

Central Administrative Tribunal
Principal Bench, New Delhi

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1. No.OA-1613/87
Shri Mohan Singh & Ors.
2. No.OA-1709/87
Shri S.Robert & Ors.

Dated: 5.8.1988

Versus

Union of India & Another ... Respondents.
For the Applicants ... Shri G.D.Gupta, Advocate
For the Respondents ... Shri P.H.Ramchandani,
Advocate.

3. No.OA-1287/87
Shri Shakhhar Chowdhary
and Another. ... Applicants.

Versus

Union of India & Another ... Respondents.
For the Applicant ... Shri S.K.Bisaria,
Advocate.
For the Respondents ... Shri P.H.Ramchandani,
Advocate.

4. No.OA-1230/87
Shri Gauri Shanker Kapoor ... Applicant.

Versus

Union of India & Another ... Respondents.
For the Applicant ... Shri S.K.Bisaria,
Advocate.
For the Respondents ... Shri P.H.Ramchandani,
Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Shri S.P.Mukerji, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicants in these applications filed under
Section 19 of the Administrative Tribunals Act, 1985 belong
to either the Central Information Service Cadre or the
category of staff artists under the Ministry of
Information and Broadcasting. Though they have prayed for

different reliefs in the applications, a common question has been raised in regard to the legality of creation and filling up of certain newly created posts for Doordarshan in the category of Artists as part of a new scheme of the Government to bring about qualitative improvement in T.V. programme. Therefore, all the applications are being considered together in this common judgement.

2. In Mohan Singh's case, there are four applicants who are at present employed in Grade III, Group 'B' of the Central (Indian) Information Service. In Robert's case, there are four applicants who are at present serving in Junior Grade, Group 'A' of the same Service. In Shekhar Chowdhary's case, there are two applicants. Both of them had held the posts of Reference Officer in News and Current Affairs Section in Doordarshan. Gauri Shanker Kapoor has worked as Script Writer in Doordarshan. They are in the category of Staff Artists.

3. The common challenge in these applications is to the advertisement issued by Doordarshan on 12.6.1987 for appointment to fiftyseven posts in the category of Artists on contract basis. The advertisement pertained to filling up of 20 posts of T.V. News Correspondents, 30 T.V. Assistant News Correspondents, and 7 T.V. Assistant Editors. A copy of the aforesaid advertisement has been given in Annexure A-1 and B at pages 29-37 of the paper-book in Mohan Singh's case.

4. The salient provisions of the aforesaid advertisement are the following:-

1. The essential qualifications for the post of T.V. News Correspondent are:-

- (i) Degree from a recognised university or its equivalent; and
- (ii) Degree/Diploma in Journalism from a recognised institute with 4 years' experience of journalist work in a news-broadcasting organisation/ reputed newspaper/news magazine/news agency; or

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six years experience of journalistic work in a news broadcasting organisation/reputed newspaper/news magazine/news agency.

- (iii) Proficiency in English and/or Hindi and current affairs which will be tested by a simple written examination consisting of two papers - (a) Essay in English, and (b) Current Affairs to be answered in English or in Hindi. Screened candidates, as a result of the written test, will also have to appear at an interview.

- (iv) Attractive T.V. personality.

The following desirable qualifications have also been prescribed for the post of TV News Correspondent

- (i) Published work in reputed News Agency/journals in English/Hindi.
(ii) Proficiency in a regional language relevant to the vacancy.
(iii) Proficiency in debating, elocution and/or acting on stage, Television or films.

The age prescribed is not exceeding 45 years as on 1st July, 1987.

The scale of the post is Rs.3000-4500 plus allowances as admissible to Doordarshan Artists from time to time.

II.

The qualifications prescribed for the other posts, viz., TV Assistant News Correspondents and TV News Editors, are the same. These are -

- (i) Degree from a recognised university or its equivalent;
(ii) Proficiency in English and/or Hindi and current affairs which will be tested by a written examination followed by an interview, as in the case of TV News Correspondents, and

(iii) Attractive T.V. personality.

The desirable qualifications are: -

(i) Degree/Diploma in journalism;

(ii) Experience of journalistic work; and

(iii) Proficiency in debating, elocution and/or acting on stage, television or film.

The age prescribed is not exceeding 30 years

as on 1st July, 1987.

III Selected candidates will be engaged on a monthly

renewable contract in the first instance. They

will be appointed as Artists on contract for a

duration of five years, including initial period

of two years of probation. The renewal of the

contracts will be for a spell of five years at a

time and further renewal will be automatic if the

records are satisfactory. Their performance will

be subject to a review/assessment by the competent

authority on the basis of confidential reports.

Subject to his/her being found fit/suitable, every

Artist will be retained in service upto the age

of 60 years.

IV. Provision has also been made to give the selected

Artists dearness allowance, city compensatory

allowance, etc., as admissible from time to time

to regular Government servants drawing equivalent

pay. Other facilities like accommodation, CGHS,

LTC, etc., are also admissible to them.

4-A. The filling up of the posts on the basis of the

impugned advertisement dated 12.6.1987 had been stayed

by another Bench of the Tribunal and the posts which

had been advertised, have not, therefore, been filled up.

The learned Counsel for the respondents submitted that this

has resulted in administrative difficulties as the respondents want to implement the new scheme as envisaged in the impugned advertisement at the earliest.

5. The genesis to the impugned advertisement is the report entitled "An Indian Personality for Television" submitted to the Government by the Working Group on Software for Doordarshan in March, 1985 (popularly known as the Joshi Committee Report). The Government had appointed this Committee to prepare a software plan for Doordarshan taking into consideration the main objectives of television of assisting in the process of social and economic development in the country and to act as an effective medium for providing information, education and entertainment. The main findings of this Committee, insofar as they are relevant to the applications before us, are the following:-

- (i) More than in the case of newspapers, films or radio, gathering and presentation of news and documentaries or other programmes on current affairs in TV, require close and understanding cooperation between members of a team. Such cooperation is now lacking in Doordarshan which has no news teams worth the name in the first place. The news programmes are put together by persons drawn for short periods from different cadres. The News Editors and Assistant News Editors who select and edit verbal copy, are drawn from the Central Information Service (CIS) which supplies journalistic personnel to all media units of the Ministry of Information & Broadcasting, including Doordarshan. Officers of

