

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.294/2003.

TUESDAY THIS THE 17th DAY OF MAY, 2005.

CORAM:

**HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER**

P.C. Satishchandran,
Station Director,
Commercial Broadcasting Service,
All India Radio,
Trivandrum.

Applicant

(By Advocate Shri M.R. Rajendran Nair.)

Vs.

1. The Director General,
Prasar Bharati Broadcasting
Corporation of India,
All India Radio,
Akashvani Bhavan,
New Delhi.

2. Chief Executive Officer,
Prasar Bharati Broadcasting
Corporation of India,
Prasar Bharati Secretariat,
PTI Building, PTI Building,
Parliament Street,
New Delhi – 110 001.

3. Union of India represented by
its Secretary to Government of India,
Ministry of Information & Broadcasting,
New Delhi.

Respondents

(By Advocate Smt K Girija, ACGSC)

ORDER

HON'BLE MR. H.P.DAS,ADMINISTRATIVE MEMBER

The applicant, P.C. Satishchandran, Station Director, Commercial Broadcasting Service, All India Radio, came to hold a Senior Time Scale post of the Indian Broadcasting (Programme) SERVICE (*IB(p)*S) on ad hoc promotion by order No. 13/2002-S1 (A) of the Prasar Bharati dated 25.2.2002 (A-3). In para 3 of this order it was stipulated that he would stand automatically reverted to his present grade i.e. Programme Production Cadre of AIR JTS of IB(P)S after completion of adhoc period in STS of IB(P)S i.e. 30.6.2002 (AN). By order No. 18/2003-S1(A) dated 1.4.2003 (A-1) the applicant was reverted to the Programme Production cadre, to the substantive post of Producer, accommodated in the JTS of IB(P)S on ad hoc basis and was allowed to continue in the STS post. The applicant is challenging his reversion from the STS and seeking regular appointment to STS. What in fact has happened is that the applicant's regular promotion to the Junior Time Scale of the IB(P)S has also been terminated by this order, making it only ad hoc now and his ad hoc appointment to STS though terminated, he is allowed to function as such in the post. The respondents contend that A-1 order had to be issued in pursuance of R1(b) orders of the Ministry of I&B dated 27.2.2003, which in turn was issued in compliance of court orders. The learned counsel for the respondents has filed a statement explaining the background in which A-1 orders had to be issued.

2. The applicant has prayed for the following main reliefs:

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(i) Quash A-1 to the extent it reverts the applicant from Senior Time Scale of Indian Broadcasting (Programme) Service.

(ii) Direct the respondent to consider the applicant for regular promotion to Senior Time Scale of Indian Broadcasting (Programme) Service.

3. Heard.

4. In regard to the applicant's reversion from STS on termination of ad hoc appointment, there is apparently no scope for challenge as the orders of ad hoc promotion dated 25.2.2002 (A-3) provided for automatic reversion with effect from 30.6.2002. Mere fact of continuance in STS beyond that date could not by itself create any right of retention in STS in favour of the applicant. But then the A-1 orders provide that the applicant, though reverted from the STS post would continue at CBS AIR, Thiruvananthapuram against the STS post. What does this mean? It only means that the applicant would be discharging the duties of the STS post, without being entitled to the scale of the post. In response to the query as to why the applicant could not be allowed to continue on ad hoc basis in the STS post, the learned counsel for the respondents explained that the applicant was ordered to hold the feeder post in JTS on ad hoc basis (A-1 order) and hence he could not be allowed a second ad hoc promotion. The learned counsel for the applicant disputed this stating that the applicant's appointment to JTS could not be held as ad hoc, after 8 years of regular holding of the post. The learned counsel for the applicant argued that once the regular appointment to JTS is upheld, ad hoc promotion to STS would become the first ad hoc promotion.

