

- 24 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH

O.A. No. 300/86 & 318/86 198
T.A. No.

DATE OF DECISION: 30.3.88

Smt. Chitra Narayan _____ Petitioner
Shri I.S. Bhama and another
Mr. Ashok Marwaha & Mr. S.R. Setia _____ Advocate for the Petitioner(s)

Versus
Union of India and others _____ Respondent
Shri P.H. Ramachandani _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE J.D. JAIN, VICE-CHAIRMAN

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ?

(Birbal Nath)
A.M.

(J.D. Jain)
V.C.

Chitra Narayan

Versus

Union of India & Ors.

....Petitioner

....Respondents.

For the Petitioner : Mr. A.K. Marwaha with Ms. S. Roy and
Ms. S. Bhattacharya.

For the Respondents: Mr. P.P. Khurana
Nos. 1, 2 and 9.

For the Respondents: Mr. R.L. Tondon with Mr. A.K. Tondon
Nos. 3, 5, 6, 7, 8, 10, 11 and 12.

For the Respondents: Mr. Baldev Malik
No. 4.

Regn. No. 318/86

Shri I.S. Bhama and another
Versus

....Petitioners

Union of India and others

....Respondents.

For Petitioners : Mr. Ashok Marwaha, Advocate
Mr. S.R. Setia, Advocate

For Respondents : Mr. P.H. Ramachandani for the respondents.

CORAM:

HON'BLE MR. JUSTICE J.D. JAIN, VICE-CHAIRMAN
HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

...

JUDGMENT:

(Judgment of the Bench delivered by
Justice J.D. Jain, V.C.)

We propose to dispose of both the above mentioned
applications as common questions of law and fact are
involved therein. Indeed O.A.318/86 is for all intents
and purposes an offshot of O.A.No.300/86 although some
what different relief is sought.

2. The facts giving rise to these applications are
that the Broadcasting Organisation of the All India Radio
was employing two categories of employees for their
broadcasting programme. One of these categories was
called the Programme Staff which comprised permanent
Government servants with varying designations and scales
of pay. The other branch was called Staff Artists who
were engaged in All India Radio on contracts of one to
five years duration. Of course, they could continue in

employment till they attained the age of 58 years.

Different fee scales were prescribed for different categories of Staff Artists. They constituted a sort of professional class, comprising as they did, writers, musicians and dramatists etc. The petitioner, Smt. Chitra Narayan in O.A.No.300/86, joined service of All India Radio as a Producer (Staff Artist) English Features Unit) on 13.7.72. She was promoted as Deputy Chief Producer (Central English Feature Unit) w.e.f. 7.5.76. The said post carried the scale of Rs.1100-1600. Still later, she was promoted as Chief Producer on 15.7.81 in the scale of Rs.1300-1700. In early 1982, the Ministry of Information and Broadcasting took a policy decision to constitute a unified service in the All India Radio by absorbing the erstwhile Staff Artists into regular Government service with the idea of eventually integrating them with the regular Programme Staff. Accordingly, it circulated letter dated 3.5.82, (Copy Annexure 'H' in O.A.300/86) to all the concerned Staff Artists of All India Radio and Doordarshan intimating to them the scheme of converting Staff Artists of the Directorate General of All India Radio into Government Servants. Part-I of the said letter concerned certain types of Staff Artists, for instance, Music Composers, Instrumentalists, Dramatists etc. who were to be re-designated as "Artists" ^{other} whereas Part-II pertains to ~~the~~ Staff Artists who were to be treated as Government servants w.e.f. 6th March, 1982 provided they opted for the same and were considered suitable having regard to their qualifications, experience and record of service by a screening committee for absorption as Government servants and they were to

27

be eventually fitted into corresponding scales of regular civil establishment. Options of the Staff Artists were invited vide letter dated 10.6.82 of the Directorate General A.I.R. Later vide letter dated 29.4.83. They were called upon to furnish their respective bio-data in the prescribed proforma. The petitioner supplied her bio-data on 17.5.83 pursuant to the aforesaid letter.

3. The President of India later on framed rules under provision to Article 309 of the Constitution of India in this behalf called All India Radio (Group-A Posts) Recruitment (Amendment) Rules, 1984 (for short "the Amendment Rules") which were duly notified in official gazette dated 23rd October, 1984. These rules envisaged appointment of Staff Artists as regular Government servants on certain terms and conditions which, *inter alia*, provided for screening of the Staff Artists who had opted to become Government employees and had not attained the age of 58 years on January, 1982 by a Screening Committee to be constituted by the U.P.S.C. After the screening of the various Staff Artists by the Screening Committee, the Government issued order dated 28th May, 1986 accepting the options exercised by the Chief Producers (fee scale of Rs. 1300-1700) and declaring them as regular temporary Government servants w.e.f. 6th March, 1982. It will be pertinent to notice that the petitioner had originally filed the aforesaid O.A.300/86 on 6.5.86 i.e., before the issuance of order dated 28.5.86 (Annex. A/) but she

amended the application incorporating therein the further relief sought qua the said order.

4. Jasdev Singh, respondent No.4, too joined All India Radio as a Producer (Staff Artist -Sports Discipline) on 2.12.65. He was promoted as Deputy Chief Producer in the scale of Rs.1100-1600 w.e.f. 29.12.73. However, there was no post of Chief Producer in the Sports Discipline of the A.I.R. but in 1981 two posts of Directors (one called Director of Sports in AIR and the other called Controller of Sports in Doordarshan) in the scale of Rs.1500-2000 were created and respondent No.4 was appointed as Director of Sports on 21.12.81, vide letter dated 4.2.82 (Copy Annexure R-3) to the counter filed by respondent No.4) ~~as Director of Sports~~ in the scale of Rs.1500-2000. He too opted for absorption as a permanent Government servant and likewise orders for his absorption w.e.f. 6.3.82 were issued by respondent on 28.5.86.

5. S/Shri S.Krishnan, respondent No.3, A.S.Greywal, respondent No.5, N.Sikdar respondent No.6, M.P. Lele respondent No.7, S.C. Garg, respondent No.8, Shiv Shanker respondent No.10, S.K. Kapur respondent No.11, A.S. Tatari respondent No.12, K.P. Pande respondent No.13 and K.K. Nayyar, respondent No.14, were already serving in All India Radion as Station Director (Ordinary Grade) having been appointed during the period 1975 to 1978 as reflected in Annexure R-1 and R-II, the affidavit of Shri Raghuram, Director of Programmes (Personnel) dated 3.7.87. The scale of the post was Rs.1100-1600. However, they were promoted and appointed as Station Director (Selection Grade) in the scale of Rs.1500-2000 w.e.f. 18th March, 1982. Some

- 28 -

of them viz., respondents 10 to 14 were later on promoted to the Deputy Director General which carried the pay scale of Rs.2250-2500 on various dates during the years 1983 and 1984. The other respondents, viz., 3 to 8 were being considered for promotion to the said post in April 1986 when the petitioner having got a scent of the same rushed to file the O.A.300/86 seeking an interim injunction restraining respondents 1 and 2 from promoting them to the posts of Deputy Director General.

6. The principal relief sought by the petitioner in the instant application is that she having been validly absorbed as a Government servant w.e.f. 6th March, 1982 ^{to} she became entitled to promotion first to the post of Station Director (S.G.) and thereafter as Deputy Director General in due course along with respondents 3 to 8 and 10 to 14. In the process, she has challenged the vires of various provisions of the Amended Rules as being in contravention of the letter of offer dated 3.5.82 which, according to her, furnishes the sole basis for her subsequent ^{to} career and anything contained in the Amended Rules which is contrary or inconsistent with the said letter must be struck down as illegal and void. She has also invoked the doctrine of promissory estoppel with a view to establish the supremacy of letter dated 3rd May, 1982 as a document of binding nature on both the parties from which her rights to absorption and future promotion as a Government servant emanate. She has vehemently urged that the Programme Staff Deputy Chief (Station Director (OG) and ~~Programme~~ Producer (Staff Artists) had a common grade viz., Rs.1100-50-1600. The next promotional avenue for the Station Director (OG) is the post of Station Director (SG) which carries the scale of Rs.1500-2000, while that of Deputy Chief ^{to} Producer is to the post of Chief Producer which carries

- 6 -

the scale of Rs.1300-1700. Since respondents 3 to 8 and 10 to 14 with the solitary exception of respondent No.4 were all ~~ranked~~ in the grade of Rs.1100-1600 ~~and~~ at the time of her absorption in Government service w.e.f. 6.3.82 all of them ranked junior to her. As for Jasdev Singh respondent No.4 her contention is that it was a case of fortuitous promotion inasmuch in 1981 in an unprecedented manner move the Sports Unit of A.I.R. which did not have any post of Chief Producer and the post of Deputy Chief Producer was the highest with them created two posts of Directors, viz., Direct of Sports in A.I.R. and Controller of Sports in Doordarshan in the grade of Rs.1500-2000 in view of the ensuing Asiad Games and therefore his appointment as Director of Sports on 21.12.81 was just ~~any~~ appointment against an ex-cadre post especially when the same was on ad hoc basis. Therefore, he too was junior to her on 15.7.81 when she was appointed as Chief Producer in a scale higher than that of respondent No.4. Thus, according to her, the promotions of respondents 3, 5 to 8 and 10 to 14 having been wrongfully ~~promoted~~ ignoring her just and rightful claim for promotion as Station Director (SG) aside w.e.f. 18.3.82 are liable to be set~~aside~~ or at any rate she is entitled to be promoted w.e.f. the aforesaid date as Station Director (SG) along with respondents 3, 5 to 8 and 10 to 14. As a necessary corollary she was entitled to be considered for promotion to the post of Deputy Director General in 1986 when the respondents 3 to 8 were considered and that not having been done she was entitled to be promoted to the post of Deputy Director General w.e.f. 23.1.87 from which date respondents 3 to 8 have been promoted as Deputy Director General.

