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CENTRAL ADMINISTRATIVE TRIBUNAL
principal Bench, New Delhi

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CA No. 509/93

NEW DELHI, THIS THE 18th DAY OF MAY, 1999

HON'BLE SHRI T.N.BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

In the matter of:

- 1) U.N.Nayak,
S/o Sh.Shyam Sunder Nayak,
Cameraman Grade-I,
Central Production Centre,
Delhi
R/o 4/63, Lodi Colony,
New Delhi - 3,
- 2) J.P.Gautam,
S/o Late Sh.Nanumal Gautam,
Video Executive,
Doordarshan Kendra, Lucknow,
R/o 883, Sarojini Nagar,
New Delhi - 23.
- 3) P.Dorai Raj.
S/o Sh.S.S.Ponnusamy,
Cameraman Grade-I,
Doordarshan Kendra, Delhi,
R/o 79/2c, Kali Bari Marg,
New Delhi - 1.
- 4) G.K.Jagdish,
S/o Sh.G.S.Kesavacharya,
Cameraman Grade-I,
Central Production Centre, Delhi
R/o 10 UF, Babar Place,
New Delhi - 1.
- 5) R.Babukhan,
S/o Late Sh.Rahim Khan
Cameraman Grade-II,
Doordarshan Kendra, Delhi,
R/o 5/629, Lodi Colony,
New Delhi - 3.
- 6) K.B.Umesh Kumar,
S/o Sh.K.G.Bhaktarachalam,
Cameraman Grade-II,
Doordarshan Kendra, Delhi,
R/o R-724, New Rajender Nagar,
New Delhi - 60.
- 7) R.Daniel Prasad,
S/o Sh.Rajarathnam,
Cameraman Grade-II,
Doordarshan Kendra, Delhi,
R/o 238/B, Puspavihar,
SAKET.

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- 8) L.Chandrasekhar,
S/o H.Lakshmana,
Cameraman Grade-II,
Doordarshan Kendra, Delhi,
R/o 165, Akashdarsan Aptms,
Mayur Vihar, Phase-I,
Delhi - 91.
- 9) M.K. Mahadev Rao,
S/o Sh.M.Krishna Rao (Late),
Cameraman Grade-I,
Doordarshan Kendra, Delhi,
R/o 21/26, 2nd Rajender Nagar,
New Delhi - 60.
- 10) Anil Singh,
S/o Dr.Shyam Singh,
Cameraman Grade-I,
Central Production Centre, Delhi
R/o
- 11) R.N.S.Reddy,
S/o Sh.G.N.Reddy,
Cameraman Grade-II,
Central Production Centre, Delhi,
R/o F-101, Lajpat Nagar, Part-I,
New Delhi.
- 12) B.N.Seetharam,
S/o B.Nagendranath,
Cameraman Grade-II,
Central Production Centre, Delhi
R/o 165, Akashdarsan Apartments,
Mayur Vihar, Delhi - 91.
- 13) P.S.Mishra,
S/o Anathacharya Mishra,
Cameraman Grade-II,
Central Production Centre, Delhi,
R/o 1803, Laxmi Bai Nagar,
New Delhi - 23.
- 14) N.Suresh Kumar,
S/o Sh.Shyamanag,
Cameraman Grade-II,
Central Production Centre, Delhi
R/o 60/17, 2nd floor,
Rajendra Nagar, New Delhi - 60.
- 15) Shivyogi.P.M,
S/o Sh.Managudaiya,
Cameraman Grade-II,
Central Production Centre, Delhi,
R/o C-73, Gulmohar, Park,
New Delhi - 60.

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16) R. Soorya Prakash,
S/o Sh. Raghavasami,
Cameraman Grade-II,
Central Production Centre, Delhi,
R/o 2/70, Old Rajender Nagar,
New Delhi - 60.

17) D.D. Burman,
S/o Sh. Bajakishore Mohanty,
Cameraman Grade-II,
Central Production Centre, Delhi,
R/o 1259, Lodi Complex,
New Delhi - 3.