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5. Can the regular appointment of the applicant to the JTS of IB(P)S be terminated after 8 years? The learned counsel for the respondents argued that the A-2 orders promoting the applicant on regular basis to the JTS of IB(P) S was issued on the basis of a panel prepared on an incorrect interpretation that the posts were to be filled by selection and not by seniority-cum-fitness. After the Apex Court laid down the norm, there was a need to recast the panel. Even after the panel was recast, further accommodation became necessary when the High Court of Andhra Pradesh directed that one Smt. Asha Cherukuri be included in the panel for 1992-1993. While implementing that, Smt. Asha Cherukuri had to be promoted to the JTS with effect from 14.6.1993 and one Smt. Bharati Gokhle had to be promoted (against the same panel year) with effect from 5.4.1999. This resulted in the reversion of the applicant (Satishchandran) and one Smt. Nazma Khan, to make way for the inclusion of Cherukuri and Gokhle. In response to the claim of the learned counsel for the applicant (A-5) that there were at least 38 vacancies after the A-2 orders were issued and there was no need of reversion, the learned counsel for the respondents argued that the vacancies were required to be reckoned with reference to the panel year 1992-93 and not with reference to the vacancy at the time of issue of A-2 orders. This was countered by the learned counsel for the applicant with the argument that as long as current vacancies are available, no regular promotee could be reverted and that the respondents were squarely responsible in not holding DPCs regularly to fill up annual vacancies.

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6. As the facts stand, A-2 orders did not mention the panel year to which the vacancies pertained. So, it has to be presumed by common prudence that the applicant was promoted against an existing vacancy. By that reckoning, 38 more vacancies were available on the date the A-2 orders were issued and the review DPC could have placed those left out earlier in the order of their seniority stipulating their date of promotion. If it is the contention of the respondents that the DPC held in May 1995 had recommended panels for 1990-91, 1991-92 and 1992-93 and these had to be reviewed on the wider basis of seniority-cum-fitness, then they should be in a position to state exactly how the applicant got thrown out of the panel of 1992-93 and could not find place in the panels of subsequent years until the retrospective revision became due. In other words, the respondents must answer why a revision was not carried out immediately after the Apex Court orders of 1999, why they issued ad hoc promotion orders of the applicant to STS in 2002, why they reverted him to a level lower than JTS terminating his regular appointment to JTS, without taking into account the vacancies that arose after 1992-93 and empanelling all those suitable, until A-1 orders were issued. More precisely, had the respondents taken into account all the accumulated vacancies existing in 2003, placed those yearwise and had promoted those who satisfied the norm, then the contingency of issuing A-1 orders might not have arisen. There is no answer to the questions, and no reasonable explanation for adhoc measures when norms already exist.

7. For the foregoing reasons, we arrive at the following conclusions:

- (i) The applicant has to be treated as substantive in the JTS of IB(P)

S as he was regularly promoted to JTS in 1995 by A-2 orders and continued as such until the issue of A-1 orders in 2003.

(ii) When A-1 orders were issued, the applicant was officiating in the STS of IB(P)S and the ad hoc promotion orders to STS issued in February 2002 (A-3) showed JTS of the IB(P)S as the parent grade. Thus the applicant can be reverted from STS only to JTS.

(iii) The respondents are within their rights in reverting the applicant from STS to JTS in pursuance of A-3 orders.

(iv) If the applicant is presently shown against a STS post and is discharging the duties of the post, then he would be treated as continuing in the STS post on ad hoc basis and would be entitled to STS scale, unless the post is downgraded.

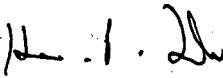
(v) While the applicant is held as substantive in JTS, he would have no right to claim seniority over his seniors in the feeder grades, even though they were or would be promoted after him due to belated DPCs.

(vi) The applicant would be considered for regular promotion to STS in the order of his seniority in the feeder grade.

8. Having concluded thus, we quash A-1 to the extent it reverts the applicant to the post of Producer and promotes him on ad hoc basis to the JTS of IB(P) S. We hold that the applicant, by virtue of holding the JTS post of IB (P) S for more than eight years on regular basis has acquired a substantive locus in it and hence he would be entitled to count JTS as the parent grade to which he would revert from STS on termination of his ad hoc tenure in the higher post. In case however, the applicant is discharging the duties of the STS post and is being

shown against the STS post, then he would be entitled to the STS scale, for the period he is so engaged. We also declare that the applicant would be considered for regular promotion to STS, in the order of his seniority in the relevant feeder grade as per the recruitment rules in force.

9. We dispose of the application with the above orders. No order as to costs.


H.P. DAS
ADMINISTRATIVE MEMBER


K.V. SACHIDANANDAN
JUDICIAL MEMBER

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