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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 27
T.A. No.

1986.

DATE OF DECISION 7.8.1986.

Shri Amrit Rao Shinde

Petitioner

Shri S.C.Gupta, Sr. Advocate

Advocate for the Petitioner(s)

with Shri Arvind Gupta.

Versus

Union of India

Respondent

Shri A.K.Ganguli,

Shri Arun Sinha

Shri Nilanjan Bose

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, 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. Whether to be circulated to other Benches? Yes

K.Madhava Reddy
(K.Madhava Reddy)
Chairman 7.8.86.

Kaushal Kumar
(Kaushal Kumar)
Member 7.8.86.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

11

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Advocate with Shri Arvind
Gupta, Advocate.

Versus

Union of India Respondent

Shri A.K. Ganguli
Shri Arun Sinha Advocate for the Respondent(s)
Shri Nilanjan Bose

CORAM:

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member

JUDGMENT

(Judgement of the Bench delivered by
Shri Justice K. Madhava Reddy,
Chairman,

In this Application under Section 19 of the
Administrative Tribunals Act, 1985, the Applicant calls in
question the appointment of the second respondent, as
Director General, All India Radio (D.G. AIR for short) and
prays for a direction that he be considered for the post
of Director General, AIR without further delay. The few
facts necessary to appreciate the contentions raised may
briefly
be noticed.

2. The applicant was appointed Deputy Director
General, All India Radio on May 7, 1979. The post of


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Additional Director General, All India Radio in the scale of Rs 2,500 - 2,750 was created on March 2, 1981. On the advice of the Department of Personnel and the Union Public Service Commission, Rules for recruitment to the post of Additional Director General were framed and notified on August 31, 1981 under which a. Deputy Director General with five Years' experience in the Grade was eligible for promotion to the post of Additional Director General. Neither the applicant nor any one else then possessed the requisite qualification for appointment to that post. Under those special circumstances, in relaxation of the Rules, the applicant was appointed as Additional Director General on August 24, 1982 and he took charge of the post on August 30, 1982.

3. Recruitment to the post of Director General, All India Radio was governed by the All India Radio (Recruitment of the Director General, All India Radio) Rules, 1963. The post of Director General, All India Radio fell vacant due to the retirement of Shri K.C. Sharma. Rules for recruitment to the post of Director General were amended on September 30, 1982 making inter alia the Additional Director General with three years' regular service in the said grade or post eligible for promotion as Director General. The second respondent herein was then the Joint Secretary in the Ministry of Information and Broadcasting and was asked to hold current charge



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of the duties of the post of Director General. He remained in charge of that post till January 31, 1983, when Shri S.S.Verma, an I.A.S. Officer was appointed to the post of Director General, A.I.R. Until March 31,1984 the post of Director General, Doordarshan was in the scale of Rs.2500-2750. The Government upgraded the scale and brought it on par with the Director General of All India Radio i.e. Rs.3000/- (Rupees three thousand). Fresh Rules of recruitment to the posts of Director General of All India Radio and Doordarshan were made and notified on February 27,1985 in GSR 103(E) Government of India, Ministry of Information and Broadcasting dated February 27,1985. Shri S.S. Verma who was holding the post of Director General, All India Radio was promoted as Secretary in the Department of Textiles and once again the post of Director General, All India Radio fell vacant on 14.2.1985.

4. The applicant who took charge as Additional Director General, All/India Radio on August 30,1982 had not put in the requisite qualifying service of three years in the Grade for being considered to the post of Director General, AIR which fell vacant on February 14,1985. Even before that date, the post of Director General, Doordarshan was filled in by appointment of Shri Harish Khanna on re-employment which was regularised under the Amended Rules of 1985. The second respondent who was then holding the post at the level of Additional Secretary, Ministry of Information and Broadcasting was appointed to the post for a

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period of six months with effect from March 4, 1985.

The appointment of the second respondent was to terminate on the afternoon of September 3, 1985.

The Applicant had by August 30, 1985 put in three years of service in the grade of Additional Director General, All India Radio well before six months term of Respondent No. 2 as Director General/ was to expire on September 3, 1985.

