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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 255 OF 1994  
Cuttack, this the 16th day of August 2000

Shri Kishore Chandra Mohanty ..... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
16.8.2000

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Shri Kishore Chandra Mohanty,  
aged about 40 years, son of Madhusudan  
Mohanty, at present working as Production  
Assistant, All India Radio, Cuttack...Applicant

Advocates for applicant-M/s K.C.Kanungo  
B.D.Rout  
S.Behera

Vrs.

1. Union of India, represented by its Secretary in the  
Ministry of Information and Broadcasting, B(A)Section,  
NewDelhi.
2. Director General,  
All India Radio  
New Delhi.
3. Deputy Director General (Administrative),  
Office of the Director General,  
All India Radio,  
New Delhi.
4. Station Director,  
All India Radio, Cuttack.
5. Station Director,  
All India Radio, Jeypore,  
Koraput.
6. Shri S.P.Singh,  
Programme Executive, Doordarshan  
Kendra,  
Muzaffarpur.
7. Shri P.S.Rawat, Programme Executive,  
All India Radio,  
Commercial Broadcasting,  
Services, Kanpur.
8. Shri S.P.Singh,  
Programme Executive,  
All India Radio, Nagpur.
9. Shri A.Bhuyan, Programme Executive,  
All India Radio,  
Jeypore.

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10. Smt.R.S.Sirambika, Programme Executive,  
All India Radio,Calicut.
  11. P.C.Roy, Programme Executive,  
All India Radio, Jeypore ..... Respondents

Advocate for respondent

nos.1 to 5 - Mr.Akhaya Ku.Misra  
Addl.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for an order quashing the promotion policy laid down in the Recruitment Rules at Annexure-5 and for quashing the promotion of respondents 6 to 11 to the post of Programme Executive in order dated 14.2.1994 at Annexure-10. He has also prayed for a direction to respondent nos. 1 & 2 to reconstitute the seniority list of Transmission Executive setting aside the existing seniority lists at Annexure-7 series.

2. The facts of this case, according to the applicant, are that he was initially appointed and joined as Staff Artist-Production Assistant in the scale of Rs.425-750/- on 28.5.1982 and he joined on 1.6.1982 on two years probation. The appointment order is at Annexure-1. He successfully completed his probation and on the recommendation of Departmental Promotion Committee, his probation was successfully completed on 27.5.1984 in order dated 12.9.1984 (Annexure-2). In Directorate General, All India Radio's letter dated 26.11.1984 Staff Artists were declared as Government servants with immediate effect and this circular was communicated to the applicant in letter dated 27.12.1984 at Annexure-3. In letter dated 15.4.1985 (Annexure-4) the order dated 26.11.1984 was modified and Production Assistants were declared Government servants with effect

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from 6.3.1982. In 1984 Government of India in their notification dated 23.10.1984 brought out All India Radio (Group A Posts) Recruitment(Amendment)Rules,1984. These Amendment Rules laid down revised recruitment and promotion policy amending All India Radio (Group A Posts) Recruitment Rules, 1963. The Amendment Rules are at Annexure-5. It is submitted by the applicant that Rule 4(A) inserted by way of Amendment Rules, 1984 deals with appointment of Staff Artists as regular Government employees. Clauses (e), (f), (g) and (h) of sub-rule (1) of Rule 4(A) deal with seniority and promotion of Staff Artists who have become Government employees and their merger with regular programme cadre. These four clauses are extracted below:

- (e) staff artists after becoming Government employees shall continue as a separate category and their interse seniority shall be determined on the basis of their date of joining in the post in the grade on regular basis;
- (f) for the purpose of promotion there shall be separate lists of seniority of officers of regular programme cadre and that of staff artists who have become Government employees; promotion to the next grade from the two lists shall be on quota basis, the ratio of which shall be based on the existing number of posts in each category on the date of holding of the Departmental Promotion Committee;
- (g) for considering an officer for promotion all persons senior to him in the grade shall also be considered provided they have successfully completed their period of probation irrespective of the fact whether they have rendered the prescribed length of service in the grade;

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- (h) the merger of a staff artist who has become a Government employee with the regular programme cadre shall be made only at the time of his promotion to the next higher grade in the programme cadre."

