

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 309, 654, 684 to 706/89 198
~~P.A.XXNoX~~

DATE OF DECISION 27-2-1991

Jayant V. Nabar and 24 others Petitioner

Mr. S. Natarajan Advocate for the Petitioner(s)

Versus

Union of India and others Respondent


Mr. A. I. Bhatkar (Mr. M. I. Sethna) Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. P.S. Chaudhuri, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *✓*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *✓*


 (U.C. SRIVASTAVA)
 V.C.

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.309,654,684 to 706/89

- | | |
|-------------------------|----------------------------|
| 1. Jayant V. Nabar | .. Applicant in O.A.309/89 |
| 2. Smt.Usha Mehta | .. Applicant in O.A.654/89 |
| 3. Smt.K.S.Rajalakshmi | .. Applicant in O.A.684/89 |
| 4. K.M.Valson | .. Applicant in O.A.685/89 |
| 5. Smt.K.Krishnamurthy | .. Applicant in O.A.686/89 |
| 6. Mrs.R.S.Oak | .. Applicant in O.A.687/89 |
| 7. Smt.Saramma Jose | .. Applicant in O.A.688/89 |
| 8. Mrs.Liduin Fernandis | .. Applicant in O.A.689/89 |
| 9. Mrs.V.P.Pillai | .. Applicant in O.A.690/89 |
| 10.Mrs.Hilda D'eaucha | .. Applicant in O.A.691/89 |
| 11.Shri R.A.Mishra | .. Applicant in O.A.692/89 |
| 12.Mrs.P.R.Naik | .. Applicant in O.A.693/89 |
| 13.Mrs.N.J.Joshi | .. Applicant in O.A.694/89 |
| 14.Smt.V.K.Borwankar | .. Applicant in O.A.695/89 |
| 15.Shri S.N.Salunge | .. Applicant in O.A.696/89 |
| 16.Smt. V.S.Bedekar | .. Applicant in O.A.697/89 |
| 17.P.K.A.Nair | .. Applicant in O.A.698/89 |
| 18.Miss.V.S.Shetty | .. Applicant in O.A.699/89 |
| 19.Smt.S.K.Maicon | .. Applicant in O.A.700/89 |
| 20.Shri H.I.Khan | .. Applicant in O.A.701/89 |
| 21.Smt.R.C.Ghosh | .. Applicant in O.A.702/89 |
| 22.Shri P.S.Rawat | .. Applicant in O.A.703/89 |
| 23.Smt.V.V.Iyer | .. Applicant in O.A.704/89 |
| 24.Smt.Kamala Kendre | .. Applicant in O.A.705/89 |
| 25.Shri S.H.Jambhekar | .. Applicant in O.A.706/89 |

vs.

1. The Deputy Director,
Vividh Bharati Service,
All India Radio,
C.G.O.Building,3rd Floor,
101, M.K.Road,
Bombay - 400 020.
2. The Director General,
All India Radio,
Akashvani Bhavan,
Parliament Street,
New Delhi - 110 001.

3. Union of India
through
The Secretary
Ministry of Information &
Broadcasting,
Shastri Bhavan,
New Delhi - 110 001. .. Respondents

Coram: Hon'ble Shri U.C.Srivastava, Vice-Chairman
Hon'ble Shri P.S.Chaudhuri, Member(A)

Appearances:

1. Mr.S.Natarajan
Advocate for the
Applicants.
2. Mr.A.I.Bhatkar
(for Mr.M.I.Sethna)
Counsel for the
Respondents.

JUDGMENT: Date: 27-2-1991
(Per U.C.Srivastava, Vice-Chairman)

In this bunch of 25 cases the facts are substantially the same except as to the post held by some of the petitioners and the year in which they were employed. All of them belong to the cadre of Senior Staff Artist. Two petitioners viz. O.A. 309/89(JAYANT V. NABAR) and O.A.654/89(SMT.USHA MEHTA) were not listed before us but with the consent of the parties we heard these cases also along with other cases as common questions of law and fact arise in these cases also.

