

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.538/05

Thursday this the 19th day of July 2007

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER**

1. A.Anwar,
S/o.S.A.Ali,
Programme Executive,
Doordarshan Kendra,
Kudappanakunnu P.O., Trivandrum – 43.
2. Philip Ninan,
S/o.C.E.Ninan,
Programme Executive,
Doordarshan Kendra, Trivandrum – 43.

...Applicants

(By Advocate Mr.G.Sasidharan Chempazhanthiyil)

Versus

1. Director,
Doordarshan Kendra, Prasar Bharati,
Kudapanakunnu, Trivandrum – 43.
2. Director General,
Doordarshan, Prasar Bharati,
Copernicus Marg, New Delhi.
3. Director General,
All India Radio, Prasar Bharati,
Akashwani Bhavan, New Delhi.
4. Union of India represented by its Secretary,
Ministry of Information & Broadcasting,
New Delhi.
5. Departmental Promotion Committee
for the post of Programme Executive
represented by its Chairman,
Office of Director General, All India Radio,
Prasar Bharati, Akashwani Bhavan,
New Delhi.

...Respondents

(By Advocate Mr.N.N.Sugunapalan, Sr & Mr.S.Sujin [R1,2&4])

This application having been heard on 19th July 2007 the Tribunal on the same day delivered the following :-

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.NO. 159/05

Wednesday this the 20th day of June 2007.

C O R A M:

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

1. A. Anwar,
S/o. S.A. Ali,
Programme Executive, Doordarshan Kendra,
Kudappanakunnu P.O., Trivandrum - 43.

2. Philip Ninan,
S/o. C.E. Ninan,
Programme Executive,
Doordarshan Kendra, Trivandrum - 43.

(By Advocate Mr. Sasidharan Chempazhanthiyil)

Versus

1. Director,
Doordarshan Kendra,
Prasar Bharati, Trivandrum.

2. Director General,
Doordarshan, Prasar Bharati, New Delhi.

3. Director General,
All India Radio, Prasar Bharati, New Delhi.

4. Union of India, represented by its Secretary,
Ministry of Information & Broadcasting, New Delhi.

5. Sandhya Rani. P,
Transmission Executive,
Doordarshan Kendra,
Prasar Bharati, Trivandrum.

(By Advocate Mr. N.N. Sugunapalan, Sr.

& Mr. Balakrishnan Gopinath (R1-4)

This application having been heard on 20th June 2007
on the same day delivered the following:

O R D E R

HON'BLE DR.K.B.S. RAJAN, JUDICIAL MEMBER

Applicants through this O.A. has sought for the following
reliefs:-

1. Call for the records and quash Annexure A6 to
the extent that it does not contain the names of
the applicant.

2. Call for the records and quash Annexure A5 as it is totally unnecessary in as much as the 3rd respondent orders a further spell of ~~xxx~~ ad hoc promotion by Annexure A6.

3. Declare that the applicants are entitled to continue as Programme Executive on ad hoc basis till replaced by regular hands and direct the respondents to take action accordingly strictly following the ratio prescribed in Annexure A3 Recruitment Rule.

4. Direct the respondents to take action towards convening regular DPC's for promotion as Programme Executives in the post lying vacant from the year 1998 onwards.

2. At the time of argument it was stated that taking into account the subsequent development, all that is remaining is last relief sought above, namely, convening of regular DPC for promotion as Programme Executive from the year 1998 onwards.

3. Briefly stated, applicants (two in number) joined the respondents' organisation respectively as Production Assistant and Floor Manager in May, 1984 and were regularised in the said post. The next promotional post is Programme Executive and as per Annexure A-3 Recruitment Rules, of 50% promotion quota, the applicants case comes within half of that ratio whereby the Transmission Executives are eligible for promotion. Though the applicants were appointed on ad hoc basis as Programme Executive in 2003 and had been continuing, while so, attempt was made to substitute their promotion by appointing others. Consequently vide impugned order at Annexure A-5 dated 25.2.2005 the applicants were reverted to the substantive post. Again certain other persons vide Annexure A-6 ~~xx~~ were promoted on ad hoc basis. These two orders were under challenge.

