioned rules and regulations, it is nowhere seen that the mode of recruitment is through deputation failing which by promotion.

22. Issue raised by the applicants are that the official respondents by violating prescribed rules and regulations of Indian Broadcasting (Programme) Service Rules, 1990 has appointed the private respondent No.6 who is from Indian Telecommunication Service Cadre (ITS) and posted him as

Additional Director (Programme) Doordarshan Kendra, Guwahati on deputation basis.

23. Now the question arises that if there is no such provision of deputation, failing which by promotion or direct recruitment, whether the authority is permitted to appoint on deputation?

24. The stands taken by the respondents as hereunder;

“If the said posts are not filled up on deputation basis, the posts would stand abolished. As a stop-gap measure and to ensure that the organisation functions efficiently, the said posts have been filled up on deputation basis from experienced persons working in various Government Department.”

25. From the above statements it is not clear as to under what authority the respondents can appoint as stop-gap arrangement on deputation basis if the method applied by the respondent authority is not available in any provisions.

26. We fail to understand as to how one officer in BSNL is experienced in the department of Prasar Bharati which is a statutory autonomous body set up by an act of parliament and comprises the Doordarshan Television Network and All India Radio which were earlier media units of Ministry of Information and Broadcasting.

27. Taking into consideration, the entire conspectus of the case we hold that the appointment order dated 05.10.2018 issued by the Prasar Bharati (India's Public Service Broadcaster) is bad in law and accordingly the same is set aside and quashed.

Consequently, the respondents may proceed for convening the Departmental Promotion Committee to the post of Additional Director (Programme) Doordarshan Kendra, Guwahati in accordance with law.

28. With the above circumstances OA stands allowed. There shall be no order as to costs.

The issue arisen in both cases are similar and the principle enunciated by the Hon'ble Guwahati Bench is acceptable to us. We are in respectful agreement

with the view expressed by co-ordinate Bench. Therefore, to that extent this OA is allowed. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR K B SURESH)
MEMBER (J)

/rsh/

Annexures referred to by the Applicant in OA No.170/00547/2019

- Annexure A1: Copy of the Office order dated 18.07.2017
- Annexure A2: Copy of the List of Video Executives members of DPPA
- Annexure A3: Copy of the notification dated 05.11.1990 containing
IBPS Rules, 1990
- Annexure A4: Copy of the representation dated 26.09.2018
- Annexure A5: Copy of the representation dated 26.09.2018
- Annexure A6: Copy of the guidelines of UPSC dated nil
- Annexure A7: Copy of the order dated 11.1.2018 in MA 691/2017 in
OA No.151/2017
- Annexure A8: Copy of the order dated 29.10.2018 in OA No.364/2018
- Annexure A9 Copy of the order dated 29.03.2019

Annexures referred to by the respondents in Reply Statement.

- Annexure R1: Copy of the letter dated 24.7.2017
- Annexure R2: Copy of the letter dated 21.2.2017
- Annexure R3: Copy of the Telecom Regulatory Authority of India
- Annexure R4: Copy of the order in CP No.39/2004 in OA No.243/2002
- Annexure R5 (A): Copy of the Notification dated 5.11.1990
- Annexure R5 (B): Copy of the Notification dated 14.09.1996
- Annexure R5 (C): Copy of the Notification dated 21.09.1996
- Annexure R6 (1): Copy of the OM dated 31.12.2010
- Annexure R6 (2): Copy of the OM dated 31.12.2010
- Annexure R7: Copy of the OM dated 10.04.1989