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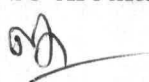
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application Nos.223 & 231 of 2006
Cuttack, this the 17th day of February, 2009

Subhra Narayan Mohanty & Anr. Applicants
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.Nos.223 & 231 of 2006
Cuttack, this the 17th day of February, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

1. Subhra Narayan Mohanty, aged about 55 years, Son of Late Krushna Chandra Mohanty, resident of 5-F/648, Sector-9, C.D.A, Bidanasi, Cuttack at present working as Programme Executive-in-charge, All India Radio, Puri, At/PO/PS/Dist.Puri (OA No.223/2006).
2. Lalitendu Kanungo, aged about 42 years, Son of Late Bhagirasthi Kanungo, resident of F-777, Sector-6, C.D.A, Bidanasi, Cuttack at present working as Programme Executive-in-charge, All India Radio, Baripada, At/Po/PS-Baripada, District-Mayurbhanj (OA No.231/2006)

.....Applicants

By Advocate : M/s. S.S.Das,S.Das,P.K.Nayak,
K.C.Khuntia,R.K.Sahoo.

- Versus -

1. Union of India represented through the Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi.
3. Deputy Director General (Admn.), All India Radio, Akashvani Bhawan, Parliament Street, New Delhi.
4. Head of the Station cum Programme Executive, All India Radio, Puri, At/Po/Ps/Dist.Puri.
5. Head of Station-Cum-Assistant Station Engineer, All India Radio, Baripada, At/Po/Ps-Baripada, Dist. Mayurbhanj.

....Respondents

By Advocate :Mr. R.N.Mishra.

O R D E R

Per- MR. C.R.MOHAPATRA, MEMBER (A):-

Two applicants working as the Executive in-charge in All India Radio, Puri and Baripada have filed the present Original Applications praying as under:

“(A) Let the impugned order passed by the Respondent No.3 communicated through Radio Net work message through the Station Heads regarding reversion of the applicants from the cadre of PEX to the cadre of TREX

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and their remaining in charge of the post of Programme Executive without any financial benefit, impugned herewith vide Annexure-5 be quashed;

(B) Let the Respondent Authorities be directed to regularize the services of the applicants as against the promoted posts of Programme Executive (PEX);

(C) Let the Respondent Authorities in the alternative be directed to retain the applicants in their promoted posts with benefits of services attached to such posts even though on adhoc basis till the said posts are filled up by direct recruitees;

(D) Let the Respondent Authorities be further directed to grant and sanction the financial as well as other service benefits to the applicants as long as they are allowed to render their services in the promoted post with immediate effect;

And

(E) Let there be any other order(s)/direction(s) deem fit and proper under the facts and circumstances of the case in the bona fide interest of justice."

2. After filing of the counter on 19th March, 2007 another additional counter was filed by the Respondents on 4h November, 2008 contending as under:

- (i) Due to various litigations and administrative constraints including non-amendments of the Recruitment Rules in the grade of PEX and considering the functional requirements especially for the newly created AIR Stations/Kendra, about 550 TREXs/Production Assistants on the basis of the seniority list were promoted to the grade of PREX on temporary and adhoc basis from 1998 onwards;
- (ii) Anomalies in the seniority list as also non-adherence of the ratio 1:1 between TREXs/Production Assistants while giving promotion to the posts PEXs even on adhoc/temporary basis, having been noticed the matter was reviewed and as a consequence 530 persons promoted on adhoc basis to the post of PEXs had to face reversion. However considering the need of filling up of the post of PREX, 504 TEXs and 126 Production Assistants and allied cadre officers were promoted on adhoc basis w.e.f. 25.2.2005 for a period of one year as per rules. However, subsequently on the basis of the approval made by the DoP&T those who were continuing as on 31.12.2004 in the promotional posts of PREX they were granted extension upto 30.06.2006.

