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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

O.A. No.314 of 2013
Cuttack, this the 22nd day of May, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

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**Programme Staff Association of All
India Radio & Doordarshan through –**

1. Shri Abhaya Kumar Dash,
Aged about 51 years,
Son of Late Hari Bandhu Das,
Plot No.1/D-122, PS-Markat Nagar,
Dist.Cuttack,
Programme Executive,
All India Radio, Cantonment Road,
Cuttack, Odisha, State Secretary,
Programme Staff Association of AIR & DD, Odisha

2. Shri Durga Majhi,
Aged about 46 years,
Son of Late Puran Majhi,
Village/Po. Hensada,
PS. Bahalda, Dist.Mayurbhanj,
Residing at Mathasahi,
Tulasipur, Cuttack,
Transmission Executive,
All India Radio,
Cantonment Road,
Cuttack.Applicants

(Advocate(s)- Ms.G.Rath, S.Rath, B.K.Nayak-3,D.K.Mohanty)

-Versus-

Union of India represented through –

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1. The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi.
2. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.
3. Chairman,
Staff Selection Commission,
CGO Complex,
Lodhi Road,
New Delhi.

**Prasar Bharati Broadcasting Corporation
of India represented through –**

4. Chief Executive Officer,
PTI Building,
Sansad Marg,
New Delhi.
5. Director General,
Prasar Bharati Broadcasting Corporation of India,
All India Radio,
Parliament Street,
New Delhi.
6. The Deputy Director (ER),
Prasar Bharati (Broadcasting Corporation of India)
Office of the Deputy Director General (ER),
All India Radio,
Akashvani Bhavan,
3rd floor, Eden Gardens,
Kolkata-700 001.

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7. The Deputy Director of Administration (P),
Office of the Director General (S-1 (B) Section),
All India Radio,
Akashvani Bhawan,
Parliament Street,
New Delhi-110 001.

8. BRIG (Retd.) V.A.M.Hussain,
Member (Personnel),
Prasar Bharati,
PTI Building,
New Delhi-110 001.Respondents

(Advocate(s)-Mr. S.Barik).

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(oral)

A.K. PATNAIK, MEMBER (J):

MA No.360/2013

By filing the instant Miscellaneous Application under Rule 4 (5) (a) of the Central Administrative Tribunals (Procedure) Rules, 1987, a prayer has been made to permit them to prosecute this OA jointly. Copy of this MA has been served on Mr.S.Barik, Learned Additional CGSC for the Union. Having heard Mr.G.Rath, Learned Senior Counsel appearing for the Applicants assistant by Shri D.K.Mohanty, Learned

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Advocate and Mr.S.Barik , Learned Additional CGSC appearing for the Respondents prayer made in this MA is allowed. MA No.360 of 2013 is accordingly disposed of.

OA No.314 of 2013

2. This Original Application has been filed by the Applicants seeking to quash the advertisement inviting application for filling up of the vacancies in the grade of Programme Executive (PEX) vide Employment News 23-29 March, 2013 (Annexure-A/9) and to hold that encroachment of the posts/vacancies meant for DPQ in PEX is bad in law. In alternative, to direct the Respondents to determine the vacancies meant for DPQ in the grade of PEX and to consider eligible candidates in the feeder grade first as against the determined vacancies before going ahead with the selection as per the advertisement under Annexure-A/9. They have also prayed to direct the Respondents to consider the cases of the TREXs and allied grade employees by convening DPC for the post of PEX

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from the date(s) of vacancies and promote/pay them all consequential service and financial benefits retrospectively.

3. It was contended by Mr. Rath, Learned Senior Counsel appearing for the Applicants assistant by Shri D.K.Mohanty, Learned Advocate that even though TREXs having all eligibility conditions, as per the existing Recruitment Rules are available to be promoted to the post of Programme Executives instead of holding DPC to consider the eligible TREXs, the Respondents-Department issued advertisement to fill up all the vacancies by way of direct recruitment. It has been submitted that as per the existing recruitment rules 40% of posts in the grade of PEX are to be filled up by way of promotion failing which by direct recruitment and 60% by way of direct recruitment. But despite availability of eligible officers in the feeder grade and despite availability of vacancies in promotional quota the Respondent-Department without application of mind and without determining the exact number of vacancies to be filled up by direct recruitment abruptly issued the advertisement

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for filing up 360 posts of Programme Executive and thereby abridging the right of consideration available to the TREXs. It has further been submitted that the TREXs have taken up their grievance individually as also through Union but till date they have not been intimated the outcome of their grievance raised through representations. Mr.S.Barik, Learned Additional CGSC appearing for the Respondents has no immediate instruction about the representation submitted by the Applicants. He has also expressed that instantly he is not fully equipped with material about the points raised by the applicants in this OA and has prayed that if time is granted he may obtain instruction and apprise this Tribunal. Mr.Rath, Learned Senior Counsel while not objecting grant of time to obtain instruction has vehemently prayed for stay for going ahead with the recruitment pursuant to the advertisement at Annexure-A/9 in so far as filling up of 360 posts of PEX. But we find that the representations submitted by the Union on 22.10.2012 12.3.2013, 21.3.2013 and 1.5.2013 are pending unanswered with the Respondents. Though a

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government servant has no right to claim promotion, certainly, he has a right to claim for consideration as per the Rules. Law ~~is~~ requires that filling up of the vacancies must be in accordance with Rules. When Rule provides 40% by way of promotion and it is the specific case of the applicants that Members of the union who are continuing in the feeder grade as TREXs are eligible to be promoted to PEX, the Respondents should not have issued advertisement without first determining the vacancies meant for DRP & DPQ. To know the outcome of the representation is sine qua non to principles of natural justice and doctrine of legitimate expectation.

4. As the applicants at the first instance tried to mitigate their grievance through representations individually and also through Union which are still pending we are not inclined to admit this OA and, therefore, on the consent of the parties this OA is disposed of at this admission stage with direction to the Respondent No.4 (Chief Executive Officer, PTI Building, Sansad Marg, New Delhi) to consider the grievance raised by

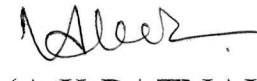


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the applicants in representations dated 22.10.2012 12.3.2013, 21.3.2013 and 1.5.2013 which are annexed to this OA as Annexures-A/10, A/11, A/12 & A/14 and communicate the result thereof to the Applicants within a period of 45 days from the date of receipt of this order and till ^{then} ~~status quo~~ in filling up of the posts of PEX shall be maintained. There shall be no order as to costs.

5. Copy of this order along with OA be sent to Respondent No.4 by speed post by the Registry at the cost of the Applicants for which Mr.Mohanty, Learned Counsel for the Applicants undertakes to furnish the required postal requisite by 24.5.2013.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)