CIS are liable to be transferred from one media unit to another, according to the exigencies of vacancies arising in different units. In addition to these routine transfers, a transfer sometimes takes place when an officer gets promoted in the CIS and there is no post available in the higher scale in the media unit where the person is working. He must move out even if he or she has proved capable and useful in that organisation. Routine transfers militate against specialisation. So far as Doordarshan is concerned, the news work is of such a special nature that journalistic posts in Doordarshan should be excluded from the CIS. If it is not possible to do this at one stroke, CIS personnel seconded to Doordarshan should first be trained for visual news gathering and presentation. If found suitable, they should remain with the organisation for a period of at least ten years. If, during this period, a CIS officer becomes due for promotion, he should be promoted on the job within Doordarshan. The filling of journalistic posts should not entirely be from the CIS. Talent from outside should be recruited to the extent of at least 25 per cent, to begin with, through the U.P.S.C. on salary terms that will attract and retain talent. Those eligible to apply, should include persons who have worked as Producers(News) (vide paras. 14-16, vol.I, pp.69-70 of the Report).

(ii) A cadre of TV journalists of different grades comprising of functionaries now designated as News Editors/Assistant News Editors, Correspondent Reporters, and Chief Producers/Producers(News), should be created. They should combine the skill of writing, editing, reporting, interviewing and of directing visual coverage and sound recording as well as the telecast of a news or current affairs programme from the production panel. It should be possible for the members of the proposed cadre of TV journalists to perform any of the tasks with an acceptable level of competence (vide paras. 24-25, vol.I, p.71 of the Report).

(iii) There will have to be a complete revamping of the recruitment rules for Staff Artists of Doordarshan on the news side issued in May, 1982. These rules are totally inadequate, both in respect of the qualifications required and the emoluments offered (vide para.29, p.72, vol.I of the Report).

(iv) One of the first steps to secure professionalism is to end the system of departmental recruitment of professional and technical personnel of the News Wing of Doordarshan. All such recruitment should be by the U.P.S.C. or by the Staff Selection Commission, depending on the salary level of a professional or technical post. If in some cases, recruitment needs to be made faster than is possible through the normal agencies, the selection should be made by a committee

which has a majority of outside experts. And such selection should be subject to ratification by the U.P.S.C. or S.S.C. (vide para. 33, p. 73, vol. I of the report).

6. The stand of the respondents is that the 57 additional posts which were created and for which recruitment action has been taken, is pursuant to the recommendations contained in the Joshi Committee's Report which have been accepted by the Government in principle. The recommendations of the Joshi Committee and the decisions thereon taken by the Government have been set out in tabular form in the annexure to the counter affidavit filed by the respondents in Mohan Singh's case (OA-1613/87) at page 130 of the paper-book. As regards the decision of the Government and its rationale, it has been stated in the said annexure that the creation of a separate News Cadre for Doordarshan, as recommended by the Joshi Committee, will be a long-term project as development of a separate News Cadre takes time, right from the inception of the Service, framing of recruitment rules, training and development of expertise.

7. The above stand of the respondents has been contested vehemently by Mohan Singh & Others in their applications. According to them, this is only a camouflage to pick and choose the favourites of the respondents, to appoint them in the posts advertised without consulting the U.P.S.C. and to induct them into the cadre later on, thereby giving them unintended benefits and seniority. They have alleged mala fides and arbitrariness on the part of the respondents. According to them, the officers currently manning the Central Information Service, could very well man the new posts for which recruitment is proposed to be made. In this context reliance has also been placed on the Recruitment Rules of 1959 and 1987 applicable to the members of the Central Information Service.

8. The Central Information Service Rules, 1959 were notified on 16th February, 1959 (hereinafter referred to as the '1959 Rules') and these Rules have been repealed by the Indian Rules, 1987 (hereinafter referred to as the '1987 Rules'). Information Service (Group 'A'). These Rules have been

reproduced at Annexure 'C' and 'D', pp.38 to 93 of the paper-book in Mohan Singh's case. It should be noted at once that these Rules are applicable to only those posts and

none else which are indicated by numerical strength and designation in the relevant schedule to these Rules. A post carrying the same designation and identical duties but beyond the numerical strength indicated in the schedule will not be covered by these Rules. Likewise posts with different designations even with identical duties as of the scheduled posts would still be outside the purview of these Rules unless specifically notified to be governed by these Rules. Members of the Indian Information Service therefore cannot ^{claim} under the Rules promotion to such posts not included in the Schedule.

Much of misunderstanding can be avoided if this basic delimitation of these Rules to the scheduled posts only, is kept in view.

9. Though the 1959 Rules have been repealed, as mentioned above, a brief reference to the salient features of the same may be made. The Central Information Service constituted under these Rules consists of seven grades, viz., Grade IV Class II (non-gazetted) non-ministerial; Grade III (Class II Gazetted) non-ministerial; Grade II; Grade I; Junior Administrative Grade; Senior Administrative Grade and Selection Grade. Appointment to Grade IV which carries a scale of Rs.470-750, is by direct recruitment through competitive examination conducted by the U.P.S.C. After one serves for five years in Grade IV, he is eligible for promotion to Grade III in the pay-scale of Rs.650-1200.

After one puts in three years' of service in Grade III, he becomes eligible for promotion to Grade II in the scale of Rs.700-1300. In Grade II, 50 per cent by promotion.

After one completes five years' service in Grade II, he becomes eligible for promotion to Grade I in the scale of Rs.1100-1600. After one puts in 5 years of service in Grade I, he becomes eligible for promotion to the Junior

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Administrative Grade in the scale of Rs.1500-1800. The Senior Administrative Grade has two scales of pay, viz., Rs.1800-2000, which is the junior scale, and Rs.2000-2250, which is the senior scale. After one puts in four years of service in the Junior Administrative Grade, he becomes eligible for promotion to the Senior Administrative Grade. Next comes the Selection Grade in the scale of Rs.3000/- fixed. The Selection Grade posts are filled by promotion. The duty posts in the Service and their designations have been given in the Schedules to these Rules.

