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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

O.A./~~XXX~~ No. 532/1992

Decided on: 27/9/92

S.K. VermaApplicant(s)

(By Shri K.C. Mittal Advocate)

Versus

U.O.I. & AnotherRespondent(s)


(By Shri P.H. Ramchandani Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A VEDAVALLI, MEMBER (J)

1. Whether to be referred to the Reporter or not? yes
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 532 OF 1992

NEW DELHI THIS THE 2nd DAY OF JULY, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

S.K. Verma
S/o Late Shri P.L. Verma,
R/o B-315, South Moti Bagh,
New Delhi.

...Applicant

By Advocate Shri K.C. Mittal

Versus

Union of India through

(1) Secretary,
Ministry of Information and
Broadcasting,
Shastri Bhawan,
New Delhi.

(2) The Director,
Song and Drama Division,
Ministry of Information and
Broadcasting,
15/16, Netaji Subhash Marg,
New Delhi.

...Respondents

By Advocate Shri P.H. Ramchandani

ORDER

Hon'ble Mr. K. Muthukumar, Member(A)

The applicant is aggrieved that the respondents have not considered him for promotion to the post of Drama Producer although the said post has been lying vacant since August, 1988. Applicant joined as an actor in December, 1961 in the Song and Drama Division under the respondents and he was promoted to the post of Assistant Drama Producer in 1981. His grievance is that despite several representations regarding his promotion, the respondents have not taken any action nor have they furnished any reply. He has, therefore, prayed for a direction to the respondents to hold a DPC making necessary

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★ appointment to the post of Drama Producer and also to consider the applicant for the said post as he is eligible to be considered.

2. The respondents have filed a short reply in which they have admitted that the applicant along with other Staff Artists in the category of Actor, Instructor etc. are eligible to be considered for promotion to the post of Drama Producer. Their only contention is that the applicant has no right of promotion. They have also averred that the respondents had decided not to fill up any vacant post of Staff Artists in the Song and Drama Division including the promotional posts and they had also declared all the category of Staff Artists as 'dyina cadre' and there was no vacant posts which are to be filled up.

3. During the hearing, the respondents filed an additional affidavit in which it was pointed out that the respondents had decided not to fill up any vacant post of Staff Artists due to administrative reasons and had declared all categories of Staff Artists as 'dyina cadre'. They have pointed out that during 1993, a higher level Committee was constituted and following its recommendations, respondents issued necessary orders wherein it was provided that all Staff Artists/Artists working in the Song and Drama Division and Films Division who were in service on 6th March, 1982 or appointed thereafter would be deemed as Government servants and would be governed by normal conditions of service applicable to Civilian Central Government employees. The aforesaid orders also provided that the Staff Artists who opted out of the aforesaid decision would be continued to be governed

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★ by their existing contractual terms and conditions. The aforesaid order also provided that such of those Artists of Song and Drama Division who are deemed as regular Government servants would be entitled to pensionary benefits as were available to regular Government servants. Necessary orders for converting the contractual posts into civilian posts were also issued by the orders of the respondents dated 16.10.95. The Recruitment Rules then in force treated these posts as contractual posts. Therefore, the Government had to notify Recruitment Rules for these civilian posts also, consequent on the decision to convert these posts into Civilian posts. It has been averred that out of total of 26 categories of Staff Artists, Recruitment Rules in respect of 23 Group 'C' categories have already been notified in the official Gazette and the action was underway to make recruitment against the vacant posts in accordance with the Recruitment Rules in respect of these categories. For the remaining three categories of Drama Producer, Stage Manager and Sr. Scenic Designer, action could not be completed as in the meanwhile, instructions were issued by the Government to impose a temporary ban on framing of Recruitment Rules and, therefore, the matter has been kept in abeyance.

4. The learned counsel for the applicant urged that the applicant had a right of consideration for promotion in accordance with the rules, in force from 1981. Annexure P-1. The applicant was, in fact, promoted as Assistant Drama Producer in the year 1981. The respondents cannot unilaterally decide that these posts should not be filled up and will have to be treated as 'dying cadre' without a proper notice in this behalf as promotion is a

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★ rightful expectation of a Civil servant. He also avers that as per the Recruitment Rules then in force, the applicant is eligible to be considered for promotion to the post of Drama Producer. He also pointed out that the respondents by their letter dated 21.10.1980 itself had offered a long term contract upto the age of 58 years to the Staff Artists including the applicant and, therefore, the applicant has a legitimate expectation for being considered for promotion to the post of Drama Producer from 1988 onwards when this post fell vacant. Instead of filling up the post in the usual course, the respondents have now come forward in their reply to state that a policy decision was taken not to fill up these posts and the post was declared as 'dying cadre'. He pointed out that the Supreme Court has deprecated the absence of promotional prospects in public service and he referred to the case of Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar and Others, AIR 1988 SC 1033 and Dr. Ms. O.Z. Hussain Vs. U.O.I. & Others, AIR 1990 SC 311 to stress this point.

