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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 7 OF 2000

Cuttack, this the 19th day of September, 2001

Smt. Dipty Mishra

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

19.9.01.
(G. NARASIMHAM)
MEMBER (JUDICIAL)

S. Somnath Somi
(SOMNATH SOMI)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 7 OF 2000
Cuttack, this the 19th day of September, 2001

CORAM:

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

.....
Smt.Dipty Mishra,
w/o Shri B.K.Satpathy,
aged about 35 years,
Plot No.803, Jayadev Vihar,
P.O/PS-Nayapalli (IRC Village),
Bhubaneswar-15,Dist.Khurda.... Applicant

Advocates for applicant - M/s Shasikanta Mishra
Sudhir Ku.Mishra
-D.N.Mishra
S.N.Dwivedi
S.Moharana

Vrs.

1. Union of India, Ministry of Information & Broadcasting, New Delhi, represented through the Secretary.

2. Prasar Bharati (Broadcasting Corporation of India), Doordarshan, Mandi House, New Delhi, represented through the Director General.

3. The Prasar Bharati (Broadcasting Corporation of India), All India Radio, Akashvani Bhawan, Parliament Street, New Delhi, represented through the Director General.

4. The Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi.

5. The Director, Doordarshan Kendra, Bhubaneswar, Dist.Khurda.

6. Smt.Kalpana Parida, presently working as Programme Executive, Doordarshan Kendra, Bhubaneswar, Dist.Khurda.

7. Sri Shiv Prasad, presently working as Programme Executive, All India Radio, At/PO-Ambikapur, Madhya Pradesh

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Respondents

Advocate for respondents - Mr.B.Dash
ACGSC

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner, who is a Transmission Executive (hereinafter referred to as "TREX") in All India Radio, has prayed for quashing the order dated 21.1.1999 at Annexure-5 promoting eight persons on ad hoc basis to the level of Programme Executive (hereinafter referred to as "PEX") in the pay scale of Rs.6500-10500/- . She has also prayed for quashing the order dated 1.7.1999 (Annexure-6) rejecting her representation dated 13.1.1999. Her third prayer is for a direction to the departmental respondents to grant promotion to the applicant from the date her juniors have been promoted, along with consequential service benefits.

2. The departmental respondents have filed counter opposing the prayers of the applicant, and the applicant has filed rejoinder. We have heard Shri S.K.Mishra, the learned counsel for the petitioner and Shri B.Dash, the learned Additional Standing Counsel for the departmental respondents and have also perused the record.

3. For the purpose of considering the petition it is not necessary to go into too many facts of this case. The admitted position is that the applicant was initially appointed as TREX in All India Radio on 30.11.1985 and was transferred to Doordarshan Kendra, Bhubaneswar in 1992. In 1994 the applicant availed study leave in order to pursue studies for Ph.D.Degree. The applicant has stated that she was sanctioned study leave for a total period of three years from 5.4.1994 to 4.4.1997. Admittedly, promotion from the level of TREX is

S. Som

to the cadre of PEX. The applicant has enclosed all India eligibility list of TREX and has stated that in order dated 21.1.1999 at Annexure-5 eight TREXs were given ad hoc promotion to the cadre of PEX. Out of these, according to the applicant, respondent nos. 6 and 7 are admittedly junior to her according to all India eligibility list of TREXs enclosed by her. Her representation for consideration of her case for ad hoc promotion was rejected and in the context of the above, the applicant has come up in this petition with the prayers referred to earlier.

4. Respondents in their counter have taken the stand that the applicant's case was considered in December 1998 for ad hoc promotion ^{to} / the cadre of PEX, but she was not found fit for promotion on the basis of assessment of her service record. They have stated that persons junior to the applicant in the rank of TREX were promoted because of better record. It is also stated that the post of PEX being a selection post, the applicant could not be promoted for the above reason and on the same ground her representation was rejected. It is not necessary to refer to the averments made by the applicant in her rejoinder because these will be taken note of while considering the submissions made by the learned counsel of both sides.

5. Before doing that it is to be noted that private respondent nos. 6 and 7 were issued with notices but they did not appear or file counter. After the hearing was concluded, the learned Additional Standing Counsel for the departmental respondents was directed to produce the DPC proceedings held in December 1998 in which the case of the applicant was considered and she was not found fit,



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along with the CR folder of the applicant. Initially the learned Additional Standing Counsel for the respondents produced two big files along with the CR folder and he was directed to file the only DPC proceedings. Thereafter in a sealed packet said to be containing the DPC proceedings of December 1998 and the CR folder was filed. At the time of preparation of the order, ^{when} the sealed packet was opened by us, it was found that DPC proceedings were not there. In view of this, the matter was again brought under the heading "To Be Mentioned" and at our instance the learned Additional Standing Counsel has again filed a sealed packet on opening of which we have found a big bunch of notesheets and correspondence along with the CR folder of the applicant and we have perused the same.

