

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1773/88
T.A. No.

1988

DATE OF DECISION 15.12.1989.

Shri S.H. Paul & Ors. Applicant (s)

Shri P.K. Aggarwal Advocate for the Applicant (s)

Union of India & Ors. Respondent (s)

None Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. P.C. Jain, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicants, who are working as Producers, Grade I in the Department of Doordarshan under the Ministry of Information & Broadcasting, filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (a) to quash the common eligibility list dated 18th March, 1988/22nd March, 1988;
- (b) to direct the respondents not to make any appointments and promotions for any posts in Doordarshan set-up from the said eligibility list and to declare that all appointments/promotions so made by the

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respondents to any post in Doordarshan from the employees of All India Radio to be wholly illegal;

- (c) to direct the respondents to fill up posts in Doordarshan either by direct recruitment or by promotion in accordance with the recruitment rules of Doordarshan from the employees of Doordarshan; and
- (d) to direct the respondents to repatriate all the employees of All India Radio working in Doordarshan who have not exercised their option in favour of Doordarshan till the date the said options were taken by the respondents in accordance with the order of separation dated 5th March, 1976.

2. The facts of the case in brief are as follows.

The applicants initially joined the service in Doordarshan as Producer Grade II in the scale of pay of Rs.500-800 known as Staff Artists on contract basis upto the attaining of 58 years of age. The applicants were appointed on various dates between 1971 and 1973. The Staff Artists have been recognised by the respondents as regular Government servants w.e.f. 6th March, 1982.

3. Prior to 1st April, 1976, Television was part of All India Radio (A.I.R. Department) under the Ministry of Information & Broadcasting. However, the Staff Artists were separately recruited for All India Radio and Television. The pay-scales of the production staff in Television were better than those of their counterparts

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under the All India Radio till 1973, as will be seen from the following table:-

Doordarshan		All India Radio	
Category	Pay Scale	Category	Pay Scale
Production Assistant	Rs. 235-480	Production Assistant	Rs. 210-470
Producer, Grade II	Rs. 500-800	Assistant Producer	Rs. 280-570
Producer Grade I	Rs. 600-1000	Producer	Rs. 425-770

4. With effect from 1st April, 1971, on the basis of rationalisation of pay-scales of Staff Artists of All India Radio, both the categories of Assistant Producer and Producer were grouped as Producers and were given the same scale of pay as Programme Executive who were regular Government servants in the scale of Rs. 350-800. 10 per cent of the ordinary grade were put in the selection grade, i.e., 620-900. There was no such rationalisation of the pay-scales on the Television side.

5. The Third Pay Commission did not consider the case of the applicants on the ground that they were not regular employees of the Government. However, Government decided on 8th March, 1977 to revise the pay-scales of the Staff Artists w.e.f. 1st January, 1973 on the analogy of the Third Pay Commission's recommendations. The scale of pay of the applicants was revised from Rs. 500-800 to Rs. 650-1200. This is stated to be under challenge in O.A.-210/87. On the A.I.R. side, the pay-scale of the Producer was revised

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to Rs. 650-1200.

6. By order dated 5th March, 1976, Television was separated from A.I.R. w.e.f. 1st April, 1976. The Television was to be organised into a separate directorate general as an attached office of the Ministry of Information & Broadcasting. Consequent on the separation of Doordarshan from the A.I.R., the following decisions were taken with regard to the staff:-

- i) Regular Government servants, who have not specifically been recruited for the TV set-up but are working there, and are on the common cadre of Sound Radio and TV will be required to exercise their options, to declare whether they choose to return to the Sound Radio network. In the case of those who opt for the Sound Radio network, their positions in the TV network will be filled up and thereafter arrangements made to repatriate them. Until arrangements for the repatriation of staff are made, the staff will continue to remain in the TV set-up as per existing arrangements, without any deputation allowance.
- ii) The programme staff at the level of producer and above and all administration and Engineering staff will be recruited against regular civil posts. The rules of recruitment for all the posts will be sent by DG, Doordarshan (TVI), to the Ministry as soon as orders regarding staffing pattern of the TV Centres are issued.

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iii) Programme and production staff below the level of producer will be recruited on contract basis.

7. In 1979, the respondents framed the recruitment rules for Doordarshan employees. In accordance with these rules, the applicants were promoted to the post of Producer Grade I between various dates from 1981 to 1985.

8. In 1984, the respondents amended All India Radio Recruitment Rules For Group 'A' and Group 'B' posts, vide amendment dated 23.10.1984 (The All India Radio (Group 'A' Posts) Recruitment (Amendment Rules, 1984)). The salient provisions of the amended Rules are the following:-

(i) Staff Artists working in All India Radio and Doordarshan on contract basis who have opted to become Government employees, shall be screened by a Screening Committee to be constituted by the Union Public Service Commission for their appointment to posts in the regular programme cadre in the initial constitution. The Union Public Service Commission shall consider the suitability of the employees and recommend persons for appointment to the respective grades.

(ii) Staff Artists, after becoming Government employees, shall continue as a separate category and their inter se seniority shall be determined on the basis of their date of joining the post in the grade on regular basis.

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(iii) For the purpose of promotion, there shall be separate lists of seniority of officers of regular programme cadre and that of staff artists who have become Government employees. Promotion to the next grade from the two lists shall be done on quota basis, the ratio of which shall be based on the existing number of posts in each category on the date of holding of the Departmental Promotion Committee.

(iv) The merger of a staff artist who has become a Government employee, with the regular programme cadre shall be made only at the time of his promotion to the next higher grade in the programme cadre.

(v) The method of recruitment, age-limit, qualification and other matters connected therewith shall be as specified in the schedule to the Rules.

