

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01431-01432/2018

DATED THIS THE 24TH DAY OF JANUARY, 2020

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

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

1. I.S. Ramakrishna,
S/o Late I.S. Shankar Jois,
Aged 57 years, Working as
Cameraman Grade-I,
Doordarshan Kendra,
J.C. Nagar, Bengaluru 560 006

2. G. Suresh,
S/o Late S. Gurumurthy, Aged 55 years,
Working as Cameraman Grade-I,
Doordarshan Kendra,
J.C. Nagar, Bengaluru 560 006

....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. The Director General (Doordarshan),
Prasar Bharati Broadcasting Corporation of India,
Doordarshan Bhavan, Copernicus Marg,
New Delhi 110 001

4. The Deputy Director (Admin) (S-III),
 O/o Director General, Doordarshan,
 Doordarshan Bhavan, Copernicus Marg,
 New Delhi 110 001Respondents

(By Shri M.V. Rao, Counsel for the Respondents)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J)

Heard. The matter in issue is Annexure-A12 speaking order issued by Prasar Bharati as F.No.C-17011/01/2018-S-III dated 07.08.2018, which we quote:

*“Prasar Bharati
 (India's Public Service Broadcaster)
 Directorate General : Doordarshan
 Doordarshan Bhawan, New Delhi*

F.No. C-17011/01/2018-S-III

Dated: 07.08.2018

SPEAKING ORDER

WHEREAS, Doordarshan Programme Professional Association had filed OA No. 60/2018 & MA No. 56/2018 and prayed the Hon'ble CAT, Principal Bench, New Delhi as under:-

- a) Quash and set aside the impugned order dated 31.10.2016 & 27.07.2017 and direct the respondents to follow a uniform policy of assignment of designation as Head of Programme and Head of Office.*
- b) Declare Video Executive as the Head of Programme when there is no senior STS level or above officer available in the Programme Section and declare Cameraman Grade-I as the Head of Programme when there is no regular Senior JTS level or higher level officer is available in Programme Section. Similarly declare Cameraman Grade-II as Head of Programme inspite of availability of PEX/in-situ PEX if found senior in service.*

2. WHEREAS, the Hon'ble CAT, PB, New Delhi vide its order dated 05.01.2018 in OA No. 60/2018 & MA No. 56/2018 had directed as under:-

“The applicants are working as Video Executive (a STS officer of the Group Programme service, IBPS) and Cameraman Grade-I. They are working against different grade pays i.e. Rs. 6600/-, 5400/- and 4600/. The grievance of the applicants is that they are not being considered for being placed as Head of Programme and they are required to report to their juniors. The applicants have made several representations. One such representation by Respondent No. 1 is dated 04.07.217 (A-14) and also by individual person dated 03.08.2017. All the representations have not been attended to till date.

In view of this, we dispose of this OA, without going into the merits of the case, at the admission stage with a direction to the Competent authority to decide the aforesaid representations filed by Doordarshan Programme Professionals Association as also by the individual within three months from the date of receipt of a copy of this order by passing a reasoned and Speaking Order.”

3. *WHEREAS, the main contention in the representation of the Doordarshan Programme Professional Association dated 04.07.2017 and the representation dated 03.08.2017 of the individual person (Shri Bhagyawan, Video Executive) is to declare the senior most Programme officer as Head of Office/Head of Programme.*
4. *WHEREAS, these representations have been examined keeping in view the Recruitment Rules and the Orders issued by the Prasar Bharati in regard to declaration of Head of Programme and Head of Office in Doordarshan Kendras.*
5. *WHEREAS, the Programme Cadre comprises of TREX, PEX and posts in the IB(P)S.*
6. *WHEREAS, the Cameraman Cadre comprises of Cameraman Grade-III, Cameraman Grade-II, Cameraman Grade-I and Video Executive.*
7. *WHEREAS, the Video Executive is inducted into IB(P)S fold in the JAG grade alongwith STS of IB(P)S. Thus a Cameraman Cadre Officer forms part of Programme Cadre only after induction at the JAG level in IB(P)S.*
8. *WHEREAS, the contention in the said representation that certain Junior Officers are working as Head of Programme is also not correct. Seniority of Programme Cadre Officers and Cameraman Cadre is different.*
9. *WHEREAS, as of now the senior most programme officer is declared as Head of Programme.*
10. *WHEREAS, the judgement of Delhi High Court in WP (C) No. 19717/2004 dated 28.03.2008 is relevant in the matter, in which it has*