The applicant has stated that in the promotion policy it is stipulated that from the date of commencement of these Rules posts shall be filled 100% by promotion. Soon after amendment of the Recruitment and Promotion Rules, 1963, in 1984 amalgamation of Staff Artists/<sup>posts</sup> were made for recruitment to the cadre of Transmission Executive in O.M. dated 12.8.1985 (Annexure-6). According to paragraph 6 of this Office Memorandum, after equation of categories of Staff Artists with that of Transmission Executives, these posts have become interchangeable. Paragraph 6 of the circular dated 12.8.1985 (Annexure-6) is extracted below:

"6. With the equation of these categories of Staff Artists with that of TREX, these posts will become inter-changeable. In other words, these categories of Staff Artists and TREX can be asked to perform any of the functions of these posts, depending upon the suitability and capability of each individual. The Heads of Stations of AIR/DD will be empowered to deploy these persons on the jobs of the above categories of posts, as per the requirements of the Stations."

The applicant's grievance is that in view of the amendment of the Recruitment Rules of 1963 through the Amendment Rules in 1984, the respondents maintained two seniority-cum-eligibility lists of Transmission Executives and Staff Artists who have been subsequently declared as Government employees and whose posts have been merged with Transmission Executives by virtue of the circular dated 12.8.1985 at Annexure-6. The separate seniority lists of both Transmission Executives and Staff

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Artists were prepared and circulated by Director-General, All India Radio (respondent no.2) in his letters dated 18.11.1992 and 11.5.1993 respectively. These two lists are at Annexure-7 series. The applicant further states that after amalgamation of the posts of Staff Artists with the cadre of Transmission Executives, the applicant was deployed in duties meant for Transmission Executives as per paragraph 6 of the circular at Annexure-6. In support of this, the applicant has filed several orders at Annexure-8 series. It is further stated that from 19.9.1989 the applicant has been assigned duties in the cadre of Transmission Executive and is discharging his duties accordingly. The duty chart prepared by respondent with effect from 18.4.1993 (Annexure-9) shows duty charts of Transmission Executives and in that the applicant's name has been shown. The applicant states that even though he has been regularly appointed to the cadre of Staff Artists with effect from 28.5.1982 and according to the rule his seniority shall be determined from the date of his joining in the post on regular basis, but because of maintenance of two seniority lists of Transmission Executives and Staff Artists who have been declared as Government employees separately, his seniority has been adversely affected. Because of the policy of giving promotion from the two lists according to a quota, persons, who have joined as Transmission Executives much after the applicant have been promoted to the next post of Programme Executive. As an example the applicant has mentioned the cases of respondent nos.6 to 11 who had joined the cadre of Transmission Executives much after the year of appointment of the applicant but have been promoted to the rank of Programme Executive in order dated 14.2.1994 at Annexure-10 even though the applicant

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has been deprived of promotion. According to the applicant, the main cause for such differentiation is because even though Staff Artists were declared as Government employees in 1982 the amalgamation of the posts came in 1984 and Staff Artists who became Government servants were eligible for promotion to the post of Programme Executive only after 1984 whereas appointees to the cadre of Transmission Executives were availing the benefit of promotion to the post of Programme Executive every year regularly. Lastly, it is submitted that even though from the year 1991-92 for a period of three years 100% posts in the rank of Programme Executive were ordered to be filled up by promotion, because of maintenance of two seniority lists persons junior to the applicant have been promoted from the eligibility list of Transmission Executives even though the applicant's case has not come into the zone of consideration. It is also submitted that respondent no.2 is likely to give further promotion of Transmission Executives to the cadre of Programme Executives and that is how the applicant has come up in this O.A. with the prayers referred to earlier.

3. Respondents 1 to 5 in their counter have stated that the application is not maintainable because the applicant has not submitted any representation to the higher authorities or the cadre controlling authority about his grievance before approaching the Tribunal. The departmental respondents have enclosed the All India Radio (Group B posts) Recruitment (Amendment) Rules, 1984 at Annexure-R/1 and have contested the statement of the applicant that for a period of first three years from the date of commencement of these rules the posts shall be filled 100% by promotion. They have stated that in accordance with Note

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1 in Column 10 relating to recruitment rules for Programme Executive, it has been laid down that for the first five years promotion quota will be 40% and direct recruitment quota will be 60%. The departmental respondents have further stated in reply to averment of the applicant that the posts of Staff Artists and Transmission Executives have become interchangeable that paragraph 4 of the Office Memorandum dated 12.8.1985 at Annexure-6 should be read with paragraph 5 of the said O.M. where it is stated that to enable Staff Selection Commission to recruit Transmission Executives for performing the functions of the above categories of staff it is necessary to re-draft the duties and responsibilities for the post of Transmission Executive. The instructions in Annexure-6 are for the post of Transmission Executive (G&P) and Transmission Executive (Specialised Categories). As those Staff Artists who were declared Government servants with effect from 6.3.1982 have not been merged with and re-designated as Transmission Executives (G&P) or Transmission Executive (Specialised Categories) and as their merger will be only at the level of Programme Executives on their promotion, the instructions at Annexure-6 are not applicable to those persons who have been recruited according to the Recruitment Rules of erstwhile Staff Artists posts. These instructions will apply not to persons recruited by Staff Selection Commission according to the Recruitment Rules of Transmission Executives. It is further stated that according to the Amendment Rule of 1984, particularly sub-paragraphs 4(e) and 4(f) Staff Artists after becoming Government employees, continue as a separate category and for the purpose of promotion there shall be separate lists of seniority of officers of regular programme cadre and Staff Artists who have become Government employees.