5. It is the case of the Applicant that although the petitioner was duly qualified to be considered for promotion to the post of Director General, All India Radio and should have been considered before any one else could be considered for appointment by transfer on deputation, the Applicant was not considered and the second respondent who was not qualified under the Rules was appointed by transfer on deputation. It is this appointment of the second respondent and the failure to consider the Applicant for the post of Director General, All India Radio that is called in question in this Application.

6. The All India Radio (Recruitment of Director General, All India Radio) Rules, 1963 as amended on February 27, 1985 called All India Radio and Doordarshan (Recruitment of Director General, All India Radio and Doordarshan) Rules, 1985 prescribe the method of recruitment and qualifications for the post of Director General, All India Radio/Doordarshan in the Schedule appended to the said rules which reads as follows:



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1. Director General, All India Radio/Doordarshan ^{2*} Name of post
 (1984) *Subject to variation dependent on work load No. of post (5)

General Central Service Group "A" Gazetted. Classification.

Rs. 3,000/- (fixed) Scale of Pay.

Selection. Whether Selection Post or non-
 Selection Post.

Not exceeding 50 years. Age limit for direct recruits.
 (Relaxable for Govt. Servants by 5 years in accordance with the instructions or orders; issued by Central Government. NOTE: The crucial date for determining the age limit shall be the closing date for receipt of Applications from candidates in India other than those in Andaman & Nicobar Islands and Lakshadweep.)

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Essential: (i) Degree from a recognised University or equivalent; (ii) 18 years experience in a supervisory capacity in educational, cultural publicity or professional Institution/organisation, including adequate general administrative experience with ability and capacity for organisation
 (3) Knowledge of India's Cultural heritage and of different forms of literary, cultural and artistic expressions in the country.
 (4) Knowledge of current affairs and contemporary thought. NOTE: 1: Qualifications are relaxable at the discretion of the Union Public Service Commission in place of candidates otherwise well-qualified *** Note 2:

Whether benefit of added years of service admissible under the Rule 30 of the Central Civil Services (Pension) Rules, 1972

Educational and other Qualifications required for direct recruits.

*** Note 2: The qualification regarding experience is/are relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to Scheduled Caste and Schedule Tribes if, at any stage of the selection, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them

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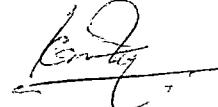
Whether age and Educational qualifications prescribed for direct recruits will apply in the case of promoters.

2 years.

(i) 50% by promotion failing which by transfer on deputation and failing both by direct recruitment. (ii) 50% by re-employment or transfer on deputation or direct recruitment, the exact method of recruitment to be decided in consultation with the UPSC on each occasion.

(6) Period of Probation, if any

Method of recruitment, whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods.



Promotion: Additional Director General, All India Radio/Doordarshan with 3 Years' regular service in the grade.

Re-employment: Retired Officers of all India-Services or Central Services group "A" who were working against the posts of additional Secretary to the Government of India or equivalent on the date of their retirement and possessing experience of the type mentioned in (ii) under Column 7.

Note: In the case of re-employment, such re-employment shall not continue beyond the age 62.

Transfer on Deputation: Officers of All India Services or Central Services Group "A" working in or eligible for appointment to the post of Additional Secretary to the Government of India and possessing experience of the type mentioned in (ii) under Column 7.

In case of recruitment by promotion/deputation/transfer, grade from which promotion/deputation/transfer to be made.

"(The Departmental Officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion. Period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same organisation/department shall ordinarily not exceed 5 years.)"

Group "A" Departmental Promotion Committee (for considering promotion and confirmation)

(i) Chairman/Member, Union Public Service Commission - Chairman

(ii) Secretary, Ministry of Information and Broadcasting - Member.

If a Departmental promotion Committee exists, what is its composition.

Consultation with the Commission necessary while making direct recruitment and selecting an Officer for appointment on re-employment.

Circumstances in which Union Public Service Commission is to be consulted in making recruitment.

* The Principal rules were notified vide G.S.R.No.1155 dated the 6--7--1963 and subsequently amended vide G.S.R.No.874 dated the 16--10--1982.

J. R. SINGH
SECRETARY.

SCHEDULE (Contd.)