10. Rule 6-8 of the 1959 Rules deals with inclusion and exclusion of posts in the Service. This Rule reads as follows:-

(1) The Government may, in consultation with the Commission include in the service any posts other than those included in Schedule I to VII or exclude from the service a post included in Schedule I to VII from time to time, by way of amendment of the relevant Schedule and when a Schedule is so amended, any reference to that schedule in these rules shall be construed as a reference to such schedule as so amended.

(2) The Government may, in consultation with the Commission appoint an officer, the post held by whom is included in the service, under sub-rule(1), to the appropriate grade of the service, in a temporary capacity or in a substantive capacity, as may be deemed fit and fix his seniority in the grade, again in consultation with the Commission whereupon such a post shall not be reckoned for determining the number of posts to be filled by promotion or by direct recruitment, under rule 6.

Provided that the officer was appointed to the post either on the recommendations of the Commission or of the Departmental Promotion Committee concerned or in accordance with the rules of recruitment applicable to the post, as the case may be."

(emphasis added)

11. The 1987 Rules, by and large, correspond to the 1959

Rules. The departures made in the new Rules which are

relevant in the present context, relate to the method of recruitment to the junior grade / and fixation of seniority of the inductees. According to Rule 7(2),

the 50 per cent of the vacancies in Junior grade shall be filled by direct recruitment on the results of a combined competitive examination conducted by the U.P.S.C. and the remaining 50 per cent shall be filled by promotion of officers. Another departure is in regard to the inclusion and exclusion of posts in the Service. Sub Rules (4) and (5) of Rule 4 of the 1987 Rules which deal with the matter read as follows: -

(4) The Government may, in consultation with the Commission, include in the Service any posts other than those included in Schedule I or exclude from the Service a post included in the said Schedule.

(5) The Government may, in consultation with the Commission, appoint an officer whose post is included in the Service under sub-rule (4) to the appropriate grade of the Service in a temporary capacity or in a substantive capacity, as may be deemed fit and fix his seniority in the grade after taking into account continuous regular service in the analogous grade." (emphasis added)

It will be noticed that under the 1959 Rules, inclusion or exclusion of posts and induction of officers holding

the posts so included in the Service has to be in

consultation with the U.P.S.C. While retaining this

provision, the 1987 Rules have omitted the proviso under

Rule 6-B of the 1959 Rules which stipulated that the

officer so inducted to the Service had been originally

"appointed to the post either on the recommendations

of the Commission or of the Departmental Promotion Committee

concerned, or in accordance with rules of recruitment

applicable to the post, as the case may be." Further for

fixation of seniority, consultation with Commission has

been omitted in the 1987 Rules and it has been provided

in the 1987 Rules that service in an analogous grade will also be taken into account. There was no such provision in the 1959 Rules.

12. After the notification of the 1987 Rules and before issuing the impugned advertisement on 12.6.1987, one important development had taken place which needs to be mentioned at this stage. On 15th April, 1987, the Central Information Service Board held a meeting under the Chairmanship of the Secretary, Information and Broadcasting, to consider the cadre review proposals submitted to the Government. This was the second cadre review of the Central Information Service (now Indian Information Service) which had been constituted w.e.f. 1st March, 1960. The proposals envisaged creation of three separate streams within the Service to meet the specialised requirements of A.I.R., Doordarshan and the Print Media. These streams will ensure that an officer spends about 15 years of service in one particular segment before he moves to another. The Board approved the proposals subject to certain observations. One observation is that so far as the newly created posts in the Doordarshan are concerned, these will not be presently staffed from IIS officers because of non-availability of adequate and suitable number of officers of IIS and other factors, but these may be taken into account while working out the basic structure of the Cadre as these are likely to be included in the IIS in future.

The Secretary of the Ministry of Information and Broadcasting also directed at the meeting that an appropriate note processing the above proposals should be prepared and the matter be taken up with the Department of Personnel & Training expeditiously. A copy of the minutes of the Board has been given in Annexure-F, pp.109-111 of the paper-book in Mohan Singh's case.

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13. The respective contentions of the parties in their pleadings may be summed up as follows:-

(i) The act of the respondents in proceeding to fill the posts by the method of direct recruitment of Artists on contract basis according to the application pursuant to the impugned advertisement, is illegal as these posts, in fact, stand covered by the 1987 Rules. The 1987 Rules cover all the posts on the side of News/Journalism, whether in All India Radio or in Doordarshan, as were existing on 18.2.87. The intention underlying the 1987 Rules is that even in future whenever any post concerning News/Journalism is created, either with the existing nomenclature or new nomenclature, the same will be included or encadred in the 1987 Rules.

As against the above, the respondents have contended that the newly created posts of TV News Correspondent/Assistant TV News Correspondent, and TV Assistant News Editor, are of the category of Artists which are distinct from the civil posts included in the Indian Information Service (Grade 'A'). The concept of separate TV News Correspondent/Assistant TV News Correspondent, etc., was given shape in April, 1987 in the context of reorganisation of TV News set-up. Even the nomenclature of these posts is different from the posts mentioned in 1987 Rules. These posts have been sanctioned in the category of 'Artists' and separate recruitment rules are being framed for them. The proposed recruitment rules provide 100 per cent direct

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recruitment to the posts which are to be filled on contract basis.

We agree with the respondents as we have already clarified in Para 8 above.

(ii) The applicants have contended that the posts of Assistant TV News Correspondent/Assistant News Editor, in fact, fall under the junior grade of pre-revised scale of Rs.700-1300. The said junior grade appears in Schedule I to the 1987 Rules. In the said Schedule, all the posts belonging to journalism in the media units, both in the AIR and Doordarshan, of the level of junior grade are given. The functions of the newly created posts were performed by the existing incumbents of the Service. Thus, the newly created posts are already covered by the 1987 Rules or should be treated as covered by the same rules. Since the post of Assistant TV News Correspondent stood covered by the 1987 Rules, it could not be filled as proposed by the respondents through the impugned advertisement. Provision already exists in the 1987 Rules for filling up of 50 per cent of the posts in the junior grade (including the post of Assistant TV News Correspondent) by promotion on the basis of seniority-cum-fitness from amongst the incumbents of the posts of Grade III of CIS and 50 per cent by direct recruitment through U.P.S.C.