8. The claim of the applicant, Chitra Nayyan, to seniority over respondents 3 to 8 and 10 to 14 and for that matter her contention that she must be deemed to have been promoted to the higher post from the dates the said respondents were promoted has been vehemently contested by the respondents. Likewise, her contention that respondent No.4 was promoted against an ex-cadre post or that his appointment was fortuitous one is strongly refuted by the respondents. Their contention precisely is that she could not be considered for promotion to any higher post till the Amendment Rules came into force and thereafter, she could be considered for promotion in conformity with the said Rules and not otherwise. It may be pertinent to notice here that under the Amended Rules the posts of Chief Producer and the Deputy Chief Producer have been clubbed together along with the post of Station Director(OG) (viz. Rs.1100-50-1600) and that constitutes one of the main grievances of the petitioner because in that event she has first to be promoted as Station Director (SG) and only then she can claim next higher post as Deputy DirectorGeneral in her own turn. We shall now proceed to take up the various points in issue arising in this case one by one.

9. The very first question and perhaps the most crucial question is regarding the absorption of the petitioner as a Government servant w.e.f. 6.3.82 pursuant pertaining to letter dated 3rd May, 1982 (Annexure 'H') which, according to her, constitutes the Magna carta of her rights. For a proper appreciation of the whole controversy in clear perspective, it will be necessary to set out the salient features of Annexures 'H', 'F' and 'A' (supra). Part II of Annexure 'H' is extracted

ready
below for reference:-

"After carefully considering the question of converting the staff artists of All India Radio/ Doordarshan as Government servants; the Government have taken the decisions detailed in the following paragraphs:-

I. xxx xxx xxx

II. STAFF ARTISTS TO BE TREATED AS GOVERNMENT SERVANTS:

6. The categories of staff artists of All India Radio and Doordarshan on long term contracts not covered under those mentioned in para 2 above and who have not attained the age of superannuation, i.e. 53 years as on 28.2.1982, will be treated as "Government Servants" and the conditions of service applicable to the following conditions:-

(a) The Staff Artists will be required to exercise an option in writing within a period of two months to be invited by Director General, All India Radio and Director General, Doordarshan indicating their willingness or otherwise to be treated as "Government servants". The option once exercised will be final.

(b) Such of the Staff Artists, who opt to be treated as Government Servants will be screened by duly constituted Screening Committees. The Screening Committees will take into account their, (i) qualifications, (ii) experience and (iii) record of service and ascertain whether they are fit to be treated as Government servants. The Committees will also assess their suitability for the purpose of fitting them into corresponding scale of the regular civil establishment.

7. The Screening Committee for placement/fitment in Group 'A' and Group 'B' posts will be presided over by a nominee of the Union Public Service Commission. For Group 'C' posts, the composition of the Screening Committee will be (i) Deputy Director General (Administration), (ii) Deputy Director General (Programmes), (iii) Director of Programmes (Personnel) in All India Radio and (i) Deputy Director General (Programme and Training), (ii) Deputy Director General (Programmes) and (iii) Controller of Programmes in Doordarshan.

8. Those staff artists who are found fit to be treated as "Government Servants", will be entitled to the same pensionary benefits as are applicable to Government servants in the regular service. They will, however, not be entitled to any special benefits as at present available to them as Staff Artists.

- 9 -

9. Those staff artists who do not elect or are not found fit to become 'Government Servants' or those who have attained the age of 58 on or before 28.2.1982 and have been allowed to continue on their present contractual terms will be allowed to continue under the present terms and conditions of service as per their respective contracts. They will not, therefore, be entitled for pension.

10. The conditions of service as indicated in the above paragraphs for staff artists to be placed in either of the categories, i.e., 'Artists' or 'Government Servants' would be given effect to from 6th March, 1982."

10. It will also be pertinent to reproduce below some of the salient provisions of the Amendment Rules:-

"4-A". Appointment of Staff artist as regular Government employee:-

(1) The appointment of staff artist working in All India Radio and Doordarshan on contract basis to that of regular Govt. employee shall be governed by the following procedures, namely:-

- (a) a staff artist who has opted to become a Government employee and has not attained the age of 58 years on the February, 1982 shall be screened by a Screening Committee to be constituted by the Union Public Service Commission his appointment to the post in the regular programme cadre in the initial constitution.
- (b) the Screening Committee shall consist of the Chairman or a Member of the Union Public Service Commission, who will be the President and not more than two representatives not below the rank of Joint Secretary to be nominated by the Ministry of Information and Broadcasting who shall be members thereof;
- (c) the Screening Committee shall, after taking into account the qualification, experience and record of service of every person prepare a list of such persons considered suitable for placement/ fitment in the appropriate grade in the regular Programme cadre and submit the name to the Union Public Service Commission for their recommendation;
- (d) the Union Public Service Commission shall, on receipt of such list, consider the suitability of persons included in the list and forward its recommendation for appointment of such persons found suitable to the respective grades to the Ministry of Information and Broadcasting;

Provided that a person who is found unfit to become a Government employee shall be allowed to continue under the same terms and conditions of his contract.

- 10 -

- (e) 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 in the post in the grade on regular basis;
- (f) for the purposes 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 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**;
- (g) for considering an officer for promotion all persons senior to him in the grade shall also be considered provided they have successfully completed their period of probation irrespective of the fact whether they have rendered the prescribed length of service in the grade;
- (h) 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."

11. Another significant fact which needs to be noticed at this stage is that in the Schedule-I the post of Chief Producer and Deputy Chief Producer who were formerly Staff Artists have been clubbed with Station Director (OG) which carries the scale of Rs.1100-50-1600. Further the total number of posts of Station Director (OG) under the Schedule is stated as 98 which includes 13 posts of Staff Artists. The said number is of course subject to variation dependent on workload. As for Station Director (OG) the number of posts is 37 inclusive of two posts of Staff Artists. This constitutes a promotion/avenue for Station Director (OG) with 5 years regular service in the grade.

12. We may also notice here that office order No.14/86-B(A) dated 28th May, 1986 vide which the petitioners and other Chief Producers have been declared as regular temporary Government servants w.e.f. 6th March, 1982. The relevant

portions of the said letter are extracted below for ready reference:-

" In pursuance of Ministry of Information and Broadcasting's letter No.4501/26/80- B(A) dated the 3rd May, 1982 and consequent upon the acceptance of the options exercised by the following Chief Producers (Fee scale Rs.1300-1700) (Staff Artists), the President is pleased to declare them as regular temporary Government servants with effect from 6th March, 1982:-

<u>S.No.</u>	<u>Name</u>	<u>Designation</u>	<u>Office</u>
1.	Shri Satish Bhatia	Chief Producer	DG: AIR
2.	Shri Satyendra Sharat	-do-	-do-
3.	Shri Chitra Narain	-do-	-do-
4.	Shri A.V. Jagirdar	-do-	-do-

2. Consequently the contracts entered into with them as Staff Artists will stand terminated and all the existing rules/regulations including pensionary benefits, the age for retirement etc. as applicable to the regular civil Government servants, will be applicable to them in lieu of the existing conditions of service as Staff Artists.

3. The posts of Staff Artists which are held by them as mentioned above are hereby converted into civil posts with effect from 6th March, 1982.

4. These posts shall be treated to have been created as temporary posts w.e.f. the effective date and upto 28.2.1987 to be converted into permanent posts in due course in accordance with the prescribed procedure."

13. On a plain reading of this letter, it is obvious that the posts of Staff Artists already held by them including the petitioner were converted into civil posts w.e.f. 6th March, 1982. Thus, the petitioners became Government servants holding a civil post w.e.f. 6th March, 1982. Further, all the existing rules/regulations including the pensionary benefits, the age of retirement etc. as applicable to the regular civil Government servants, were made applicable to them in lieu of the existing conditions of service as Staff Artists which were contractual in nature. However, the grievance of the petitioner is that

- 12 -

neither letter dated 28th May, 1986 nor the amendment rules notified on 23rd October, 1984 in terms confer on her the full benefits which would have accrued to her by the promise contained in letter dated 3rd May, 1982 (Annexure 'H') if fulfilled in letter and spirit. In other words, she claims that she ought to have been considered for promotion as Station Director (S.G.) w.e.f. 18th March, 1982, viz., from which the date ~~the~~ respondents 3,5 to 8 and 10 to 14 were promoted althoggh they were junior to her at the time of promotion. So, we have to examine this aspect of the matter at some length.

14. The doctrine of 'promissory estoppel' is now well settled and well defined on the authority of a catena of judicial decisions including those of the Supreme Court in Union of India V. Indo-Afghan Agencies Ltd.,: (1968) 2 SCR 366, Motilal Padampat Sugar Mills Vs. State of U.P.: AIR 1979 SC 621 and Union of India and others Vs. Godfrey Philips India Ltd.: (1985) 4 S.C.C. 369. The legal position as regards the doctrine of promissory estoppel has been enunciated, as summed up by the Supreme Court in the last mentioned case, as under:-

"The doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter-position of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the

parties. The doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. This doctrine is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of this doctrine."

Applying the criteria laid by the Supreme Court in these judgments there can be no room for doubt that the respondent-Union of India did make a clear and unequivocal promise to the Staff Artists to convert them into Government servants ~~xxd~~ vide Annexure 'H' and the same was intended to effect legal relationship of a different nature which was to arise in future. The said proposal was accepted by the petitioners by exercising an irrevocable option for being absorbed into Government service. Hence, it was obligatory on the respondent-Union of India to honour the promise or in other words, it was estopped from turning round and dishonouring the said promise. ~~OMKSSYX~~ It must, therefore, be said in all fairness to the Union of India that it did honour its commitment vide office order dated ⁱⁿ 28th May, 1986 which/term refers to their letter dated 3rd May, 1982 (Annexure-H) as also to the acceptance of option exercised by the petitioner to become a regular Government servant. Indeed, it was by virtue of the promise contained in Annexure-H that the petitioner was absorbed as a Government servant with retrospective effect, viz., 6th March, 1982 and the post held by her earlier as a Staff Artist was converted into a civil post w.e.f. 6th March, 1982. In I.S. Bhama's case it was canvassed on behalf of the petitionerstherein that the conversion of Staff Artists who were government employees on purely contractual basis into Government servants with retrospective effect

- 14 -

was bad in law inasmuch as order dated 28th May, 1986 which was purely of administrative nature could not have been made with retrospective effect. It was also urged with considerable fervor that the petitioner and for that matter, Jasdev Singh, the contesting respondent ~~themselves~~ in I.S. Bhama's case had opted for becoming a Government servant of their own volition and therefore, they were not bound by the terms and conditions laid down in the Amendment Rules notified on 23rd October, 1984. The thrust of the argument is that there was no promotional avenue whatsoever either for the petitioner or for Jasdev Singh as Staff Artist and therefore, the question of their altering their position to their detriment by opting for absorption as Government servants did not arise. In other words, they would not have been better off had they not opted for absorption in government service. However, this argument of the petitioners in I.S. Bhama's case is simply fallacious inasmuch as it ignores the basic equitable and that considerations underlying the doctrine of promissory estoppel ~~the~~ prejudice or detriment to the party ^a who proceeds on the basis of the promise is not ~~the~~ sine qua non for promissory estoppel to operate. As observed by the Supreme Court in M.P. Sugar Mills (supra) :-

"It is not necessary in order to attract the applicability of the doctrine of promissory estoppel, that the promise, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. This position was impliedly accepted by Denning, J., in the High Trees Case when the learned Judge pointed out that the promise must be one "which was intended to create legal relations and which, to the knowledge of the person making the promise was going to be acted on by the person to whom it was made and which was in fact acted on. If a promise is "acted on", "such action, in law as in physics, must necessarily result in an alteration of position".