4. By virtue of an interim order dated 3.3.2005 status quo in respect of the applicants was ordered.

5. When the matter was taken up for hearing on 11.12.2006, an order dated 16.11.2006 was produced and the same reads as under:-

" It is informed that the ratio 1:1 was broadly adopted in all ad hoc promotion in the grade of PEX. However, the promotion made under order dated 25.2.2005 were made in the ratio 4:1 ie. TRES 4 and

Production Assistant 4. This was done on the analogy of promotion made to the post of Assistant Station Director prior to 1990 from PEXs and Producers, on the basis of the numerical strength in these post on the date of DPC. Since DOPT has given extension to the PEXs promoted earlier, the order dated 25.2.2005 became infructuous. Thus the ratio of 1:1 is broadly adopted being maintained in ad hoc promotion in the grade of PEX."

6. The above order has made Annexure A-5 and Annexure A-6 impugned orders infructuous and the Department has decided to adopt 1:1 ratio as per the Recruitment Rules at Annexure A-3.

7. In the main part of the Recruitment Rules certain amendments were originally carried out as per which the ratio in respect of regular Programme Cadre Officer and staff artists was based on the numerical strength. The amendment was challenged before the other Bench and the Full Bench was constituted at Jaipur Bench which held the aforesaid amended portion of the Recruitment Rules stood quashed and set aside. By virtue of order dated 16.11.2006 extracted above, the ratio of the two feeder grades correspond to 1:1 coinciding with the provisions of the Recruitment Rules.

8. In view of the above situation, all that survives is that the applicants' case should be considered for regular promotion as Programme Executive in accordance with the Recruitment Rules as per the prescribed procedure for conducting DPC. Counsel for the applicants submitted that since the vacancies belong to the year 1998, the applicants should be considered for regular promotion from 1998. The counsel for the respondents, however, objected to the same.

9. We are of the considered view that the DPC shall be convened within a period of two months from the date of communication of this order and the persons recommended by the DPC should be considered for promotion as Programme Executive. Separately, the feasibility of regularising the services of the applicants as Programme Executive may be considered with effect from the date of ad hoc promotion from 2003. For, if the ad hoc promotion of 2003 continued till the regular promotion, the case of the applicants for regularisation would fall under the decision contained in Paragraph 47 (b) of the decision of the Apex Court in Direct

Recruit Class II Engineering Officers' Association Vs. State of Maharashtra (1990) 2 SCC 715, which states, "if the initial appointment is not made by following the procedure laid down by the Rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the Rules, the period of officiating services will be counted." The respondents may decide this part of the order within a period of three months from the date of effecting promotion of the eligible and suitable individuals. In case the applicants are aggrieved of the decision by the Department in respect of regularisation of the ad hoc services it is up to them to take recourse to challenge the same in accordance with law.

10. With the above directions the O.A. is disposed of.
No costs.

(Dated the 20th day of June 2007)

Sd/-

K.S. SUGATHAN
ADMINISTRATIVE MEMBER

Sd/-

K.B.S. RAJAN
JUDICIAL MEMBER

CERTIFIED TRUE COPY

Date: 27.6.2007

Sd/-

Section Officer (Judl)

.2.

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

When the matter came up for hearing, counsel for the applicant submitted that relief no.1 & 3 have been granted as the respondents have published a final all India seniority list of Staff Artists equated with Transmission Executives as on 1.1.2004 in which the name of the applicants figure and therefore he is not pressing for the same. As far as relief no.4 is concerned the matter was gone into in another OA 159/05 filed by the applicants and a direction has been given therein to convene the DPC within a period of two months from the date of communication of the order dated 20th June 2007 and therefore this matter is also under consideration of the respondents.

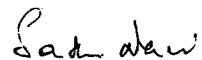
2. In the light of these submissions, the O.A is closed as infructuous.

(Dated the 19th day of July 2007)



K.B.S.RAJAN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN