

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

36

Decided on 17.7.1998

O.A. No. 212/94 &
connected OAs

Y.K. Mehta Applicant
(By Advocate: In Person)

vs.

U.O.I. & Ors. Respondents
(By Advocate: Shri P.H. Ramchandani &
Shri Pawan Duggal)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of
the Tribunal? Yes

Adige
(S.R. ADIGE)
Vice Chairman (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

37
New Delhi, dated this the 17th JULY 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALI, MEMBER (J)

O.A. No. 212 of 1994

Shri Y.K. Mehta,
Video Executive,
Doordarshan Kendra,
New Delhi-110001.

.... APPLICANT

(In person)

Versus

1. Union of India
through the Secretary,
Ministry of Information & Broadcasting,
New Delhi.
2. The Director General,
Doordarshan,
Mandi House,
New Delhi.
3. The Director General,
All India Radio,
New Delhi.
4. The Chairman,
UPSC,
New Delhi.
5. Shri Rajamani Rai
6. Shri R.P. Mathur
7. P.U. Aiyoob
8. Shri A. Natarajan
9. Shri V.V.K. Sahstry
10. Shri A.K. Biswas,
11. Shri Gajender Naik
12. Shri M.P. Suri
13. Shri J.B. Gupta
14. Shri L.D. Mandloi
15. Smt. Lalita S. Bhoj
16. Smt. Vimla Mittal
17. Shri P.L. Chawla
18. Shri S.C. Aggarwal

19. Shri S.B. Chandola
 20. Shri Somiran Chaudhary,
 21. Shri M.M. Sinha
 22. Shri G.K. Marar
 23. Shri Sitaram Sharma
 24. Shri M.F. Nazki
 25. Shri S. Kulkarni
 26. Shri Biswanath Das
 27. Shri Ramesh Chander
 28. Shri N.G. Srinivasa
 29. Dr. R. Sreedhar
 30. Shri Basavraj
 31. Shri U.N. Tarafdar
 32. Shri L.P. Manderwal
 33. Smt. Nazish Hussaini
 34. Shri Sudhir Tandon
 35. Shri V. Senapati
 36. Shri S.S. Hungund
 37. Shri K.S. Israni
 38. Shri S. Diengdoh.

.... RESPONDENTS

(By Advocate: Shri P.H. Ramchandani for
 R-1 to 4
 Shri Pawan Duggal for
 R-5 to 38. Mai

O.A. No. 53 of 1997

1. All India Graphic Artists Assn.
 (Doordarshan)
 through its General Secretary,
 Shri Madhukar Sharma
2. Mrs. Aruna Ghosh,
 W/o Shri Manoj Ghosh,
 R/o Qr. No. 907, Sector 8,
 R.K. Puram,
 New Delhi-110022.
3. Mrs. Meena K. Singh,
 W/o Shri Harminder Singh
 R/o 216-B, Munirka Village,
 New Delhi-110067.

4. Mrs. Manu Bist,
Shri R.S. Bisht,
R/o Qr. No. B-2659,
Netaji Nagar,
New Delhi-110023.

5. Shri R.N. Das,
S/o late Shri R.C. Das,
R/o 1-A, CPWD Housing Complex,
Vasant Vihar,
New Delhi-110057.

6. Mrs. Sunita Arora,
W/o Shri Kewal Krishan Arora,
R/o B-60, Vijay Nagar,
Delhi-110009.

..... APPLICANTS

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through
the Secretary,
M/o I & B
New Delhi.
2. The D.G.,
Doordarshan,
Mandi House, New Delhi.
3. The Chairman,
UPSC,
New Delhi.
4. Shri R.P. Mathur
5. Shri N.G. Srinivasa
6. Dr. R. Sridhar
7. Shri L.P. Manderwal
8. Shri Sudhir Tandon
9. Shri V. Senapati
10. Shri N.B. Pahari
11. Smt. S. Diengdoh
12. Shri A.K. Biswass
13. Shri M.P. Suri
14. Shri L.D. Mandloi
15. Smt. Lalita S. Bhoj
16. Smt. Vimla Mittal
17. Shri P.L. Chawla