been specifically stated that nature of functions performed by the Cameraman is different from those of programme service. Work of Cameraman is technical in nature and that of programme service is to conceptualize, visualize and produce programmes. Work of Cameraman is ancillary to the programme service and cannot be equated with the same. The matter of equating Cameraman as equivalent to Programme cadre was also decided by a Speaking Order issued by Ministry of I&B in the case of OA No. 1176/2013 filed by Shri Uday Ram & Ors.

11. WHEREAS, Prasar Bharati being a central autonomous statutory body, follows the Central government Rules and instructions including Delegation of Financial Power Rules, 1978.

12. WHEREAS, as per Rule 14 of Delegation of Financial Power Rules, 1978 : 'Departments of the Central Government, Administration and Heads of Departments shall have power to declare any Gazetted Officer subordinate to them as the Head of an office for the purpose of these rules: Provided that not more than one Gazetted Officer shall be declared as Head of Office in respect of the same office or establishment, unless such office or establishment is distinctly separate from one another'.

The use of the word "any" in this Rule makes it abundantly clear that for declaration of 'Head of Office' the Head of Department is not required to be guided by seniority of officers.

13. WHEREAS, the Office Memorandum No. A-10/76/2014-PPC dated 13.06.2014 regarding procedure to be followed for declaration of Head of Office at All India Radio Stations and Doordarshan Kendras, was issued by the Prasar Bharati Secretariat to serve as guidelines to the Director Generals of AIR and Doordarshan to ensure that such declaration of 'Head of Office' were made keeping the functional interest of the Station/Office on priority.

14. WHEREAS, the Office Memorandum cited above was issued with the approval of CEO, Prasar Bharati is in exercise of the powers vested in him under Section 5 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, and as delegated to him by the Prasar Bharati Board through its Resolution dated 10th/11th December, 1997.

15. WHEREAS, ***The 'Head of Office' is not a post. It is about assigning duties and responsibilities for running day to day affairs of an office without any additional remuneration at the sole discretion of the respective Director Generals of AIR or Doordarshan, as the case may be.***

16. WHEREAS, since declaration of an officer as the 'Head of Office' of any particular station/Kendra is not an appointment to a post, there

is no ground for any grievance or violation of any constitutional provision and as such is not justiciable.

17. *WHEREAS, the 'Head of Office' is not expected to write the APARS of equivalent officers in other cadres or those carrying higher pay scales. The APARs of such officers would be recorded by officers senior to them in their respective cadre or the Regional Heads, as the case may be. Necessary instructions/clarifications are being issued in this regard separately.*

18. *WHEREAS, in view of the facts explained above, the prayer of the Doordarshan Programme Professional Association in OA No. 60/2018 & MA No. 56/2018 before the Hon'ble CAT, Principal Bench, New Delhi for placing/declaring Video Executive and Cameraman Grade-I as Head of Programme is not feasible.*

19. *WHEREAS, power to declare Head of Office in DDn and AIR has been delegated to the respective DGs vide PB Order No. 116/2018-PPC dated 27.04.2018. The procedure for declaring Head of Office has been laid down in the PB Secretariat Office Memo No. A-10/76/2014-PPC dated 13.06.2014.*

20. *WHEREAS, in view of the position explained above, the request in the said representation is disposed of accordingly.*

21. *This issues with the approval of Competent Authority.*

Sd/-
 (A K Suraj)
 Dy Director (Admin) (S-III)
 DG: Doordarshan"

2. Shri M.V. Rao, learned counsel for the respondents, relies on paragraph 12 wherein it is declared by the Prasar Bharati that Head of Office or the Head of Department is not required to be guided by seniority of officers as he would say that in reference to paragraph 15 of the said speaking order that the Head of Office is not a post but it is about assigning duties and responsibilities for running day to day affairs of an office without any additional remuneration at the sole discretion of the respective Director Generals of AIR or Doordarshan, as the case may be.