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Therefore, maintenance of two seniority lists/eligibility lists of Transmission Executives and Staff Artists who have become Government servants is absolutely necessary. In paragraph 10 of the counter the following averment has been made:

10. That in response to the averment made in paragraph 4(k) of the application, it is humbly submitted that the functions of both the Production Assistant and Transmission Executive (General) are almost same and both are equitable cadre (sic). Hence for smooth running of Programme Production and broadcasting, sometimes the applicant has been assigned the Transmission Executive (General) duty. But this does not change the basic principles of recruitment rule."

As regards the averment of the applicant that he is discharging the same duties as of a Transmission Executive, the respondents have stated that the applicant is working in Programme Section and discharging duties as Production Assistant. It is further submitted that for maintenance of seniority, date of appointment to the grade on regular basis has been taken into account and the applicant has been given appropriate place in the concerned eligibility list. It is further submitted that promotion from both the seniority and eligibility lists is made on quota basis and the quota is fixed at the time of holding of DPC. The respondents have also stated that recruitment of Programme Executives has not been stopped since 1985, as claimed by the applicant. In fact the Programme Executives in All India Radio and Doordarshan are recruited 60% by direct recruitment through Union Public Service Commission and 40% by promotion. It is further submitted that no blanket permission [redacted]

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has been granted by UPSC for filling up of all the vacancies by promotion. In view of acute stagnation in the cadre of Production Assistants and Transmission Executives a proposal was sent to Union Public Service Commission for filling up all vacancies of 1993-94 by promotion as an one time relaxation from the existing recruitment rules. The UPSC have granted this relaxation for filling all the vacancies of 1993-94 by 100% promotion as an one time measure. The averment of the applicant that from 1991-92 for a period of three years 100% vacancies in the post of Programme Executives were filled up by promotion is incorrect, according to the respondents. It is further submitted that Staff Artists including Production Assistants were recruited originally on contract basis. In order to afford promotional avenues to them, Government devised a scheme for conversion of Staff Artists into regular Government servants. For this purpose Recruitment Rules of Programme Executives were amended on 23.10.1984 which provide promotion of Staff Artists to the grade of Programme Executive. The Rules inter alia provided that those Staff Artists who wanted to become regular Government servants should exercise an option which would be placed before Screening Committee. On the Screening Committee accepting the above, Staff Artists would be declared as Government servants and this would make the Staff Artists eligible for promotion as Programme Executive. Even prior to 1985 the Transmission Executives in All India Radio/Doordarshan were recruited as regular Government servants who were eligible for promotion to the grade of Programme Executive. At the time of promotion, the two seniority/eligibility lists are taken into consideration for promotion to the grade

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of Programme Executive. As the applicant was a Staff Artist originally, on his becoming a Government servant he became eligible for promotion to the grade of Programme Executive after the amended Recruitment Rules came into force with effect from 23.10.1984 and therefore, no injustice has been done in his case. It is further stated that All India Radio has been following the practice of engaging Staff Artists for various functions from its very inception. They were engaged on contract basis. They were declared Government servants in order to make them eligible for pensionary benefits and also to remove their genuine grievance that they had no satisfactory mobility in their career. In All India Radio there are regular Programme Officers holding programme posts. There are also Staff Artists doing the job of programme production. The functions of both the categories are more or less same and they are engaged in planning and production of programmes. Keeping the programme as the end product of all these categories of employees engaged in their joint effort, the Government decided to unify the cadres for all people involved in planning and production of programmes and ultimately it was decided that merger into a single cadre would be done at the level of Programme Executives, i.e., at the next higher level on promotion. It is further stated that there are different categories of posts of Staff Artist, namely, Assistant Editors having the scale of Rs.1640-2900/- and Production Assistants in the scale of Rs.1400-2600/-, as against the posts of Transmission Executives having the scale of Rs.1400-2600/-. It was decided that when a

