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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 544 OF 1996

Raj Gopal Singh.	...	Applicant.
	Vrs.	
Union of India & Ors.	...	Respondents.

ORIGINAL APPLICATION NO. 557 OF 1996.

Nanda Kishore Dash.	...	Applicant.
	Vrs.	
Union of India & Ors.	...	Respondents.

DATE OF DECISION: 20th / JULY / 2000.

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

20.7.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

O. A. NO. 544 OF 1996;

RAJ GOPAL SINGH,
Floor Assistant,
Doordarshan Kendra,
Bhubaneswar, Po. Sainik
School, Dist; Khurda,
(Orissa).

... APPLICANT.

By legal practitioner; M/s. Brajasunder Das,
S. K. Das,
R. P. Dash,
Advocates.

- Vrs. -

1. Union of India represented
through the Secretary,
Ministry of Information &
Broad Casting, New Delhi.
2. Director General,
Doordarshan, Doordarshan
Bhawan, Copernicus Marg,
New Delhi-110 001.
3. Director, Doordarshan Kendra,
Bhubaneswar, At/Po; Bhubaneswar,
Orissa.

... RESPONDENTS.

By legal practitioner; Mr. S. B. Jena,
learned ASC.

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O. A. NO. 557 OF 1996.

NANDA KISHORE DASH,
Floor Assistant,
Doordarshan Kendra,
Bhubaneswar,
Po; Sainik School-5,
Dist; Khurda.

... APPLICANT.

by legal practitioner; M/s. Brajasunder Das,
S. K. Das, R. P. Das,
Advocate.

- Versus -

1. Union of India represented through
its Secretary, Ministry of Information
and Broadcasting, New Delhi.

2. Director General, Doordarshan,
Doordarshan Bhawan, Copernicus
Mart, New Delhi-1
3. Director, Doordarshan Kendra,
Bhubaneswar, At/Po: Bhubaneswar,
Dist: Khurda.

: Respondents.

By legal practitioner: Mr. S. B. Jena, Additional
Standing Counsel (Central).

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C O R A M

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDD.).

...

Date of decision:- Cuttack, this the day of , 2000.

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Respondents in these two O.As are common and the applications contain identical prayers. Applicant Raj Gopal Singh in original Application No. 544/1996 and applicant Nanda Kishore Das, applicant in OA No. 557/96 are floor Assistants, serving under the Doordarshan Kendra, Bhubaneswar (Respondent No. 3). Hence, though the applications have been heard separately, are being disposed of through this common order.

2. Applicant, Raj Gopal Singh, joined as Floor Asst. on 26-5-1983 while applicant in OA No. 557/96, Nanda Kishore Dash joined as Floor Assistant on 6.12.1983. Both of them had undergone the basic Television Production and Technical operation Course as Floor Manager at FTII, Pune.

3. It is their case that during their service, they have served their authorities with utmost satisfaction and received numerous appreciation letters and certificates. On many occasions, they performed their duties as Floor Manager (as substitutes) in obedience of the orders of their authorities in addition to their own duties as Floor Assistant every now and then. As per the Department Rules to regulate the method of recruitment to Gr.C Programme (Technical) posts published in GAZETTE OF INDIA on 2.9.1989 (Annexure-4), 50% of the of Floor Managers are to be promoted from in service candidates yet from the year 1990 out of four vacancies of Floor Manager, three were filled up by direct recruitment and one on promotion. In spite of their experience and seniority, they were not selected in the recruitment but one Raja Khan without proper qualification and experience, was given appointment by the Selection Committee not properly constituted. However, in case of Lighting Assistants, who also belong to Gr.C, promotional facilities have been extended to them pending finalisation of the Recruitment Rules with much less seniority under Annexure-7. Applicants, therefore, submit that they have been overlooked for promotion and not only that, the age limit prescribed for the promotions in the rules published on 2.9.1989 would also be in hindrance. This apart, it is stated that they are also entitled to the emoluments of the Floor Manager for the period they have been performing the duties as such in addition to their normal assignments on the basis of 'Equal pay for Equal work'.