J. J. J.

6. The first point to be noted in this connection is that in course of hearing the learned counsel of both sides have made elaborate submissions whether the posts were to be filled up on the basis of selection or on the principle of seniority-cum-fitness. It is not necessary to go into these submissions because along with the written note of arguments submitted on behalf of the applicant, which has also been taken note of, the applicant has filed xerox copy of the rules and instructions regarding recruitment rules for various posts in All India Radio. In these we find that in sub-paragraph (4) of paragraph 13, it is clearly laid down that where ad hoc appointment is by promotion of the officer in the feeder grade it may be done on the basis of seniority-cum-fitness basis even where promotion is by selection method. As in the impugned order at Annexure-5 persons junior to the applicant have been given ad hoc



promotion to the cadre of PEX, the same is required to be done on the principle of seniority-cum-fitness and not on selection basis even though the post of PEX is to be regularly filled up by way of selection from the post of TREX.

7. We have gone through the bunch of papers filed by the learned Additional Standing Counsel for the respondents and we find that no formal meeting of DPC was held and there are no DPC proceedings. But according to sub-paragraph (4) of paragraph 13 of the instructions, referred to above, ad hoc promotion may be made only after proper screening by the appointing authority of the record of the officer. From this, it is clear that for ad hoc promotion these rules do not provide for holding of a formal meeting of the DPC and ad hoc appointment can be given by screening of the CR. In the bunch of papers we find a note dated 22.12.1998 by Shri S.D.Kumar, O.S.D., Prasar Bharati, in which it has been stated that the CR folders of the eligible officers have been gone through and all the eligible officers have been found fit for promotion except in seven cases. In this list of seven officers who were not found fit for ad hoc promotion, the name of the applicant has been shown, and it has been mentioned that her name is against serial no.8 of the eligibility list. There is a further remark that she has been absenting since 1994. This note has been approved by the Director General on 23.12.1998. Thereafter O.S.D. has directed immediate issuance of orders. After this apparently the order of promotion has been issued on 24.12.1998 and this order is also in the bunch of papers filed by the learned Additional Standing Counsel. In this order of promotion the names of respondent nos. 6 and 7

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are not there. Subsequently, in order dated 21.1.1999 (Annexure-5) the seven persons including two juniors of the applicant have been promoted. From the above it is seen that the case of the applicant was considered by the appointing authority, i.e., Director General for ad hoc promotion in December 1998.

8. The next question for consideration is whether the consideration was correctly done. Law is well settled that the Tribunal cannot re-assess the CR and come to a finding different from the finding arrived at by the appointing authority because the Tribunal does not act as an appellate authority over the appointing authority. But at the same time it is clear that if the appointing authority has decided the case of a candidate on wrong premise, then it is permissible under the law to examine the matter. As earlier noted, at the time of consideration of the case of the applicant, against her name it was mentioned that she is absenting from 1994. This endorsement is obviously incorrect because the applicant was granted study leave initially for a period of two years which was extended again for one year of extraordinary leave. Therefore, it cannot be said that the applicant was absenting which presupposes that she was away from duty without intimation to the departmental authorities, which in any case is not a fact. Instructions also provide that even when a person is on study leave his case for promotion will have to be considered. In this case the applicant's study leave ended on 4.4.1997 according to the applicant and this averment has not been denied by the departmental respondents. Thus, the conclusion that she was absenting from 1994 is not correct. On the date of consideration of her case in

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December 1998 she was ^{not} ~~on~~ authorised study leave and extraordinary leave which were granted to her and in any case she has reported for duties in April 1997.

9. The other aspect of the matter is the CR of the applicant. We find on a perusal of CR of the applicant that in the year 1993-94 there is an adverse entry. There is no record if this adverse entry was communicated to the applicant. We note that the reviewing officer has not accepted this adverse entry but this has remained on record and it is not clear if this adverse entry given by the reporting officer has been taken into account while assessing the suitability of the applicant when she was not found fit for ad hoc promotion on the principle of seniority-cum-fitness. In view of this, we dispose of the O.A. with a direction to respondent nos. 3 and 4 to consider the case of the applicant for ad hoc promotion to the rank of Programme Executive from the date her junior was so promoted. While considering the case of the applicant, the adverse entry which is in the CR should not be taken note of firstly because it was never communicated to her and secondly because this was also not accepted by the reviewing officer. This exercise should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order and further action ^{taken} ~~within~~ a period of 30 (thirty) days thereafter depending upon the assessment of the appointing authority about the applicant's suitability for ad hoc promotion to the rank of Programme Executive from the date her junior was given such ad hoc promotion.

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10. With the above observation and direction the Original Application is disposed of. No costs.

19.9.01.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
19.9.2001

AN/PS

