

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1582/98
MA No.1815/99

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New Delhi this the 11th day of February, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

In the matter of:

1. V.K. Jain(GA)
S/o Late P.D. Jain
C- 9, Nav Rachna Appt.
East Arjun Nagar
Delhi-92
2. Smt. Anita Verma
W/o Mahender Verma
19/965, Lodhi Colony
New Delhi- 3
3. Smt. Jaswant Kaur
W/o Sardar Manjeet Singh
CA- 69-B DDA Flats
Hari Nagar
New Delhi-64
4. Smt. Sunita Vij
W/o C. K. Vij
109/12 R.K.Puram
New Delhi-22
5. Smt. Sarita Ghai
W/o Shri I.K.Ghai
1061 Lakshmi Bai Nagar
New Delhi 23
6. Smt. Savita Khera
W/o Pradeep Kr. Khera
J-706, Mandir Marg
New Delhi-1
7. Smt. Inderjeet Kaur
W/o G.S. Bhatia
K.G-1/ 569 Vikas Puri
New Delhi
8. Smt. Kiran Sagar
W/o Shri Pradeep Kumar
C-2/101, Lodhi Road
New Delhi-3
9. Smt. Surinder Mahajan
W/o O.P.Mahajan
BG-7/21 Pachim Vihar
New Delhi
10. Smt. Asha Verma
W/o Shri B.R.Verma
V/56 W.P.Nagar
New Delhi
11. Smt. Saroj Wadhwa
W/o Rajkumar Wadhwa
13- Parmanand Colony
New Delhi
12. Smt. Promila Kumari
W/o Shri Jitendra Kumar
111/3 Shakur Basti
Delhi

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13. Smt. Veena Kapoor
W/o Shri Prakash Kapoor
M-286, Guru Harkishan Nagar
Pachim Vihar, New Delhi-63
14. Shri S.K. Garg
S/O Late. Shri Shankar Lal
H.N. FCA-3286-A
Gali No.- 6 Block- A
Sanjay Gandhi Memorial Nagar,
NIT Faridabad (Haryana)
15. Shri Balbir Singh Patwal
S/O Late Shri Khushal Singh
H. No. 1868, Ramdas Basti,
Kotla Murabakpur,
New Delhi-23
16. Shri Pratap Narayan Srivastava
S/O Late S. N. Srivastava
1886, Cheera Khana
Gali Kayasthan
Delhi- 6
17. Smt. Kunkum Chopra
W/O Shri Mahesh Chopra
BB-16-C, Shalimar Bagh
New Delhi
18. Smt. Paramjeet Kaur
W/o Shri. Harjinder Pal Singh
9, Shiv Puri Extn., Super Bazar
Delhi - 51

19. Smt. Hardeep Kaur
W/o S. Navaratan Singh,
161, Jheel Khureji, Delhi - 51
20. Smt. Raj Sharma
W/o Late Omkar Sharma
Z-529, New DDA Market
Timarpur, Delhi
21. Smt. Surinder Kaur
W/o Shri. K. S. Ahuja
118 Pocket A1, Sector 25,
MIG Flats, Rohini, Delhi - 85
22. Smt. Uma Sharma,
W/o Vimal Sharma,
250, Lawrance Road
Delhi

...Applicants

V/S

1. Union of India through
Secretary
Ministry of Information and Broad Casting
Govt. of India, Shastri Bhawan
New Delhi
2. Director General
All India Radio
Akashwani Bhawan
New Delhi
3. Director General
Doordarshan
Mandi House, New Delhi

(Applicants through Shri K.C. Mittal, Advocate)

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4. Station Director
All India Radio
Akashwani Bhawan
New Delhi
5. Smt. A.K. Gupta
Accountant
DG, P & D unit, AIR
New Delhi
6. Shri N.L. Katyal,
Copyist
DTPES, AIR
New Delhi
7. Shri Mohd. Hamid
Copyist
ESD, AIR
New Delhi
8. Shri Y.P. Gosain
UDC
SSW-I, CCW, AIR
New Delhi
9. Smt. Bhupinder Kaur
UDC
ESD, AIR
New Delhi
10. Smt. Anjali Dey
UDC
ESD, AIR
New Delhi
11. Shri Abdul Hamid
UDC
ESD, AIR
New Delhi
12. Smt. Nirmals Nawani
UDC
DD (News), DDK
New Delhi
13. Smt. Shanta Bhattacharya
UDC
DTPES, AIR
New Delhi
14. Smt. Nisha Mangotra
Gen. Asstt.
CBS, AIR, ESD
New Delhi

... Respondents

(Service to respondent no. 5 to
respondent no. 2)


(Respondents through Shri A.K. Bhardwaj, Advocate)

MA No. 1815/99

1. Kanchan Kapoor
2. Naim-Ullah Khan
3. Iftikha-Uz-Zaman
4. Bhagwati Prasad Sharma
5. Vijay Lakshmi
6. Kamal Verma
7. Kusum Kshatriya

... Intervenors

(By Advocate Shri S.Y. Khan)



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O R D E R

By Reddy, J.-

The short question that arises in this case is whether the applicants are entitled for promotion to the posts of Transmission Executives (General & Production) (for short TREX (G&P)).