3. Applicant relies on paragraph 18 which says that the prayer of the Doordarshan Programme Professional Association in OA No. 60/2018 & MA No. 56/2018 before the Hon'ble CAT, Principal Bench for placing/declaring Video Executive and Cameraman Grade-I as Head of Programme is not feasible. This is also illegal and therefore quashed.

4. It is contended by the learned counsel for the applicant that the matter is covered by the judgment of the Hon'ble Apex Court of India in Union of India and Others Vs. E. Krishna Rao & Others etc. etc. in Civil Appeal No. 11948-11950/2016 dated 26.09.2018 reported in 2019 (1) SLJ Page 25, which we quote:

“SUPREME COURT OF INDIA
The Hon’ble Mr. Chief Justice Dipak Misra
The Hon’ble Mr. Justice Dr. Dhananjaya Y. Chandrachud
The Hon’ble Mrs. Justice Indra Banerjee

UNION OF INDIA & ORS ---*Appellants*
Versus
E. KRISHNA RAO & ORS. ETC. ETC. ---*Respondents*
Civil Appeal Nos. 11948-11950 of 2016 *Decided on 26.09.2018*

JUDGMENT

Dr Dhananjaya Y Chandrachud, J. The appeals arise from a judgment of the High Court of Andhra Pradesh dated 20 March 2014. The High Court rejected a challenge to an order of the Central Administrative Tribunal [The "Tribunal"] directing the appellants to provide to the Respondents all benefits of service and to consider their cases for promotions in accordance with the Indian Broadcasting (Programme) Service Rules 1990. [The Indian Broadcasting (Programme) Service Rules 1990 are referred to in this judgment as the Rules.]

2. The First Respondent was engaged as a TV News Correspondent on contract for a period of five years on 6 August 1988. The second Respondent was engaged as a TV Assistant News

Correspondent on contract on 12 August 1988. The Rules came into effect on 5 November 1990. They did not have a specific provision for the posts of TV News Correspondent and TV Assistant News Correspondent. The Rules define the expression 'departmental candidates' thus:

"(c) "Departmental Candidates" means-

- "(i) Officers appointed on regular basis in consultation with the commission or on the recommendations of the Departmental Promotion committee, and who hold posts on regular basis or hold, *lien in* Group 'A' programme cadre of All India Radio and Doordarshan on the date of commencement of these rules and
- (ii) All officers appointed on regular basis to the post of video executive in Doordarshan in the pay scale of Rs.3000-4500;"

Rule 6, which provides for the initial constitution of the service, reads thus:

"6. Initial Constitution of the Service:-

(1) Subject to the provisions of sub-rules (2), (3) and (4) all departmental candidates holding posts on regular basis in the scales of pay of Rs. 5900-6700, Rs.3700-5000, Rs.3000-4500 and Rs. 2200-4000 shall from the date of commencement of these rules, be deemed to have been appointed to the corresponding posts and grades in the Service.

Provided that nothing in this sub-rule shall apply, to those Department Candidates who have been granted Selection Grade in the scale of Rs. 2200-4000.

(2) (a) The Departmental Candidates referred to in sub-clause (i) of clause (c) of rule 2 shall be required to convey their options in writing for inclusion in any one of the four Cadres of the Service.

(b) In the event of options not being received within the stipulated time, the Departmental Candidates shall be deemed to have opted in the respective cadre of the All India Radio or Doordarshan, as the case may be, where they are working.