2. In or about 1971 these applicants were appointed as General Assistant/Copyist(Staff Artist) Junior Grade on contract basis. Vide memorandum No. 7/5/70-SVII dated 30-12-1970 the General Assistants/ Copyists were assigned the following duties:(i)to copy

scripts, letters etc. as required on the typewriter or by hand; (ii) to maintain registers, catalogues etc. as required; (iii) to render all type of clerical and misc. assistance; (iv) to take part occasionally in programme and (v) any other duties that may be assigned. Admittedly they were also to participate in programmes and the said memorandum also provided that if they take part in programmes more than twice a week they were paid an extra remuneration upto 25% of their basic fee for the extra work. The duties as have been mentioned were some sort of mixed duties clerical cum non-clerical which included participation in programmes. The duties of Production Assistants were also mentioned in the said memorandum which are as follows: (1) to record, dub, edit and play back programmes of all kind; (2) to maintain registers of blank tapes, recorded tapes, etc. according to system in force (3) to assist in production of programme of all kinds (4) to assist in preparation of news-reels whenever required (5) to take part in play, feature etc. if required and (6) any other duties which may be assigned from time to time. The duties of Production Assistants referred to above also indicate that these also included some duties of clerical nature like maintenance of registers of blank tapes, recorded tapes etc. It is obvious to note that all these petitioners were also participating in the programmes

(9)

as and when required though not to the extent that Production Assistants were participating and it appears that there was overlapping of duties. Earlier these persons were engaged on casual basis. Subsequently they were appointed specifically as Staff Artist, though on contract basis, but the appointment was to continue upto the age of 58 years. It is to be noticed that the cadre of Staff Artist had four groups and the pay scales of these groups are somewhat different—Clerical group, Production group, Announcer group and Journalistic group. In the year 1976 revised recruitment rules for Staff Artists on Broadcasting side(excluding Television and foreign language staff) of All India Radio were framed with the concurrence of the Govt. of India. In the said recruitment rules for the post of Production Assistant the method of recruitment was 100% by limited selection from among Senior Grade General Assistants/Copyists/Tape Librarians/Instrument Repairers/Caretaker Musical Instruments and Junior Grade General Assistants/Copyists/Tape Librarians/Caretaker Musical Instruments/Instrument Repairers with at least five years continuous service in that grade failing which by direct recruitment. In the schedule a note was put that "this method of recruitment will be for a period of five years from the date of implementation of these rules. Thereafter, fresh Recruitment Rules will be framed." There is no denial of the fact that

no fresh rules in this behalf have been framed so far. The rules make it abundantly clear that for the duties which the persons perform in the matter of programmes and for the experience gained by them they were also considered as a feeder class for appointment to the post of Production Assistant. The promotion channel for Junior Grade General Assistant/Copyists was normally to Senior Grade General Assistant/Copyists, and thereafter to the post of Production Assistants. It is not disputed that several General Assistants Junior Grade were promoted to General Assistant Senior Grade. Some General Assistants Senior Grade during this period were also appointed as Production Assistant.

3. Vide an order No.45011/26/80-B(A) dated 3-5-1982 the Staff Artists(except few categories) were treated as Government servants under the conditions stipulated therein. Options were called for and apparently it appears all these petitioners exercised their willingness under the conditions mentioned therein.

4. Recruitment Rules for the posts of Clerks Grade-I/Store Keeper were notified under No.45011/83/82-B(A) dated 19-9-1983 and included General Assistants/Copyists/Tape Librarian Junior Grade in the feeder cadre. Similarly the recruitment