2. The broad facts of the case, as seen from the pleadings (mostly from the counter), are as under:

2.1 The applicants are General Assistants/Copyists working in the Doordarshan. Both All India Radio (AIR) and Doordarshan are having the posts of General Assistants, Copyists and Production Assistants and the posts are treated as Staff Artists. The posts in both the organisations carry the same pay scale but they are distinct and separate for the two organisations, with separate recruitment rules and different promotional avenues. Under the recruitment rules of 1976 for Staff Artists in AIR, General Assistants/Copyists with five years' service are entitled to be considered for promotion as Production Assistants under the method of limited departmental selection. In so far as Staff Artists of Doordarshan are concerned, the recruitment rules were consolidated in 1979 and according to these rules the method of recruitment to the posts of Production Assistants is 100% by limited selection from amongst the General Assistants and Copyists etc. with five years of continuous service failing which by direct recruitment.

2.2 In 1992 the Government decided to convert the Staff Artists posted in the AIR and Doordarshan into civil posts with the sole purpose of bringing such employees in the pension scheme of the Government. It was also decided to merge the post of Staff Artists with the post in the Government and equated to civil posts of Clerks Grade I and Grade II in the administrative cadre. For that purpose the recruitment rules of Head Clerks/Accountant were amended in 1983. The General Assistants/Copyists of AIR were not happy with the above decision of the Government. Hence, they approached the Tribunal before the Bombay Bench seeking that their avenues of promotion in the channel of Production Assistants should continue. The Tribunal by its order dated 27.2.91 held that the applicants therein were entitled to be promoted as General Assistants Senior Grade and Production Assistants in the Programme cadre and that their channel of promotion should be protected. It was also declared that the notification amending the rules of Grade I and Grade II have no application to them.

2.3 The posts of Production Assistant, in AIR as stated by the respondents in their counter-affidavit, were amalgamated with the posts of Transmission Executive which is the common cadre for AIR and Doordarshan and the posts of Production Assistants of AIR have been redesignated as Transmission Executives (G&P). The recruitment rules of Transmission Executives were notified in 1992. These rules are called the AIR and Doordarshan (Transmission Executives) Recruitment Rules, 1992. As per the rules the recruitment to the posts was 100% by

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way of direct recruitment. Subsequently these rules were amended in 1994 which are called AIR and Doordarshan (Transmission Executives) Recruitment (Amendment) Rules, 1994. Under these rules the method of promotion has been shown for the posts of Transmission Executives (G&P) as 100% by promotion (instead of direct recruitment), failing which by direct recruitment. General Assistants and Copyists etc. with five years continuous service in that grade are entitled for consideration for promotion.

3. It is the case of the applicants that they are, therefore, entitled for consideration for promotion to the posts of Transmission Executives (G&P) under the amended rules of 1994.

4. The case of the respondents could be glanced from the above narration of the facts. The 1992 rules have been amended only for the purpose of providing avenues of promotion to the applicants who approached the Bombay Bench and they are the General Assistants and Copyists in AIR. The directions given by the Bombay Bench of the Tribunal, are applicable only to the posts in AIR and not Doordarshan. The applicants in fact had no avenue of promotion under the 1979 rules to the posts of Production Assistants the method of recruitment under those rules being totally by way of direct recruitment. Hence, the amended rules cannot be said to be applicable to the applicants. The learned counsel for the respondents also heavily relied upon the letters dated 7.4.97 and 12.8.97 written by the respondents wherein it has been clarified that the General Assistants of AIR alone are entitled for

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promotion to the posts of Transmission Executives (G&P) and that their counter-parts in Doordarshan are not eligible for the same.

5. We have given careful consideration to the facts of the case but we are of the considered view that the applicants are entitled for the reliefs prayed for.

6. The basis of the applicants' claim are the amended rules of 1994 which are filed as Annexure A-11. These rules are made under Article 309 of the Constitution whereby the AIR and Doordarshan Transmission Executives Recruitment Rules 1992 were amended. The material amendments for our purpose are in column 11 and 12 of the Schedule of 1994 rules. They read as follows:

"for the entries in Column 11, the following entry shall be substituted, namely:

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|---|--|
| (a) Transmission Executive and all posts other than Transmission Executive (General and Production) included in Transmission Executive. | (i) 90% by direct recruitment. |
| | (ii) 10% by promotion, fail-which by direct recruitment. |

For the purpose of allocation of vacancies, between the direct recruitment quota the vacancies at all the stations or offices of All India Radio & Doordarshan in a particular state or Union Territory will be pooled together by Head of All India Radio Stations as indicated in each

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case in Annexure
A to this
Schedule;

- (b) Posts designated as Transmission Executive (General and Production) and included in Transmission Executive. 100% by promotion, failing which by direct recruitment.