18) V.R. Padmanabhan,
S/o Sh. V.S. Ramasamy,
Cameraman Grade-II,
Central Production Centre, Delhi,
R/o B/2-36, Janakpuri,
New Delhi - 58.

(By Advocate: Sh. B.B. Raval)

.... APPLICANTS

Versus

1) Union of India through
Secretary, Ministry of Information
and Broadcasting,
Shastry Bhavan, New Delhi

2) Doordarshan, Government of India,
through Director General,
Doordarshan Bhavan
Coper Nicus Marg,
New Delhi

3) Doordarshan Cameraman Welfare
Association,
229, Akashdarshan Apartment,
Mayur Vihar - Phase - I,
Delhi - 91

through

President, General Secretary

.... RESPONDENTS

(By Advocate: Shri P.H. RAMCHANDANI)

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JUDGEMENT

Hon'ble Shri T.N.Bhat, Member (J)

The applicants herein are working as Video Executives, Cameramen Grade-I and Cameramen Grade-II in Doordarshan at Delhi. They have come to the Tribunal seeking fixation of seniority over all those persons who did not possess the qualification of diploma or degree in Cinematography. According to the applicants the aforesaid qualification has been prescribed as the minimum qualification under the relevant recruitment rules called the 'Doordarshan Programme (Technical Camera) Group A and Group B recruitment Rules, 1987'. While the applicants admittedly possess the said qualification, there are some persons recruited initially as Programme Executives (Cameramen) who later became Cameramen Grade-II and even Cameramen Grade-I but did not possess the aforesaid qualification.

2. Basing their claim upon the judgement delivered by the Bombay Bench of this Tribunal on 1.1.1992 in Y.K. Mehta vs. Union of India & Ors. (OA 197/89) the applicants claim seniority over all those persons who do not have the qualification of degree or diploma in Cinematography. It is interesting to note that the persons over whom seniority is claimed by the applicants are neither named in the OA nor have been impleaded as parties.

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According to the applicants impleadment of respondent no. 3 herein, namely, Doordarshan Cameramen Welfare Association would be sufficient compliance with the relevant rules regarding impleadment of necessary parties.

3. The respondents have in their counter taken the plea that the persons above whom the applicants are claiming seniority had been recruited/appointed nearly a decade prior to coming into force of the aforesaid rules of 1987 and that at the time of their appointment the qualification of diploma/degree in Cinematography was not the only essential qualification required for the posts to which they were appointed. The aforesaid persons had been appointed on the basis of their experience as Cameramen and according to the advertisement notices issued by the respondents the alternative qualification of having more than 3 years experience of Cameraman work in Television/Films made those persons "eligible" for appointment. It is further contended that the posts of Cameramen Grade-I and Video Executive being promotion posts, the requirement of holding a diploma/degree in Cinematography was not applicable in the case of the promotees and would apply only to direct recruits. As regards the judgement of the Bombay Bench of the Tribunal, the respondents have contended that some important relevant facts do not seem to have been noticed by that Bench and that the judgement of that Bench would not be applicable.

4. The applicants have filed their rejoinder in which the contentions raised in the OA have been reiterated.

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5. We have heard the learned counsel for the parties at length and have perused the material on record.

6. The respondents have annexed to their counter the copies of a large number of advertisement notices issued from time to time by the respondents calling applications for appointment as Programme Executives (Cameramen). Those notices relate to a period prior to 12th October, 1987, which is the date on which the recruitment rules of 1987 came into force. According to those advertisement notices "at least 3 years experience of Camera work in Television/Films" was one of the requisite qualifications though diploma / degree in Cinematography was also prescribed as one of the alternative qualifications. Admittedly the recruitment rules of 1987 were not in force when the persons over whom the applicants are claiming seniority were appointed in the first instance. In this regard, we may state that the respondents have annexed to their counter a list of persons who, by the notification dated 22.9.1987 (Annexure R-3/6), were regularised as Cameramen Grade - II though initially they had been appointed as Staff Artists or Programme Executives but their services were later converted to regular government employment. On perusal of the list annexed to the aforesaid Notification reveals that all those persons had been appointed as far back as 1973 to 1981. In these circumstances the contention of the applicants that the aforesaid persons had been irregularly appointed and are junior to the applicants cannot be accepted. The recruitment rules having come into force on 12th October, 1987 the same would not govern those who had been appointed earlier to the aforesaid date.