15. That being the correct legal position, we are of the view that the respondent-Union of India was under a legal duty to honour its commitment to the petitioner and for that matter, other staff artists who had opted for absorption as permanent Government servants. In this view of the matter, therefore, order dated 28th May, 1986 although retrospective in operation does not suffer from any legal infirmity as it ~~was not~~ in letter dated 3rd May, 1982 (Annexure 'H'). Surely, the Government had the requisite power to effect ~~the~~ reforms in the personnel cadres of All India Radio with a view to improve the service conditions of Staff Artists who were feeling of being accorded a step-motherly treatment because ~~of~~ the programme staff having dominant position in the organisation ~~had~~ an edge over them in some respects. As held by the Supreme Court in Col.A.S. Sangwan Vs. Union of India and others: (1980)2 SLR 1, the

16. Nothing has come on record of this case to impute mala fides or motives to the respondent-Union of India in framing a new policy to convert the erstwhile Staff Artists into Government servants, rather as already observed, the main object in doing so was to ameliorate and improve the service conditions of the Staff Artists whose conditions of service, especially precarious nature of ~~enviable~~ tenure which was contractual, were far from ~~enviable~~ and they were feeling sorry over the same. So an integration of the two wings of the A.I.R. Organisation was sought to be conducive to better and efficient working of the organisation ~~good~~. Hence, respondent-Union of India simply made its promise and as such order dated 28th May, 1986 cannot in any manner be faulted with.

17. The more crucial point however is whether on the terms and conditions embodied in the proposal 'Annexure 'H' it can be justifiably inferred that order dated 28th May, 1986 had the effect of merging/integrating the erstwhile staff artists into the corresponding cadres of varying designations in the All India Radio Group 'A' posts so as to entitle them to promotion into higher echelons of service. An analytical examination of letter dated 3rd May, 1982 does not persuade us to hold so as all that it promises on its plain language was that the conditions of service applicable to Government servants would become applicable to them subject to the conditions specified therein. Of course, it further stipulated that the Screening Committee would assess ~~on~~ their suitability taking into account their (1) qualifications, (2) experience and (3) record of service and then ascertain whether they were fit to be treated as Government servants. Further the Committee was to assess their suitability for the

purpose of fitting them into corresponding scales of the regular civil establishment. Hence, it clearly laid down certain conditions precedent for ultimate absorption of the Staff Artists into regular civil establishment of All India Radio. So the question of their being merged or integrated into corresponding cadres of the All India Radio with immediate effect, i.e., with effect from the date of their conversion as Government servants did not arise. Indeed, the Government had yet ~~laid~~ ^{to} down the norms and the procedure for screening of the Staff Artists. Further, it was incumbent on them to suitably amend the All India Radio (Group 'A' Post) Recruitment Rules, 1963 which were then in vogue and which governed the service conditions including the requisite qualifications and the method of appointment by direct recruitment or promotion etc. in order to make them eligible ~~for appointment~~ for fitment/promotion in the ^{what} to corresponding regular cadres of All India Radio and this is precisely ^{the Government} notification of India did by framing the amendment rules by ~~letter~~ dated 23rd October, 1984 (Annexure 'H'). Thus, the only effect of letter dated 28th May, 1986 was to transform the erstwhile Staff Artists into regular civil Government servants and make the ~~extant~~ rules/regulations (including as pensionary benefits the age of retirement etc) ^{as} were applicable to the regular civil Government servants to them in lieu of the existing conditions of service as Staff Artists. So we have to look into the existing rules and regulations which will naturally include the amendment rules to ascertain the terms and conditions of the service and their fitment in the corresponding scales of regular cadres in the All India Radio. In

otherwords, the Amendment Rules having been expressly made prospective in operation cannot be construed as conferring any benefit of fitment/merger/integration of the staff artists into the corresponding regular scales of service prior to 23rd October, 1984 when they came into force.

17. Significantly, the letter (Annexure 'H') which constitutes pivotal basis of the claim to promotion sought by the petitioners in this case itself was issued on 3rd May 1982, i.e., much after 18th March, 1982 with effect from which respondents 3, 5 to 8 and 10 to 14 were promoted as Station Directors (SG). So, the latter had already acquired secured/ vested rights in the cadre of Station Director (SG) of the All India Radio, even before the petitioner had exercised her option. No doubt, the petitioner and for that matter other staff artists mentioned in the said letter became Government servants holding civil posts w.e.f. 6th March, 1982 but that would not mean that they had any pre-emptive or overriding claim to be considered for promotion to the post of Station Director (SG) when they were not even members of the regular establishment of the All India Radio, muchless being eligible for promotion to the said post. The eligibility criteria laid down in the All India Radio Group 'A' Recruitment Rules, 1963 had to be satisfied before any one of them could claim to be considered for promotion to the post of Station Director (SG). The mere fact that the petitioner was having a higher scale of pay would not per se have entitled her to such considerations in the absence of her fitment in the corresponding regular grades of the establishment.

18. The learned counsel for the petitioner has canvassed with great fervor that Annexure 'H' having been issued by the respondent-Union of India in exercise of the power under Article 309 of the Constitution of India was statutory in nature and even if it had not been issued under Article 309 it had a statutory flavour because the object and purpose of the order was to enforce the policy of converting erstwhile staff artists into permanent government servants and eventually integrate them into the corresponding cadres of corresponding status. Reliance in this context is strongly placed on certain observations made by the Supreme Court in State of U.P. and another Vs. Dr. M.J. Siddiqui and others 1980(1) SLR 868. In that case the State of U.P. had formerly two Medical Services consisting of members serving ~~in~~ in the State, the senior service was called Provincial Medical Service and the other Service was known as Provincial Medical Service (Subordinate Service). The former was a gazetted service carrying ~~in~~ a higher scale of pay than the latter which was a non-gazetted service with lower scale of pay. In 1945, the Government of U.P. framed United Provinces Medical Service (Men's Branch) Rules, which 1945 were applicable to P.M.S. only. However, in 1964 the Government decided to have one Medical Service and with this object in view ~~of~~ vide order dated 2.11.64 the Government merged the two services namely, P.M.S.(I) and P.M.S.(II) w.e.f. 1.11.64. The said order abolished the distinction between P.M.S.-I and P.M.S.II and the two Services were constituted into one P.M.S. (men and women). However, while merging the two Services into one the Government did not meant to fix the inter se seniority of the officers of the two erstwhile services. It was only in February 1965 that the Government laid down

the rules for fixation of inter se seniority. It was, therefore manifest that during the ~~interregnum~~, i.e.

November, 1964 to February 1965, the rules of 1945 were ^{unified} inapplicable so far as the Service was concerned. It was in this context that the Supreme Court observed:-

"It was therefore rightly contended by the appellants and in the absence of any such provisions in the order which was also passed under Article 309 of the Constitution and was, therefore of a statutory character or at any rate had a statutory flavour the Rules, 1945 could not be applied to the situation as on 31st October, 1964".

19. We failed to understand how these observations are of any assistance to the petitioner in this case; rather they clearly countenance the view taken by us, viz., till the Amended Rules came into force, the All India Radio Recruitment Rules 1963 could not be made applicable to the petitioner or other staff artists just by virtue of letter dated 3rd May, 1982 (Annexure 'H') even if read ~~with~~ in conjunction with office order dated 28th May, 1986.

20. Finding himself in this predicament the learned counsel for the petitioner put forth a somewhat novel argument by saying that on a true interpretation of M.J. Siddiqui's case the Recruitment Rules 1963 ceased to be operative w.e.f. ^{and} 6th March, 1982 on the absorption of the petitioner ~~and~~ other staff artists with ~~the~~ effect from the said date. It is indeed incomprehensible as to how the said rules became ineffective and inoperative merely because of the policy decision on the part of the Government to convert the erstwhile staff artists into regular Government servants. There could be no conceivable impediment in the way of the said rules continuing to operate till the merger ~~or~~ / integration of the staff artists into

main stream was finalised. It is significant to note that in ~~before~~ M.J. Siddiqui's case office order dated 2nd November 1964 clearly laid down that "instead of having two medical services, viz., P.M.S.I and P.M.S.II and a selection grade in PMS I, there shall be, with effect from November 1, 1964 one service to be called Pradeshik Medical Service (Men/Women)....." Evidently, therefore, the aforesaid order of the State of U.P. was construed as one made under Article 309 or atleast having a statutory flavour. It straight-way abolished PMS-II and ~~the~~ ordered its merger into newly constituted Pradeshik Medical Service along with PMS-I. Thus the inevitable consequence was that the Rules of 1945 could no longer operate. The instant case clearly is distinguishable on facts inasmuch as neither letter dated 3rd May, 1982 (Annexure-H) nor office order dated 28th May, 1986 has any such implications. All that was conveyed by the Government vide letter dated 3rd May, 1982 was that on absorption the Staff Artists will be treated as government servants and the conditions of service applicable to the Government servants will become applicable to the staff artists mentioned in the said letter. Further it visualises the fitment of the Staff Artists into corresponding scales of regular civil service after assessment of their suitability by the Screening Committee. So the question of any merger of the staff artists with the existing ~~grades~~ in the All India Radio Organisation did not arise at all. Even letter dated 28th May, 1986 does not postulates merger/integration of the staff of artists with the existing ~~cadres~~ All India Radio. It simply provides that all the existing rules/regulations including pensionary benefits, age of retirement etc. as applicable to regular Government civil servants will be applicable to them in lieu of the existing conditions

of service of staff artists. Thus, we have looked in vain for finding out any stipulation regarding merger/integration with the existing cadres in either letter or letter dated dated 3rd May, 1982 ~~and~~ 28th May, 1986 and all that can be said is that they contained an assurance/promise of conversion of the staff artists into regular Government and their fitment servants/into corresponding scales of regular civil establishment ~~xxx~~ which may perhaps mean the existing cadre of All India Radio, but to say that the petitioner or for that matter, any other staff artist became a part and parcel of the existing cadres/Services of ~~would be wholly unwarranted~~ All India Radio ipso facto by virtue of these two letters. Therefore, we have to look to the Amended Rules for merger/integration of the petitioner as also the terms and conditions thereof. As already observed the same was prospective in nature. Hence, the question of petitioner being considered for promotion to the post of Station Director(SG) w.e.f. 18.3.82 does not arise.