As against the above, the respondents have contended that the posts now advertised are distinct and separate from the posts included in the 1987 Rules. The new posts belong to the category of 'Artists' to be engaged on contract basis. This is also clearly mentioned in the sanction letter issued by the Ministry of Information & Broadcasting on 29th April, 1987, a copy of which has been annexed to the counter affidavit in the Mohan Singh's case as exhibit R-1 (pages 126 to 128 of the paper-book). The 1987 Rules nowhere stipulate that all posts on the side of News/Journalism, whether in AIR or in Doordarshan, even after notification of the Rules either with the existing or new

nomenclature, will necessarily be included or encadred

in the 1987 Rules. The respondents have pointed out that,

in fact, a number of posts on the side of Journalism/News,

namely, News Reporters, News Correspondents/ News Editor,

Reference Officer and Producer Grade I/II which already

exist in Doordarshan, and which are governed by a different

set of Rules, have never been included in the 1987 Rules.

We agree with the respondents in accordance with

the clarification given by us on the limitation of the 1987

Rules to the scheduled posts only and not beyond.

(iii) The applicants have referred to the provisions

of Rule 6-B of the 1959 Rules and the corres-

ponding sub Rules 4) and (5) of the 1987 Rules

dealing with inclusion and exclusion of members

of the Service and have contended that a

material change has been brought in the 1987

Rules. The change is that while the proviso

to Rule 6-B(2) of the 1959 Rules stipulated

that only such officer would be considered

for inclusion in the Service as was appointed

to the post (sought to be included in the

Service) on the recommendations of the U.P.S.C.

or of the D.P.C. concerned or in accordance

with the Rules of recruitment applicable to

the post, as the case may be, the said

provisions have been omitted under Rule 4(5)

of the 1987 Rules. Thereafore, even if a person

was not appointed to the post concerned either

on the recommendations of the U.P.S.C. or of

D.P.C. concerned, or in accordance with the

rules of recruitment applicable to the post,

as the case may be, he can be included in the

Service under the 1987 Rules. Further, Rule

4(5) of the 1987 Rules empowers the Government

to fix the seniority of a person so included

in the Service in the grade after taking into

account continuous regular service in the

analogous grade. This is arbitrary. Sub Rules 4

and (5) of the 1987 Rules do not lay down any norms or guidelines for the purpose of inclusion and exclusion of the posts in the Service for

the guidance of the competent authorities. It also does not lay down that such inclusion or exclusion should be done by a duly constituted Cadre Review Committee. Such inductions would also adversely affect the seniority of the incumbents already in Service and instead of gaining in seniority with the passage of time, they will lose in seniority by becoming junior to the inductees.

As against the above, the respondents have contended that the provisions of sub-rule (4) and (5) of Rule 4 of the 1987 Rules provide for consultation with the U.P.S.C. while considering the inclusion of a post or an officer whose post is included in the service. Inclusion of the post does not make it obligatory on the Government to induct the incumbent in that post. There is no arbitrariness in fixing the seniority of the incumbent of a post which is included in the Service. The seniority of the officer is fixed in consultation with the U.P.S.C. and in accordance with the guidelines issued by the Government on the subject from time to time. Further the posts of Assistant T.V. News Correspondents are not included in the I.I.S. Group 'A' and the provisions of the recruitment rules for Junior Grade of IIS Group 'A' cannot be automatically made applicable to the post of Assistant T.V. News Correspondents.

Our views in regard to the above contention have been mentioned hereinafter (Vide para 31).

- (iv) The posts which are mentioned in the impugned advertisement, are not covered by the definition of 'Artist' as given in the circular issued by the Ministry of Information & Broadcasting relating to the new terms and

conditions for engagement of Artists by AIR and Doordarshan. In the said circular, which has been set out in Annexure-E at pp.94-107 of the paper-book in Mohan Singh's case, the term 'Artist' has been defined as follows:-

"The following persons will be treated as "ARTISTS"

ALL INDIA RADIO

DOORDARSHAN

i) Announcer/Compere i) News Presenter

ii) Newsreader-cum-Translator ii) Presentation Announcer (Sr.)

iii) Newsreader iii) Presentation Announcer(Jr.)

iv) Conductor iv) Instrumentalist

v) Music Composer v) Music Composer

vi) Instrumentalist

vii) Drama Voice

viii) Translator-cum-Announcer (Foreign Languages)

ix) Announcer-cum-Translator (Indian Language)"

The applicants have referred to the aforesaid circular to contend that the posts which are mentioned in the impugned advertisement, are not covered by the above definition. According to them, the attempt of the respondents to fill up the new posts on contract basis and to appoint persons as Artists, is mala fide, illegal and contrary to the 1987 Rules as also the above mentioned circular defining the post of Artist.

As against the above, the respondents have contended that the aforesaid circular was issued in a different context. The decision to create posts of TV News Correspondent/TV Assistant News Correspondent/Assistant TV News Editors in the Artist category was taken keeping

in view the special requirements of Doordarshan with the object of improving the quality of its performance so that

it can become a powerful media for the people and be able to telecast programmes comparable with those of more

advanced countries. It was, therefore, felt essential

to build up Doordarshan's own News Cadre. The functional

requirement of a TV News Correspondent/TV Asstt. News

Correspondent/TV Asstt. News Editor in Doordarshan is

distinct from those in journalistic staff in the traditional

medium of press and even Radio. A TV journalist has to meet

the specialised needs of the medium of TV. Therefore,

Doordarshan's requirement is to have as TV News Correspondent,

Asstt. News Correspondent/Asstt. News Editors persons sensitive

to the visual requirements of the medium and fully capable of

putting together the reality of an event and depict it

visually rather than narrate utterances. Also the Artists have

to have an attractive TV personality because they may have

to come on screen quite often while conducting interviews

etc. as TV News Correspondents etc., which may not be the

case for members of the IIS. It is further stated that TV

News Correspondent/TV Asstt. News Correspondent/TV Asstt.

News Editor has to be familiar with not only visual technique

but also with the overall concept of producing the TV program

itself. Artists comprise not only performing artists that is

those who are heard over Radio or appear on TV screen but

also those who work behind the scene. Further, the working

Group on Software for Doordarshan headed by Dr. P.C. Joshi,

has, inter alia, recommended that there is a need to have

a separate cadre for Doordarshan in replacement of CIS

officers, where TV journalists should be recruited. The

Government has accepted this recommendation in principle.

We agree with the respondents as we have already clarified in para. 8 above.