Provided that the Departmental Candidates referred to in sub-clause (ii) of clause (c) of rule 2 shall merge with the Programme Production Cadre of Doordarshan and will maintain their separate identity as indicated in Schedule VII.

(3) (a) The commission shall constitute a Selection Committee with the Chairman or a Member of the Commission, as President and not more than three representatives of the

appropriate status to be nominated by the Controlling Authority to consider all the options from the departmental Candidates referred to in sub-rule (2) and recommend the cadre and the Medium to which such Departmental Candidates may be appointed, and submit lists of officers considered suitable for such appointment to the Commission, which shall forward to the Controlling Authority its recommendations thereon.

(b) The decision of the Controlling Authority in respect of appointments based on the recommendations of the Commission shall be final and such appointments shall be deemed to have been made with effect from the date of constitution of the Service.

(c) After such departmental candidates have been so allocated to a particular Medium or a cadre thereof they will continue to serve in the cadre of that medium to which they have been so assigned:

Provided that the commission may, while making such recommendations, in respect of Departmental candidates, referred to in sub-rule (2), include a recommendation that officers considered suitable for appointment to a grade shall, if sufficient number of vacancies are not available in that grade, continue to hold the post held by them before the commencement of these rules and for this purpose such posts shall be deemed to have been excluded from the service so long as such offices continue to hold the said posts.

Explanation: The absence of a member other than the chairman or a Member of the Commission shall not invalidate the proceedings of the Selection Committee.

(4) (a) Notwithstanding anything contained in rule 7, officers referred to in the proviso to sub-rule (3) shall be included in the Service when vacancies in the said grade are available.

(b) Such persons who are included in the Service at a later date will rank-en-bloc junior to the person inducted into the Service at the initial constitution.

(5) Departmental Candidates who do not desire to be absorbed in the Service shall, within a period of three months from the date of commencement of these rules, communicate their decision in writing to the Controlling Authority and they shall thereafter and subject to the other provision of these rules be deemed to continue to hold the posts held by them immediately before the commencement of these rules, and for this purpose, such posts shall be deemed to have been excluded from the Service so long as they hold the said posts.

(6) (a) *The regular continuous service of Departmental Candidates prior to their appointment to the Service shall count for purposes of promotion and confirmation.*

(b) *To the extent the controlling Authority is not able to fill the authorised strength of the various grades in the service in accordance with the provisions of this rule, the same shall be filled in accordance with the provisions of rule 7."*

Note 3 of Schedule I of the IBPS Rules is as follows:

"Note 3, Schedule I of IBPS Rules

"3) *The number of posts sanctioned for various schemes after 1.1.1985 in All India Radio and Doordarshan will be deemed to have been included in the service and such posts will be added to the strength shown therein."*

The posts which have been specified in Schedule I together with their scale of pay are reflected in the following table :

Sl. No.	Grade	All India Radio	Door darshan	Scale of pay
1	Senior administrative Grade Deputy Director General (Management)	10	11	Rs.5900-200-6700
2	Junior Administrative Grade (Selection grade) Senior Director	-*	-*	Rs. 4500-150-5700
3	Junior Administrative Grade Director/ Controller	44	15	Rs. 3700-125-4700-150-5000
4	Senior Time Scale Deputy Director/ Deputy Controller	130	32	Rs. 3000-100-3500-125-4500
5	Junior Time scale Programme Officer	144	37	Rs. 2200-75-2800-EB-100-4000
6	<i>Total</i>	328	95	

Schedule II provides for the Programme Production Cadre.