(iv) for the entries in column 12, the following entries shall be substituted, namely:-

"(1) For Transmission Executive and all posts other than Transmission Executive (General and Production) included in Transmission Executive:

From amongst Senior Librarians (including those of the Directorate General: All India Radio, New Delhi) with years' regular service in the grade, failing which amongst Programme Secretaries, Studio Executives, Junior Librarians (including those of Directorate General and All India Radio, New Delhi) with 5 years' regular service in the respective grades:

(ii) For posts designated as Transmission Executive (General & Production) and included in Transmission Executive;

From amongst Senior Grade General Assistants/Copyist/Tape Librarianas/Instrument Repairers/Caretaker (Music & Instruments) and Junior Grade General Assistants Copyists/Tape Librarians/Caretakers of Musical Instruments, Instruments Repairers with at least five years' continuous service in that grade."

7. Thus, it is clear that the method of appointment which was 100% by direct recruitment, in 1992 rules has now been altered, in respect of Transmission Executives other than Transmission Executives (G&P), to 90% by direct recruitment and 10% by promotion. For the post of Transmission Executives (G&P) it is 100% by promotion failing which by direct recruitment. Para 2 (iv)(ii) of the notification of 1994 amendment makes it abundantly clear that for the post of Transmission Executives (G&P) the General Assistants, Office Copyists etc. are entitled for

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consideration being the feeder posts. Thus, the General Assistants and Copyists in AIR and Doordarshan are entitled for consideration for promotion. It is also not in dispute that the seniority list of Copyists/General Assistants etc. has been revised w.e.f. 6.3.82 and they are also shown as eligible for promotion to the post of Transmission Executives (G&P) as on 1.1.96. It is a combined seniority list of the General Assistants and Copyists in AIR and Doordarshan. It is also stated by the applicants that promotions to the posts of Transmission Executive (G&P) were given to the eligible seniormost persons from out of this list who also include the employees from the Doordarshan.

8. There appears to be some justification in the contention of the learned counsel for the respondents. In fact in 1992 rules for the Transmission Executives of the AIR and Doordarshan either the applicants in Doordarshan or the General Assistants or Copyists in the AIR are not shown as eligible for promotion. By the time the rules of 1992 had come into force the Bombay Bench of the Tribunal has given directions in the OAs filed by the General Assistants and Copyists of AIR allowing their claims. The respondents were directed to consider their cases for promotion to the posts of Production Assistants in accordance with 1976 rules as the posts of Production Assistants in AIR have been amalgamated into the posts of Transmission Executives (G&P). In order to implement the directions given, it is stated, the amendment was brought out in 1994. The contention of the learned counsel for the respondents, therefore, appears to be sound and logical. But it should also be noticed that

the applicants who were the General Assistants and Copyists in Doordarshan are also handicapped in that they had also no avenues of promotion. They should retire as Production Assistants/Transmission Executives. In all fairness the employees in the Doordarshan are also entitled for promotion to the posts of Transmission Executives (G&P). Their posts are also in all respects equal with that of General Assistants/Copyists in AIR. The judgement of the Tribunal of the Bombay Bench cannot be read as an embargo to consider the cases of the applicants for being eligible for consideration for promotion. In these circumstances the Government might have thought that there can be no good reason for discriminating the employees in the Doordarshan. Hence, the Government amended the rules accordingly.

9. The learned counsel for the applicants Sh. K.C. Mittal places strong reliance on the rules which are mandatory. We entirely agree with him. If the rules are read as they are the applicants are entitled for consideration for promotion. The executive instructions given by the respondents in the letters dated 7.4.97 and 12.8.97 cannot have any force of law as they are directly contrary to the statutory rules. The rules are made under Article 309 of the Constitution and they are still in force. Hence, they are enforceable. The administrative directions can be followed only in the absence of statutory rules but not when the rules are very clear on the subject and hold the field.



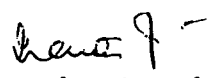
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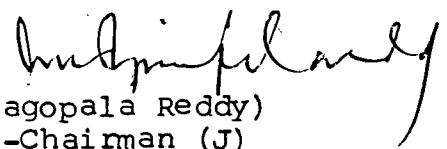
10. In the circumstances, the OA has to succeed.

11. MA-1815/99 is filed by the third parties who were given ad hoc appointment as TREX (G&P) in AIR Delhi subject to the outcome of the above O.A. The Tribunal in its interim order dated 2.12.98 directed to maintain status quo regarding further appointment in the above posts till further orders. In view of the above orders the respondents terminated overzealously, the applicants by order dated 20.8.99.

12. It is now stated by the learned counsel for the applicants that against the order of their termination the applicants approached the High Court and the High Court had passed interim order restoring the applicant into service. The learned counsel for applicants and respondents in OA submit that the applicants herein need not be disturbed pending the disposal of the OA and they would continue in service subject to the final result of the OA in terms of their appointment orders. In the circumstances no order need be passed on this application. The MA is accordingly disposed of.

13. In view of the aforesaid discussion the O.A. succeeds. The impugned orders are quashed. The respondents are directed to consider the applicants for promotion to the posts of TREX (G&P) in terms of All India Radio and Doordarshan (Transmission Executives) Recruitment (Amendment) Rules, 1994. No costs.


(Smt. Shanta Shastri)
Member (Admnv)


(V. Rajagopala Reddy)
Vice-Chairman (J)

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