(v) The applicants have alleged mala fides on the part of the respondents. According to them,

certain persons who are not eligible for appointment to the newly created posts by

promotion or direct recruitment through UPSC,

under the 1987 Rules, are sought to be appointed

by the respondents by bypassing the statutory

requirements of going through the U.P.S.C.

The respondents have also expressed their

intention to ultimately encadre the incumbents

selected on the basis of the impugned advertise-

ment in the Service. In this context, reference

has been made to the minutes of the CIS Board's

meeting held on 15th April, 1987. Para.2(i) of

the minutes of the meeting of the Board refers

to the staffing of the newly created posts by

non-IIS officers "because of non-availability

of adequate and suitable number of officers of

IIS and other factors". The applicants have

contended by referring to the qualifica-

tions, experience, etc., of the newly created

posts as per the impugned advertisement that

these are fulfilled by the existing incumbents

of Grade III of the Service numbering about 280.

The existing incumbents have to their credit a

service of 4-12 years in relation to journalistic

work. In other words, suitably qualified and

more experienced persons are available within

the Service. That being so, induction of new

persons through the impugned advertisement is

mala fide. They have also contended that

reference to "other factors" in para.2(i) of the minutes is too vague. This also indicates mala fides.

As against the above, the respondents have contended that the future status of the proposed inductees has been left open. Reference to the 'other factors' is presumably to the needs of TV journalism which is fast changing and much different from normal requirements of conventional journalism. The respondents have denied the allegation of mala fides on their part.

14. In the above factual background, the following legal issues arise for consideration, namely,

- (i) whether it will be legally and constitutionally in order for the respondents to recruit 'Artists' pursuant to the impugned advertisement and form a separate category of Artists outside the purview of the 1987 Rules;
- (ii) whether the provisions of sub-rules (4) and (5) of Rule 4 of the 1987 Rules are liable to be struck down on the ground that they confer an unbridled or unfettered power on the respondents in the matter of inclusion and exclusion of members of the Service.

15. Shri P.H. Ramchandani who appeared for the respondent referred to the recommendations of the Joshi Committee and strongly pleaded that it is for the Government to decide as to what type of personnel should man the newly created posts. The Government has not taken a final decision on incumbents thereof. the encadrement of these posts and if and when the question of encadrement arises, the U.P.S.C. will be consulted. At

present, no-one's legal right has been affected. When the rights of the members of the Service are affected or when there is an apprehension that their rights will be affected, it will be open to them to move the Tribunal and seek appropriate relief. At this stage, it is only speculation that the Government may do this or that and no legal rights of the applicants have been adversely affected by the creation of the new cadre of Artists pursuant to the impugned advertisement.

16. Shri Ramchandani relied upon the decision of the Supreme Court in Dr. N.C. Shinghal Vs. Union of India & Others, 1980(2) SLR 118 at 136. In that case, the question arose whether the Government was guilty of legal malice when it created posts in super-time Grade II in Ophthalmology speciality at Willingdon Hospital. The Supreme Court observed that "whether a particular post is necessary, is a matter depending upon the exigencies of the situation and administrative necessity. The Government is a better judge of the interests of the general public for whose service the hospitals are set up. And whether a hospital catering to the needs of the general public providing medical relief in different specialities has need for a particular post in a particular speciality, would be better judged by the Government running the hospital. If Government is a better judge, it must have the power to create or abolish the posts depending upon the needs of the hospital and the requirements of the general public. Creation and abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest and necessity of internal

administration. The creation or abolition of posts is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of posts, are all decided by the Government in the interest of administration and general public."

17. The above contention of Shri Ramchandani is perfectly valid. Shri G.D. Gupta, the learned counsel for the applicants, did not dispute the power of the Government to create new posts dictated by policy decisions, exigencies of circumstances and administrative necessity. His contention was that the new posts have been created by the respondents with a view to pick and choose their own favourites from the open market, ignoring the claims of the members of the Service who have been performing the very same duties all these years which the respondents propose to entrust to the newly recruited personnel. He also contended that after the recruitment to the new posts is made, the respondents would invoke the provisions of sub-rule (4) and (5) of Rule 4 of the 1987 Rules and induct personnel into the Service through the back door. This would adversely affect the interests of the existing incumbents of the Service. According to the learned counsel for the applicants, the action taken by the respondents is mala fide and arbitrary.

18. The learned counsel for the applicants relied upon the decision of the Supreme Court in Air India Vs. Nagesh Meerza, AIR 1981 S.C. 1829. In that case, the Supreme Court observed that "it is true that a discretionary power

may not necessarily be a discriminatory power but where a statute confers a power on an authority to decide matters of moment without laying down any guidelines or principles or norms, the power has to be struck down as being violative of Article 14".

19. According to the learned counsel for the applicants, no guidelines have been laid down for the exercise of the power conferred on the Government under sub-rules (4) and (5) of Rule 4 of the 1987 Rules in regard to the inclusion and exclusion of members of the Service. The 1987 Rules also do not incorporate the proviso which had been included under Rule 6-8 of the 1959 Rules dealing with inclusion and exclusion of posts which envisaged that the officer who will be included in the Service must have been appointed to the post either on the recommendations of the U.P.S.C. or of the Departmental Promotion Committee concerned, or in accordance with the rules of recruitment applicable to the posts, as the case may be. The learned counsel for the applicants argued that in the absence of any guidelines or principles or norms, the Government has been given the discretion to pick and choose their favourites, appoint them to the new posts and at a later stage induct them into the Service and assign them seniority over those who have worked in the Service for several years. This would not be legally permissible.

20. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. What the respondents propose to do in the present case is to 'test run' a new category of 'Artists' 'au fait' in audio-visual presentations, without involving the UPSC.

in the process of selection as that would entail a time-consuming process of framing Recruitment Rules, etc., which may be premature at this experimental and tentative stage. The question arises whether there would be any legal or constitutional objection to this proposal.

21. It is well settled that the Government is competent within its sovereign rights and obligations to decide to create posts in the public interest or in the exigencies of Service. The Government is competent to lay down the requisite qualifications for recruitment to these posts. There is no legal or constitutional objection to the newly created posts being formed into a separate category side by side but outside the existing cadres. These are matters of

policy, with which the court will not interfere so long as there is no violation of any constitutional provisions.