20. Assuming arguendo, however, that the intendment of the aforesaid two letters was to integrate/merge the staff artists with existing cadres of All India Radio forthwith the petitioner still will not have a better claim over the respondents who stood already promoted to the post of Station Director (SG) even before the issuance of letter dated 3rd May, 1982 and for that matter, ^{before} the petitioner and other Staff Artists exercising their options for absorption into government service on regular basis. The law is well settled that executive/administrative instructions unlike the statutory rules regulating recruitment and conditions of service framed under the proviso to Article 309 of the Constitution of India cannot have any retrospective effect. (See: S.B. PATWARDHAN AND ANOTHER Vs. STATE OF MAHARASHTRA AND OTHERS)

(1977) 3 SCC 399). It is equally well settled that the office memorandum being an administrative order or instructions cannot supersede or amend statutory rules of service. As observed by the Supreme Court in Baleshwar Dass Vs. State of U.P.: AIR 1981 SC 41, "the office memorandum makes it clear that direct recruitments will be made to "both permanent and temporary vacancies of Assistant Engineers". But this scheme of 1961 cannot stand in isolation and has to be read as subordinate to the 1936 Rules. After all, the 1961 Memorandum cannot override the Rules of 1936 which are valid under Article 313, and so must be treated as filling the gaps, not flouting the provisions."

21. Hence, we entertain no iota of doubt in our mind that letter dated 3rd May, 1982 or for that matter subsequent letter dated 28th May, 1986 cannot have overriding effect over the Recruitment Rules, 1963 and as such the same cannot be superimposed on the said rules so as to alter or modify the provisions relating to ~~other conditions of~~ service recruitment, promotion and other conditions of service of various cadres of All India Radio and the petitioner cannot derive any benefit from the said letters as regards her claim to eligibility for promotion as Station Director (SG) w.e.f. 18th March, 1982 is concerned.

22. There is yet another way of looking at the things. Even assuming for the sake of argument that the said letters were issued in exercise of the power conferred on the Government under proviso to Article 309 of the Constitution of India and as such are statutory in nature or had statutory flavour the same shall not ~~at all~~ obviously affect or impinge upon the vested rights of respondents 3 to 8 and 10 to 14 ~~and~~ who had already been promoted even

before the promise to induct the petitioner and other staff artists as government servants was made. It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with retrospective effect. It is, however equally well settled that any rule which affects the rights of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. (See: T.R. Kapur Vs. State of Haryana: AIR 1987 415, and P.D. Aggarwal and others Vs. State of U.P. and others: 1987(4) ATC 242.)

23. Since the vacancies of Station Director (SG) had occurred when the Recruitment Rules, 1963 were in force, i.e., before the so-called Amendment thereof vide letters dated 3rd May, 1982 and 28th May, 1986 the same had to be filled in accordance with the extant rules. If an authority is needed for this proposition, the reference may be made with advantage to Y.V. Rangaiah and others Vs. J. Sreenivasa Rao and others: (1983) 3 SCC 284 wherein it was held that "the vacancies which occurred prior to the amended rules have to be filled up in

accordance with the unamended rules and not by the amended rules". Hence, looked at the matter from any angle, there is no escape from the conclusion that the rights and interests of respondents 3 to 8 and 10 to 14 could not be taken away by the socalled amendments made by letters dated 3rd May 1982 and 28th May, 1986, as they had already acquired vested rights to be considered for promotion and the same could not be scuttled down by reason of the offer of the Government to the petitioner and other staff artists for conversion into regular Government servants, even though they became civil Government servants retrospectively from 6th March, 1982. Since the amended rules are prospective in nature, they shall certainly apply to all the staff artists as well as Programme Staff for future promotion, i.e., the promotions to be made in various cadres of the All India Radio subsequent to the coming into force of the amended rules.

24. The question whether the amended rules are merely prospective or retrospective in nature came up for consideration before the Jodhpur Bench of this Tribunal in Mrs. Maya Israni Vs. Union of India and another(TA 628/86 (S.B.C.W.1472/84)) decided on 28th July, 1987, a copy of which has been placed by the respondents on record in M.P.911/87 (O.A.300/86). On a consideration of Rule 4.A(f) of the amended rules as also the power of the amendment of Service Rules made under proviso to Article 309 of the Constitution retrospective ly in the light of the doctrine of equality and non-arbitrariness enshrined in Articles 14 and 16(1) of the Constitution, the Bench held that the Amended Rules are prospective in nature. B.S. Sekhon, V.C., speaking for the Court observed that-

"It is evident from the aforesaid clause that the staff artists were made eligible to be considered

for promotion only from the date of coming into force of 1984 Amendment Rules. It is stating the obvious that only such staff artists are to be considered as fulfil the eligibility qualifications. As a necessary corollary to the aforesaid, it would follow that the staff artists were not entitled to be considered for the vacancies which existed prior to the commencement of the 1984 Amendment Rules. A contrary view would have the effect of giving a retrospective operation to the 1984 Amendment Rules."

24. It may be pertinent to notice here that there were 40 vacancies meant for promotion quota in the cadre of All India Radio when the D.P.C. met on 31st March, 1984. However, the D.P.C. recommended a panel of 20 Programme Executives only and the remaining 20 vacancies were left out to be filled out of the staff artists. The object of the same was to provide promotional avenue to the staff artists who had limited promotional avenues earlier and therefore 50% quota had been earmarked by administrative instructions for them, even before the amended rules were notified. The Bench taking notice of this fact observed that -

"the decision of the Government to defer the convening of the D.P.C. for the vacancies which had fallen due prior to the date of coming into force of 1984 Amendment Rules, the executive instructions issued and the guidelines contained in 1985 Scheme seem to treat the unequals as equals. The effect of the aforesaid decisions/instructions/Scheme is to confer a right to be considered for promotion to a higher post on persons who have still not been absorbed in the feeder service. The guarantee of equality enshrined in Article 14 is a charter for equals. As the aforesaid decision/instructions/scheme seeks to treat the staff artists who were not even eligible as equal to the programme Executives possessing the eligibility qualifications, these would fall within the vice of Article 14."

25. We are in respectful agreement with these observations. A feeble attempt was made on the part of the learned counsel for the petitioner to urge that the staff artists comprising Chief Producer and Deputy Chief Producer etc. were not a party to the said case, and as such the judgment in that case is not binding on them. No doubt a judgment not rendered inter parties is not binding on those who

were not parties to the case but the judgment still has considerable force as a precedent on a question of law which is similar and identical to the one in the instant case. Under the circumstances, the question of reference to a larger bench would arise only if we are not persuaded to agree with the view expressed by the Jodhpur Bench after due deliberation and consideration of the relevant provisions of law.

26. That brings us to the most crucial and vital question posed in the instant case, namely, the challenge to the vires of the Amendment Rules on the part of the petitioner. However, before embarking upon a discussion of the same we would at the outset like to steer clear of the nature of the rules framed under proviso to Article 309 of the Constitution and the inherent limitation on the part of the Court to review the same judicially.

27. It is now well settled that the power exercised by the President and Governor under proviso to Article 309 of the Constitution is a power which the legislature is competent to exercise but has in fact not yet exercised. It partakes of the characteristics of the legislative, not executive, power. It is legislative power. Further the power to make law relating to seniority is vested by Article 309 in the legislature, and until it acts, in the President/Governor. Whether it is the legislature which passes an act or the Governor who makes rules regulating seniority, the end product is "law". (See B.S. Yadav V. State of Haryana: AIR 1981 SC 561, K.Nagraja and others Vs. State of Andhra Pradesh and another : AIR 1985 SC 551 and Wing Commander, J. Kumar Vs. Union of India and others: AIR 1982 SC 1064 in this context). In K. Nagraja (supra) the Supreme Court observed -

"The service rules can be as much amended

as they can be made, under the Proviso to Art.309 and the power to amend these rules carries with it the power to amend them retrospectively. The power conferred by the proviso to Art.309 is of a legislative character and is to be distinguished from an ordinary rule making power. The rules and amendments made under the proviso to Art.309 can be altered or repealed by the Legislature but until that is done, the exercise of the power cannot be challenged as lacking in authority."

28. In Wing Commander J.Kumar (supra), an argument was advanced that the power of rule making exercisable under Proviso to Article 309 is quasi judicial in nature and as such the rule framing authority ought to give notice to all the affected persons. However, this argument was repelled by their Lordships with the observations that -

"Quite apart from that, the promulgation of a statutory rule governing seniority is not a quasi-judicial function. It is the exercise of a legislative power and in respect thereof the principles of natural justice have no application at all."

In K.Nagraja (supra), the Supreme Court was considering the case of deletion of the proviso to F.R.2 by the Andhra Pradesh Government reducing age of retirement from 58 to 55 by means of an ordinance. The same was challenged, inter alia, on the ground of non-application of mind by the Government as also mala fides. Repelling both the above contentions, the Supreme Court observed -

"It is impossible to accept the submission that the Ordinance can be invalidated on the ground of non-application of mind. The power to issue an ordinance is not an executive power but is the power of the executive to legislate. This power is plenary within its field like the power of the State Legislature to pass laws and there are no limitations upon that power except those to which the legislative power of the State Legislature is subject. Therefore, though an ordinance can be invalidated for contravention of the constitutional limitations which exist upon the power of the State Legislature to pass laws it cannot be declared invalid for the reason of non-application of mind, any more than any other law can be. An executive act is liable to be struck down on the ground of non-application of mind. Not the act of a Legislature. "

"The burden to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, both of which are conspicuously absent in these writ petitions. Besides the ordinance making power being a legislative power, the argument of mala fides is misconceived. The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if, none are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of 'transferred malice' is unknown in the field of legislation."