15

7. It is clear from the rules extracted above that out of the two posts of Directors General, one of AIR and the other of Doordarshan one was to be filled in primarily by promotion if the other post was filled in by direct recruitment, re-employment or deputation. By the time the post of D.G., AIR fell vacant on 14.2.1985 Shri Harish Khanna had been appointed on re-employment as Director General, Doordarshan and his appointment was regularised under the amended rules. As per the Rules, the other post of the Director General, AIR was, therefore, to be filled in primarily "by promotion failing which by transfer on deputation and failing both by direct recruitment" as laid down in col. 10 of the Schedule. There is no dispute as regards this factual position. There is also no dispute that this post was not filled in by promotion but was filled in by transfer on deputation. This appointment was made on 10th December, 1985 by way of continuation of the earlier appointment of Respondent No.2 beyond 3.9.1985 upto 3rd March, 1987. Admittedly, by that date the petitioner who was Additional Director General had put in more than three years of service in the Grade and as such was fully qualified for being considered for promotion to the post of Director General, AIR. It is conceded in para 25 of the Reply that "when the vacancy of Director General, AIR became under consideration, there was only one regularly appointed Additional D.G., namely Shri Shinde" The rule requires that in such a situation this post should be filled in by promotion and only if the person qualified to be promoted is not available or found suitable and is not selected, then the question of considering the appointment to the post

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by transfer on deputation would arise. It was, therefore, obligatory for the respondents to have initially considered the Applicant for promotion before considering the continuation of the second respondent until 3.3.1987. That has not admittedly been done.

8. The action of continuing the appointment of the second Respondent is sought to be justified on the ground that when he was initially appointed on 4th March, 1985, the Applicant had not put in the requisite qualifying service of three years as Additional Director General and there being no person qualified for promotion, the second respondent was appointed by transfer on deputation. Although the Applicant has contended that even this appointment by transfer on deputation was illegal, we are unable to accept this contention. Neither the Applicant nor anyone else was qualified to be promoted as D.G., AIR in accordance with the Rules on that day. The method of promotion to the post of Director General, AIR had thus failed when the vacancy occurred in February, 1985. No exception can, therefore, be taken to the appointment by transfer on deputation instead of by promotion. Even so, whether the second respondent was qualified to be appointed even on transfer on deputation in February, 1985 and his appointment could be continued upto 3.3.1987 is another matter which we would consider later. So far as the Applicant is concerned, he cannot make a grievance that he was not considered for promotion. The grievance of the Applicant that he was not considered for promotion when the vacancy occurred in February, 1985 cannot be sustained. The continuation

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of the second respondent as Director General, AIR vide issued on Notification on 10.12.1985 upto March 1987, however, stand on a different footing. By August 30, 1985, the Applicant who had taken charge on August 30, 1982 had completed three years of service as Additional Director General, AIR and was thus fully qualified to be appointed as Director General, AIR by way of promotion. The excuse for not considering the Applicant as put forth in the reply has to be stated to be rejected. In paragraph 25 of the reply it is pleaded "when the vacancy of D.G., AIR became under consideration, there was only one regularly appointed Additional D.G., namely Shri Shinde and he had not completed the prescribed period of three years service on the date the proposals for appointment to the post of D.G. were made. Therefore proposal for the continued appointment of Shri Mathur for a further period was processed". This statement is not altogether incorrect; but it does not disclose the entire position correctly and leads one to the desired conclusion if not probed into. Under the Rules the relevant date with reference to which the position should have been examined is the date when the six months term of the second Respondent's appointment was to conclude. The fact that this question of continuation of the second respondent was taken up before the Applicant had put in three years of service can have no bearing on the question whether on the date when the post was to fall vacant, it should/promotion by be filled in by