5. The learned counsel for the respondents has submitted that the Recruitment Rules of the year 1981 referred to by the learned counsel for the applicant were, in fact, not applicable to the applicant with effect from 6.3.1982 by virtue of the Notification of 14.6.1993 of the Government deeming the Staff Artists (who have not opted out of the scheme) as Government servants. Although there are provisions for holding DPC annually, these are only administrative instructions and they are not statutory rules under proviso to Article 309 of the Constitution. Learned counsel pointed out that in any case, when the

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Government did not propose to fill up the vacant posts due to administrative policy, this decision could not be questioned. He pointed out that although the Government have taken some steps subsequently to the framing of the Recruitment Rules for all category of the Staff Artists who are deemed as Government servants by issue of Notification in this behalf, the Recruitment Rules for Drama Producer, however, have been held up due to the present ban for framing of Recruitment Rules. The learned counsel contended that the Court or the Tribunal cannot direct the Government to frame the Recruitment Rules or to fill up the post, and there has been no mala fide on the part of the respondents in this case.

6. We have heard the learned counsel for the parties and have perused the record.

7. It is an admitted position that the applicant is eligible for consideration for promotion to the post of Drama Producer. It is also admitted that the post of Song and Drama Division including the promotion post of Drama Producer were contractual posts and they have since been converted into regular civil posts. These contractual posts had continued for long and, in fact, the applicant was also offered a long term contract upto the age of 58 years. While it is admitted that the applicant is eligible for consideration for the post of Drama Producer, he has no enforceable right for such promotion but at the same time when a long term contract was offered to the Staff Artists including the applicant of the Song and Drama Division till the age of 58 years and when a promotion post became available in 1988, promotion avenue was provided and.

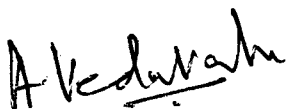
therefore, there could be natural expectation among the eligible candidates for such promotion. It is stated in the counter-reply that the respondents have taken decision not to fill up any post including the promotional post for administrative reasons and they have declared all the categories of Staff Artists as 'dying cadre'. The respondents have not shown any document published in this behalf. The learned counsel for the respondents, however, informed that a decision was taken on file on 30.4.87 not to fill up these posts as they were 'dying cadre'. There has been no formal declaration to this effect. The matter was gone into by a Committee, which according to the respondents, observed that the "stoppage of further recruitment of Staff Artists is affecting the quality of performance of groups. Certain additional man power should be allowed to the extent of sanctioned strength". The plea of the respondents that these posts belong to a 'dying cadre' is no longer valid as the respondents have taken a decision to treat the Staff Artists as deemed civil employees for all purposes. The respondents have also converted the contractual posts into regular civil posts for which the Recruitment Rules were framed for certain category of posts. As per the sanctioned strength of the converted posts, there are two posts of 'Drama Producer' (Annexure III to the additional reply). However, the respondents have stopped further action due to the ban enforced for framing of fresh Recruitment Rules. As the Government have taken a decision to treat these Staff Artists as regular Civil Servants and have also converted these posts into civil posts, it is incumbent on the respondents to notify necessary Recruitment Rules in this behalf unless, of course, it is decided to abolish these

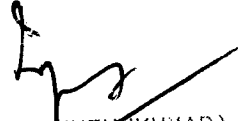
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posts once for all. Since the respondents have created temporary posts on account of the policy decision to convert these contractual posts, it is obvious that these posts exist and Recruitment Rules are to be notified, if they are to be operated. Although no Government servant has a vested right for promotion, promotion is a legitimate expectation among civil servants and as model employers, it casts an obligation on the part of the respondents to take such expeditious steps as may be necessary to consider the need for continuance of ban on framing of Recruitment Rules, when the posts in question are continued, and to take such consequential action as may be necessary for notifying the pending Recruitment Rules and for filling up the posts including the promotional post of Drama Producer in accordance with rules. We direct that the respondents may take suitable action in this behalf within a period of 2 months from the date of receipt of a copy of this order.

The application is disposed of with the above direction. No costs.


(DR. A. VEDAVALLI)
MEMBER (J)


(K. MUTHUKUMAR)
MEMBER (A)

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