18. Shri S.C. Aggarwal

19. Shri M.F. Naki

20. Shri Biswanath Das

.... RESPONDENTS

(By Advocate: Shri P.H. Ramchandani
 for R-1 to 3
 Shri Pawan Duggal for
 R-4 to 20

O.A. No. 125 of 1997

1. Shri R. K. Tayal
2. Shri M.C. Rukmanipathy
3. Shri S.N. Kaul
4. Shri Satish Kapoor
5. Shri P.C. Sharma
6. Shri Naresh Chawla
7. Shri madan Sharma
8. Shri P.K. Sharma
9. Shri T.N. Sharma
10. Shri J.P. Gautam
11. Shri W.P. Raju
12. Shri R.K. Sapra
13. S. Mohan
14. Shri M.G. Yevlekar
15. Shri Ahsok Pillai

.. 15. APPLICANTS: Pillai

(By Advocate: Shri T.C. Aggarwal)

Versus

1. Union of India through
 the Secretary,
 M/o I & B, New Delhi.
2. The D.G., Doordarhsan
3. The D.G, AIR., New Delhi.
4. The Chairman, UPSC, New Delhi.
5. Shri R.P. Mathur
6. Shri A.K. Biswas
7. Shri M.P. Suri

8. Shri L.D. Mandloi
9. Smt. Lalita S. Bhoj
10. Smt. Vimla Mittal
11. Shri P.L. Chawla
12. Shri S.C. Aggarwal
13. Shri M.F. Naki
14. Shri Biswanath Das
15. Shri N.G. Srinivasa
16. Dr. R. Sridhar
17. Shri U.P. Manderwal
18. Shri Sudhir Tandon
19. Shri V. Senapati
20. Smt. Diengdon

.... RESPONDENTS

(By Advocate: Shri P.H. Ramchandani
for R 1 to 4
Shri Pawan Duggal

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

As all these 30As involve common questions of law and fact they are being disposed of by this common order.

OA-212/94

2. In this O.A. applicant Shri Y.K. Mehta, Video Executive, Doordarshan, New Delhi impugns respondents' order dated 14.6.93 (Annexure-C^(colly)) and dated 17. 8.93 (Ann-C^(Colly.)) whereby R-6 to 38 have been promoted, and prays for promotion w.e.f. 26.6.78 with consequential benefits.

OA-53/97

3. In this O.A. applicants who belong to All India Graphic Artists Association, Doordarshan seek a direction to declare the presence/posts of Programme Executive and Transmission Executives as illegal w.e.f. the date of implementation of the new staffing pattern and seek promotion as per the Inter-Departmental Review and Rationalisation Committee Report over the promotions of R-4 to 20 with retrospective effect with consequential benefits.

OA-125/97

4. In this O.A. applicants Shri R.K. Tayal & Others also seek a direction to declare the presence/posts of Programme Executives and Transmission Executives in Doordarshan are illegal w.e.f. the date of implementation of the new

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staffing pattern and seek promotion as per the Inter-Departmental Review and Rationalisation committee Report over the promotions of R-5 to 21 along with consequential benefits and also seek reconstitution of Doordarshan Service so far as the Programme cadres are concerned, in the manner suggested by SIU and pray for quashing of Indian Broadcasting (Programme) Service Rules, 1990.