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Production Assistant or Assistant Editor would cease to hold the post either by promotion, retirement, death, etc., the post will be filled up as Transmission Executive in the scale of Rs.1400-2600/-. The departmental respondents have further stated that even though the posts of Staff Artist/Production Assistant and Transmission Executive have been equated, these two categories have not been merged into one single cadre in view of their appointment through different agencies, with different pay scales and different educational qualifications and experience. Lastly, it is stated that promotion to the post of Programme Executive is done from the two seniority/eligibility lists of Transmission Executives and Staff Artists/Production Assistants on quota basis. The exact quota is determined on the basis of existing number of posts in each category on the date of holding of the DPC. These instructions are followed every time a meeting of the DPC is held and therefore, no injustice is caused to the Staff Artists. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri Akhaya Kumar Mishra, the learned Additional Standing Counsel for the departmental respondents and have perused the records. The learned counsel for the petitioner has filed written note of submissions which has also been perused. The private respondents have neither appeared nor filed counter.

5. The departmental respondents in their counter have raised a preliminary point that the applicant

has not filed any representation to the departmental authorities with regard to his grievances and therefore this Original Application is not maintainable. The learned counsel for the petitioner has argued that in this case the applicant has challenged the promotion policy and the seniority list only on the point of law and there is also no statutory appeal provided in such matters and therefore, it has been submitted that the Application is maintainable. In support of his contention the learned counsel for the petitioner has relied on the case of S.S.Rathor v. State of Madhya Pradesh, AIR 1990 SC 10, in which it has been observed that in case of service disputes the cause of action must be taken to have arisen from the date of order of the higher authority where a statutory appeal is provided. As the applicant has raised crucial points of law, we feel that the Application should not be rejected at the outset on the ground of non-maintainability, moreso when statutory appeal has not been provided. The applicant has also challenged the promotion of respondent nos. 6 to 11 who have been promoted in 1994. In view of this we hold that the Application is maintainable before us.

6. The prayer made by the applicant in this case is two-fold. Firstly, he has prayed for redrawing of the seniority list setting aside the existing seniority list at Annexure-7 series. The second prayer is for quashing the promotion policy at Annexure-5 and the order of promotion of

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respondent nos. 6 to 10 to the post of Programme Executive at Annexure-10. The question of quashing the seniority list is taken up first. The admitted position is that the applicant joined as Staff Artist/Production Assistant with effect from 28.5.1982 and successfully completed his period of probation on 27.5.1984. In order dated 26.11.1984 (enclosure to Annexure-3) his option for being treated as Government servant was accepted. In this order dated 26.11.1984 it has been stated that the applicant is declared as Government servant with immediate effect. Subsequently, in order dated 11.4.1985 (Annexure-4) the words "immediate effect" have been substituted by the words "with effect from 6th March, 1982". But as the applicant had joined on 28.5.1982 he has mentioned in paragraph 4(d) of the OA that he has been declared as a Government employee with effect from the date of his initial appointment, i.e., 28.5.1982. The order dated 26.11.1984 has been issued in pursuance of the amended Recruitment Rules, called All India Radio (Group A posts) Recruitment (Amendment) Rules, 1984, published in the notification dated 23.10.1984. Rule 4(a)(1) provides that the appointment of staff artist working in all India Radio and Doordarshan on contract basis to that of regular Government employee shall be governed by following procedure. This procedure prescribes that the staff artist who has not attained the age of 58 years on 28.2.1982 is required to opt to become a Government employee. Thereafter he will be screened by a Screening Committee for his appointment to a post in regular programme cadre in the initial constitution. It is provided under sub-rule (e) that staff artists after becoming Government employee shall continue as a separate category and their interse seniority shall be determined on the basis of their date of joining in the post in the grade on regular basis.

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The applicant has challenged Rule 4(A)(1)(e) which provides for treating the staff artists even after they have become Government employees as a separate cadre and maintenance of their interse seniority separately. The first point to be noted in this connection is that this Amendment Rules came into force from 23.10.1984 and the order treating the applicant as Government servant has been issued on 26.11.1984. The applicant therefore must have given option to become a Government employee knowing fully well the provision that even after he is treated as Government employee, he will be treated as a separate cadre along with other staff artists who have become Government employees and a separate seniority list will be maintained for such persons. It is therefore prima facie not open for him to challenge the system of maintaining a separate seniority list for such staff artists after he has knowingly opted to become Government employee in pursuance of the Recruitment Rules. It is no doubt true that in order dated 15.4.1985 at Annexure-4 he has been treated as a Government employee with effect from 28.5.1982, the date of his initial joining which is prior to the amendment dated 23.10.1984. But this will not have any effect on this point because issuing of order treating him as a Government employee has been done after the Amendment Rules came into force on 23.10.1984.