Their grievance through representations having not yielded any result, they prefer these applications for directing the Respondents to promote and appoint them

as Floor Manager as in the case of Lighting Assistants and place them in seniority higher than that of Raja Khan, who was selected on 22-4-1994 and also for direction to the Respondents for payment of all their duties up-to-date against the work done in the capacity of Floor Manager.

4. The stand of the Department in their counter is that letters of appreciation from higher authorities are issued not only to the applicant, but also to all other Floor Assistants. Under the Rules published in the Gazette of India on 2nd September, 1989, 50% of the vacancies in the grade of Floor Manager are to be filled up by direct recruitment and the remaining 50% by promotion. Direct Recruitment is made by the Kendra concerned while promotion is done by the Directorate General, Doordarshan through a duly constituted DPC based on the seniority list of Floor Assistants drawn on all India basis. Applicants were called for an interview for direct recruitment in the post of Floor Manager but they were not found suitable for the post ^{as per} direct recruit. Raja Khan was selected and appointed in that post. Hence the question that Raja Khan was Jr. to them does not arise. Recruitment Rules of Lighting Assistants and Floor Assistants are quite different in nature and as such adhoc promotion of Lighting Assistants can not be precedent for promotion of the existing Floor Assistants. Applicants were performing the duties of floor Manager on very rare occasions in addition to their own duties. Such arrangements were occasionally necessary where two shifts of transmission exists. Their duties during such periods were only to run the show for a last moment substitute which is not continuous for any additional remuneration but to get acquainted with Floor Manager's duties for further

promotion. Hence payment of extra remuneration ^{on} for these rare occasions does not arise. On these grounds the Respondents pray dismissal of these Original Applications.

5. In the rejoinder, applicants reiterated their prayers through argumentative form.

6. We have heard Mr. B. S. Das, learned counsel for the applicant and Mr. S. B. Jena, learned Additional Standing Counsel appearing for the Respondents and also perused the records.

7. As earlier stated the two main prayers of the applicants are that they should be paid remuneration of floor Manager on the dates they performed their duties of Floor Manager and like Lighting Assistants, they should also be promoted to the next higher post i.e. Floor Manager and should be declared as senior to Raja Khan.

There is nothing in the pleadings that the applicants were engaged as Floor Manager for a continuous period of time. On the other hand their own case is that in addition to their own duties they were asked to perform the duties of Floor Manager for some days which are not continuous. In other words it comes to this that they ^{have} ~~have~~ to perform their duties of Floor Manager in addition to their own duties on some rare occasions. No administrative instruction or any provision of law has been cited by the applicant, that even on such contingency, they are entitled to emoluments of Floor Manager. Usually for certain administrative urgency and contingency and on occasion of sudden absence of a immediate superior, a junior directly under him is asked to perform the duties of his senior/ superior in addition to his own duties. This is happening in every office and for this such junior employee discharging

the duties of superior on such rare occasions is not entitled to remuneration of that superior post for those days. We are, therefore, not inclined to accede to the prayers of the applicant in this regard.

8. There is no prayer to strike down the rules published in the Gazette of India, on 2.9.89 under Annexure-4. As per these rules, 50% of the vacancies of Floor Manager are to be filled up by direct recruitment and the remaining 50% by promotion. Under Appendix to these Rules, promotion to the post of Floor Manager shall be made on the recommendation of the DPC and the zone of consideration for the purpose of eligibility for such promotion in the feeder grade will include the Floor Assistant, with minimum of five years of regular service and this eligibility for promotion shall be determined as on the 1st January of the year in which the DPC meets. As on the date of commencement of these rules the existing All India Seniority list would form the basis in relation to officers included therein. In respect of those appointed to the grade of floor Assistant, thereafter the names of officers will be added on the basis of the date of their regular appointment/on long term contract as Staff Artist for maintenance of their inter-se-seniority in the respective Doordarshan Kendras. In other words, the zone of consideration for promotion to Floor Manager from amongst the floor Assistants is taken from the All India seniority of Floor Assistants. It is not the case of the applicants that in All India seniority list they are already in the zone of consideration and they have been overlooked. Their grievance is that they had appeared in the direct recruitment but one Raja Khan was selected and appointed to the only one vacant post available