5. Applicant Shri Y.K. Mehta was initially engaged on contract basis as a Staff Artist in the category of Cameraman Gr. II on 21.11.70 and was subsequently promoted as Cameraman Gr. I on 26.6.78. Aggrieved by their non-inclusion in the Third Pay Commission's recommendations for revised pay scales on account of their not being Govt. servants but only contract employees, applicant Sh Y.K. Mehta and other staff artists of Doordarshan filed CWP No. 1239/79 and other connected cases in the Hon'ble Supreme Court who by their judgment dated 26.6.98 (reported in 1988 (2) SCALE 64) held that staff artists of Doordarshan including the petitioners were Govt. servants, and were entitled to the same scales of pay as their counterparts in the Films Division. On the question as to the date from which the petitioners would be entitled to the pay scales prescribed for their counterparts in the Films Div., it was held that the ends of justice would be met sufficiently

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if such pay scales were given to the petitioners w.e.f. the first day of the year in which each writ petition was filed in the Hon'ble Supreme

Court except that in case of CWP No. 1756/86 such pay scales would be given to the petitioners w.e.f. 1.12.83. The judgment concluded thus:

"In the circumstances, all these writ petitions are allowed. The Sound Recordists, who are the petitioners in WP(C) No. 974/78 shall be given the pay scale of the Recordist/Sound Recordist in the Film Div. i.e. Rs.550-900 w.e.f. 1.1.78. The Cameraman Gr.II, who are the petitioners inb WP(C) No. 1239/79, shall be given the pay scale of the Cameraman of the Film Div. i.e. Rs.650-960 w.e.f. 1.8.79. The Lighting Assistants/Lightmen, who are the petitioners in WP(C) No. 1756/86 shall be given the scale of pay of Asst. Cameraman in the Film Div. i.e. Rs.425-700 w.e.f. 1.12.83. The petitioners in all these wPs will also be entitled to the substituted scales of pay and consequential benefits. The respondents are directed to disburse to the petitioners the arrear amounts being the difference in the pay scales within four months from today."

6. Meanwhile applicant admits (vide his representation dated 30.8.93 copy at Ann. B) that respondents by their order dated 11.5.88 recognised Cameramen Gr. I including himself as Govt. servants w.e.f. 6.3.82 and acknowledges that consequent to the Hon'ble Supreme Court's judgment dated 26.8.88 (Supra) respondents treated Cameramen as Govt. servants from the date they joined Doordarshan as Staff Artists by giving them

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pay scales equal to their counterparts in Films Division. It is also not denied that applicant was promoted as Vide Executive w.e.f. 14.2.89.

7. On 15.11.90 the Indian Broadcasting (Programme) Service Rules, 1990 were promulgated (Ann. R-1) by which the Indian Broadcasting (Programme) Service was constituted. The post of Video Executive was encadred in the service and by Notification dated 2.2.93 (Ann. R-2) applicant was inducted into the service w.e.f. 5.11.90 with his channel of promotion in that service.

8. The main thrust of the arguments advanced by applicant Shri Y.K. Mehta in O.A. No. 212/94 and indeed on behalf of the other two O.As before us is that the Ministry of I&B by its letter dated 5.3.76 (Ann. I to OA-53/97) had communicated its decision to separate Television from AIR as far back as 1.4.76 but this decision was never implemented properly or in full measure by respondents. It is argued that as per Para 5 of that letter, regular Govt. servants, who had not specifically been recruited for the Television set up but were working there, and were on the common cadre of Sound Radio and TV, were required to exercise their option, to decide whether they chose to remain in TV or chose to return to the Sound Radio Network, and those who opted for the

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Sound Radio Network were to be repatriated. It is contended that instead of repatriating those functionaries to Sound Radio Network they were allowed to continue in the TV Setup, and in fact were allowed to enjoy the best of both worlds, namely when promotional vacancies arose in AIR they were considered for those promotions, while continuing to enjoy all the promotional and other benefitss in the TV set up also, and thus they deprived the applicants of the promotional posts which would otherwise have become available to them.

9. It has also been argued, that the InterDepartmental Review and Rationalisation Committee set up by the Govt. to look into anomalies in the pay scales of certain categories of staff artists of Doordarshan and to review the same, keeping in view the staffing pattern recommended by SIU and accepted by the Govt. had made its recommendations and had also prepared a chart indicating the set up of a TV centre as per SIU norms in respect of Programme and Support Services (excluding Engineering and Administrative Service), according to which Cameramen were placed directly in the line of promotion as Manager/Asst. Director; and similarly Graphic Artists were placed directly in the line of promotion as Graphic Supervisor and then Manager/Asst. Director, but instead of implementing the same, Programme Executives and Trnasmission Executives

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were transferred from AIR to Doordarshan and thereafter occupied positions as Manager/Asst. Director, arbitrarily and illegally thereby vitiating the promotional prospects of the applicants in the three OAs before us.