Similarly, Article 309 of the Constitution dealing with recruitment and conditions of service of persons serving the Union or a State, does not make it obligatory for the

Government to make rules relating to public service, nor invalidate any act done by the Government in the exercise of its executive power relating to public services on the ground that rules relating to the matter have not been made under Article 309. So long as rules under Article 309 are

not made, there is nothing to debar the Government from exercising its executive power to manage any compartment of its public services, provided such action is not contrary

to any provision of the Constitution or any legislative enactment. The decisions of the Supreme Court in B.N.

Nagarajan Vs. State of Mysore, AIR 1966 S.C., 1942, in Sant Ram Sharma Vs. State of Rajasthan, AIR 1967 S.C. 1910, and in Ramesh Prasad Singh Vs. State of Bihar, 1978 S.C.C.

(L&S) 23, may be referred to in this context.

22. In B.N. Nagarajan's case, the Supreme Court observed that it is not obligatory under proviso to Article 309 to make rules of recruitment, etc. before a service can be constituted or a post created or filled. The Government has the executive power to act in this regard. One of the contentions raised in that case was that if the executive is held to have power to make appointments and lay down conditions of service without making rules in that behalf under proviso to Article 309, Articles 15 and 16 of the Constitution would be breached because the appointments in that case would be arbitrary and dependent on the mere whim of the executive. Rejecting this contention, the Supreme Court observed as follows:-

"If the Government advertises the appointments and the conditions of service of the appointments and makes a selection after advertisement there would be no breach of Art.15 or Art.16 of the Constitution because everybody who is eligible in view of the conditions of service, would be entitled to be considered by the State." (emphasis added)

23. In Sant Ram Sharma's case, the Supreme Court has observed that till statutory rules are framed by the Government, it can issue administrative instructions regarding the principle to be followed in the matter of promotion. The Court relied upon its earlier decision in Nagarajan's case.

24. In Ramesh Prasad Singh's case, the Supreme Court observed as follows:-

"As is well known, the process of rule-making is a protracted and complicated one involving consultation with various authorities and compliance with manifold formalities. It cannot also be disputed that exigencies of administration at times require immediate creation of service or posts and any procrastination in that behalf cannot but prove detrimental to the proper and efficient functioning of public departments. In such like situations,

the authorities concerned would have the power to appoint or terminate administrative personnel under the general power of administration vested in them as observed by this Court in B.N. Nagarajan Vs. State of Mysore and T. Cajes v. U. Jormanik Siem. It follows, therefore, that in the absence of rules, qualifications for a post can validly be laid down in the self-same executive order creating the service or post and filling it up according to those qualifications."

25. The further question that arises is whether it would be consistent with the principles enshrined in Articles 14 and 16 of the Constitution to recruit and appoint T.V. personnel in the category of 'Artists' pursuant to the impugned advertisement.

26. The TV personnel in the category of 'Artists' proposed to be appointed under the new scheme would form a distinct and separate class and would be governed by a separate set of service rules. There is a nexus between the basis of classification and the object sought to be achieved which is to bring about better efficiency and secure professionalism in T.V. journalism. The recruitment will be through an open advertisement on all India basis and those who fulfil the educational and other qualifications and experience prescribed by the impugned advertisement have equal opportunity to compete and get selected to the posts advertised. Those who are members of the C.I.S.(I.I.S.) Cadre, or otherwise holding posts of cognate specialisation in any capacity like 'Staff Artist', or regular Government servant, also can compete with the others if they fulfil the prescribed qualifications and experience. In view of these, it cannot be concluded that the principles enshrined in Articles 14 and 16 have been infringed in any manner. Creation of these TV posts cannot, in any manner, be held to have diminished the existing chances of promotion of the applicants as these posts have not supplanted the posts to which they are normally promoted.

On the other hand, these newly created posts have opened up new vistas of accelerated promotion and of work of deeper sophistication and professionalism untrammelled by frequent and routinised transfers inherent in a 'broad-spectrum' cadre.

27. In this context, it is pertinent to point out that several artists have been engaged since long in All India Radio and Doordarshan outside the cadre and not forming part of the mainstream of the organised Service (vide Annexure 'E', pages 94 to 108 of the paper-book in Mohan Singh's case).

[This appears to have gone unchallenged]

all these years. We are also not impressed by the contentment of the applicants that the duties and responsibilities of the newly created posts of Artists are similar to those presently being performed by the existing

incumbents of the Service and that the change in the nomenclature of the posts is merely a camouflage.

28. The applicants have alleged mala fides and arbitrariness on the part of the respondents.

29. As has been observed by the Supreme Court in Shri E.P. Royappa Vs. State of Tamil Nadu, 1974 S.C.C.

(L&S) 165, the burden of establishing mala fides is very heavy on the person who alleges it. The allegation of mala fides demands proof of a high order of credibility.

In the present case, it cannot be said that the applicants have discharged this onus. Equal opportunity was afforded

to the members of the Service to compete with the other candidates for selection and appointment to the newly created posts. There is no allegation that the examination and interviews were held improperly or in an irregular manner. There is no allegation that things were done in a hush hush manner.

30. In the facts and circumstances of the case, we are of the opinion that the impugned advertisement and any action taken pursuant to the said advertisement are not liable to be quashed, as prayed for by the applicants.

In arriving at this conclusion, we have also taken note of the submissions made by the respondents in DA-1230/87 that "the Department has already conducted written examinations on 23rd August, 1987, for filling the post of News Correspondents, etc. Out of 9000 and odd applications received, 6000 and odd applicants were

found eligible and were allowed to write the examination. The answer-books written by the candidates have already been evaluated. Government has incurred an expenditure of Rs.3.52 lakhs on the recruitment" (vide pages 40 and 41 of the paper-book in OA-1230/87 - Gauri Shanker Kapoor Vs. Union of India and Others). Shri Ramchandani, the learned Counsel for the respondents, submitted before us that there was great urgency in the matter and that 57 persons have already been selected by a duly constituted selection committee consisting of outside experts in the field. Moreover, the present proposal involves creation of ex-cadre posts ^{of Artists a} on contract basis and similar ex-cadre posts on contract basis have been in existence in A.I.R. and Doordarshan for a number of years without any challenge from members of the C.I.S. (IIS) Service. The basic point which cannot be lost sight of is that the members of the Indian Information Service can claim promotion etc. under the Indian Information Service (Group A) Rules, 1987 only to such posts which are included in Schedule (I) thereto by not only designation but by number. The 57 newly created posts in question are admittedly not included in that schedule. As a matter of fact to prevent the designation of these posts which are in category of Artists are not identical with the scheduled posts. Accordingly, the members of the Service can have no pre-emptive right to appointment to these 57 posts merely by virtue of their belonging to that Service. The Government have also not taken any decision at this stage about encadrement or otherwise

of these 57 posts as also of the new personnel

who are yet to be appointed and as such, it cannot

be said that the legal rights of the applicants

could have been adversely affected at present. To our

mind, there is no justification to stall the process

of recruitment and appointment of Artists, as proposed,

on the mere unfounded apprehension of the applicants

that their career prospects would be adversely

affected by the proposed action.

