

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.25/08

Thursday this the 19th day of November 2009

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. V.K.Raveendran Achary,
Assistant Station Engineer,
Doordarshan Kendra,
Viyyoor P.O., Thrissur – 680 010.
 2. K.V.Padmanabhan,
Assistant Station Engineer,
Doordarshan Kendra, Calicut – 673 008.
 3. P.N.Sudhakaran,
Assistant Station Engineer,
All India Radio, Ramavarmapuram P.O.,
Thrissur – 680 631.
 4. T.S.Sreekumar,
Assistant Station Engineer,
All India Radio, Vazhuthacaud,
Thiruvananthapuram – 695 014.
- ...Applicants

(By Advocate Mr.P.Santhosh Kumar)

V e r s u s

1. Union of India represented by Secretary,
Ministry of Information and Broadcasting,
New Delhi.
2. Prasar Bharathi (Broadcasting Corporation of India),
New Delhi, represented by the Chief Executive Officer.
3. Engineer in Chief,
Directorate of All India Radio,
Parliament Street, New Delhi – 1.
4. Engineer in Chief,
Directorate of Doordarshan Kendra,
Mandi House, New Delhi – 1.

5. The Station Director,
All India Radio, Thiruvananthapuram.
6. The Director,
Doordarshan Kendra,
Kudappanakkunnu, Thiruvananthapuram – 43. Respondents

(By Advocate Mr. P. S. Biju, ACGSC [R1, 2, 3 & 5]
& Mr. N. N. Sugunapalan, Sr. with Mr. S. Sujin [R4 & 6])

This application having been heard on 19th November 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicants are in fact aggrieved by the Annexure A-3 order No.26/2007-S.III dated 24.4.2007 promoting them to the Junior Time Scale Grade of IB(E)S (Rs.8000-13500/-) only with effect from 24.4.2007. Their contention is that the respondents should have regularised their services with effect from 29.4.1999 ie. the date on which the Annexure A-2 order No.33/99-S.III was issued by the respondents promoting them on ad hoc basis to the Junior Time Scale.

2. The brief facts of the case are that the applicants are initially appointed as Engineering Assistant belonging to Group 'C' category. They were promoted as Senior Engineer Assistant which belongs to Group 'B' category. Thereafter they were further promoted to the post of Assistant Engineer which also belongs to Group 'B' category. The next promotion from the post of Assistant Engineer is to the Junior Time Scale. According to the Annexure A-1 Recruitment Rules known as "The Indian Broadcasting (Engineers) Service Rules, 1981" which came into force with effect from 5.11.1981, the method of recruitment to the Junior Time Scale is (i) 50% by

promotion and (ii) 50% by direct recruitment in accordance with clause (a) of sub rule (2) of rule 7. The field of selection and the minimum qualifying service for promotion is "Assistant Engineers of the Akashvani/Doordarshan excluding those in Civil Construction Wing with 3 years regular service in the grade." The applicants have been holding the post of Assistant Engineers on regular basis with effect from 7.4.1989, 24.9.1988, 30.9.1990 and 7.4.1989 respectively. Thus they have qualified themselves to be promoted to the Junior Time Scale with effect from 7.4.1992, 24.9.1991, 30.9.1993 and 7.4.1992 respectively. However, no DPC was held for considering them for promotion to the Junior Time Scale by the respondents. As a result, the respondents have promoted 139 Assistant Engineers on ad hoc basis who have qualified themselves to be promoted as Junior Time Scale vide Annexure A-2 order No.33/99-S.III dated 29.4.1999 for a period of one year or till such time the posts are filled on regular basis whichever is earlier. However, there was no promotion on regular basis for a number of years. As a result, 139 Assistant Engineers including the 4 applicants herein continued to be on ad hoc basis for an indefinite period. Finally, by the Annexure A-3 order No.26/2007-S.III dated 24.4.2007 the respondents have promoted 233 Assistant Engineers, including those 139 officials in Annexure A-2 order, as Junior Time Scale Grade of IB(E)S with effect from 24.4.2007. The contention of the applicants is that non convening of the DPC cannot be a reason for not promoting them on regular basis when they have become eligible to be considered for promotion. They have, therefore, made representation to the respondents to consider them as regular Junior Time Scale officers from the date of their ad hoc promotion ie.29.4.1999. The respondents