10. It is argued that consequent to the Hon'ble Supreme Court's judgment dated 26.8.88 (Supra) official respondents were required to consider applicants on the promotional posts at each level resulting from the policy instructions dated 5.3.76, and the acceptance by the Govt. of the SIU's recommendations recorded by the Inter-Departmental Review & Rationalisation Committee in its Report, from the date(s) they became eligible for the same after treating them as Govt. servants from the date they joined the Doordarshan as Staff Artists.

11. Some of the pvt. respondents who claim to be senior to Shri Mehta as Cameraman assert that they would be entitled to consideration for such promotions from a date even prior to Shri Mehta.

12. Various judgments have been cited, in support of these contentions, including 1995 SC 179 Dhananjay Sharma Vs. State of Haryana; JT 1989

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(3) 513 CSIR Vs. K.G. Bhatt: 1991 (17) ATC 204
- Balkishna Vs. Delhi Admn. AIR 1968 SC 1413 and
1992 (19) ATC 302.

13. We have heard both sides at considerable length and given the matter our careful consideration.

14. We have already noticed that the Indian Broadcasting (Programme) Service Rules, 1990 were notified in the official Gazette on 5.11.90.

15. These Rules were framed under Article 309 of the Constitution and are statutory in character. By these Rules the post of Video Executive was encadred in the service and by Notification dated 2.2.93 (Ann. R-2) applicant Shri Y.K. Mehtawas inducted into the service w.e.f. 5.11.90 (Ann. R-2) with his channel of promotion in that service. As a Video Executive in the pay scale of Rs.3000-4500 applicant was in the Senior Time Scale of the Programme Production cadre of Indian Broadcasting (Programme) Service with his channel of promotion as Junior Administrative Grade/Chief Producer; JAG (SG)/Director (Production) and so on.

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16. It is well settled that the statutory Recruitment Rules framed under Article 309 of the Constitution over ride any executive instructions. Shri Mehta has not impugned the aforesaid Indian Broadcasting (Programme) Service Rules, 1990 in his O.A. No.212/94, and till such time as these Rules are in force, respondents have to act strictly in accordance with their provisions. We are clear and categorical in our view that the Hon'ble Supreme Court's judgment dated 26.8.88 (Supra) cannot be construed to mean that the official respondents are now required to go behind the rules and consider applicant Shri Mehta for promotion ~~against~~ posts on the basis of certain recommendations made by the SIU and/or the Inter-Departmental Review & Rationalisation Committee when even the sanctioning orders creating those posts against which applicant seeks promotion have not been produced by him.

17. We would like to reiterate that regardless of the extent to which official respondents implemented their instructions dated 5.3.76, and/or the recommendations of the SIU and the Inter-Departmental Review & Rationalisation Committee, once the Indian Broadcasting (Programme) Service Rules, 1990 were notified on 5.11.90, they being statutory rules framed under

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Article 309 of the Constitution they would have overriding authority, and as long as those Rules are in force, the Hon'ble Supreme Court's judgment dated 26.8.88 (Supra) cannot be construed in a manner to do them violence or to set them at nought.

18. Hence the O.A. No. 212/94 warrants no interference and is dimissed.

19. As regards O.A. No. 53/97 applicants as Staff Artists were admittedly employed initially on contract basis, and have since been made Govt. servants and occupy posts of Graphic Artists which is in Group 'C' category while Respondents No. 4 to 20 are I.B.(P) S officers which is an organised Group A Service notified under the IB(P)S Rules on 5.11.90. The reasoning adopted while dimissing O.A. No. 212/94 will apply mutatis mutandis in the present O.A. also, and as long as the I.B. (P) S Rules 1990 are in force -- the Rules themselves have not been specifically challenged in the O.A. -- the Hon'ble Supreme Court's judgment dated 26.8.88 cannot be construed to mean that the official respondents are required to go behind those rules, declare the presence of Respondents 4 to 20, who are occupying certain

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posts as Members of the I.B. (P) Service illegal and then consider applicants for promotion against these posts.