3 On 29 November 2011, the Union Ministry of Information and Broadcasting sought options from the Respondents on whether they

desired to be treated as government servants or whether they wished to continue as contractual employees. The First Respondent opted to be treated as a government servant. On 21 March 1992, the Director of Doordarshan Kendra, Hyderabad by a Memorandum bearing no. TVH / 23 (6) 92-S) declared the First Respondent as a government servant with effect from 31 March 1992. The Memorandum reads thus:

"MEMORANDUM

The option exercised by Shri E KRISHNA RAO in the category of T. V. NEWS CORRESPONDENT has been considered. Accordingly Shri E KRISHNA RAO, Doordarshan Kendra, Hyderabad, has been declared as Government Servant with effect from 6.8.88 Vide Director General letter No. 45011/29/91 Bd (R) dt. 29.11.91.

All the existing rules/regulations and benefits, including pensionary benefits, the age for retirement etc. Which are applicable to the regular Civil Government Servants will be applicable to him/her. Consequently the contract entered into with him/her will stand terminated with effect from 6.8.88.

The post of Staff Artists in the category of T.V. NEWS CORRESPONDENT which was hitherto held by Shri E KRISHNA RAO is here by converted into Civil post with effect from 6.8.88 without change of designation. The fee scales in which She/he is employed will from 6.8.88 be considered as pay scales of the corresponding post and the fee drawn by him/her will be the pay drawn by him/her with effect from 6.8.88. This post would be treated to have been created as temporary post with effect from 6.8.88 to be converted into permanent post in due course in accordance with the prescribed procedure.

For Director."
Administrative Officer"

The Memorandum states that all the rules/regulations and benefits, including pensionary benefits, age of retirement etc., which are applicable to regular government servants, would also apply to the First Respondent with effect from 6 August 1988, thereby terminating the contract which he had entered into at the time of his recruitment. The Second Respondent was similarly declared to be a government servant.

4 The Respondents were not given any promotion for twelve years. Aggrieved by this, they filed OA 916 of 1999 and OA 1010 of 1999 before the CAT, claiming that they had not received any promotion, as they were not treated as members of the Indian Broadcasting Programme Service by the appellants. The Tribunal

allowed the applications of the Respondents and directed the government to grant them all benefits under the Rules and consider their cases for promotion.

5 The appellants challenged the order of the Tribunal before the High Court of Andhra Pradesh. They submitted that since the posts of TV News Correspondent and TV Assistant News Correspondent have not been included in the Rules, the Respondents cannot be considered for promotion to the post of Junior Administrative Grade (selection grade) and therefore, the Tribunal had no jurisdiction to issue such a direction.

6 The High Court upheld the Tribunal's decision that acceptance by the Respondents of benefits under the Annual Career Progression scheme did not disentitle them to get equivalent pay scales. The High Court examined the meaning of the expression 'departmental candidate' in Rule 2 (c) alongwith Rule 6 and Note 3 of Schedule I. The High Court held:

"A bare perusal of above definition would clearly go to show that the person who holds posts on regular basis can also be treated as "department candidate". It is not in dispute before this Court that by virtue of proceedings dated 31 March 1992 the applicants were declared as Government Servants with retrospective effect from 6 August 1988 and 12 August 1988 respectively. Therefore the applicants fit into the definition of "department candidate" as defined under Section 2 (c) of the IBPS Rules, 1990. Rule 6 of the IBPS Rules is that subject to the provisions of sub-rules (2), (3) and (4) all departmental candidates holding posts on regular basis in the scales of pay of Rs. 5900-6700, Rs. 3700-5000, Rs. 3000-4500 and Rs. 2200-4000 shall, from the dates of commencement of these Rules, be deemed to have been appointed to the corresponding posts and grades in the Service."

Hence, the High Court held that the Respondents fulfill the definition of a departmental candidate under section 2(c) of the Rules. Rule 6 provides that subject to the provisions of sub- rules (2), (3) and (4), all departmental candidates holding posts on a regular basis in the scales of pay of Rs. 5900-6700, Rs. 3700-5000, Rs. 3000-4500 and Rs. 2200-4000, shall, from the date of commencement of the Rules, be deemed to have been appointed to the corresponding posts and grades in the Service. The High Court has also relied on Note 3 of Schedule I to the Rules, under which posts sanctioned for various schemes in All India Radio and Doordarshan after 1 January 1985 are deemed to have been included in the service and such posts shall be added to the strength of the cadre.

7 Intervention Applications have been filed. The intervenors state that they fall in the same category as the First and Second

Respondents and hence the Rules should also apply to them. It was also submitted that the Petitioner offered promotion to the First and Second Respondents and to similar persons after a probation of 2 years, but even after its completion they were not promoted. The Intervenors have also submitted in their written submissions that two days after the final hearing on 9 August 2018, the appellants published a Gazette notification online showing truncated Recruitment Rules 2014 that exclude the Group A posts of TV Assistant News Correspondents to prevent the affected parties from benefitting.

8 On hearing the submissions made by the Petitioner and the Respondents, we are of the view that the Tribunal and the High court are correct in their findings and conclusions.

9 Rule 6 which provides for the initial constitution of the service stipulates that from the date of the commencement of the Rules, departmental candidates who held posts on a regular basis in the stipulated pay scales would be deemed to have been appointed to corresponding posts and grades in the service. Rule 2(c) provides for the definition of the expression "departmental candidates". The effect of Note 3 to Schedule I is that posts sanctioned after 1 January 1985 in All India Radio and Doordarshan would be deemed to have been included in the service and will be added to the strength shown therein. The High Court has observed that on the date of the commencement of the Rules, the pay scales of the applicants were Rs. 3000-4500 and Rs. 2200-4000 respectively. As a result of the deeming provision in Note 3, it was held that they would be appointed to corresponding posts and grades in service. This finding is unexceptionable. It was not in dispute before the High Court that the posts of TV News Correspondent and TV Assistant News Correspondent were regular sanctioned posts. Based on this, it was held that having due regard to Rule 6 read with Rule 2(c) and Note 3 of Schedule I, the posts held by the Respondents shall be deemed to have been included in the service. This interpretation of the High Court is borne out by the Rules. Once they were declared to be government servants, it would be unfair and inequitable to deny to them all the benefits, including of pay scales and other conditions of service applicable to posts in the equivalent pay scale.

10. While affirming the judgment of the Tribunal, we clarify that:

- (i) promotions which have already been effected and the existing seniority shall not be affected;*
- (ii) in the case of employees who have retired, a notional pay fixation shall be carried out and retiral benefits, including pension, if any, shall be determined on that basis; and*

(iii) individual cases for promotion would be considered against vacancies available, keeping seniority in view.

11. The appeals are accordingly disposed of in the above terms. Pending applications, if any, are disposed of. There shall be no order as to costs."

5. Therefore, for any positioning according to seniority, their respective seniority in the IBPS and declared by the Hon'ble Apex Court will have to be looked into but whether there has to be any distinction between the Head of Programme and the Head of Office in a limited sense, we will leave it to the authorities to decide as the case may be but going by and complying with the dictates of the Hon'ble Apex Court as stated in the earlier judgment.

6. The OA is disposed as above. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01431-01432/2018

Annexure A1 Copy of the order dated 06.02.1998
Annexure A2 Copy of the order dated 20.09.2000
Annexure A3 Copy of the notification dated 05.11.1990
Annexure A4 Copy of the order dated 08.07.2015 in MA No. 898/2013
Annexure A5 Copy of the order dated 30.11.2015
Annexure A6 Copy of the order dated 01.12.2015 in CP No. 636/2015
Annexure A7 Copy of the order dated 04.04.2016 in WP No. 670/2016
Annexure A8 Copy of the notification dated 23.10.1984
Annexure A9 Copy of the order dated 22.06.2012
Annexure A10 Copy of the order dated 13.06.2014
Annexure A11 series Copies of the order dated 16.11.2015, 25.01.2016 & 14.02.2017
Annexure A12 Copy of the speaking order dated 07.08.2018

Annexures referred in reply statement

Annexure R1 Copy of the order dated 14.09.2000
Annexure R2 Copy of the extract of notes

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