There is, however, some force in the contention

of the applicants as regards the validity of the

existing provisions of sub-Rules (4) and (5) of Rule 4

of the 1987 Rules. As the newly created posts have also

been taken into account in the second cadre review

proposals concerning the C.I.S. (IIS), we are of the

opinion that if at a future date the question of en-

cadrement in the C.I.S. (IIS) Cadre of all or some of the

newly created posts of Artists along with the incumbents

arises, the same should be decided by the respondents in

consultation with the U.P.S.C. Rule 4(4) of the 1987 Rule

already contains a provision in this regard. However, in

order to rule out any arbitrariness and ensure justice

and fairness to the existing members of the Service, we

are of the opinion that the fixation of seniority of such

persons inducted into the Service should, in that event,

also be in consultation with the U.P.S.C., keeping

the respondents in view the length of service and the quality of

affidavit in Mohan

Singh's case and performance of the inductees in the analogous grade.

Accordingly, Rule 4(5) should be suitably amended

on the above lines in due course.

: 30 :

32. Applications filed by Mohan Singh & Others (OA-1613/87) and Roberts & Others (OA-1709/87) are disposed of accordingly.

33. We may now consider the points raised in the application No. OA-1287/87 filed by Shri Shanker Chowdhary & Another and application No. OA-1230/87 filed by Shri Gauri Shanker Kapoor in the connected matters. In these applications, the common point with the applications of Mohan Singh & Robert & Others (OA-1613/87 and OA-1709/87) is that the applicants have challenged the validity of the impugned advertisement. In Shekhar Chowdhary's case the applicants have prayed that the respondents be directed to promote them as News Correspondents/ News Editors in the Grade of Rs. 1100-1600 against the departmental quota as per recruitment and promotion rules. In Gauri Shanker Kapoor's case, the applicant has prayed that the respondents be directed to give seniority to him with effect from 1.6.1973 till 14.11.1989 as News Reporter and promote him as News Correspondent against the departmental quota as per recruitment and promotion rules. The facts of these cases are as follows.

OA-1237/87

34. In this application, Shekhar Chowdhary and his colleague are seeking promotions as departmental candidates from the post of Reference Officer to the post of News Correspondent against the vacancies advertised by the respondents through the impugned advertisement. Both of them are working as Reference Officers in News & Current Affairs Unit. The pay scale of the post of Reference Officer is Rs. 650-1200. According to the applicants, in the hierarchy of News & Current Affairs Unit, the next post is of News

Editor/News Correspondent in the grade of Rs.1100-1600 (pre-revised) and as per the recruitment and promotion rules, 50 per cent of posts in the cadre of News Editor/News Correspondent are to be filled by departmental promotion and the remaining 50 per cent by direct recruitment. The following are eligible categories for departmental promotion:-

(i) Reference Officer in the Grade of Rs.650-

1200 with five years' experience.

(ii) News Reporter in the Grade of Rs.550-900 with six years' experience.

(iii) Producer Grade I with two years' experience in the Grade of Rs.700-1300.

35. According to the applicants, the respondents have entirely advertised 20 posts of TV News Correspondents to be filled by direct recruitment in contravention of the recruitment and promotion rules, according to which, 50 per cent posts are to be filled up by departmental promotees. This amounts to denial and deprivation of the applicants' right to departmental promotion from the post of Reference Officer to the post of News Correspondent.

36. As against the above, the respondents have contended in their counter-affidavit that there was no bar on the departmental candidates to apply for the posts of TV News Correspondent for which advertisement had been issued.

Therefore, the applicants could also have sent their applications through proper channel. They have reiterated their contention in Mohan Singh's case and Robert's case that the posts advertised are distinct and separate from the posts of News Correspondent/News Editor in the category of 'Staff Artists' to which they are aspirants.

37. The respondents have further contended that there are only two posts sanctioned of News Correspondents in the Staff Artist category and both of them have been filled up. As such, the applicants have no case for promotion against the filled posts. In this context, it has been pointed out that until March, 1987, Doordarshan had two categories of posts in the News Section. The bulk of the posts are included in the Central Information Service and are being manned by the officers of the Service. Two posts of News Editor/News Correspondent belonged to the erstwhile categories of Staff Artists, which by a Government of India decision of 1982, were to be converted into regular civil posts on the basis of the option to be exercised by the incumbents. Presently, both the posts are filled by officers in the Staff Artist category who have already exercised their option to become Government servants. Action in regard to declaring them Government servants is under process and simultaneously the posts will also become converted into civil posts. Producers Grade I and Reference Officers who were earlier in the feeder group of posts for promotion as News Editors/News Correspondents, have been now given promotional avenues in the mainstream of Programme staff on their conversion as Government servants. Thus, effective from 23rd August, 1984, the Reference Officers as also Producers Grade I stand equated to Assistant Station Directors and Programme Executive, respectively and are eligible for promotion to the regular programme posts. In the light of the above, the applicants having already been declared

Government servants, are no longer Staff Artists and they stand excluded from promotion to the posts of News Correspondents/News Editors.

38. The respondents have further pointed out that the Reference Officers, on conversion as Government servants and on equation to the posts of Programme Executive, thereafter, have nowhere contested against their groupings with programme staff for promotional avenues.

38A. As already pointed out, these applicants cannot claim departmental promotions to any of the 57 newly created posts with different recruitment procedure and categorisation. The applicants could have competed for these posts if they were otherwise eligible. These posts cannot by any manner be deemed to have abridged the existing chances of their promotion.

