

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Govindan S. Tampi, Member (Admnv.)
Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.178/2001
M.A.No.158/2001

New Delhi, this the 11th day of December, 2001

1. AIR & Doordarshan Engineers" Association
through its President
Shri V. Appakutty
s/o Shri P.Vellaisamy
Office of Chief Engineer (North Zone)
12/3, Jam Nagar House
Shahjahan Road
New Delhi - 110 011.
2. Shri Dhruba Ray
s/o Shri S.R.Ray
Director Engineering
Office of the Director General
Doordarshan
Copernicus Marg
Mandi House
New Delhi - 110 001.
3. Shri Ghanshyam
s/o Shri Shyam Karan
Director Engineering
Office of Chief Engineer (North Zone)
All India Radio and Doordarshan
12/3, Jam Nagar House
Shahjahan Road
New Delhi - 110 011.
4. Shri N.A.Khan
s/o Shri M.A.Khan
Deputy Director Engineering
Office of the Director General
All India Radio
Parliament Street
New Delhi - 110 001.
5. Shri V.K.Gupta
s/o Shri B.S.Gupta
Deputy Director Engineering
Office of Chief Engineering (North Zone)
All India Radio And Doordarshan
12/3, Jam Nagar House
Shahjahan Road
New Delhi - 110 011.
6. Shri Ram Bachan Ram
s/o Shri Ram Bali Ram
Assistant Director Engineering
Office of the Director General
All India Radio
Parliament Street
New Delhi - 110 001.

7. Shri Surinder Singh
s/o Shri Mahender Singh
Assistant Director (Engg)
Office of Chief Engineering (North Zone)
All India Radio And Doordarshan
12/3, Jam Nagar House
Shahjahan Road
New Delhi - 110 011. .. Applicants

(By Advocate: Shri Gopal Dutt with Shri Sanjeev Sharma)

Vs.

1. Union of India through
The Secretary to the Government of India
Ministry of Information & Broadcasting
Shastri Bhavan
New Delhi - 110 001.
2. Prasar Bharati
through it's Chief Executive Officer
Copernicus Marg
Mandi House
New Delhi - 110 001.
3. Union Public Service Commission
through it's Secretary
Shahjahan Road
Dholpur House
New Delhi - 110 011.
4. Union of India through
The Secretary to the Govt. of India
Ministry of Personnel, Public Grievances &
Pension, Department of Personnel & Training
North Block, New Delhi - 110 001. ... Respondents

(By Advocate: Shri M.M.Sudan, Sr. Govt. Standing Counsel)

O R D E R (Oral)

By Shri Govindan S. Tampi, Member(A):

Heard the learned counsel on either side.

2. The reliefs sought for in the OA are as follows:

- "a) issue appropriate directions/orders to the Respondent No.1 and Respondent No.3 to conduct the DPCs for various cadres of IB(E)S and more specifically that of JTS to STS from STS to JAG and from JAG to SAG and from SAG to HAG.

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- b) alternately, if during the pendency of the present OA the Prasar Bharati frames the rules & regulations as enunciated under section 9 of the 1990 Act & the necessary option under section 11 of the said Act is sought from the applicants & the officers represented by the applicant No.1, the applicant No.2 to 7 and various officers represented by applicant No.1 be not transferred to/with the Respondent No.2 until and unless the applicants and other officers represented by Applicant No.1 are considered for DPCs as per instructions of DOPT.
 - c) pass necessary order/direction to the Respondent No.3 to act and discharge it's statutory duty to hold and conduct DPCs for the IB(E)S Cadres immediately with retrospective due date(s).
 - d) pass necessary order/directions to the Respondent No.2 to desist from usurping the powers and authority vested in the Government of India qua the IB (E) S Cadres and not to pass orders/directions affecting the terms and conditions of the employees of Respondent No.1 without fulfilling the statutory obligations and other conditions as laid down in the Act of 1990.
 - e) allow the Original Application of the applicants with costs in favour of the applicants.
 - f) and grant any other relief that this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."