In view of the foregoing authoritative pronouncements it is crystal clear that the legality and validity of the amendment rules cannot be questioned either on the ground of non-application of mind, or on the ground of mala fides. Hence, their legality and validity has to be determined on the touchstone of doctrine of equality and non-arbitrariness enshrined in Articles 14 and 16 of the Constitution only.

29. The first target of attack at the hands of the petitioner are clauses (e), (f) and (h) of the Amended Rule 4-A(1) adverted to above. These clauses lay down that (1) staff artists after becoming Government employees shall continue as a separate category and their inter se seniority on the basis of their date of joining in the post in the grade on regular basis; (2) there shall be separate lists of seniority of officers of regular programme cadre and that of staff artists who for purposes of promotion and the promotion to the next grade from the two lists shall be 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; and (3) 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. Evidently, the object of these provisions

is to maintain separate entity of both the sources from which future promotions to the higher regular Programme Cadres are to be made. Further the aim of keeping a separate list till they are eventually merged is to ensure that each feeder channel gets a fair proportion of the posts in the higher grade having regard to their existing strength. Of course, the promotions made from both the sources shall merge into the main stream after that is done as a unified cadre. We do not ~~see~~ ^{think} that these provisions ~~suffer~~ ^{in any way} from the vice of unreasonableness, hostile discrimination or arbitrariness. Rather they are intended to ensure fairplay and justice in action to both the sources from which future promotees have to be drawn. The contention of the learned counsel for the petitioner therefore that the Staff Artists be deemed to have merged in the corresponding cadre of the Programme Staff automatically and that their inter se seniority with the programme staff in the corresponding cadres be regulated by the length of total service irrespective of the provision of quota has no legs to stand. It may give an unmerited/disproportionate advantage to one category of employees, say Staff Artists over the other category and vice versa in a given Programme Cadre. In other words, reckoning of seniority on the ~~para~~ parameters suggested by the petitioner's counsel may be more beneficial to Staff Artists like the petitioner, but the same may be detrimental to other staff artists who may have to be absorbed in a different regular cadre. Surely, such a kind of procedure ~~far~~ ^{shall} from ensuring fairplay and justice to all concerned ~~lead~~ to tilting of balance in favour of one or the other category in a given case.

30. It is now well settled that where recruitment is made from two or several sources there is no ~~warra~~ inherent

invalidity in induction of quota system and to work it out by a rule of rotation. The existence of a quota and rotational rule will not violate Articles 14 and 16 of the Constitution. (See: Mervyn Continho and others Vs. Collector of Customs: AIR 1967 SC 52, Govind Dattatray Kelkar and others v. Chief Controller of Imports and Exports and others: AIR 1967 SC 839, A.K. Subraman and others Vs. Union of India and others : AIR 1975 SC 483, G.S. Lamba Vs. Union of India and others: AIR 1985 SC 1019 and

Narender Chadha and others Vs. Union of India and others: 1986(1) SLR 437. In the last mentioned authority, it was observed by the Supreme Court:

"It is now well-settled that it is permissible for the Government to recruit persons from different sources to constitute a service. It is also open to it to prescribe a quota for each source. Rules of recruitment framed on the above lines are perfectly legitimate and quite consistent with Articles 14 and 16 of the Constitution. It is also true that when the rules of recruitment prescribe ~~xxgma~~ recruitment from different Services in accordance with the specified quota the Government is bound to appoint persons to the Service concerned in accordance with the said rules. The seniority of persons recruited from different sources will have to be regulated accordingly. So far there can be no controversy."

Hence, the validity and propriety of the quota rule cannot be challenged merely because it does not suit a particular staff artist or a particular category of staff artists. The scheme has to be looked at as a whole for determining whether the quota rule laid down in a particular case works injustice and hardship to a particular source or not vis-a-vis the other. In Govind Dattatray Kelkar (supra), it was ruled that -

"When the recruitment to certain posts is from

contd...

different sources, what ratio would be adequate and equitable would depend upon the circumstances of each case and the requirements and needs of a particular post. Unless the ratio is so unreasonable as to amount to discrimination, it is not possible for this Court to strike it down or suggest a different ratio. "

The Supreme Court further observed that -

"When the State makes a classification between the two sources of recruitment unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the court that the said classification is unreasonable and violative of Article 16 of the Constitution."

We may also heed here the note of warning sounded by the Supreme Court in V.T.Khanzode vs. Reserve Bank of India (1982) 2 SCC 7 and others/ in the following words:-

"No scheme in government 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. Vested interests are prone to hold on to **

**their acquisitions..." So, the mere fact that the petitioner feels disgruntled with that the rule of quota laid down in the aforesaid provisions of Rule 4-A will hardly be a ground for branding them unfair unreasonable or arbitrary so as to be violative of principles of equality and non-arbitrariness envisaged in Articles 14 and 16 of the Constitution. It may be pertinent to notice here that the cadre of Station Director (OG) after amendment is comprised of 98 posts of which 13 posts are of Staff Artists. That was precisely the number of staff artists comprising the Chief Producers and Deputy Chief Producers as on 6th March, 1982. Likewise the amended strength of the Station Directors (SG) is 37 which includes 2 posts of

Staff Artists. As already seen two posts of Staff Artists comprise the Director of Sports in A.I.R. and Controller of Sports in Doordarshan. So the quota of staff artists have been apparently fixed having regard to the actual number of posts held by them as on 6th March, 1982. We do not consider that the basis for fixation of quota in the instant case can be said to be unreasonable unfair or irrational by any stretch of reasoning.

30. The last but perhaps the most crucial question which fails for determination is regarding fitment of the petitioner as Station Director (OG). It is indeed an off shoot of the challenge posed by the petitioner to the vires of the Amendment Rules. It bears repetition that formerly the staff artists did not form part of All India Radio Group 'A' Service and as such the question of their being included in one or the other cadre of All India Radio Service did not arise. By the Amendment Rules the Staff Artists of the level of Chief Producer and Deputy Chief Producer have been clubbed together and included in the cadre of "Station Director (OG)". The challenger to the same at the hands of the petitioner stems from the fundamental objection that the said cadre carries a scale of Rs. 1100-1600 which was equivalent to the scale of Deputy Chief Producer in the category of Staff Artists. She was appointed as Deputy Chief Producer in the scale of Rs. 1100-1600 w.e.f. 7.5.76 and it was after rendering of more than 5 years of service that she was promoted as Chief Producer in the scale of Rs. 1300-1700 w.e.f. 15.7.87. So, after having been promoted to a higher post her clubbing with the Station Director (OG). Deputy Chief Producer was most inequitable, unjust and unfair. It is virtually tantamount to her demotion. When Government

servant, she had naturally aspired for better promotional prospects because there was no grade higher than that of Chief Producer in the category of staff artists atleast in the discipline to which she belonged and it was only a fortuitous circumstance ~~and~~ that two posts of Directors of Sports and Controller of Sports were created in 1981 due to Asiad that Jasdev Singh, respondent, was appointed just on ad hoc basis to one of them w.e.f. 21.12.81, i.e., on the eve of Asiad. So, she seeks redress against her unmerited demotion in rather dubious manner. Her contention is that she had completed 5 years of service in the scale of Rs.1100-1600 by the time she was promoted as Chief Producer in 1981 and therefore she should have been placed and fitted in the cadre of Station Director (SG) and not the lower grade which casts a stigma and aspersion on her entire career as ~~an~~ ^a talented staff artists.

31. The learned counsel for the respondents on the other hand have canvassed with considerable fervor that she was admittedly holding a post lower in scale than that of the Station Director (SG) on 6th March, 1982 w.e.f. which she has become a regular civil Government servant. Admittedly, there were no promotional avenues at that time. So, in the normal course, she would have been promoted to the next higher grade of Station Director (SG) in due course after her absorption and after the amended rules came into force. According to him, Chief Producers have been placed ~~en bloc~~ ^{above} Deputy Chief Producers and therefore, they will ^{be} first to be considered for promotion as Station Director (SG), more so when they are still carrying ~~on~~ ^{scale of} their special ~~pay~~ of Rs.1300-1700. Hence, no prejudice is caused to the petitioner and the other Chief Producers like her in the matter of their future promotions by (OG). placement in the cadre of Station Directors. He has also placed on record the reasons which weighed with the

Government while categorising various classes of staff artists for fitment into corresponding Programme Staff scales. A perusal of the same reveals that two broad reasons have been assigned for clubbing the Chief Producer with Deputy Chief Producer/Station Director (OG) rather than Station Director (SG). The main reason may be extracted below for ready reference:-

1. SD(SG) are eligible for promotion to the cadre of DDG in the pay scale of Rs. 2250-2500.

Rs.1100-1600 Rs.1500-2000 5 yrs.
Rs.1500-2000 Rs.2250-2500 7 yrs.

As per the Handbook on R/Rules, Chief Producers in the pay scale of Rs. 1300-1700 could have been eligible for promotion to the scale of Rs.1500-1800(had there been higher posts); officers of the pay scale of Rs.1500-1800 were eligible for promotion to Rs.1800-2000; officers with pay scale of Rs.1800-2000 to Rs.2250-2500. In the normal course also, officers of Rs.1300-1700 were not eligible for promotion to Rs.1500-2000. It would have meant dual promotion without the process of prescribed DPCs. (Annexure II)

Rs.1100-1600 Rs.1300-1700 3 years.
Rs.1300-1700 Rs.1500-1800 3 years.
Rs.1500-1800 Rs.1800-2000 3 years.
Rs.1800-2000 Rs.2250-2500 5 years.

2(a) SD(SG) who are in the pay scale of Rs.1500-2000 have been delegated administrative/financial powers of the Heads of the Deptt. vide Min.of I&B's letter No.6(1)78-B(P)(ii) dt. 8.9.78 under DFP Rules, GFRS & SRS (Annexure I)

(b) SD(SG) have all India transfer liability and are normally required to head major/capital stations of AIR/DD.