DA-1230/87

39. In this application also, Gauri Shanker Kapoor, the applicant, has challenged the validity of the impugned advertisement as in other cases. The applicant joined the respondents on 1.6.73 as Script Writer in the Grade of Rs. 235-480. On 30.9.77, he was transferred to Hindi News Unit at Delhi Doordarshan. In 1978, the grade of his post was revised from Rs.235-480 to Rs.550-900. He has been engaged on a contract basis. The service contract has been extended upto 6.4.2000, i.e., till he attains the age of 58 years.

40. The applicant, vide letter dated 14.11.1980, was declared surplus as a Script Writer. Thereupon, he was adjusted and designated as News Reporter in the same grade of Rs.550-900. He has prayed that he should be given seniority w.e.f. 1.6.1973. His second prayer is that he should be promoted as News Correspondent against the departmental quota as per the recruitment and promotion rules. He has pointed out that in the hierarchy of News Unit, the next post is that of News Editor/News Correspondent in the grade of Rs.1100-1600 (pre-revised) and as per the recruitment and promotion rules, he is eligible for promotion. 50 per cent posts in the cadre of News Editor/

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News Correspondents are to be filled by departmental promotion and the remaining 50 percent by direct recruitment. It is in this context that he has challenged the action of the respondents in advertising 20 posts of T.V. News Correspondents to be recruited through direct recruitment pursuant to the impugned advertisement.

41. The respondents have stated in their counter-affidavit that as a result of the recommendations of the Staff Inspection Unit (SIU), the applicant was rendered surplus and in order to avoid his being thrown out of employment, he was adjusted against a vacant post of News Reporter in the equivalent grade. According to the service rules, if a person becomes surplus, efforts are to be made to absorb him in other cadres as per availability of vacant posts. It is a matter of coincidence that when the applicant became surplus, a post in the equivalent grade was available against which he was absorbed. The respondents have relied upon the Office Memorandum issued by the Ministry of Home Affairs on 6.2.1969, according to which, when a person on being surplus is absorbed in another office, no benefit of past service is given. His seniority in the cadre in which he is absorbed, is determined with reference to his date of selection for absorption in the new cadre and not with reference to the date of appointment in the previous cadre. Such a person cannot be made senior to the persons already working in the particular grade.

42. As regards the creation of 20 new posts of TV News Correspondents, the contention of the respondents is the same as in the other applications mentioned above.

43. The respondents have further pointed out that at present there are two posts of News Editor/News Correspondent in Doordarshan in the category of Staff Artist to which the applicant belongs. Both posts have been filled up.

44. The respondents have also pointed out that earlier a large number of employees working in Doordarshan and A.I.R. were in the category of Staff Artist who were appointed on a contractual basis. After considering their demands, the Government, in 1982, decided to bifurcate the contract staff into the following categories:-

(a) Those Staff Artists who were doing the work of a regular Government servant. Such contract staff were allowed to be treated as regular Government servants after due screening and obtaining their option. The process of conversion of such staff still continues.

(b) Those who are in the category of performing artists. They have been designated as 'artists and include such categories as News Presenters, Presentation Announcers, Instrumentalists, Music Composers, etc. Such Staff is given 5 years contract which is renewed periodically upto the age of 60 years depending on their suitability.

45. The applicant is at present a News Reporter in the erstwhile category of Staff Artists which was converted into a civil post. The applicant was given an option to be included in the Indian Information Service Grade IV, but he declined. However, he opted to be a Government servant.

46. The respondents have also pointed out that it was open to the applicant to apply for the post of TV News Correspondent pursuant to the impugned advertisement.

47. The reliefs claimed in these two applications insofar as they relate to promotion as News Correspondents against the departmental quota as per recruitment and promotion rules are dependent on the availability of the vacancies in the respective departmental quotas. Since the 20 posts of T.V. News Correspondents do not belong to either the Indian Information Service or the category of Staff Artists and have to be filled up 100% by open selection, the applicants of these two applications cannot claim promotion to the advertised posts as departmental candidates. As regards seniority claimed by Shri Gauri Shanker Kapoor, we are of the opinion that in the interest of justice, he should be given seniority in his category of News Correspondent w.e.f. 30.9.1977 from which date, according to his own version, he has been continuously discharging the duties of News Reporter. Having been absorbed in his own office, his service prior to his being declared surplus on 14.11.1980, cannot be overlooked for seniority.

48. To sum up, the four applications are disposed of with the following findings and directions:-

1.) DA-1613/87 and DA-1709/87

(a) The impugned advertisement dated 12.6.1987

and any action taken pursuant to the said advertisement are legally and constitutionally valid. All ad interim orders passed in these cases will stand vacated with immediate effect.

...37...

(b) The applicants have no claim to be considered for departmental promotion to the advertised posts as these posts lie completely outside the line of their promotion as departmental candidates.

(c) The newly created advertised posts to be filled by open competition cannot be held to have abridged the existing chances of applicants' promotion as these posts do not reduce or supplant but supplement the posts to which the applicants aspire for promotion.

(d) If and when the question of encadrement to the Indian Information Service of all or some of the newly created 57 posts (vide sanction letter dated 29.4.1987) and the incumbents thereof arises at a future date, the same should be decided by the respondents in consultation with the Union Public Service Commission. The fixation of seniority of such inductees in the cadre of Central Information Service (Indian Information Service) Group 'A' should also be in consultation with the UPSC, keeping in view the length of service and the quality of performance of the inductees in the analogous grade. Rule 4(5) of the Indian Information Service (Group 'A') Rules, 1987 should suitably be amended on the above lines in due course.

2) OA-1287/87 and OA-1230/87

The above findings and directions mutatis mutandis equally apply to the prayers in these applications

insofar as they relate to promotion to the posts of TV News Correspondents which are included in the posts newly sanctioned on 29.4.1987.

- 3) In the interest of justice, we order and direct that Gauri Shanker Kapoor, the applicant in DA-1230/87, should be given seniority w.e.f. 30.9.1977 in the grade of News Reporter in his own category.
- 4) There will be no order as to costs.
- 5) A copy of the order be placed in DA-1613/87, DA-1709/87, DA-1287/87 and DA-1230/87.

(S.P. Mukerji)
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)