

(2)

34

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 821/2001

New Delhi this the 22nd day of January, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

1. Association of UPSC Recruited
Programme Officers of All India
Radio & Doordarshan (AUPO) having
its office at DDA Quarters No.8-G,
Basti Naarnaul (CAG Scheme), Ajmeri
Gate, Delhi through its Convener
Shri Jose Jude Mathew S/o Sh.Antony
Moraes.
2. Dr.S.R.Syed
S/O Late S.M.Ali,
working as Assistant Station
Director, AIR, Parliament Street,
New Delhi R/O-U-303, Taj Enclave,
Geeta Colony, Delhi.

..Applicants

(By Advocate Shri Colin Consalves)

VERSUS

1. Union of India
through its Secretary,
Ministry of Information and
Broadcasting, Shastri Bhawan,
New Delhi.
2. The Director General,
All India Radio, Akashvani Bhawan,
Parliament Street, New Delhi.
3. The Director General,
Doordarshan, Doordarshan Bhawan,
Copernicus Marg, New Delhi.
4. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
5. Mohd.Ashraf Lone
S/O Abdul Rahim Lone
R/O Bemina, Srinagar
Presently as Station Director,
DDK, Srinagar, Jammu and Kashmir.

..Respondents

(By Advocate Shri N.K.Agarwal, learned
senior counsel for the official
respondents)

(By Advocate Shri K.C. Gangwani, learned
senior counsel with Ms.Gauri K.Dass
for intervenor)

B

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

This application has been filed by two applicants where applicant No.1 is an Association of the UPSC recruited Programme Officers of All India Radio and Doordarshan (AIR&D). They have challenged the order passed by the respondents dated 14.3.2001 (Annexure A/1). Their main contention is that the respondents have not acted in ^{the} ~~correct~~ perspective while allocating the vacancies for Staff Artists (SA) for the years 1982 to 1984 and hence, the whole action of the respondents is illegal, arbitrary, against the Recruitment Rules (RRs) of 1984 and in contravention of the judgement of the Jammu and Kashmir High Court dated 6.7.1997 in the case of Mohd. Ashraf Lone Vs. The Director General and Anr. (SWP-1261/91), which order has been upheld by the Hon'ble Supreme Court while dismissing SLP No.8880-81/99.

2. Shri Colin Consalves, learned counsel for the applicants has submitted that the respondents have not considered the points raised by them in their representation dated 19.9.2000 in correct perspective, which has resulted in wrong action and the orders being passed by them on the basis of which they were to convene a ^{Review} Departmental Promotion Committee (DPC), for promotion of the concerned officers. The applicants have referred to the order of the Jammu and Kashmir High Court dated 16.7.1997 in M.A. Lone's case (supra) (Annexure A-5). The Hon'ble Jammu and Kashmir High Court has allowed the petition partially to the following extent:-

"....the respondents that they shall identify the posts of Assistant Station

Directors which have become available from 6th March 1982 to ending December, 1989 in the Programme cadre of All India Radio/Doordarshan and after identifying the same, they shall under the exercise of ratio of quota and placement of persons who shall become eligible thereto as per service rules. In case there has been any excess of Recruitment to the cadre from any of the source, they shall be adjusted accordingly. Further the respondents shall follow principles laid down by the Hon'ble Supreme Court in AIR 1977 SC 251 and then issue the tentative seniority list to be published and circulated amongst the Assistant Station Directors/promotees.

Further, a writ of mandamus is issued commanding the respondents to give consequential benefits to the petitioner which he derives by such placement and his date of promotion be also treated retrospectively from the date he is found due for such promotion as per his placement and being in the feeding cadre to the service of Assistant Station Director/next promotees".

The SLP filed by the respondents against this order before the Hon'ble Supreme Court was dismissed by order dated 14.2.2000.

3. The applicants had earlier filed OA(OA 2545/2000) which was disposed of by Tribunal's order dated 6.12.2000 in which reference had also been made to the judgment in M.A.Lone's case (supra). It was also observed that the applicants in that case apprehended that certain service rules would not be followed and more than due weightage would be given to the SAs category. They had submitted a representation dated 19.9.2000. In the circumstances, the Tribunal thought it fit to direct the respondents to consider the said representation before the review DPC is convened and pass a speaking order. In pursuance of the aforesaid Tribunal's order dated 6.12.2000, the respondents

36

have considered the applicants' representation and passed the present impugned order dated 14.3.2001.