under the Bhubaneswar Kendra by the Selection Committee not properly constituted. The pleadings, however, are completely silent as to how that Selection Committee was defective. Their grievance against Raja Khan is that he does not know the local language Oriya and as such he should not have been selected. This can not be a ground for disqualification of Raja Khan. In fact there is no prayer in these applications for quashing the selection and appointment of Raja Khan and even if the applicants had come up with such prayer, the same would have been disallowed in the absence of Raja Khan as one of the Respondents in these OAs.

9. The Rules dated 2.9.1989 published in the Gazette, under Annexure-4 ^{are} with reference to the Recruitment to Gr.C Programme (Tech.) posts. In the schedule only two categories of posts were included such as Library Assistant (Sr. Grade) and Floor Manager. The Posts of Floor Manager as already said, can be filled up by promotion from the level of Floor Assistants and by direct recruitment. Posts of Cameraman Gr.3 is not included as a category of posts in these Rules. The Feeder post of Cameraman is Lighting Assistant as would be evident from Annexure-1. It is true through Annexure-7, dated 16th February, 1995, 20 Lighting Assistants have been given adhoc promotions to the post of Cameraman Gr.III for a period of one year pending finalisation of Recruitment Rules for the post of Cameraman Gr.III and it is made clear in that order that these promotions are purely adhoc and shall not confer upon the promotees any claim for regular appointment or seniority in the post of cameraman Gr.III, and regular appointment and fixation of seniority would be done

later in accordance with Recruitment rules to be notified for this post. This follows that the post of Lighting Assistant is completely ^adifferent and distinct post from the post of Floor Assistant. Since no Recruitment rules as yet have been framed and in view of the vacancies the posts of Cameraman Gr.III have been filled up by adhoc promotions by some Lighting Assistants. This would not necessarily mean that the applicants and other Floor Assistants have to be given promotion on adhoc basis, completely by passing the rules dt. 2.9.89 under Annx. 4 more so when the pleadings is silent as to the number of vacancies of Floor Manager ~~are~~ available ^{under} in the Bhubaneswar Doordarshan Kendra.

10. In the course of argument, learned counsel for the applicants Mr. Das relied the decisions reported in AIR 1996 SC 352 - Dr. Krishna Chandra Sahu and others Vrs. State of Orissa and others, AIR 1991 SC 1733, Municipal Corporation of Greater Bombay and others Vrs. Dr. Sushil V. Patkar and others, AIR 1990 SC 1381 - Miss. Shainda Hasan Vrs. State of Uttar Pradesh and others and AIR 1988 SC 2181 - Bharat Singh and others Vrs. State of Haryana and others. We have carefully gone through these decisions and in our view they are not relevant to the issues requiring decision in these two Original Applications.

11. Dr.K.C.Sahu (supra)' case is in regard to the decision of the Selection Committee which was not properly constituted. AS we have already stated the pleadings ^{are} is silent as to how the selection committee conducting the direct recruitment would ^{be} legally defective. Municipal Corporation of Greater Bombay's case is in regard to a selection of a candidate not possessing the requisite qualification at the time of interview. In the Original Applications before us, as already indicated, there is no averments as to how Raja Khan had no requisite qualification excepting that he is not a local person ~~having~~ no understanding ^{of} Oriya which we have already stated is not a dis-qualification. Even otherwise, the appointment of Raja Khan is not under challenge in these applications. Miss. Shainda Hassan's case deals with a case where selection committee in the absence of statutory rules relaxed the qualification and experience of a candidate. It is not understood how this decision is relevant in the cases before us, because there is no specific pleadings that the Select committee relaxed any qualification or experience in respect of any candidate. In Bharat Singh's case it has been held that party raising point must plead and prove such facts by evidence. In fact this ruling goes against the applicants, as discussed, in the absence of any specific averments in the pleadings.

12. In the result, there is no merit in these two Original Applications which are accordingly ^{dismissed} ~~rejected~~.

No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)