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have vide Annexure A-5 letter dated 5.12.2007, rejected their request stating that the issue of counting of ad hoc service as regular for the purpose of seniority and promotion has been extensively examined in the Directorate. However, it has not been found possible to accede to their request owing to following reasons :-

- (i) That in each order of ad hoc promotion it was clearly communicated to the concerned officers that the ad hoc appointment to the JTS will not bestow upon them any claim for regular appointment or seniority in the JTS of IB(E)S.
- (ii) That it is the consistent policy of the Government that regular promotions are always prospective and never retrospective.

3. In this regard they have relied upon the judgment of the Apex Court in State of Orissa and another Vs. Dr. Pyari Mohan Mishra [1995 (3) SCC 123] in which it has been held that mere continuous ad hoc service does not ripen in to regular service to claim permanent or substantive status. They have also relied upon the judgment of the Apex Court in Dr. Surinder Singh Jamwal and another Vs. State of J&K and others [1996 (9) SCC 619] wherein it has been held that even thirteen years of service can not entitle an ad hoc employee to claim regularisation.

4. Aggrieved by the aforesaid rejection the applicants have approached this Tribunal seeking the following reliefs :-

- (i) To quash Annexure A-5 order.
- (ii) Issue a declaration that the applicants are entitled for regular promotion in the Junior Time Scale with effect from Annexure A-2 promotion order.

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(iii) Issue appropriate direction directing the respondents to promote the applicants to the Senior Time Scale on completion of 4 years from the date of the joining the Junior Time Scale as per Annexure A-2 order, with all consequential benefits like notional fixation and other attended benefits.

(iv) Grant such other further reliefs as this Hon'ble Tribunal may deem just, fit and proper in the facts and circumstances of the case.

5. The applicants have taken the following grounds for the grant of the aforesaid reliefs :-

(a) Even though it has been specifically stated in Annexure A-2 appointment order that the ad hoc appointment is for a period of one year or regular appointments are made whichever is earlier no such action has been done in this regard. The method adopted by the department was extending the ad hoc promotions without any rhyme or reason. The applicants were working in the promotion post without any break in service and discharging duties in the Junior Time Scale effectively as they are fully qualified as per the provisions of the recruitment rules. Due to the lethargic attitude of the administration and laches on the part of the administration, the applicants were not regularised in service as prescribed in the Recruitment Rules.

(b) It is respectfully submitted that the applicants were appointed in the regular post and regular vacancies in the cadre strength of Junior Time Scale. It is admitted and distinguished fact in service jurisdiction that an employee has got a valid right for promotion as per the provisions of the Recruitment Rules. Appointing a qualified employee as per the Recruitment Rules in regular vacancies in the cadre strength without giving him a valid promotions as provided in the Recruitment Rules, the service of the employees are utilised in the category and followed by regularisation after a lapse of 8 years. The delay in regularisation for 8 years is illegal and arbitrary and a clear case of denial of equality guaranteed under the Constitution of India.

(c) It is admitted fact that the appointment of the applicants are in the post already in the cadre strength and not outside the cadre strength. So working in a promotion post in a post in the cadre strength accrues a right to the employee for regularisation even though it is termed as ad hoc promotion.

(d) It is to be noted that regular promotion in the Junior Time Scale has been held in the year 1995. Now it took 12 years to regularise the ad hoc appointment with effect from 24.4.2007 after 8 years of Annexure A-2 order of ad hoc promotion.

(e) It is interesting to note that the ad hoc promotions given to the applicants in the year 1999 they were not terminated at any time even though it is stated that it is for a period of one year or till regular appointments are made whichever is earlier. So the service of the applicants and similarly placed persons were utilised and their energy has been extracted by the administration without giving them any benefits of regularisation. Which is an act on the part of the administration deliberately made to deny valuable right of an employee, continuing in regular post in the cadre strength.