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6. That apart, in the recruitment rules of 1987 itself there is a specific provision which makes the appointments of those persons as valid. Rule 5 of the recruitment rules reads as under:-

"5. Persons working on contract to be considered initially - An officer who was holding the post of Cameraman Grade-I or Cameraman Grade-II on contract basis and who has opted for joining the civil post shall be initially considered by the Screening Committee/ Union Public Service Commission. In case he is considered fit he will be deemed to have been appointed to the post on and from the date of commencement of these rules. If he is not considered fit, his case will be reviewed every year till his term as an employee on contract expires. If before the expiry of the contract the Officer is not considered fit by the Screening Committee / Union Public Service Commission, his service will be liable to be terminated as per the terms of the contract".

A bare reading of this provision would make it quite clear that even those persons who have been working on contract basis as Cameramen Grade-I and Cameramen Grade-II at the time of coming into force of the aforesaid rules would be deemed to have been appointed under those rules if they were considered fit after screening. As already mentioned, several persons had already been regularised on the posts they were holding prior to coming

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into force of the rules and, therefore, they would be deemed to have been appointed regularly under the recruitment rules.

7. A perusal of the recruitment rules, as at Annexure -A, reveals that for promotion to the post of Cameraman Grade-II, Cameraman Grade-I and Video Executive, the prescribed essential qualification of holding a diploma/ degree in Cinematography is not applicable. Under column 9 of the Schedule it is specifically mentioned against all the aforesaid three posts that age and educational qualification prescribed for direct recruits would not apply in the case of promotees. As a matter of fact the qualifications prescribed in the Schedule are applicable only to direct recruits under column 8 and not to promotees.

8. It follows from the above that appointment of the persons against whom the applicants claim seniority can by no stretch of reasoning be held to be irregular or in any manner less valid than the appointment of the applicants.

9. Coming to the judgement of the Bombay Bench, on a careful reading of the judgement we are convinced that the judgement is based upon erroneous consideration of facts and hence is ~~per~~ ⁱⁿcuriam. The fact that the persons against whom the holders of diploma/degree in Cinematography are claiming seniority had been appointed prior to coming into force of the 1987 rules seems to have escaped the notice of the learned Members constituting the Bombay Bench. It has also not been considered that so far



as promotees are concerned even under the said recruitment rules the essential qualification of possessing such a diploma/degree was not applicable. It is not disputed that in the absence of recruitment rules the competent authority has the power to issue instructions / guidelines governing the requisite qualifications for a particular post. In the instant case, as already indicated, according to the advertisement notices issued prior to the coming into force of the recruitment rules 3 years experience as Cameraman in Television/Films was also recognized as one of the alternative qualifications. The Apex Court has held in Sant Ram Sharma vs. State of Rajasthan & Anr (AIR 1967 SC 1910) that it cannot be said that till statutory rules governing promotions to selection grade posts are framed, the Government cannot issue administrative instructions regarding the principles to be followed.

10. On the question as to whether the judgement of the Bombay Bench would be a binding precedent for us we have a number of authorities to support our view that the said judgement is in ~~per incuriam~~ and would not bind us. The Lucknow Bench of the Tribunal held in its judgement dated 25.10.1994 in Om Parkash Satija vs. Union of India & Ors, reported in (1995) 29 ATC 1, that where a belated application had been filed by certain persons seeking relief on the basis of judgements rendered by the Tribunal in other cases the refusal of the relief would not be violative of Article 14 of the Constitution of India. On the facts of that case it was held that the judgements in question were not judgements in rem. That case also related to the question of seniority. The Apex Court has also held in State of UP and Anr. vs. Synthetic and



Chemicals Limited & Anr, reported in (1991) 4 SCC 139, that the doctrines of 'per incuriam' and 'sub-silentio' operate as exceptions to the rule of precedent.