75

transfer on deputation. Under the rules, as already stated, ~~unless~~ when the post is to be filled in, it has to be primarily filled in by promotion and only when the method of promotion failed, it could be filled in by transfer on deputation and when both these methods fail, by recruitment. When the initial appointment of the second respondent expired and the post fell vacant on 3.9. 1985, as the Applicant was fully qualified for being considered for promotion, the Rules did not permit the Respondents to consider appointment by transfer on deputation. Even if the proposal was initiated ^{entire} earlier, the position as on 3.9. 1985 when the post ^{clearly} would fall vacant, ought to have been presented to the Appointments Committee and considered. In other words, the Applicant who was duly qualified should have been first considered for promotion and that consideration under the rules, could only be by a DPC. Admittedly, this step had not been taken. Only if the DPC having considered him did not find him fit for promotion, the question of considering anyone else for appointment by transfer on deputation including the question of continuation of second respondent could have arisen. Presumably, this aspect was not even presented to the Appointments Committee. The appointment of the second respondent although stated to be by way of continuation, is still an appointment made on 10th December, 1985 so that he may continue without any break from 3.9. 1985. That the Applicant by that time was fully qualified for consideration for promotion was conveniently ignored. Merely because on the date the case was processed the Applicant was not qualified, he does not lose his right

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to be considered for promotion when he was fully qualified on the day the vacancy arose. The order appointing the second respondent on 10th December, 1985 and continuing him as Director General is, therefore, unsustainable and must be quashed. The bypassing of the Applicant was also sought to be justified on the plea "that even on 30.8.85 by which time Shri Shinde would have completed three years of service as Additional D.G. he had service of six years in the scale of Rs 2000 - 2250 and above. It was felt that he would have found it difficult to meet the job requirements of this very sensitive post." The defence again is wholly untenable. To hold that one should have put in more than three years as Additional D.G. to "meet the job requirements of the post of D.G.", a post which is described as sensitive by the Under Secretary to Government is to claim superior wisdom to the Legislative Authority which framed the Rules in exercise of the powers under the proviso to Art. 309 of the Constitution and cannot be countenanced.

9. So is the plea raised in paragraphs 10 and 11 of the Reply that the composite method of recruitment was followed and that para 3.12.5 of the Instructions of the Department of Personnel authorises it. The relevant portion of that para reads as follows:

"In cases where the field of promotion consists of only one post, the method of recruitment by "transfer on deputation (including short-term contract)/promotion is prescribed so that the departmental officer is considered alongwith outsiders."

10. Firstly this deals with "cases where the field of promotion consists of only one post". Here there are



two posts of Director General, AIR and Director General, Doordarshan. Hence these instructions have no bearing on the issue before us. But a far more formidable objection is that any such departmental instructions cannot override, not even modify the Rules framed under the Proviso to Art. 309 of the Constitution. Any umbrage under these instructions would not afford any protection to the appointment of second Respondent which is contrary to the Service Rules.

10. The next question that was canvassed before us and that would become relevant because the appointment of second respondent is being quashed and the first respondent would be required to fill in the post in accordance with the rules is : whether the second respondent was qualified to be appointed under the rules either in March, 1985 or later in December, 1985. The appointment of the second respondent being by way of transfer on deputation, he is required to possess the qualification mentioned in col. 7 of the Schedule extracted above. According to the said rules, a person to be appointed by transfer on deputation must be an officer of All India Service or Central Service Group 'A' and such an officer should be working in or be eligible for appointment to the post of Additional Secretary to the Government of India. The second Respondent possessed this qualification. The further qualification prescribed is that such an officer should be possessing experience of the type mentioned in clause 2 under


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col. 7 which reads as under:

"18 years experience in a supervisory capacity in educational, cultural publicity or professional Institution/Organisation, including adequate general administrative experience with ability and capacity for organisation".

11. While it is contended for the petitioner No.2 that the Respondent/does not have this experience, the respondents have sought to substantiate that he does possess the qualification envisaged under col. 11 of the Schedule in respect of appointment by transfer on deputation. In their counter affidavit the various positions held by the second respondent during the course of his service are enumerated as under:

1956 : Joined Indian Administrative Service (Madhya Pradesh Cadre)

1967 : Managing Director, Tribal Cooperative Development Corporation where his duties included development of small-scale industries by organising infra-structure, raw material and marketing, promotion of the development of handlooms and handicrafts industry and establishment of co-operative movement in the tribal area.

1969 : Deputy Secretary in Cabinet Secretariat.

ii) Later, Director in-charge of Manpower and Employment.

August 1972 : Secretary to Chief Minister, to January, Government of West Bengal. 1973

January 1973 : Chief of Division in-charge of State Plan and Multi-level Planning Division in the Planning Commission. Later, appointed as Joint Secretary to the Government of India and continued in the same Division.