rules for the posts of Head Clerks/Accountants/
Senior Store Keepers were also amended by order
No.45011/83/82-8(A) dated 29-10-1983 to include
in its feeder cadre, General Assistants/Copyists/
Tape Librarians, but the Ordinary Grade and
Selection Grade. The applicants stated that they
were at no time engaged in clerical work nor were
the General Assistants considered as doing clerical
work, no option has been taken from them and no
trifurcation has taken place. As this was going
on a commotion started and one Ibha Mitra, General
Assistant, Senior Grade, challenged before the C.A.T.,
Calcutta Bench which allowed the same on 28-2-1986
and a Special Leave Petition filed by the Govt.
before the Supreme Court was dismissed on 2-3-1987.
Thereafter the Cuttack Bench of the C.A.T. allowed
a similar application on 30-4-1987. As even then
the decisions were not being implemented, the
Akashvani Doordarshan General Assistants/Copyists
Association filed an application (O.A.No.664/86)
before the Principal Bench which was also allowed
in their favour. The Principal Bench while allowing
the application observed that "However, it must be
made clear that a person appointed to one cadre
cannot be shifted to another cadre without his
consent. Whether they are eligible to be considered
for promotion and entitled to further promotion as

Production Assistants and as and when vacancies arise in that rank is a question of fact depending upon the qualifications of each individual incumbent.

No directions can be issued against the respondents to consider all the members of the Association for promotion as Production Assistant, whatever their qualifications are. However, such of them as are eligible under the rules are entitled to be considered while retaining them in the cadre to which they were appointed. A direction shall accordingly be issued." Notwithstanding these directions they are not being promoted and some of them were offered clerical posts which was not accepted by them.

5. The opposite party has placed great reliance on O.M. dated 12th August, 1985 under which the post of Production Assistant no more existed and the same is equated to a post called Transmission Executive. It is to be noted that Recruitment Rules for the post of Transmission Executive were notified in October, 1974 and further amended from time to time. According to the opposite party persons belonging to the clerical cadre are not eligible for promotion to this Branch of the Programme cadre. According to the respondents even Production Assistants and Transmission Executives are synonymous with each other and as these applicants belong to the

13

clerical cadre as such they cannot get this post and according to them the post of Head Clerk/ Accountant is the channel of promotion for the Clerks in the department. The fallacy in the case of the opposite party is that the applicants, according to them, are members of the Clerical cadre while the cadre of Production Assistant is a different cadre, notwithstanding the fact that there is only one cadre of Staff Artist which includes the Clerical group and three other groups. So far as the applicants are concerned they actually do not fall in any particular group as they have to perform the duties of atleast two groups. It may be noted that the duty of one group is more than that of the other as such they cannot be said to be members of the Clerical cadre. Even if they are doing the work of the Clerical cadre unless Clerical cadre is not separated and they are not given option as to whether they are to stay in the Clerical cadre in which they are considered fit for promotion they cannot be said to belong to another cadre i.e. some other cadre than that of Staff Artist. The group to which the applicants belong appears to be a dying wing of the cadre known as the cadre of Staff Artist. Once they were assigned duties though not regularly of Programme Assistants and worked and gained experience they are to be retained in the same

channel of promotion leading to the posts of Production Assistant in which they were put earlier and which posts still exist. There appears to be no ground for throwing them out of that channel of promotion suddenly even without taking their version and which action has no legal support and is otherwise inequitable and against the principles of natural justice. Once a particular class is considered fit for a particular promotional avenue they can be thrown away from it only on some valid or good ground which must have a nexus with the object sought to be achieved. No such nexus can be said to be existing. It may be noted that the applicants as a whole may not be benefitted and overall there may be only nominal gain but that itself will not be a ground for denying the relief claimed. In view of what has been stated above the case of the applicants if not better than is at least identical with the cases of the applicants before the Calcutta and Cuttack Bench^es of the Tribunal referred to above.

6. Accordingly, all these applications are allowed and it is declared that:


- (i) the Government of India Notification No.45011/83/82-B(A) dated 19-9-1983 and Government of India Notification dated 29-10-1982 being amendments of Recruitment Rules of Clerk Grade-I and Head Clerks etc. respectively have


no application to the applicants.

(ii) the applicants are entitled to be promoted as General Assistants Senior Grade and Production Assistants in the Programme cadre.

(iii) the applicants are entitled to protection of the channel of promotions available to them in terms of the Recruitment Rules of 1976 and they are to be considered for promotion thereunder from amongst the category to which they belong.

7. There will be no order as to costs.


(P.S. CHAUDHURI)
Member(A)


(U.C. SHIVASTAVA)
Vice-Chairman