7. The applicant has submitted that subsequently in order dated 12.8.1987 the staff artist posts were amalgamated with the cadre of Transmission Executive. In this order at Annexure-6 it is provided that staff artists who are designated as Assistant Editor (Tribal Dialects), assistant Editor (Scripts), Assistant Editor (Farm and Home/Educational Broadcast, School Broadcast, Family Welfare)

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and Script Writer, Production Assistant, Sub-Editor (Scripts), Sub-Editor, Property Assistant and Floor Managers and have opted for Government servant status, have already been made Government servants. It is further provided that the above categories of staff artist posts have been equated with Transmission Executive and they have been made eligible for promotion to the grade of Programme Executive in terms of the Amendment Rules dated 23.10.1984. This circular further provides that vacancies in the cadre of the posts mentioned above will henceforth be filled up in accordance with the Recruitment Rules for Transmission Executive and the Recruitment Rules for the above mentioned category of staff who are earlier recruited as staff artists will become redundant. It is further provided that with the equation of these categories of staff artists with that of Transmission Executive, these posts will become inter-changeable and these categories of staff artists and Transmission Executives can be asked to perform any of the functions of the posts depending upon suitability and capability of each individual. It is further provided that any post falling vacant in the above cadre of staff artists will automatically be converted into the grade of Transmission Executive and will be filled up accordingly. The applicant has stated that in accordance with this circular the cadres of staff artists who have been treated as Government employees and Transmission Executives have been merged. He has also stated that he has been performing all functions of Transmission Executive from time to time. The applicant has enclosed at Annexure-8 the different orders giving him work as Transmission Executive. The respondents in their counter have admitted that the

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functions of Production Assistant and Transmission Executive (G) are almost same and sometimes the applicant has been assigned duties of Transmission Executive (G). The respondents have stated that this doesn't, however, change the basic principles of the recruitment rules. Rule 4(A)(1)(h) of the Amendment Recruitment Rules provides that the merger of a staff artist who has become a Government employee with the regular programme cadre shall be made only at the time of his promotion to the next higher grade in the programme cadre. From this it is clear that staff artists are merged with the programme cadre only after they are promoted to the post of Programme Executive to which post Transmission Executives are also entitled to promotion. As the post of Programme Executive is filled up from two sources, i.e., staff artists, in the case of the applicant Production Assistant, and from Transmission Executive, it has therefore been provided that the merger of the two groups will take place when they are promoted to the cadre of Programme Executive. So far as the plea of merger of the cadres of Staff Artists/Production Assistants and Transmission Executives as a result of the of the order dated 12.8.1987 is concerned, this order merely provides that staff artists have been equated with that of Transmission Executive and made eligible for promotion to the grade of Programme Executive. This also provides that in future in a vacancy arising in the post of Staff Artist, the post will be filled up only by recruiting a Transmission Executive on the basis of the Recruitment Rules for Transmission Executive and the Recruitment Rules with regard to filling up of the posts of Staff Artist/Production Assistant were declared redundant. In

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other words, this circular dated 12.8.1987 provides that in future vacancies in the rank of Staff Artist should be filled up by Transmission Executive. This, however, does not mean that the existing Staff Artists who have become Government employees knowing fully well that they will be treated as a separate cadre and a separate seniority list will be maintained will stand merged with Transmission Executives because the duties have been made interchangeable. Rules relating to treating the staff artists as Government employees specifically provide that even after being converted as Government employees they will be treated as a separate cadre and a separate seniority list will be maintained. The applicant has been recruited much prior to this equation of Staff Artists with Transmission Executive. Presumably he has been recruited in pursuance of the Recruitment Rules which were in force at that time and because therefore the duties have been made interchangeable he cannot claim that his cadre as Staff Artist has merged with Transmission Executive. It has been submitted by the learned counsel for the petitioner that clauses (e) and (h) of Rule 4(A)(1) of the Amendment Recruitment Rules providing that staff artists who have become Government employees will continue as a separate cadre and will have a separate seniority list and their merger with the programme cadre will be made only at the time of their promotion to the next higher grade in the programme cadre, i.e., to the post of Programme Executive, are discriminatory. The learned counsel for the petitioner has relied on the case of Kumari Shilekha Bidyarthi v. State of U.P., AIR 1991 SC 537, and the case of Mervyn Continho and others v. Collector of Customs, Bombay and others, AIR 1967 SC 52 in support of his contention. In