No such powers have been delegated to the Chief Producers. Even SD (OG) do not enjoy these enhanced delegated powers.

All Chief Producers are Delhi based and their job is not transferable. Thus, they have no administrative experience of working at a station which is very essential for manning major/capital stations.

Contd.....

31. Evidently, reason No.1 is simply hypothetical when there does not exist a scale of Rs.1500-1800 in the All India Radio Services. So invoking of the recruitment rules as given in the Handbook is totally misconceived. It was incumbent on the Government to look to the All India Radio (Group 'A' Post) Recruitment Rules as in force on the relevant time rather than to be guided by extraneous considerations such like recruitment rules as given in the Handbook which are of general nature. It is well settled that special rules/laws must have precedence over general rules/laws while considering a case of any particular post/situation. The extant rules clearly contemplated promotion of Station Director (OG) in the scale of Rs.1100-1600 to the post of Station Director (SG) in the scale of Rs.1500-2000 on completion ^{not} of 5 years regular service in the grade. So it is/intelligible on what basis the Government felt that the Chief Producers were if at all only eligible for promotion to a post carrying a scale of Rs.1500-1800 and not Rs.1500-2000. As already observed, the petitioner had put in 5 years of regular service in the grade of Rs.1100-1600 and had also put in more than 3 years of service in the scale of Rs.1300-1700 by the time the Amendment Rules were promulgated. Hence, to say that she was not eligible for promotion to the scale of Rs.1500-2000 on the said date is simply preposterous. It is blinking at the obvious and self evident. The first reason therefore does not bear scrutiny, being simply fallacious. As for the second reason that S.D.(SG) had been delegated financial powers of the Head of Department and that they were carrying All India transfer liability, suffice it to say that these powers can always be conferred when

an officer holds a particular assignment. They do not constitute parts and parcel of the basic duties which an incumbent of a particular post has to discharge. Admittedly the staff artists were performing duties analogous to those of Programme Staff. They had their own talent and experience to count for promotional avenues. So, the mere fact that delegation of administrative/financial powers etc. had not been made in their favour would not detract from ~~the~~ ^{their} equation with the post of S.D.(SG). ^{Hench}, the reasoning given by the Government Committee for clubbing all the Chief Producers with Station Director (OG) failed to carry conviction and have no reasonable nexus with the object to be achieved, just and fair namely ~~the~~ integration of two erstwhile separate categories in the All India Radio.

32. The fundamental distinction between the Chief Producer and Deputy Chief Producers who were holding a scale identical to that of Station Director (OG) in our view, could not be overlooked by the concerned authorities while deciding fitment of the erstwhile staff artists into corresponding grades of permanent staff. Surely, the Chief Producers constituted a promotional avenue and for that matter, the Deputy Chief Producers constituted a feeder channel for the post of Chief Producer. Having ^{earned} promotion the petitioner and the other staff artists like her could not be simply downgraded to the same level merely because it was not considered proper or desirable to confer automatic promotion on them by including them in the grade of SD(SG). Since the concerned Committee was reluctant to confer an automatic promotion on the petitioner and other Chief Producers ^{slipped in} they unwittingly ~~to~~ to the grave error of demoting them. It was certainly open to the Government

to amend the Recruitment Rules so as to provide for a grade of Rs.1300-1700 for the cadre of Chief Producers and in that event there could have been no cause of complaint to the petitioner and the like of her. However, not having chosen that course, the Government could not resort to downgrading the petitioner and her like in this manner. She could certainly be kicked up but not kicked down. While an unintended benefit in the form of so-called promotion could be legitimately conferred on the Chief Producers in the process of equating the posts, rights already acquired and vested in them could not be adversely affected on the specious plea that their equation with S.D.(SG) will amount to premature promotion. After all, apart from the scale of pay ~~and~~ the Government servant carries a certain degree of status which is inalienable from each and every post in the Government hierarchy. Hence looked at from this angle there can be no room for doubt that the fitment of the petitioner and other Chief Producer with S.D.(OG) suffered from the vice of arbitrariness unreasonableness and unfairness. It is virtually a negation of doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

33. The matter may be looked at from a yet another angle. In letter dated 3rd May, 1982 it was envisaged that the Screening Committees will ascertain not only whether the staff artists are fit to be treated as Government servants after taking into account their (i) qualifications, (ii) experience; and (iii) record of service, but also that the Screening Committees will assess their suitability for the purposes of fitting them into corresponding scales of regular civil establishment. It is beyond the pale of controversy that the screening committees meeting were held on 6.3.86 and 10.3.86 to assess the suitability of the staff artists of All India Radio/Doordarshan for their absorption in regular civil cadres and a copy of the minutes of the said meeting has been shown

contd...

to us by the learned counsel for the Government. A perusal of the same would show that the function of the said screening committee was to consider the suitability of the different categories of Group A staff artists for their appointment as regular government employee in the Programme Cadre of the All India Radio and Doordarshan in terms of Rule 4-A of Amendment Rules. Hence, the job of the Screening Committee was considerably diluted inasmuch as they were called upon to scrutinise the staff artists for determining their suitability for appointment to the post in the appropriate grade in the regular Programme Cadres of All India radio and Doordarshan as per amended rules. This was obviously contrary to the letter and spirit of office memo dated 3rd May, 1982 which as observed earlier ^{unmistakably} stipulated that suitability for purposes of fitting them into corresponding scales of regular civil establishment would be considered by the Screening Committees. Evidently, the screening committee was confronted with a *fait accompli* so far this part of the stipulation in letter dated 3rd May, 1982 is concerned. No doubt the Amendment Rules being statutory in nature will prevail upon the administrative instructions/promise contained in letter dated 3rd May, 1982 but still it will countenance the plea of the petitioner that the fitment of the petitioner and her like under the amended rules is arbitrary, unreasonable and unfair.

34. In A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.: (1984) 3 S.C.C. 316, the Supreme Court observed

"Conceding for the present purpose that legislative action follows a legislative policy and the legislative policy is not judicially reviewable, but while giving concrete shape to the legislative policy in the form of a statute, if the law violates any of the fundamental rights including Article 14, the same is void to the extent as provided in Article 13. If the law is void being in violation of any of the fundamental rights set out in Part III of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy. Wisdom of the

legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights and if it trenches upon any of the fundamental rights, it is void as ordained by Article 13."

It is equally well settled that the basic principle which informs both Articles 14 and 16 is equality and inhibition against discrimination. Article 14 strikes at arbitrariness because any action that is arbitrary must necessarily involve negation of equality. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which ~~shax~~ classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. In other words, legislative and executive action may be sustained if it satisfies the twin tests of classification and the rationale to the principle co-related/object sought to be achieved. (See: D. S. Nakara Vs. Union of India 1983(1) SCC 305 and A.L. Kalra (supra). As observed in the later judgment "one need not confine/denial of equality to a comparative/ between two persons to arrive at a conclusion of discriminatory treatments." An action per se/it self denies equal protection by law."

35. From the foregoing, it clearly emerges that the Amendment Rules so far as fitment of erstwhile ~~or~~ staff artists especially the petitioner and the like into corresponding staff programme cadres is concerned treats unequals as equals which is violative of the principle of equality cherished by Articles 14 ~~or~~ and 16 of the Constitution.

36. We may at this stage advert to a recent judgment of the Supreme Court in Dr. Chakradhar Paswan Vs. State of Bihar and others JT 1988 (1) SC 496. In that case, the Directorate of Indigenous Systems of Medicines, State of Bihar, was comprised of four posts, namely, one Director and 3 Deputy Directors which were all Class I posts. The post of the Director was the highest post and carried a higher scale of pay of Rs. 2250-75-2675 while the post of Deputy Director carried the pay scale of Rs. 1900-75-2500. One of the posts of Deputy Director was reserved for SC/ST, according to 50-Point Roster. The Supreme Court held that the posts of Director and Deputy Director did not constitute one cadre. They were members of the same service but did not belong to the same cadre. Their Lordships have enunciated the legal position as under:-

"In service jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental Rule 9(4) defines the word 'cadre' to mean the strength of a service or part of a service sanctioned as a separate unit. The post of the Director which is the highest post in the Directorate, is carried on a higher grade or scale, while the posts of Deputy Directors are borne in a lower grade or scale and therefore constitute two distinct cadres or grades. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties carry the same responsibilities or draw the same pay. The conclusion is irresistible that the post of the Director and those of the Deputy Directors constitute different cadres of the Service. It is manifest that the post of the Director of Indigenous Medicines, which is the highest post in the Directorate carried on a higher grade or scale, could not possibly be equated with those of the Deputy Directors on a lower grade or scale."

These observations to our mind would aptly apply to the facts of the case on hand inasmuch as the post of Chief Producer which ~~was~~ the apex post in various disciplines of Staff Artists has been unjustifiably and irrationally equated with the post of Deputy Chief Producer for purpose of fitment ~~that~~ in the cadre of Station Directors (OG). While the scales of pay of the post of Deputy Chief Producer and Station Director (OG) were equivalent and they could be clubbed together the post of Chief Producer was by all parameters ~~superior~~ ^{superior} to that of the Deputy Chief Producer and as such the same could not be clubbed with the cadre of S.D. (OG). Hence, we entertain no iota of doubt, in our mind that the same has to be quashed.

