

File for Reporting

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. OA 2504/90

Date of decision: 25.2.92

All India Radio, Administrative ----- Applicants
Staff Association & another

Vs.

Union of India through ----- Respondents
Secretary, Ministry of
Information & Broadcasting &
others

CORAM: THE HON'BLE MR.JUSTICE RAM PAL SINGH, VICE CHAIRMAN, J,
THE HON'BLE MR.D.K.CHAKRAVORTY, MEMBER, A,

For the Applicants Shri T.C.Agarwal,
Counsel

For the Respondents Shri P.H.
Ramchandani, Senior
Counsel.

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR.D.K.CHAKRAVORTY, MEMBER,

This is an application filed by the All
India Radio, Administrative Staff Association and
Shri O.P.Dargan, Office Superintendent under section
19 of the Administrative Tribunals Act, 1985 challenging
the recruitment rules notified on 6.9.90 for the post
of Superintendent in Civil Construction Wing of All
India Radio. They have also alleged discrimination
in the matter of equal pay for equal work. The
applicants have prayed for the following reliefs:-

(a) The respondents be directed to revise
the scale of pay of Superintendent to
Rs.1640-2900.

(b) The recruitment rules dated 6.9.90 be
quashed with a direction to provide

promotion to the post of Superintendent
from feeder cadre of Head Clerk/Accountant.

2. The Civil Construction Wing of the Directorate General of All India Radio came into existence in 1971-72. This is headed by a Chief Engineer (Civil). The organisation of the Civil Construction Wing has been done based on the pattern of CPWD/P&T Civil Wing. There is, however, variation as regards cadre of Ministerial staff of General Civil Services (GCS) and Central Secretariat Services (CSS), as compared to the CPWD/P&T Civil Wing. The cadre controlling authority in respect of CSS is vested in several sections of the Directorate and in respect of GCS cadres with the Station Directors of the respective zones. There is a common Ministerial cadre working in AIR/Doordarshan including Civil Construction Wing. In the offices of Superintending Engineers and Superintending Surveyor of Works, 13 posts of Superintendents in the pay scale of Rs.1600-2660 have been created whereas Head Clerks ^{General} are placed as supervisor of the Administration in the offices of the Executive Engineers. For the post of Superintendent, the recruitment rules dated 6.9.1990 prescribe "transfer on deputation" as the only method of recruitment. The applicants contend that it is discriminatory because the posts of Superintendent in the Song and Drama Division under the Ministry of Information & Broadcasting are filled up by promotion ^{of} officers from the feeder cadres with 5 years' service. Further, the scale of Superintendent in the Song and Drama Division has been revised from Rs.550-900 to Rs.1640-2500 whereas for the post of Superintendent in the ^{the} Civil Construction Wing/prescribed revised scale is Rs.1600-2660. This is stated to be violative of the principles of equality in opportunity in similar circumstances

as guaranteed by Article 16(1) of the Constitution and as held by the Hon'ble Supreme Court in the case of General Manager Vs. Rangachari (1961 SC Journal 424). This is also fully covered by the judgement in the case of Y.K. Mehra Vs. U.O.I (AIR 1988 SC 372) wherein it has been observed that two different policies cannot apply under the same Ministry.

The post of Superintendent was already in existence in the All India Radio and had been filled up by promotion. 13 posts referred to earlier were created afresh in 1984 and from that date all along these were filled up on ad hoc basis from the feeder grade of Head Clerk/Accountant as in the other units of the Ministry though no formal orders in this regard were issued. All this was changed with the promulgation of the recruitment rules on 6.9.1990 prescribing by "transfer on deputation". This is against the instructions issued by the Department of Personnel vide ^{Office} Memo dated 18.3.1988, the relevant portion of which is reproduced below:-

"Promotion may be kept as a method of recruitment depending upon the availability of the field of consideration. Care should be taken to see that the base for promotion is strong, i.e. the departmental candidates are fully qualified for the responsibilities of the higher post and the field is also adequate, i.e. normally the feeder grade should range from 3 to 5 times the number of sanctioned posts in the higher grade, in case the post in the higher grade is to be filled on selection basis."

The same OM goes ^{on} further to state that "in the case of isolated posts, it will be desirable to keep the method of recruitment of transfer on deputation/short-

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term contract as, otherwise, the incumbents of the lower posts, if directly recruited, will not have any avenue of promotion. In fact, it may be worthwhile to bring such posts into an organised cadre/Service rather than fill them by deputation from outside for limited periods from time to time. Care should always be taken to ensure that the officers holding posts, other than in an organised Service, have enough prospects for advancement in their own line. For this purpose, the administrative Ministry/Department should bring together all such isolated posts requiring similar educational qualifications, experience involving similar functions etc. into different groups to provide enough channels of promotion."

4. The applicants contend that since adequate number of officers are available in the Civil Construction Wing as well as in the other offices of the All India Radio and the respondents themselves had stated in October, 1989 that the system ^{issue of} ~~vogue~~ prior to the recruitment rules "is functioning properly" (Annexure A-6), it was arbitrary to promulgate the recruitment rules which eliminates ^{promotion} ~~as~~ the method of filling up the posts. ^{New} ~~The~~ recruitment rules have taken away the avenues of promotion. The Hon'ble Supreme Court has held in Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Govt. of Bihar and ors. (AIR 1988 SC 1033) that "reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly".