20. O.A. No.53/97 under the circumstance also warrants no interference and is dismissed.

21. As regards O.A. No.125/97, the reasoning adopted in dismissing OAs No.212/94 and 53/97 will apply mutatis mutandis in the present O.A. also. It is no doubt true as urged by Shri T.C. Aggarwal that till the Recruitment Rules were framed administrative decisions would hold the field, but by the same token once the RRs are framed under Art. 309 of the Constitution as was done in the case of the IB(P)S Rules, 1990 which were notified on 5.11.90, they being statutory in nature, would override any executive instructions issued on the basis of administrative decisions or policy, and once those RRs are in force it cannot legitimately be argued that promotions should be made on the basis of some recommendations made, or decisions taken much before the framing of those statutory Recruitment Rules. The Hon'ble Supreme Court's judgment dated 26.8.88 (Supra) also cannot be construed in a manner to permit this, and the IB(P) Service Rules themselves per se do not become illegal, arbitrary or malafide even if they do

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depart from the recommendations of the SIU and/or the Inter Departmental Rationalisation and Review Committee. Respondents 5 to 21 hold their posts by virtue of belonging to IB(P) Service Rules on 5.11.90 and were promoted as per the relevant provisions of those Rules. Respondents have correctly pointed out that applicants cannot lay claim to an altogether other category of posts, which are different in status and in nature of duties which have different RRs.

22. The IB(P) Service Rules have been challenged on the ground that they relate only to Class I posts and has nothing to do with the progression of staff working below where the recommendations of SIU and the Inter Departmental Review and Rationalisation Committee's recommendations should have been implemented. Specific mention has been made of absence of provision for Cameramen Gr. II and other categories of staff artists including Sound Recordists, etc. Respondents in their reply have pointed out that the non-inclusion of Cameraman Gr.II in the feeder cadre of JTS of IB(P) S is the subject matter of O.A. No. 351/91 which is separately before CAT, and therefore we express no opinion on the merits of its inclusion or non-inclusion, but would like to make it clear

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that mere inclusion or non-inclusion of a particular post or group of posts, or indeed a service, in a set of RRs does not per se make those RRs illegal, arbitrary or malafide. Applicants' grievance is that they have no promotional opportunities in their service career and have referred to the Hon'ble Supreme Court's judgment in Raghunath Prasad Singh Vs. Secretary, Home (Police) Dept., Govt. of Bihar AIR 1988 SC 1033 wherein the need for making available suitable promotional opportunities in the public service has been emphasised. No doubt, absence of promotional opportunities is a demotivating factor and it is in respondents best interests as model employees that consistent with the financial implications of such a decision, suitable promotional opportunities are made available to its employees to maintain their motivation and morale, but the absence of mention of applicants, who belong to Group C category, in the RRs framed from Group A posts, does not make those RRs illegal, arbitrary or malafide. The argument that the recommendations of the SIU and/or the Inter Departmental Review and Rationalisation Committee, in respect of which no final sanctioning orders actually creating posts were shown to us, became a service condition of applicants, which was altered to their disadvantage by the IB(P)

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Service Rules, or which respondents were under some legal obligation to implement has also to be rejected.

22. In the result this O.A. No. 125/97 also warrants no interference and is dismissed.

23. In the result all three OAs are dismissed.
No costs.

(Dr. A. Vedavalli)
Member (J)

anjaneyulu
(S.R. Adige)
Vice Chairman (A)

/GK/

Office
Section Officer
Central Administrative Tribunal
Principal Branch, New Delhi