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May 1977 : Hill Commissioner, Secretary, Planning, Finance, PWD, Power, Food and Civil Supplies in the Government of Manipur. Later, Additional Chief Secretary and Chief Secretary to the Government of Manipur.

July 1980 : Joint Secretary in the Ministry of Information and Broadcasting dealing with Information Media viz., Cinema, Press, DAVP and with the Broadcasting Media, namely, AIR and Doordarshan.

October 1983 : Appointed as Additional Secretary to the Government of India and posted as Secretary, UPSC.

12. The second Respondent has been in government service for more than 18 years but what the rules require is 18 years experience in a supervisory capacity in educational, cultural publicity or professional Institution/Organisation. This experience should also include "adequate" general administrative experience". An IAS officer who has been working for that long, would undoubtedly be having "adequate general administrative experience". But the rule further requires that such experience should be "in educational, cultural publicity or professional institutions/organisations". The qualifications stated in the additional affidavit do not disclose that the second respondent had experience "in educational, cultural publicity or professional institutions/organisations". It was, however, argued that the experience possessed by the second respondent as an administrative officer would be sufficient to hold that he fulfills the qualifications laid down in col. 11 for it does not lay down that the person sought to be appointed by transfer on deputation



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should have the same qualification but prescribes only "of the type" mentioned in col. 7. Even so, it should be in educational, cultural publicity or professional institutions/organisations. The second Respondent had wide experience but it is not in any of these institutions/organisations. He does not, therefore, fulfil the requirement as to qualifications laid down under the said rules. Even if his experience as a Joint Secretary in the Ministry of Information and Broadcasting is deemed to be experience in the organisation of the type referred to in col. 11 of the Schedule to the Rules, his experience in that organisation is not of 18 years' duration; it is only of three years and a few months.

13. A combined reading of Columns 7 and 11 would disclose the legislative intent that the requirement of professional experience of 18 years including general administrative experience was prescribed for outsiders and not for departmental candidates. The reason for this distinction is obvious. For promotion only an Additional D.G. of AIR/Doordarshan with three years service in the grade is eligible for consideration. By that time he has already the requisite exposure and experience of his own organisation which he would head on promotion. The Rule making Authority in its wisdom thought that outsiders only with ~~at~~ longer experience in certain specified field, though strangers to AIR/Doordarshan could be thought of. As the second Respondent did not fulfil the qualifications prescribed by the rules either on the date he was initially appointed

in March, 1985 for six months or on 10th December, 1985 when that appointment was extended upto March, 1987, his appointment cannot be considered to be valid. The rules also do not vest in the respondents any power to relax them. Only in the case of direct recruitment, as laid down in Note 1, the qualifications are relaxable at the discretion of the U.P.S.C. and none else in case of candidates otherwise well qualified and as laid down in Note 2, the qualifications regarding experience are relaxable at the discretion of the UPSC only in the case of candidates belonging to Scheduled Castes and Scheduled Tribes, if, at any stage of the selection, the Union Public Service Commission is of the opinion that sufficient number of candidates, from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them. Even this limited power of relaxation vested under the Rules is not permitted to be exercised in case of appointments by transfer on deputation. Under these Rules, there is no general power of relaxation vested in any authority to exempt whatsoever. Power is vested in the Central Government to the limited extent mentioned in ^{the} proviso to Rule 5 of the 1963 Rules which deals with disqualifications. Once recruitment to a post is governed by the rules framed under Article 309 of the Constitution, the recruitment has to be in accordance with the rules; any appointment made in derogation of the said rules would be illegal and unsustainable. In this view of the matter, the

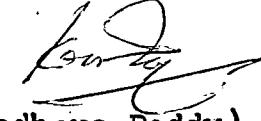


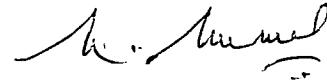
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appointment of the second respondent is quashed and the respondents are directed to fill up the post of the Director General, AIR in accordance with the Rules and consider the case of the Applicant who is duly qualified, under the rules, for promotion.

14. This Application is accordingly allowed but in the circumstances we make no order as to costs.


(K. Madhava Reddy)
Chairman 7.8.1986


(Kaushal Kumar)
Member 7.8.1986