5. The application has been contested by the respondents. They have stated that the recruitment rules which provide for filling up the post of Superintendent by transfer on deputation by the officers of the Central Government holding, analogous posts on a regular basis or with 4 years regular service in the pay scale of Rs.1400-2600 or with 6 years regular service in the scale of Rs.1400-2300 have been notified with the approval of all concerned including the Ministry of Law. The comparison with the posts in the Song and Drama Division is not valid as their working is entirely different as compared to the Civil Construction wing which is working on the pattern of CPWD/P&T Civil wing and has to follow the CPWD manual in work charges establishment also. Further, the recruitment rules have been prepared to fit into its functional and administrative requirements for effective and efficient working. Every organisations may frame their own recruitment rules to fit into their functional and administrative requirements. It has been admitted that the posts were initially created in 1984 when there were no recruitment rules and the posts were filled up by promotion from amongst Head Clerks, Accountants/ Senior Store Keepers on ad hoc basis pending finalisation of recruitment rules for the post of Superintendent. It has been submitted that 13 posts of Superintendent have been created ^{only} in the Civil Construction Wing in the scale of Rs.1600-2660 which is in between the pay scale of Head Clerks of Rs.1400-2300 and Administrative Officer of Rs.2000-3200. If the post of Superintendent is made a promotional post for Head Clerks then it ^{will} form feeder grade to the post of Administrative Officer [✓] as according to the rules double channel of promotion is not allowed. Further, Head Clerks have now far greater number of posts

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in the promotional grade and on promotion they can be adjusted to a great extent at places of their choice which would be difficult in case they were promoted to the post of Superintendent. Keeping all these circumstances in view, it was decided to make the post of Superintendent as an ex-cadre post. Even now, the Head Clerks/Accountants will be eligible for consideration along with others.

5. We have heard the learned counsel for both parties and have gone through the records of the case carefully.

6. The first relief sought by the applicants relate to revision of the scale of pay of the Superintendent from Rs.1600-2660 to Rs.1640-2900. It is seen from the OA that the applicants have not made any representation to the respondents for consideration of this relief. During the hearing also it was confirmed that no ^{formal} representation has been made. We, therefore, hold that the application is pre-mature in so far as this relief is concerned. In view of this, the applicants may file a detailed representation to the respondents which shall be duly considered and disposed of by the respondents.

7. As regards the second relief, the recruitment rules for the post of Superintendent, the respondents' general contention that every organisation may frame its own recruitment rules to fit into its functional and administrative requirements for effective and efficient working are unexceptionable. However, we are not impressed by the reasons advanced for treating these 13 posts as ex cadre posts and prescribing transfer on deputation as the only method

of recruitment. It has not been explained as to why the procedure followed in respect of 4 posts of Superintendent in the Song & Drama Division, namely, promotion from the feeder cadre with 5 years regular service, failing which by transfer on deputation, cannot be adopted in the Civil Construction Wing. The contention that if the post of Superintendent is made a promotional post for Head Clerks then it cannot form feeder grade to the post of Administrative Officer on the ground that double channels of promotion are not allowed is not valid.

There are many organisations where two separate levels of feeder posts carrying different scales of pay are prescribed for ^{one level of} promotional posts. In such cases different lengths of qualifying service are prescribed for the different feeder channels.

8. The learned counsel for the applicants stated at the Bar, which has not been controverted by the learned counsel for the respondents, that the recruitment rules framed on 6.9.90 have not yet been implemented. The posts are still being held by some of the applicants on ad hoc basis for a period of almost 7 years and as such their accrued right cannot be taken away by promulgation of new recruitment rules. In ~~the~~ reply it was submitted on behalf of the respondents that even under the recruitment rules, Head Clerks/Accountants will be eligible for consideration along with others. It would be rather unusual to fill up an ex-cadre post through the method of "transfer on deputation" from the persons belonging to the same organisation. The very concept of deputation implies that persons within the same cadre cannot be considered for deputation as they are entitled only to promotion when due (vide the case of Vinod Kumar Vs. U.O.I & Ors. - 1989 (10) ATC 852).

9. In the light of the above discussion, we remand the matter

relating to the second relief to the respondents with the direction that the recruitment rules dated 6.9.1990 may be suitably revised to provide adequate promotional opportunities to the applicants. While doing so, the respondents shall keep in view the guidelines issued by the Department of Personnel and Administrative Reforms under their OM dated 22.5.1979 and subsequent Office Memoranda reproduced in the "Handbook on Recruitment Rules". Special attention may be given to the guidelines on eligibility of departmental officers for appointment by deputation. Further, since the posts have been filled up on ad hoc basis continuously for a long period, the respondents shall consider the desirability of incorporating a note on initial constitutional clause to protect the interest of existing incumbents.

10. In the conspectus of the facts and circumstances of the case, we order and direct as follows:-

- (i) The applicants may submit a detailed representation to the respondents for upgradation of the scale of pay for the posts of Superintendent in the Civil Construction Wing of the All India Radio from Rs.1600-2660 to Rs.1640-2900/- within one month from the date of receipt of a copy of this order. The respondents shall, on receipt of such a representation, consider and dispose of the same within a period of 4 months thereafter.
- (ii) The respondents are directed to amend/revise the recruitment rules for the post of Superintendent suitably providing for adequate promotional opportunities

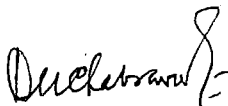
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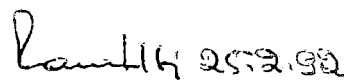
to the applicants keeping in view the observations made in para 9 supra. This direction shall be complied with expeditiously, preferably within four months.

- (iii) The respondents are directed to allow the persons, who are continuously holding the posts of Superintendent on ad hoc basis, to continue in the same posts till the promulgation of amended/revised recruitment rules as directed in (ii) above.

11. If the applicants are still aggrieved, they will be at liberty to move the Tribunal afresh in accordance with law, if so advised.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER(A)
25/2/1992


(RAM PAL SINGH)
VICE CHAIRMAN(J)