9. According to the amended Rules, the various posts of both All India Radio and Doordarshan were clubbed together. The respondents have also merged the seniorities of various classes for promotion to the next post both in A.I.R. and Doordarshan. This is stated to be the subject matter of challenge in OA-142 of 1987 (S.M. Haider and Others Vs. Union of India & Others) pending in this Tribunal.

10. On 18th March, 1988/22nd April, 1988, the respondents prepared a common seniority list/eligibility lists of Service officers, Producers Grade I/Producers (SG)/

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Producers Grade II/Reference Officers/Editors (Script)/Translators working in A.I.R./Doordarshan, for promoting them to the posts of Assistant Station Director which carries the scale of pay of Rs.2200-4000. According to the applicants, there cannot be any such combined eligibility list and that the amendment to the Recruitment Rules of A.I.R. are inapplicable to them. They argue that they cannot be promoted to either the same Grade or to the junior grade. According to them, Assistant Station Director carries the pay-scale of Rs.2200-4000. The applicants are also in the same pay-scale till their pay-scales are revised to Rs.3000-4500. The Fourth Pay Commission has, however, recommended to fix the pay-scales of the applicants in parity with their counterparts in the Films Division in the Ministry of Information & Broadcasting. This is stated to be the subject matter of C.A. 212/87 (Khalid Sultan Vs. Union of India) pending in the Tribunal.

11. The applicants have challenged the validity of the common eligibility list prepared by the respondents mainly on the following grounds:-

- (i) The seniority/eligibility of the employees working in two different departments cannot be merged for any purpose nor the employees of one department can be made to work in a different department as this would tantamount to change in service conditions of the respective employees.
- (ii) The posts available in the next higher grades in Doordarshan and A.I.R. cannot be merged/amalgamated for the purpose of filling up the post from the next below grades. The

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number of posts, the staffing pattern, the job requirements, nature of work, duties and responsibilities of the posts in A.I.R. and Doordarshan are different.

(iii) The recruitments/promotions in each department should be governed by separate rules and not by the same set of rules.

12. We have gone through the records of the case carefully and have heard the learned counsel for the applicant. Despite service of notice, the respondents did not enter appearance, nor did they file their counter-affidavit.

13. The common seniority lists/eligibility lists which have been impugned in the present proceedings, have been prepared pursuant to the amendment of the Recruitment Rules in 1984. Though the applicants have alleged in Grounds (10), (14) and (17) of the application that the said amendment is illegal, ultra vires, without jurisdiction, discriminatory and bad in law, they have not made any specific prayer for quashing the same. To our mind, there is nothing intrinsically illegal if the same recruitment rules made by the President under the proviso to Article 309 of the Constitution, were to apply to the officers working in two separate departments under the same Ministry of the Government of India. In the eye of law, it makes no difference if the employees of two departments are governed by the same Recruitment Rules or different Recruitment Rules. In the instant case, the employees of A.I.R. and Doordarshan who have opted to become Government servants, have been brought under the Recruitment Rules of A.I.R. by amending the same suitably, so as to govern the employees of A.I.R. and

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Doordarshan separately. This is a matter of legislative technique which cannot be faulted on any ground.

14. The question arises whether even after the amendment of the Recruitment Rules in 1984 mentioned above, they would be governed by the Rules of 1979 which were made to govern the recruitment of employees in the Doordarshan. We agree that both these Rules cannot be made applicable to the employees of Doordarshan simultaneously. In the facts and circumstances of the case, it would, however, be only reasonable to conclude that the earlier Rules of 1979 applicable to Doordarshan employees, have been impliedly repealed by the later Rules of 1984. We do not, therefore, find any force in the submissions made by the applicants in this regard.

15. As a result of the preparation of common seniority lists/eligibility lists, the chances of promotion of the employees of Doordarshan may have been diluted. This in itself will not justify the quashing of the impugned lists, as mere chances of promotion are not conditions of service (vide P. Ramakrishniah & Others Vs. Union of India & Another, J.T. 1989(1) SC 595). The respondents are entitled to amend the recruitment rules. No vested right or accrued right of the applicants has been taken away by the amendment of 1984 Rules.

16. As has been observed by the Supreme Court in *Kishori Mohan Lal Bakshi Vs. Union of India*, AIR 1962 S.C. 1139, "It is entirely a matter for the State to decide whether to have several different cadres or an integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause." In *Reserve Bank of India Vs. N.C. Paliwal*, 1977 SCC (L&S) 82, the Supreme Court observed

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as follows:-

".....it is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not competent to the court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The only enquiry which the court can make is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class."

17. In Bishan Sarup Gupta Vs. Union of India, 1974 S.C.C. (L&S) 506 at 518, the Supreme Court observed thus:-

".....this Court is not concerned with Government's policy in recruiting officers to any service. Government runs the service and it is presumed that it knows what is best in the public interest."

18. In V.T. Khanzode Vs. Reserve Bank of India, 1982 S.C.C. (L&S) 147 at 167, the Supreme Court observed as follows:-

".....Private interest of employees of public undertakings cannot override public interest and an effort has to be made to harmonize the two considerations. No scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these."

19. In matters of seniority, the Tribunal or court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority, so long as the competent authority has acted bona fide and acted on principles of fairness and fair-play (vide S.P. Shukla Vs. the State of U.P. & Others, 1986 (1) SCALE 1311).

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20. On careful consideration of the pleadings, we are unable to find any infirmity in the impugned common seniority/eligibility lists prepared by the respondents. The application is devoid of any merit and the same is dismissed.

There will be no order as to costs.

(C. Jain) 15/11/89
(P.C. Jain)
Administrative Member

(P.K. Kartha) 15/11/89
(P.K. Kartha)
Vice-Chairman (Judl.)