4. Learned counsel for the applicants has heavily relied on the judgement of Jodhpur Bench of the Tribunal in Mrs. Maya Israni Vs. UOI & Ors. (TA 628/1986) which has been decided on 20.7.1987, i.e., prior to the judgement of the Jammu and Kashmir High Court in M.A.Lone's case (supra). He has contended that the respondents should be directed to consider and promote the eligible candidates, i.e., Programme Executives and Staff Artists from 23.10.1984 till 1989, strictly in accordance with the RRs., and also follow the decision of the Jodhpur Bench of the Tribunal in the aforesaid case.

5. The respondents have filed their reply and controverted the above submissions. They have relied on the judgement of the Hon'ble Supreme Court in M.A.Lone's case (supra). They have submitted that in terms of Tribunal's order in OA 2545/2000, they have examined the representation dated 19.9.2000 filed by the applicants and have passed a speaking order on 14.3.2001. They have referred to an ad interim order passed by the Tribunal on 30.3.2001 by which it was ordered that meanwhile, if respondents are holding DPC, they may do so but they shall not take any final decision in the matter before the next date of hearing. Shri N.K. Aggarwal, learned senior counsel for the respondents has submitted that they have followed the order of the Hon'ble Jammu and Kashmir High Court dated

16.7.1997 which has been upheld by the Hon'ble Supreme Court in M.A.Lone's case (supra). They have also referred to the fact that Shri M.A.Lone had filed Contempt Petition 166/1998 before the Hon'ble Jammu and Kashmir, High Court in which they have filed an affidavit of undertaking to convene the DPC for implementation of the order/judgement dated 16.7.1997 and the steps have been initiated in the Department to comply with the judgement. However, in view of Tribunal's ad interim order dated 30.3.2001, that exercise has not been completed. Shri N.K.Aggarwal, learned senior counsel has submitted that in the circumstances of the case, if the applicants have any grievance they may agitate before the Hon'ble Jammu and Kashmir High Court and they cannot hamper the respondents in implementing the orders of the Hon'ble Supreme Court and the Hon'ble Jammu and Kashmir High Court by filing the present application. He has also submitted that the respondents have not only complied with the aforesaid directions of the Courts but they have followed the relevant RRs. The respondents have also referred to the judgement of the Tribunal (Jodhpur Bench) in Mrs. Maya Israni's case (supra) and learned counsel has submitted that, that order has also been complied with. He has, therefore, submitted that in the circumstances of the case, the respondents have no alternative but to follow the orders of the Hon'ble Supreme Court and the Jammu and Kashmir High Court which they have done. Therefore, they have submitted that there is nothing illegal or arbitrary in the actions taken by them. In particular, he has

submitted that in compliance with the Tribunal's order dated 6.12.2000 in OA 2545/2000, the representation of the applicants was considered and they have passed a speaking order. In the circumstances, he has prayed that the OA may be dismissed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We have also perused the impugned order dated 14.3.2001 which has been passed in compliance with the Tribunal's order dated 6.12.2000 in OA.2545/2000. It is clear from a perusal of this order that the respondents have taken into account the observations ⁱⁿ ~~of~~ the judgement of the Hon'ble Jammu and Kashmir High Court and the order of the Hon'ble Supreme Court in M.A.Lone's case (supra). In the facts and circumstances of the case, briefly mentioned above, we are unable to agree with the contentions of the learned counsel for the applicants that this order should be quashed and set aside. This order has been passed in compliance with the earlier order of the Tribunal and the other relevant orders, referred to above. We see merit in the submissions made by Shri N.K.Agarwal, learned senior counsel that the respondents have to implement the order of the Hon'ble Supreme Court read with the order of the Jammu and Kashmir High Court in M.A.Lone's case (supra) which they have done. Therefore, the action of the respondents in implementing the orders of the competent Courts and particularly that of the Hon'ble Supreme Court, is neither improper nor arbitrary nor illegal in the facts and

circumstances of the case. In the facts and circumstances of the case, the implementation of the aforesaid orders of the Court by the respondents cannot also be faulted. Accordingly ad-interim order dated 30.3.2001 which has been continued from time to time stands vacated.

7. In the result, for the reasons given above, the OA fails and is dismissed. No order as to costs.

(Govindan S.Tampi)
Member (A)

sk

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)