37. Had the Government provided for/retained the special/non-rationalised scales of Rs.1300-1700 for the post of Chief Producer there would have been no difficulty whatsoever in fitting them into that scale. That not having been done the only course open under the circumstances is to equate the post of Chief Producer with that of Station Director (SG) even though the later happens to carry a higher scale of pay. It would be therefore wrong to say that it amounts to an automatic promotion from a feeder channel to a promotional avenue. It may be pertinent at this stage to notice that one of the averments made by the petitioner in the application is that the Cadre Reviewing Committee had recommended that the Chief Producer's grade be raised to Rs.1500-2000. While denying that such a recommendation had been made by the Cadre Reviewing Committee the respondents 1 and 2 admitted in the counter that an inter-departmental official study group constituted to review the cadre of staff artists had recommended in their report

that the pay scale of Chief Producer should be raised. Since the Government's new Scheme had come up to Rs.1500-2000, to convert the staff artists into civil Government servants, it was not found possible to consider the recommendations of the Cadre Review Committee by the Government. Further, according to them for purpose of fitting Staff Artists, found fit to be government servants in the corresponding scales of the regular civil establishment of the Programme Cadres of A.I.R. and Doordarshan, was taken up with the Nodal Ministries, i.e., Ministry of Finance and Department of Personnel. Since there was no identical scale in the regular Programme Cadre of AIR and Doordarshan, it was decided that scale corresponding to the scale of Rs.1300-1700 should be the scale of Rs.1100-1600. Obviously, the Government has slipped into the grave error in doing so. It only reflects a negative approach on the part of the Ministry of Finance who, it is common knowledge, in their zeal to safeguard the finances ~~necessity~~ of the government are generally conservative in their approach in service matters. Hence, looked at the matter from any angle we feel persuaded in all fairness to hold that the petitioner and the like ought to have been fitted in the cadre of Station Director (SG) rather than ~~in~~ the cadre of Station Director (OG). Of course, that would have been effective from the date the amended rules, which are prospective in nature, came into force.

38. Before concluding, we may also in the passing advert to certain preliminary objections raised by the respondents. In the first instance, they point out that the present application is pre-mature and not maintainable because the petitioner, Smt. Chitra Narain had not been appointed as a Govt. servant until 6-5-1986 when she filed

the instant application and it was only afterwards that she was conferred the status of Govt. servant vide letter dated 28th May, 1986 retrospective effect. We do not think~~xx~~ there is any substance in this contention having regard to the facts of the case. Admittedly, she was called upon to exercise her option whether to be absorbed in the Regular Programme Cadre of All India Radio or not. She had exercised her option in favour of joining the All India Radio as a Govt. servant. So she could legitimately look for her proper placement/fitment in the corresponding grade of Programme Staff. In this view of the matter, therefore, but also she was not only competent, & entitled to challenge the vires of the amended rules which purported to fit ~~her~~ her place in the grade of Station Director (OG). She could challenge her equation immediately the amended rules came into force and this right was available to her both as well as prior ~~and~~ subsequent to her appointment as a Govt. servant. At any rate even if it is presumed that her right to challenge the amended rules was still inchoate it certainly ripened into full right on her appointment on 28th of May, 1986.

In other words, her order of appointment dated 28th May, 1986 would relate back to March, 1982 and, therefore, would cure the formal ~~xx~~ technical defect in filing the instant application prior to the same. Hence nothing would turn on this kind of hyper-technical objection.

39. The second objection raised by the respondents is that the instant application would be barred by the provisions of section 20(1) of the Act in as much as

she did not avail of all the remedies available to her under Service Rules for redressal of her grievance before filing this application. However, this argument too is totally misconceived. Section 20(1) reads as under:-

"A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances."

The use of the word "ordinarily" in the aforesaid provision certainly connotes that normally the petitioner should come to the Tribunal for seeking a relief under the provisions of the Act only after exhausting other available remedies as per Service Rules. However, it leave a certain amount of discretion with the Tribunal to entertain an application under Section 19 of the Act even if the applicant has not exhausted alternative remedies which may be available to him under the Service Rules. The discretion, of course, has to be exercised on sound and judicially well recognised considerations and not arbitrarily or capriciously. xxxx Surely there is no absolute embargo on the admission of an application in a case where the applicant has not availed of the remedies available to him under the relevant Service Rules for redressal of his grievances. Reference in this context with advantage may be made to Charan Singh Vs. Union of India: 1986 ATC 307 (Vol.I) and Shri Amar Nath Vaish and others Vs. Union of India and other ATR 1987(1) CAT 353. In the former case, the Court No.1 of the Principal Bench of this Tribunal noticed that no stay order could be granted to the applicant with regard to his reversion to a lower post by any administrative

authority. So he could avail of such a relief only by filing an application under Section 19 of the Act. Likewise we do not think that the petitioner could have challenged the vires of the Amended Rules by making a representation to the concerned administrative authority. Such a relief could be sought under the Act only from the Tribunal or the Supreme Court under Article 32 of the Constitution of India for infringement of her fundamental rights under Articles 14 and 16 of the Constitution. If that be so, the question of her exhausting alternative remedies as such will not arise. Moreover, one cannot be oblivious of the fact that the application itself was primarily aimed at restraining the respondents from proceedings with the selection of Station Director (SG) for promotion to the post of Deputy Director General on the basis of the Departmental Promotion Committee's meeting held on 8.4.86. She wanted to pre-empt any action being taken pursuant to the recommendations of the Departmental Promotion Committee. Hence, looked at from this angle too we do not think that the instant application suffers from any such legal infirmity. So we hold that non-exhaustion of other remedies, if any, by the petitioner will not preclude her from making an application under Section 19 of the Act straightway. Hence, this objection too is devoid of any substance.

contd.....

40. That brings us to the application filed by Shri I.S. Bhama and C.R. Ramaswamy, applicants both of whom are Directors (SG) in the All India Radio/Doordarshan. They have challenged the eligibility of the respondent Jasdev Singh for promotion to the post of Deputy Director General, All India Radio on the basis of the recommendations made by the D.P.C. which aforesaid had met on 8.4.86. The application having been filed on 8.5.86 their contention is twofold, viz., (i) that respondent No.4 not being a Government servant and not having been absorbed in the All India Radio (Group 'A' Posts) under the Recruitment Rules, 1963 as amended by Amendment Rules of 1984, was not at all eligible for promotion to the post of Deputy Director General which was a selection post to be filled up only by promotion from amongst Station Directors (OG) or Station Directors (SG) with 10 years combined service in the said grades out of which 3 years service should be in the Selection Grade and (ii) that at any rate the Amendment Rules 1984 being prospective in nature, he could not be placed at point No.1 of the list of eligible candidates for promotion to the post of Deputy Director (General) and the Staff Artists, posts only having regard to the quota of 2 in the overall strength of Station Directors of 37 must be placed below the regular (SG) Programme Staff in the cadre of Station Director at Points 18 and 37 and not 1 and 19 as has been done by the respondent to favour them. Union of India. Later an application was also moved by the petitioners for amendment of their O.A.No.318/86 by adding additional ground of challenge, namely, that Jasdev Singh, respondent could not have been appointed retrospectively w.e.f. 6th March, 1982 and his appointment at best could relate back to the date when the Amendment Rules came into force viz., 23rd October, 1984. However their application was

opposed by the respondents and the same was rejected by us vide order dated 23.12.87. Since, however, the question had cropped up in O.S.No.300/86 in a certain context we have dwelt at length on the said point and for reasons given above we have held that the appointment of Smt. Chitra Narain retrospectively w.e.f. 6th March, 1982 is perfectly legal and valid. So, we need not go over the same contention and reasoning again and on a parity of reasoning we hold that appointment of Jasdev Singh, respondent vide order dated 28th May, 1986 retrospectively w.e.f. 6th March, 1982 is perfectly valid and legal.

41. The respondents have contested this application vehemently contending that respondent No.4 was duly appointed to the service w.e.f. 6th March, 1982 in accordance with the policy letter dated 3rd May, 1982 and since he was already holding the post of Director of Sports which was carrying the same ~~same~~ ^{same} pay-scale as that of a Station Director (SG) he was rightly clubbed with the Station Director (SG) under the Amended Rules. Further, according to them none of the Station Director (SG) including the petitioners was eligible for promotion to the post of Deputy Director General at the relevant time and it was only ^{by} allowing relaxation in terms of Rule 6 of the 1963 Rules, that all of them including respondent 4 were considered for promotion to the post of Deputy Director General. So, the petitioners cannot make a grievance of it because they ^{are} sailing in the same boat as Jasdev Singh. They have also controverted the petitioners' allegation that respondent No.4 was not qualified and was unfit to hold the post of Deputy Director General because he lacked administrative and organisational experience which Station Director (SG) had in plenty

73

of
because the very nature of their duties. Their contention is that as per the provisions of the ~~-ment~~ Amend~~ed~~ Rules it was for the Screening Committee presided over by ~~as~~ member of the U.P.S.C. to take into account their qualifications, ~~and~~ experience and record of service of every person and once they ~~of~~ approved fitment of the respondent, Jasdev Singh in the cadre of S.D.(SG), ~~and~~ the latter too became eligible for promotion to the post of D.D.G. like his counter parts from the Programme Staff. They assert that the Staff Artists were performing similar functions relating to Planning and Production of Programme and Programme Management as Programme Staff but the former had inadequate promotional avenues and therefore had to continue to work in the post for a number of years. So, it was decided by the Government that the first point in the roster in different cadres should go to the staff artists in accordance with their ratio. Hence, Jasdev Singh, respondent, was considered for promotion as a separate category in accordance with the provisions contained in Rule 4-A(e) and (f) against his own quota and not against the quota of the Station Director (SG).

42. The respondents have also informed us that no appointments were made on the basis of the Selection Committee recommendations made on 8.4.86 because the requisite relaxation had not been accorded to anyone of the eligible candidates at that time. So, the Government is not at all relying on the proceedings of the DPC dated 8.4.86. Eventually, however, the ^{their} petitioners along with ~~other~~ colleagues from the

Programme Staff and Jasdev Singh, respondent, were considered by the DPC in its meeting held on 8.10.86 and it was in the said meeting that Jasdev Singh was approved for promotion from the category of staff artists while 5 Station Director (SG) were brought on the select list for promotion to the said post, the total number of vacancies in the ~~post~~ of Deputy Director General at the relevant time being six. The learned counsel for the respondents have also contended that both the petitioners were duly considered for selection to the post of Deputy Director General ~~but~~ ^{but} their grading was lower than that of many of their seniors. Therefore, they were not selected. According to him, all officers brought on the select list were senior to the petitioners and as such the petitioners cannot make any grievance of their non-selection.

43. We have carefully considered the rival contentions of both the parties and we find that even though respondent No.4 and for that matter other staff artists who had not been appointed/encadred with regular staff programme as S.D.(SG) till 8.4.86 could not at all be considered for promotion to the post of D.D.G., but after having been appointed to a civil post w.e.f. 6th March, 1982 vide order dated 28th May, 1986, respondent No.4 became ~~eligible~~ entitled to promotion to the higher post like any other Station Director (SG) provided of course he satisfied the requisite qualifications and conditions of eligibility. Since the respondent-Government has not acted upon the recommendations of the Selection Committee meeting held on 8.4.86 nothing would turn upon the same so far as the decision of this case is concerned. So the crucial question which falls for determination is whether the select list prepared by the Selection Committee at its meeting held on 8.10.86 are perfectly valid and legal or not.