In another case titled ICAR & Anr. vs. T.K. Suryanarayan & Ors., reported in 1997 (2) S.C. Services Law Judgements 308, the Apex Court held that an employee cannot base his claim for promotion contrary to the statutory service rules and that an incorrect promotion either given erroneously by the department by misreading the said Service Rules or giving promotion pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion.

11. It would suffice to cite just one more judgement which has been delivered by the Ernakulam Bench of the Tribunal in P.I.Koya vs. Director, CMFR Institute & Ors., reported in (1996) 33 ATC 763, in which it has been held that an incorrect precedent is not binding. It was further held that where a judgement of the Tribunal was not correct the same would be per incuriam and need not be followed by the same Bench of another Bench of the Tribunal. A similar view has been taken by the Chandigarh Bench of the Tribunal also, in which one of us, namely, T.N.Bhat was also a Member, in Western Command Civilian Employees' Union and Anr. vs. Union of India and Ors., reported in (1996) 33 ATC 406, and it was held that judgements based on incorrect facts were not binding even if passed by coordinate Benches.

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12. It is, however, urged before us by the learned counsel for the applicants that the judgement of the Bombay Bench having been upheld by the Apex Court the said judgement of the Apex Court would be binding upon us. A copy of the order passed by the Hon'ble Supreme Court in a review petition in the SLP filed by the Union of India & Ors. against the applicants in that OA assailing the order passed by the Bombay Bench has been brought to our notice. This is an order passed in a review petition and in the order it is stated that after examining the review petition and other relevant documents the Hon'ble Supreme Court did not find any merit in the prayer for review and the prayer was accordingly dismissed. In this regard we may refer to a judgement reported in AIR 1996 SC 2124, passed by the Apex Court in which it was held that the dismissal of a Special Leave Petition by a non-speaking order which does not contain the reasons for dismissal does not amount to acceptance of the correctness of the decision sought to be appealed against and that the effect of such a non-speaking order of dismissal would only mean that the Supreme Court has decided that it is not a fit case where the SLP should be granted. It has further been held that such an order does not constitute law laid down by the Supreme Court for the purpose of Article 141 of the Constitution. The same view has been expressed by the Apex Court in K.K.M.Natyar Vs. Union of India, a judgement reported in (1993) 24 ATC 702.

13. We may now refer to the objection raised by the respondents regarding non-joining of necessary parties. As already mentioned, the applicants have not cared to even name the persons against whom the relief is claimed. They

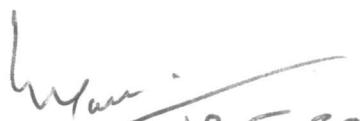
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have also not been impleaded as parties. Learned counsel for the applicants, however, argues that since the number of such persons is very large the applicants have impleaded the Employees Welfare Association as a party respondents. Shri T.C. Aggarwal, appearing for the aforesaid Association has strongly urged before us that the Association has nothing to do with this matter as the said Association represents not only those against whom the relief has been claimed but also the applicants herein. We are of the considered view that impleadment of the Association in the facts and circumstances of the case is not sufficient compliance with the requirement of impleading all the necessary parties. The applicants ought to have impleaded at least some of those affected persons if not all of them. Non-impleadment of the persons who were likely to be affected by the order in this OA has left a gaping hole in the case of the applicants.

In the conspectus of the facts and circumstances discussed above, we find no merit in this OA. In the result, the OA is dismissed, but without any order as to costs.


 (S.P. Biswas)
 Member (A)

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 (T.N. Bhat)
 Member (J)
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