(f) The delay and latches on the part of the Administration in denying the right of an employee entitled for regularisation in accordance with rules also denies the right for further promotion from the Junior Time Scale. It is a clear case of malafide exercise of jurisdiction as submitted earlier an employee who got promotion in the category of Junior Time Scale has to get 4 years regular service for promotion to the post of Senior Time Scale as per the Recruitment Rules. The Recruitment Rules prescribes method of recruitment to the post of Senior Time Scale only by promotion from the category of Junior Time Scale with 4 years regular service in the grade. So the appointment of the applicants have to be considered on regular basis from the date of Annexure A-2 order, and they are entitled for promotion to the post in Senior Time Scale on 29.4.2003 on completion of 4 years.

(g) It is also to be noted in this regard that the appointment in the Junior Time Scale is by promotion and direct recruitment. The irony of the matter is that direct recruited persons in the Junior Time Scale in the year 2001 much after the applicants were promoted on ad hoc basis to JTS were already promoted as STS. So they will get a march over the applicants in the category of Junior Time Scale and Senior Time Scale only due to the delay and latches on the part of administration in not regularising applicants and other similarly placed persons in time.

(h) It is to be noted that vacancies arose in the Junior Time Scale from 1994 and 1995 onwards and they were also eligible candidates for promotion to the post in Junior Time Scale 5 years of Annexure A-2 order of promotion on ad hoc basis issued by the department. They could have effected promotions as early as in 1995 onwards. So there is delay on the part of ad hoc promotion for the period from 1995 to 1999

and also delay in regularisation of the ad hoc promotion for the period from 1999 to 2007. Instead of giving ad hoc promotion after a lapse of 5 years, the administration could have given regular promotions from 1995 onwards. So the delay in granting ad hoc promotion and also regular promotions are at writ large.

(i) The continuance of the post for years together proves that it is a regular post. As per the DOPT guidelines promotions are to be made year wise. The above guidelines were not followed by the administration but instead ad hoc promotions were given only in April 1999. So the applicants are entitled for regularisation of their service in the Junior Time Scale from the date of Annexure A-2 order. They are also entitled for further promotion to the Senior Time Scale in promotion as per Recruitment Rules considering their ad hoc promotion as regular promotion in Junior Time Scale.

6. The counsel for the applicants has also relied upon the judgment of the Constitution Bench of the Apex Court in the case of Direct Recruit Class – II Engineering Officers' Association and others Vs. State of Maharashtra and others [AIR 1990 SC 1607] in which it has been held as under :-

"44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) 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 regularisation of his service in accordance with the rules, the period of officiating service will be counted."

7. He has also relied upon the judgment of the Apex Court in Rudra Kumar Sain and others Vs. Union of India and others [AIR 2000 SC 2808]. In the said judgment the Apex Court has clearly distinguished the three terms of ad hoc, stop gap and fortuitous. The operative part of the said judgment was as under :-

"16. The three terms ad hoc, stop gap and fortuitous are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression fortuitous in Strouds Judicial Dictionary is accident or fortuitous casualty. This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to fortuitous. In Blacks Law dictionary, the expression fortuitous means occurring by chance, a fortuitous event may be highly unfortunate. It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression ad hoc in Blacks Law Dictionary, means something which is formed for a particular purpose. The expression stop-gap as per Oxford Dictionary, means a temporary way of dealing with a problem or satisfying a need.

17. In Oxford Dictionary, the word ad hoc means for a particular purpose; specially. In the same Dictionary, the word fortuitous means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyers Law Lexicon (2nd Edition) the word ad hoc is described as for particular purpose, Made, established, acting or concerned with a particular and or purpose. The meaning of word fortuitous event is given as an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God.

19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as ad hoc or stop-gap. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as ad hoc appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.