3. The facts as brought out in this OA are that the applicants were working as Director Engineering/Deputy Director Engineering/Assistant Director Engineering, in various offices of All India Radio and Doordarshan under the Ministry of Information & Broadcasting. In the meantime Prasar Bharati was constituted as "Broadcasting Corporation of India" under Prasar Bharati Act, 1990 w.e.f. 23.11.1997. However, the employees of the All India Radio and Doordarshan including the applicants herein

have not been transferred to Prasar Bharati and continue to be Central Govt. employees under the Ministry of Information & Broadcasting. The applicants belong to Indian Broadcasting (Engineers) Service to which they were originally recruited as Assistant Directors Engineering on the basis of the selection through an open competition of Combined Engineering Services Examination conducted by the Union Public Service Commission (UPSC for short) or were departmentally promoted as Assistant Directors, Engineering. Indian Broadcasting (Engineers) Service was constituted by the Govt. of India on 4.11.1981 under I&B Ministry as an organised Central Civil Service, when IB(E)S Rules, 1981 were also formulated. The service which provides the technical support for audio and vision transmission in the country has about 1500 officers in various categories in Junior Time Scale (JTS), Senior Time Scale, JAG, SAG and HAG. Out of which about 350 posts are lying vacant. These are to be filled up by holding DPCs from time to time and in consultation with UPSC in certain cases. DoPT's OM No.22011/9/98-Estt(D), dated 8.9.1998 and 13.10.1998 have notified the procedure for conduct of DPCs and a model Calendar for DPCs. These instructions also inter-alia provide that the DPCs should be convened at regular intervals. However, the Cadre Controlling Authority has not moved the UPSC for holding the DPCs in tune with the result, the applicants have been stagnating without promotion though they had completed the requisite period in the respective cadres for promotion to the next grade. Representations made by the applicants has not produced any positive results. Respondents have adopted a view that after the

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✓ constitution of Prasar Bharati, UPSC is not competent to hold DPC. The fact however remains that the constitution of the Prasar Bharati is not yet complete and the employees continue to be those of Govt. and of AIR and Doordarshan and the Madras Bench of this Tribunal in OA No.293/2000 filed by Shri D. Devarai & Others Vs. Union of India & Others have in their decision dated 25.8.2000 pulled up the respondents in not having just in completing the requisite procedures as directed in Section 11 of the Prasar Bharati Act. Decisions of the Tribunal dated 30.10.1998, in OA No.1802/98 filed by V.C.Satish Chandran Vs. Union of India is also relevant as the employees like the applicants continue to be Govt. employees, there was no reason, the issue of their promotion cannot be taken up, as in the case of the other Govt. servants, argue the applicants. (7)

4. During the oral submissions, it has been pointed out by Shri Gopal Dutt, learned counsel for the applicants that Hon'ble High Court of Madras in the case of Union of India & Others Vs. D. Devarai & Others held that the Corporation is entitled to make use of the service of the employees presently working with it even though such employees are employees of the Government of India till they are all permanently absorbed in the Corporation, at the place where they work as in the interest of efficient work of the Corporation requires the presence of the employees. This has been relied upon by the decision of the Co-ordinate Bench of the Principal Bench in OA No.2067/2000 (S.K.Garg and Others Vs. Union of India & Others), decided on 29.10.2001. In view of the above, the relief sought for by them should be allowed

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in spot, learned counsel for the applicant has prayed.

5. Replying on behalf of the respondents and reiterating their written pleadings, Shri M.M.Sudan, learned counsel for the respondents deny that they had acted in any malafide manner. According to him, Prasar Bharati Corporation was to have constituted Recruitment Boards, till the completion of which UPSC was to continue its functions regarding recruitment, relating to the employees of the Corporation. This was authorised by an ordinance dated 29.10.1997, repromulgated on January, 1998. It lapsed with the Prasar Bharati Act, 1990, which excluded UPSC from its recruitment process. Therefore promotion could not be ordered. Rules and regulations in connection with recruitments in Prasar Bharati Corporation are yet to be notified. To meet with exigencies of service, ad-hoc promotions are being ordered and the Staff would satisfy the requirements of the organisation. One or two of the applicants themselves have got the ad hoc promotion which were ordered and therefore the applicants are not at any loss. The applicants do not have a case on merit and the OA deserves rejection, argues Sh. M.M.Sudan.

6. We have carefully considered the matter and the facts brought on record. It is an admitted fact that all the applicants are those who joined in the Ministry of I&B on the basis of the Examination conducted by the UPSC and those who were promoted in the organisation. Though they are presently working in the Prasar Bharati Corporation, the absorption process in the Corporation is not complete and they continue to be the employees of the Central Government, in the Ministry of I&B. This has been the

view adopted by the Madras Bench of the Tribunal in the case of D.Devaraj and Others, reiterated by the Madras High Court in the CWP against the Tribunal's order. The same has been, we find, accepted by the Principal Bench in OA No.2067/2000 filed by S.K.Gang, and Others Vs. Union of India and Others, on identical issue, decided on 29.10.2001. Relevant portion of the said order read as under:-

- "4. The learned senior counsel appearing on behalf of the applicants has drawn our attention to the decision rendered in this regard by the High Court of judicature at Madras on 17/1/2001 in Union of India & Ors.. Vs. Devaraj and Ors. Whether or not, the Prasar Bharati (Broadcasting Corporation of India) possesses the authority to post and transfer the Engineers currently working on its rolls, was examined by the High Court, who have, after careful consideration of the matter, concluded that the authority to post and transfer the Engineers could be exercised by the Prasar Bharati even though the engineers to still remained servants of the Government.
5. We are given to understand that at the same time that the Central Government is yet to initiate requisite action contemplated under Section 11 of the Prasar Bharati Act. That being so, consequently with what the High Court has observed in the aforesaid judgement, we do not find it difficult to arrive at the very same conclusion, namely, that the Applicant-Engineers are still servants of the government and accordingly, they could and should be considered for promotion to the post of Executive Engineer as hitherto in accordance with the procedure vogue in the Government.
6. When the matter came before this Tribunal, it was decided on 11.9.2001 to serve a fresh notice on UPSC. That notice has also being duly served. However, none had appeared on behalf of the UPSC yet again. Despite their absence in view of what has been discussed above, we are inclined to dispose of this OA by setting aside the OM dated 25.7.2000 and by directing the

respondent No.1 to holding meetings of DPC on year-wise bases from 1997 onward in accordance with the DP and AR OMs dated 24/1/1980 and 20/5/1981 and such other rules as might be found to be applicable. The applicants will be considered in the proposed DPC meetings in accordance with the rules and regulations and if found eligible and prayed for the purpose, will be promoted with effect from the date of the accrual of vacancies. The UPSC whose absence has been noted will play their part in the above process of selection in accordance with the aforesaid rules and instructions. The respondent No.1 will forthwith initiate action to hold DPC meetings and ensure conclusion of such meetings within a period of three months from the date of receipt of a copy of this order. The applicants, subject to being found eligible and fit for the purpose, will be promoted as above within 15 days after the recommendations made by the DPC have been finalised at the level of the competent authority. We direct accordingly." The above decision squarely applies in this case and we respectfully agree with it and order accordingly.

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6. The present OA is dispose of in the aforesaid terms. No costs."

7. In the above view of the matters the OA succeeds and is accordingly allowed. Respondents are directed to initiate the procedure for initiating the DPCs for filling up the vacant posts in IB(E)S, with the association of UPSC, whenever necessary on yearly basis and consider the cases of the applicants if they are eligible for such consideration and if found fit, promote them in accordance with rules and instructions laid down by DoPT's OM No.24011/9/98 Estt.(D) dated 8.9.1998 and ~~13.10~~^{13.10}.1998 and the IB(E)S Rules, 1981. This exercise shall be finalised as early as possible and in any rate within four months from the date of receipt of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

GOVINDAN S. TAMPI
MEMBER (A)