44. The first contention of the petitioners that the Staff Artists now made eligible for the post of D.D.G. did not have the requisite background of working in a station and also lack administrative experience which is absolutely essential for the post of D.D.G. which carries degree of functions and duties and requires higher responsibilities and a large amount of administrative acumen ~~functions and duties~~ is devoid of any merit. As explained by the respondents, the post of Director of Sports held by respondent No. 4 had been included in the definition of "Station Director" vide Amended Rules. Further the Screening Committee presided over by the members of the U.P.S.C. having duly considered the requisite qualifications and experience and past performance of the staff artists recommended fitment of respondent No. 4 in the cadre of Station Director. So, there is neither any justification nor any basis for urging that they were not eligible for promotion to the higher post of Deputy Director General. Indeed a perusal of O.M. dated 4.2.82 of the Government (copy Annexure III to O.A.No.318/86) would show that the duties and functions of the Director (sports), inter alia, involve management, co-ordination and administration of Sports Cell in the Headquarters of All India Radio. He has to maintain liaison with the Engineering Wing of Directorate General, regarding technical arrangements and he has to look after the organisation in depth coverage of Sports events and programmes of different sports, national and international. Further he has to advise the Director General regarding general policies and guidelines which may be framed for sports and have co-ordination and liaison with national and international organisations in the field of sports. Further he has also to draw up and organise training programmes on All India ~~Radio~~ basis for sports staff and commentators, organise

panel discussions etc. besides a host of varied nature of duties relating to sports section of the All India Radio. So, by no stretch of reasoning it can be said that a Director of Sports does not have any administrative functions and duties to be discharged or that he lacks administrative experience for being considered fit for promotional post of Deputy Director General. The claim of the petitioners therefore that Station Director (SG) alone are equipped with administrative acumen and experience must be rejected as hollow and baseless.

45. No doubt as already observed by us the Staff Artists became a part and parcel of the All India Radio (Group 'A' Posts) of Programmes Staff by virtue of the Amendment Rules of 1984 and the same being prospective in nature they cannot be deemed to have been inducted in the respective cadres of All India Radio w.e.f. 6.3.82 from which date they are entitled to become Government servants. Since Rules of 1963 were not applicable to them, they could not derive any benefit therefrom but by a legal fiction they became entitled to all the benefits to which their counter parts in the Staff Programme side were entitled after becoming members of various cadres of All India Radio, (Group 'A' Posts) as per Amendment Rules, 1984. All the same their past experience and the service rendered by them in equivalent grade could not at all be ignored as being of no consequence. Needless to say that in government service past experience over a long number of years confers a valuable right on the Government servants to be considered for higher promotional avenues. Hence, the argument of the learned counsel for the petitioners that respondent No. 4 could at best be deemed to be a Station Director (SG) by legal fiction and as such he did not otherwise rank equal to S.D. (SG) has no legs to stand upon. As for the requisite years of service rendered in a particular

grade, Shri Ram Chandani, learned counsel for the respondent has rightly pointed out that none of the officers including the petitioners was strictly speaking eligible for promotion to the post of D.D.G. So, having regard to the exigencies of service and pressing need of the department for filling up these posts of D.D.G. which could be filled up by promotion and not otherwise, the Government thought it fit to relax the condition of 7 years regular service in the grade of ^{Station} Directors ~~(SC)~~. Hence, question of any discrimination muchless hostile discrimination against the petitioners does not arise.

46. We have perused the minutes of the meeting held on 8.10.86 of the D.P.C. which was presided over by a Member of the U.P.S.C. We find that only one Staff Artists holding the post of Director of Sports, namely, Jasdev Singh, respondent was considered against their quota while as many as 15 officers from amongst Station Directors (SG) including the petitioners were considered for promotion to 5 vacancies allocated to them. Respondent No.4 was egraded "very good" and as such was brought on the select list. ^{of} the Station Directors (SG) as many as 8 were graded "very good" and 5 of them, all of whom were senior to the present petitioners, were included in the select list. Singnificantly, one more officer R.S.Sawdekar (SC) who was senior to both the petitioners was rated "very good" while two more officers Smt. Lila Bawdekar and Shri T.R.Malakar (SC) who were also rated as ^{both} "Every good" were senior to I.S. Bhama, petitioner No.1 herein. The grading given to ^{both} the petitioners was "good". Evidently, therefore, they could not find a place in the select list in preference to those of their seniors who had been graded "very good". So, the instant application is liable to be dismissed on this short score.

47. As for the challenge to the rule of quota and rota we may again advert to clauses (e) and (f) of Rule 4-A(1) of the Amended Rules. Under Clause (e) the staff artists after becoming Government servants have to continue as a separate category and their *inter se* seniority shall be determined on the basis of their joining the post in the grade on regular basis. So, Jasdev Singh, respondent having been appointed as Director of Sports vide order dated 22.12.81 (copy Annexure III to the application) in the scale of Rs.1500-2000 on regular basis and having been placed on probation for a period of two years must rank senior to other staff artists who were appointed to an equivalent post subsequently. Needless to say that on successful completion of period of probation, the confirmation of the appointee relates back to the original date of his appointment. Hence, there can be no room for doubt that Jasdev Singh, respondent No.4 was the senior most, amongst the staff artists. Further under clause (f) of Rule 4-A(1) separate list of seniority of officers of regular programme cadre and that of Staff Artists who had become Government employees had to be maintained for purposes of promotion and promotion to the next grade from the two lists had to be made on quota basis, the ratio of which is to be based on the existing number of posts in each category on the date of the holding of the meeting of the D.P.C. Admittedly, the number of the posts in the cadre of Station Director (SG) under the amended rules was 37 which included ~~two~~ ^{were} two posts of Staff Artists. Needless to say that the said posts of Director of Sports and Controller of Sports in the Doordarshan. So the quota of the staff artists was rightly fixed at 2 as against 35 for

Station Directors (SG). The petitioners have not questioned the correctness of the quota. However, their grievance is that the staff artists having been inducted into the cadre of Station Director artificially by legal fiction only ought to have been placed below the Station Directors at Points 18 and 37. However, we do not find any logic or rationale behind this argument. As has been rightly pointed out by the respondents 1 and 2 such a course would not only be illogical, but also impracticable and unworkable. As explained by them, having regard to the fact that the staff artists were performing similar functions relating to planning and production of programme and programme management, but had inadequate promotional avenues and as such they had to continue in the same posts for a number of years in the normal course, the Government decided that first point in the roster in each cadre should go to the staff artists in accordance with their ratio. This approach seems to be quite just and fair because if the staff artists had been placed below a formidable number of Programme Staff and Station Director (SG), the chances of promotion of the erstwhile Staff Artists would not only have been rendered very bleak, but would have become totally illusory. A large contingent of 17 officers from Programme Staff would have in all probability run out the lone

contd....

staff artist placed at Point No.18 and the fate of the staff artist placed at S.No.35 in the roster would have been still worse. So, both fairness and reasonableness demanded that the officers who were muchless in number than their counter parts on the other side should have been placed higher in the roster meant for promotion, of course, in conformity with their quota in the total strength of the cadre of Station Directors. Needless to say that it is primarily/prerogative of the Government to fix the quota as also the rotation in which the quota has to be worked out and it is not for this Tribunal to sit in judgment over the same unless, of course, it feels persuaded to hold that the rule of quota and rota is violative of the principles of equality enshrined in Articles 14 and 16 of the Constitution. In other words, both quota and rota must be fair and just and not arbitrary to to all concerned. We need not in this context advert *again* to the observations of the Supreme Court in Govind Dattatray (supra). So we hold that by no stretch of reasoning the rule of quota and rota as laid down in the Amendment Rules can be held to be violative of the principles of equality embodied in Articles 14 and 16 of the Constitution of India.

48. The upshot of the whole discussion, therefore, is that we find absolutely no merit in O.A.No.318/86.

contd....

49. To sum up, therefore, OA 300 of 1986 succeeds in part. We hold and declare that appointment of the applicant Smt. Chitra Narain as a Chief Producer against the newly created civil post with effect from 6th March, 1982 vide order dated 28th of May, 1986 is perfectly valid and legal. However she will be deemed to have been considered suitable for placement/fitment in the appropriate grade in the Regular Programme Cadres as envisaged in the amended rules only with effect from the date the said rules came into force viz. 23rd of October 1984. In other words, her appointment to the corresponding group 'A' post in the All India Radio shall relate back to 23rd Oct., 1984 and not earlier when she would be considered to be a Government servant holding the post of Chief Producer only. As regards her placement/fitment in the corresponding Regular Programme Cadre, we declare that equation of Chief Producers and for that matter, the applicant Smt. Chitra Narain with the ^(OG) Station Director is totally unreasonable, unjust, unfair and arbitrary. So it is violative of articles 14 & 16 of the Constitution of India. Hence we quash schedule I as amended to the extant that it includes and equates the post of Chief Producer with that of Station Director (ordinary grade). However, the rest of the amended schedule No.1 is held to be intra-vires. We further declare and direct that the applicant and for that matter other Chief Producers appointed vide order dated 28th of May, 1986 shall be deemed to have been equated with Station Directors (Selection Grade) with effect from 23rd of October, 1984 and they will be entitled to all the consequential benefits including promotion to higher grades as per rules. The respondents shall suitably amend Schedule V so as to bring it in conformity with this order of ours. We further direct that the applicant

and for that matter other Chief Producers similarly situated, who are thus equated with Station Directors (SelectionGrade) with effect from 23.10.84 shall be duly considered for promotion to the next higher posts having regard to their performance, past experience and other legal requirements for eligibility etc. under the amended rules against vacancies which have occurred or may arise subsequent to 23.10.84. The respondents 1 to 3 are directed to implement this order of ours within four months from the date of receipt of a copy thereof.

50. As for OA 318 of 1986, we find absolutely no merit in it. Hence, it is dismissed being without any substance. Under the circumstances, we pass no order as to costs.

351318
(Birbal Nath)
Administrative Member
30.3.88

Draw
(J.D. Jain)
Vice-Chairman
30.3.88