20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be stop-gap or fortuitous or purely ad hoc. In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be fortuitous/ad hoc/stop-gap are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

21. In view of our conclusions, as aforesaid, we quash the seniority list both provisional and final, so far as, it relates to the appointees either by direct recruitment or by promotion in the Delhi Higher Judicial Service, prior to the amendment of

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the Recruitment Rules in the year 1987, and their inter-se seniority must be re-determined on the basis of continuous length of service in the Cadre, as indicated in Singlas case and explained by us in this judgment. Since the future of these officers to a great extent depends upon seniority and many of these officers may be on the verge of superannuation, the High Court would do well in finalising the seniority within a period of six weeks from the date of receipt of this judgment."

8. The respondents in their reply statement submitted that there was no regular selection made for the purpose of promoting these applicants as, for some time, the UPSC had declined to associate itself with the process of appointment of Prasar Bharati after the formation of Prasar Bharati as an autonomous body from 1997 onwards. However, in the year 2001 Commission agreed to conduct Departmental Promotion Committee (DPC) on the basis of an order passed in OA 2067/00 of the Principal Bench of this Tribunal. Thereafter, a Writ Petition was filed by Union of India before the Lucknow Bench of Allahabad High Court challenging the order in OA 218/05 regarding the eligibility of Diploma Holder Assistant Engineers for promotion as JTS. Those issues were finally settled in December, 2003 only. Immediately thereafter, the process of convening the DPC was taken up for the selection to the category of JTS for the vacancy pertaining to the year 1997-2004 and that DPC was finally held in 2007. They have also relied upon the very same judgment relied upon by the counsel for the applicants, namely, Direct Recruit Class - II Engineering Officers' Association and others Vs. State of Maharashtra and others (AIR 1990 SC 1607) and argued that the Annexure A-2 promotions made by them was a stop gap arrangement and it will not give or confer any right to regularisation from the date of initial appointment on ad hoc basis.



9. We have heard learned counsel for the parties. Undoubtedly, when the applicants were promoted vide Annexure A-2 order dated 29.4.1999 in the Junior Time Scale on ad hoc basis, they were eligible to be promoted in Senior Time Scale in accordance with the Annexure A-1 Recruitment Rules. The reason for not considering them for regular promotion was that DPC was not held from the year 1997 to 2007 as the UPSC had declined to associate itself with the process of appointment of Prasar Bharati after the formation of Prasar Bharati as an autonomous body from 1997 onwards. As a result, the applicants and other similarly placed persons are continued to be working on ad hoc basis in the Junior Time Scale for over a period of 8 years. Finally, when the DPC was held the applicants having been found eligible under the Recruitment Rules were appointed as Junior Time Scale on regular basis, vide Annexure A-3 order dated 24.4.2007. By no stretch of imagination we can agree with the respondents that the aforesaid promotion was made on a stop gap basis. The appointment on stop gap basis was made for a limited period on occurrence of certain unforeseen incidences in service. Such long period of 10 years service on ad hoc basis is definitely cannot be termed as fortuitous also as held by the Apex Court in Rudra Kumar Sain and others Vs. Union of India and others(supra). In our considered opinion the judgment of the Apex Court in Direct Recruit Class – II Engineering Officers' Association and others Vs. State of Maharashtra and others (supra) squarely applies in this case. Even though the initial appointment of the applicants were not made according to the recommendation of the DPC, they continued in the post of Junior Time Scale uninterruptedly till the regularisation of their services in accordance



with the rules on the recommendation of the DPC. Therefore, the period they have officiated in the post of Junior Time Scale for the period from 29.4.1999 to 23.4.2007 shall count as regular service.

10. In the above facts and circumstances of the case, we allow this OA and quash and set aside Annexure A-5 order dated 5.12.2007. We also declare that the applicants are entitled for regular promotion in the JTS with effect from 29.4.1999. The respondents shall issue appropriate orders promoting the applicants to JTS from 29.4.1999 and grant all consequential benefits within two months from the date of receipt of this order. There shall be no order as to costs.

(Dated this the 19th day of November 2009)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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