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Kumari Shilekha Bidyarthi's case (supra) their Lordships of the Hon'ble Supreme Court have held that State action in contractual matters can also be reviewed under Article 14 of the Constitution. That was a case where State of Uttar Pradesh Government removed enblock all District Counselors in the State and took the plea, when challenged, that appointment of District Government Counselors by the State Government is only a provisional engagement like that of a private client and his lawyer, and it is purely contractual with no public element attaching to it. This contention was rejected by the Hon'ble Supreme Court and it was held that all Government action with regard to filling up of the post has a public element attached and can be challenged under Article 14. Mervyn Continh's case (supra) dealt with seniority in the rank of Appraisers and Principal Appraisers in the Customs Department. Posts of Appraisers were filled up 50% by direct recruitment and 50% by promotion and seniority was fixed by rotational system by alternatively fixing promotees and direct recruits in the seniority list. The Hon'ble Supreme Court held that no violation of principle of equality is involved in this. For the post of Principal Appraiser the grade of Appraiser was the only source of recruitment. The Hon'ble Supreme Court held that restoring seniority of direct recruits in the Appraisers grade when they are promoted to the grade of Principal Appraisers denies equality of opportunity to Appraisers. The position of law is well settled that any Government action including action taken in pursuance of rule making powers of Government can be challenged for being violative of Article 14 of the Constitution. But in this case we fail to see how on the

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question of treating the staff artists as a separate group and maintaining a separate seniority list for them Article 14 is violated. Admittedly, the applicant and other staff artists like him joined as Staff Artists on the basis of different Recruitment Rules. They opted for becoming Government servants knowing fully well that they will be treated as a separate group and a separate seniority list will be maintained. Transmission Executives came through another channel and were recruited in accordance with the Recruitment Rules applicable to them. The amendment rules dated 23.10.1984 provide that both staff artists treated as Government employees and Transmission Executives would be entitled to be promoted to the post of Programme Executive and merger of the staff artists in the programme cadre will take effect on their being promoted to the post of Programme Executive. From this it is clear that staff artists who have become Government employees by exercising option and Transmission Executives who are Government employees right from the date of their recruitment were two different categories recruited under different Recruitment Rules and therefore, providing that the two cadres will be maintained separately at the initial level cannot be said to be violative of Article 14.

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8. It is submitted by the learned counsel for the petitioner that with the interchangeability of the duties of Staff Artists and Transmission Executives, they have become equal, but they have been treated unequally even after such equation by treating Staff Artists as a separate cadre and by publishing a separate seniority lists for both the categories. As the Amendment Rules dated 23.10.1984 specifically provide that the merger will take place only at

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the level of Programme Executive, merely by interchangeability of their duties, it cannot be said that Staff Artists have been merged with Transmission Executives.

9. It is next contented by the learned counsel for the petitioner that clause (h) of Rule 4(A)(1) of the Amendment Rules dated 23.10.1984 is discriminatory because it provides that Staff Artists will be merged with the programme cadre only at the level of Programme Executive. The learned counsel for the petitioner has relied on the case of V.K.Sood v. Secretary, Civil Aviation, (1993) 25 ATC 68 in which the Hon'ble Supreme Court have held that when qualifications are prescribed under rules for appointment to a post this cannot be challenged on the ground of mala fide. The plea of mala fide against rule making body was held not sustainable. This decision has no application to the facts of this case because the applicant has not alleged mala fide against any authority. The next case relied upon by the learned counsel for the petitioner is SC &ST Officers Council v. State of U.P., AIR 1997SC 1451. In this case the Hon'ble Supreme Court found that Government order issued with regard to promotion in the State Medical Health Department was in violation of general policy of Government. It was also noted that the impugned order was issued mala fide to deprive SC &ST candidates for promotion. This decision obviously has no application to the facts of this case. <sup>on the</sup> basis of admitted facts it is clear that the Amendment Rules provide that Production Assistants, i.e., Staff Artists would be eligible for promotion to the post of Programme Executive to which post Transmission Executives are also eligible for

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promotion. It was provided in the Recruitment Rules that the merger of the Production Assistants will take place at the level of Programme Executive after they are so promoted. As the Production Assistants/Staff Artists and Transmission Executives are two different groups, their merger at the level of Programme Executive on their promotion cannot be said to be violative of Article 14. We have not been shown any reason why it would be so. We have already rejected the contention that with equatioin of duties and responsibilities the Staff Artists got merged with the cadre of Transmission Executive. In view of this, the prayer of the applicant for quashing clauses (e) and (h) of Rule 4(A)(1) of the Amendment Recruitment Rules is held to be without any merit along with his prayer for quashing the two seniority lists.

10. The applicant has also prayed for quashing the promotion of respondent nos. 6 to 11 in the promotion order dated 14.2.1994 at Annexure-10. As we have already held that treating the Staff Artists who have become Government employees as a separate group and maintenance of separate seniority list are valid, it cannot be said that these private respondents are junior to the applicant because they have been borne in another seniority list. In view of this, this prayer of the applicant is also held to be without any merit and is rejected.

11. The next prayer of the applicant is for quashing the promotion policy at Annexure-5. The Amendment Rules dated 23.10.1984 (Annexure-5) deal with promotion of Staff Artists in Clauses (f) and (g) of Rule 4(A)(1). It is provided therein that for the purpose of promotion there shall be separate lists of seniority of officers of regular programme cadre and that of Staff Artists who have become

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Government employees. Promotion to the next grade from the two seniority lists shall be on quota basis the ratio of which shall be based on existing number of posts in each category on the date of holding of DPC. It is further provided in clause (g) that for considering an officer for promotion all persons senior to him in the grade shall also be considered provided they have successfully completed their period of probation irrespective of the fact whether they have rendered the prescribed length of service in the grade. The applicant's challenge is particularly to clause (f) providing for the quota. The point of the learned counsel for the petitioner is that in the order dated 12.8.1987 it has been provided that in future all vacancies in the posts of Staff Artists mentioned in the order should be filled up as Transmission Executive in accordance with the Recruitment Rules for the post of Transmission Executive. It is submitted by the learned counsel for the petitioner that as a result, recruitment to the post of Staff Artist is frozen whereas recruitment is made from time to time to the post of Transmission Executive. The quota system provides that on the date of holding of DPC the existing number of Staff Artists who have become Government employees and Transmission Executives will be calculated and depending upon their relative number, the quota for filling up of the post of Programme Executive will be determined each time. In other words, if there are 50 Staff Artists who have become Government employees and 150 Transmission Executives, then for filling up 4 posts of Programme Executive, the ratio between the Staff Artists and Transmission Executives is 1:3.

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The applicant's grievance is that as the cadre of Staff Artist has been frozen and the cadre of Transmission Executive is expanding, the share of the Staff Artists in the promotional post on the basis of quota is getting reduced day by day. This has resulted in the Staff Artists not getting promotion to the post of Programme Executive even though Transmission Executives who have joined as such much later than such Staff Artists are getting promotion to the post of Programme Executive on the basis of quota system worked out on the basis of existing posts in each category on the date of holding of DPC. The learned counsel for the petitioner has submitted that promotion is a legitimate expectation of a Government employee. He has cited a large number of decisions in support of the above contention. It is however not necessary to refer to these cases because the departmental respondents in their counter at pages 6 and 7, have stated that the proposal for conversion of Staff Artists into regular Government servants was taken up in order to provide promotional avenue to the Staff Artists including Production Assistants. It has been submitted by the learned counsel for the petitioner that inequality is writ large in the quota system after the departmental authorities have frozen the cadre of Staff Artists and have filled up the vacant posts of Staff Artist by recruitment of Transmission Executives. In support of his contention the learned counsel for the petitioner has relied on the case of Col.A.S.Sangwan v. Union of India and others, AIR 1981 SC 1545, in which their Lordships of the Hon'ble Supreme Court have held that Union of India can change policy formulated earlier for promotion of employees in Defence Forces, but the new policy must

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conform to requirement of equality. He has also referred to the case of B.N.Nagarajan and others v. State of Karnataka and others, AIR 1979 SC 1676, wherein the Hon'ble Supreme Court have held that act done in exercise of executive power of Government cannot override rules under Article 309 of the Constitution. The next case referred to by the learned counsel for the petitioner is Roshan Lal Tandon v. Union of India and others, AIR 1967 SC 1889. In this case direct recruits and promotees were absorbed in one cadre. But in the matter of further promotion favourable treatment was given to direct recruits. The Hon'ble Supreme Court held that when the direct recruits and promotees have come in one cadre, for further promotion both are to be treated equally and no favourable treatment can be shown to the persons who have been absorbed in the cadre as direct recruits. In this case we have held that Staff Artists after they have become Government employees and even after their duties have been made interchangeable with the duties of Transmission Executives, continue to remain as a separate group and maintenance of two separate seniority lists for Staff Artists who have become Government employees and for Transmission Executives is valid. The original provision in the Amendment Recruitment Rules about the quota is also reasonable because it is provided in clause (f) that the post of Programme Executive will be filled up on quota basis and this quota will be fixed on the basis of existing number of posts in each category on the date of holding of DPC. But this quota system has undergone a vital change and to the detriment of the interest of the Staff Artists with the order dated 12.8.1987 in which the cadre of Staff Artists has been frozen and it

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has been provided that all future vacancies in the post of Staff Artist shall be filled up by Transmission Executive in accordance with the Recruitment Rules of Transmission Executive. Because of this the posts of Staff Artists are frozen and Transmission Executive posts have been increasing. As the promotion to the post of Programme Executive from the cadres of Staff Artists and Transmission Executives on quota basis depends upon the strength of the two groups, with the freezing of the cadre of Staff Artists this quota system has worked out to the detriment of the promotion prospects of Staff Artists. An example will make it clear. If it is taken that at any given point of time there were 400 Transmission Executives and 40 Staff Artists who have become Government employees, then the ratio between them is 1:10. After filling up, say 55 posts of Programme Executive, five posts from Staff Artists and 50 posts from Transmission Executives, the residual number of Transmission Executives and Staff Artists will therefore be 350 and 35 respectively thus maintaining the ratio of 1: 10. But in the order at Annexure 6 the cadre of Staff Artists has been frozen and the vacant posts of Staff Artists are being filled up as Transmission Executives in accordance with the Recruitment Rules for Transmission Executive. Therefore, in the example given above, if after the first promotion some more Transmission Executives have been recruited, then at the time of next promotion the ratio of 1: 10 would not be maintained. It will be reduced so far as Staff Artists are concerned. Thus, it is clear that with the freezing of the cadre of Staff Artists and with recruitment in the rank of Transmission Executives, the quota for the Staff Artists for

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promotion to the post of Programme Executive will get reduced to the extent depending on the number of Transmission Executives who have been recruited after the last promotion. It is also to be noted that the cadre of Staff Artists who have been converted as Government employees is a frozen dying cadre and over a period of time with all of them getting promotion as Programme Executives, there shall only be a cadre of Transmission Executives for being promoted to the post of Programme Executive. As the number of Staff Artists gets reduced because of promotion and the number of Transmission Executives gets gets increased because of recruitment, the quota will be constantly declining so far as promotion of Staff Artists to the grade of Programme Executive is concerned. In view of this, this quota system basing on the number of persons in both the categories cannot be held to be non-discriminatory after the cadre of Staff Artists has been frozen whereas Transmission Executive cadre is expanding. None of the parties has indicated what is the present strength of Staff Artists who have become Government employees and of Transmission Executives. But from the order at Annexure-10 it appears that in this order 106 Transmission Executives have been promoted to the post of Programme Executive along with 12 Staff Artists who have been declared as Government servants. In other words, at the time of holding of DPC in respect of this promotion order dated 14.2.1994 the ratio between the two groups was 6:53. As the number of Staff Artists will remain constant and the number of Transmission Executives will increase with fresh recruitment even in the vacancies in the post of Staff Artist, this ratio of 6:53 will be changed to the detriment of the Staff Artists in future. We must say that the original

provision in clause (f) is reasonable and certainly not discriminatory because the quota was based on the existing number of posts in each category on the date of holding of DPC. But an element of discrimination has been introduced in this quota system by the decision of the departmental respondents in their order dated 12.8.1987 freezing the cadre of Staff Artists whereas Transmission Executive cadre is apparently an expanding cadre moreso when in the vacancies caused in the posts of Staff Artist, Transmission Executives are being recruited. In view of this, we hold that clause (f) of Rule 4(A)(1) of the Amendment Recruitment Rules laying down the quota system on the basis of existing number of posts in each category on the date of holding of DPC is violative of Article 14 of the Constitution. The Staff Artists have been given an opportunity for promotion to the post of Programme Executives. But because of the decision of the Department in freezing their cadre while the Transmission Executive is an expanding cadre, quota for promotion of Staff Artists to the rank of Programme Executive gets reduced progressively. In view of this, we quash this part of clause (f) of Rule 4(A)(1) of the Amendment Recruitment Rules at Annexure-5 for determining the quota on the basis of existing posts of the two categories on the date of holding of DPC. The departmental respondents are directed to evolve some other formula for operating the quota system for filling up of the post of Programme Executive from Staff Artists and Transmission Executives. We also direct that future promotions to the rank of Programme Executive should be made by the departmental respondents only after evolving a new quota system.

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12. In the result, therefore, the Original Application is partly allowed in terms of our observation and direction above but without any order as to costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
16.8.2000  
VICE-CHAIRMAN

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