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However, while granting permission the DoP&T specifically made the condition that irrespective of the ratio or status in the provisional seniority list of the feeder cadres, the Department was required to focus on the adhoc PREX as on 21.12.2004

- (iii) Accordingly, on 24.02.2006 decision was taken to revert 262 PEXs to their parent cadres. However on the request of individuals as also pressure of staff association those 262 employees were allowed to hold the charge of PREX without any financial benefits vide order dated 01.03.2006;
- (iv) Allowing them to continue as in-charge PEXs were subject matter of consideration before various Benches of the Tribunal. As per the directions of the Tribunal some of the stations paid the pay scale of the PEXs to the in-charge PEXs in whose favour direction was given by the concerned Benches of the Tribunal even without formal approval of the Directorate.
- (v) Regular DPC for promotion to the grade of PEX has not been convened since 1997 due to administrative inconvenience and pendency of court cases in various Tribunal;
- (vi) Meanwhile in compliance of the directions of the Tribunal on the subject matter, draft seniority list has been published in web site on 27.06.2008 inviting objection;
- (vii) CR dossiers of 330 TREXs and Production Assistants have been scrutinized and graded them. Few more CR Dossiers of TREXs/Production Assistants are yet to be received from various Doordarshan Kendras/Statons.
- (viii) Though DPC twice met on 14th and 27th August, 2007 yet to finalize the cases of promotion due to non-availability of identified/evolved ratio between TREXs and Production Assistants & Allied cadres. Vigilance clearance of some of the employees is yet to receive from DG, Doordarshan.
- (ix) In view of the above, and in view of the fact that there are only 300 vacancies in the grade of PEX are available, employees who are holding the charge of post of PEX may not be promoted through the proposed DPC;
- (x) Proposal for recruitment holiday for 297 posts has been moved to the Ministry. These posts would be filled up by way of direct recruitment. However, if proposal is accepted then thee posts would be diverted for consideration by the DPC. Even then 630 PEXs continuing on adhoc basis cannot be adjusted.
- (xi) Due to various Court directions, proposal for restoration of reverted PEXs has been sent to the

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Ministry for their consideration on 16.01.2008. The Ministry sought some clarification vide letter dated 15.7.2008 and the same has been complied with in letter dated 30.7.2008;

- (xii) The order dated 01.3.2006 for holding the charges of PEX has been issued with the approval of DG. Only 171 vacancies are available in the promotional quota. All the adhoc promotion has been made against the Promotion vacancies and DR Vacancies and a proposal for seeking recruitment holiday for 197 posts DR vacancies have been sent to the DoP&T through Prasar Bharati/Ministry of I & B. Their approval is awaited.
- (xiii) The adhoc promotions in the grade of PEX vide order dated 25.2.2005 has been made for the first time in the 4:1 ratio among TREX and allied cadres. Production Assistants (on the basis of the clause 41(a) (f) in Recruitment Rules, 1984 which was quashed by this Tribunal in the year 2000. As a result more TREXs were promoted and more production Assistants who were already promoted were reverted. The Department had not submitted any proposal for extension of the adhoc period of these adhoc PEXs as they were promoted only for one year and there are no vacancies in the grade of PEX.

3. Heard Learned Counsel for both sides and perused the materials placed on record.

4. No rejoinder to the additional counter filed by the Respondents has been filed by the Applicants. It is also not substantially the case of the Applicant while any of his juniors coming under the same ratio were promoted on adhoc basis and they were retained and are going to be considered for regular promotion in the proposed DPC for they have been ignored. It is also not the case of the Applicants that their promotion to the post of PEX was in accordance with rules and after the recommendation of the duly constituted DPC. In absence of the above, and in view of the law enunciated by the Hon'ble Apex Court in a plethora of judicial pronouncements that persons promoted or appointed on adhoc basis de hors the rules have

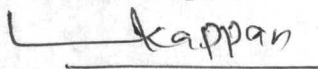
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no right to claim regularization in the posts in which they were appointed. In view of the above the prayer for regularization of the Applicants is hereby rejected.

5. So far as payment of the scales attached to the posts of PEX are concerned, we hold that in view of the admission of the Respondents that as per the direction of other Benches of the Tribunal similarly situated employees continuing in charge PEXs and were applicants before the Tribunal have been paid their salary in the grade of PEX. In view of the above, the Respondents are hereby directed to pay the Applicants the scale of pay of PEX from the date they were kept in-charge of the said posts within a period of 60 days from the date of receipt of copy of this order.

6. As far as the relief that has been sought by the applicants that the Respondents be directed to retain them in the promoted posts is concerned, it is noted that it is the case of the Respondents that considering the need of the man power, adhoc and in-charge basis promotions were given to the employees from feeder cadre. If situation so demands, the Respondents may consider this prayer of the applicants with the terms and conditions as before. But no positive decision can be issued by this Tribunal keeping in view the factual positions enumerated by the Respondents and the law on the subject.

7. In the light of the observations and directions made above, this OA stands disposed of. There shall be no order as to costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)