

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 547/89 AND 434/91.

Mary Johny ... Applicant  
Versus  
Union Of India & Others ... Respondents

IN  
O.A. NO.  
547/89.

Doordarshan Programme  
Producers' Association  
and Others ... Applicants  
Versus  
Union Of India & Others ... Respondents

IN  
O.A. NO. 434/91.

CORAM :

Hon'ble Shri M. R. Kolhatkar, Member (A).

Hon'ble Shri D. C. Verma, Member (J).

APPEARANCE :

1. Shri M. S. Ramamurthy,  
Counsel for the Applicant.  
2. Shri M. I. Sethna,  
Counsel for the Respondents.

IN  
O.A. NO. 547/89.

1. Shri Dharmadhikari,  
Counsel for the Applicant.  
2. Shri V. S. Masurkar,  
Counsel for the Respondents.

IN  
O.A. NO. 434/91.

JUDGEMENT :

I Per. Shri M. R. Kolhatkar, Member (A) 13-2-1995

1. This matter has come to us on remand from the Supreme Court. O.A. No. 547/89 was disposed of by a Bench of this Tribunal by judgement dated 22.08.1991. R.P. No. 58 of 1991 in O.A. No. 547/89 was also disposed of by an Order dated 22.11.1991. The matter related to challenge to promotional transfer of a Group 'C' employee by a co-employee working under Ministry of Information and Broadcasting.

2. Separately, O.A. no. 434/91 was also pending in this Tribunal. This related to challenge to the promotional appointments of Programme staff under the Ministry of Information and Broadcasting. We reproduce below the order of the Supreme Court in S.L.P No. 4934-34A/1992 dated 4th January, 1993 :-

"Special Leave is granted.

Several questions have been raised on behalf of the appellant which do not appear to have been dealt with in the impugned judgement. The Learned Counsel for the appellant has referred to the materials on the records in support of the pleas. It is also stated that identical questions are pending for decisions before the Tribunal in O.A. No. 434/91 and O.A. No. 315 of 1989. In that view, we consider it appropriate to remit these matters for fresh decision by the Tribunal alongwith the aforesaid pending cases, without expressing any opinion on the merits of the questions raised by the parties before us. Accordingly, we set aside the orders dated 22.08.1991 and 22.11.1991 and remit the cases to the Tribunal. The appeals are accordingly disposed of. There will be no order as to costs."

and 22.11.1991  
It would thus be seen that our Orders dated 22.08.1991/in  
O.A. No. 547/89 have been set aside and we are required to

rehear the case alongwith cognate cases. Two cogiate cases are referred to, mainly; O.A. No. 315/89 and O.A. 434/91 but O.A. No. 434/91 is alone before us. O.A. No. 315/91 is not before us and on verification also, that appears to be a different case, the names of the parties being K. S. Solanki V/s. Union Of India & Others i.e. Union Territory of Dadra & Nagar Haveli. Thus the Respondents are different. We have, therefore, heard the two cases, i.e. O.A. No. 547/89 and 434/91 together. However, as the former case relates to ministerial staff and the latter relates to programme staff, we shall deal with them separately, while taking note of common contentions.

O.A. NO.: 547 OF 1989.

3. In this case, the applicant was recruited as a Clerk, Grade-II in All India Radio (A.I.R.) on 07.02.1963. She was promoted and posted as Clerk Grade-I in Doordarshan (D.D.) Kendra on 28.08.1972. According to the applicant, by a Government Resolution dated 05.03.1976 at Annexure-A, the Government of India, Ministry of Information and Broadcasting, issued a memorandum dated 05.03.1976 under the heading "Separation of Television from All India Radia". In this memorandum, it has been stated that it has been decided by Government that Television should be separated from All India Radio with effect from April 01, 1976 and organised into a separate Directorate General as an attached office under the Ministry of Information and Broadcasting. Doordarshan would be responsible for the operation and administration of the T.V. service and its personnel. It was stated in <sup>of the memorandum</sup> para 4 that for the present Security set up, and Research and Training establishments would be common but in all

other respects, the organisation for TV will have a separate set up of its own. In para 5(i), it was stated that regular Government servants, who have not specifically been recruited for TV set up but are working there, and are on the common cadre of Sound Radio and TV will be required to exercise their options, to declare whether they choose to return to the Sound Radio Network. It also states that until arrangements for repatriation of the staff are made, the staff will continue to remain in the TV set up as per existing arrangements without any deputation allowance.

4. The applicant essentially relies on this Memorandum dated 05.03.1976, and contends that her orders of promotional transfer as Accountant to Nagpur Station of A.I.R. dated 15.06.1989, are illegal in terms of the above memorandum. The applicant had opted for Doordarshan and this has not been denied by the Respondents. If the applicant opted for Doordarshan in terms of Government Memorandum, separating Doordarshan from A.I.R., then the Officers of A.I.R. had no authority to transfer her from Doordarshan, Bombay to A.I.R., Nagpur. The applicant's argument stage referred Counsel at / to a subsequent letter No. 101/1/88/BC dated 12.02.1988, issued by the Ministry of Information and Broadcasting (Bifurcation Implementation Cell) on the subject of "bifurcation of cadres of AIR and Doordarshan - implementation of the Study Group Report." The memorandum states that the Government had appointed a Study Group to consider various aspects of bifurcation of cadres of AIR and Doordarshan and to work

out the modalities and methodology for the same. The Study Group has since submitted its Report and the same has been accepted by the Government. So far as the present cadre is concerned, the recommendation of the Study Group was that the administration cadre, except Clerk Grade-II, who are locally recruited by the respective Kendra/Station, should be bifurcated immediately. We note that this memorandum as produced, is an incomplete and an unsigned one and the Counsel for the Respondents stated that there are no instructions as to this additional memorandum but neither did they question the authenticity of the same. According to the applicant, the transfer order which was issued after the receipt of the recommendations of the Study Group, could not have been issued by the Station Director, A.I.R., Nagpur, so as to effect the transfer of an employee at Doordarshan, Bombay to A.I.R., Nagpur.

5. The relief claimed by the applicant is to quash the order of transfer on the ground of its being illegal and invalid in view of its being in violation of the bifurcation orders between A.I.R. and D.D. In addition, the applicant has urged the ground that, her transfer to Nagpur was malafide because the department had not followed the strict order in which the vacancies occurred and was meant to transfer the applicant out of Bombay, in spite of the department having full knowledge of her personal problems, mainly because the department was aggrieved by the applicant having approached the C.A.T. earlier in connection with her transfer to Jalgaon. So far as the transfer being malafide is concerned, the department has given a detailed statement indicating the year in which

the vacancies occurred and the promotional transfers were ordered. On perusal of the pleadings, we are not satisfied that any malafides are established in the matter of transfer. It is now well settled vide the latest Supreme Court Judgement in N.K. Singh V/s. Union Of India [JT 1994 (5) 298] that the transfer is not a condition of service but an incident of service and a Government employee can challenge the transfer only on the ground of malafides or on the ground of violation of any transfer guidelines.

6. The applicant next referred to the Director General, Doordarshan circular dated 08.09.1988 which has been violated. A copy of the circular was produced by the Respondents at the argument stage and the contents are reproduced below :-

"It is observed that orders of postings and transfers of Doordarshan employees to and from Doordarshan are being issued by the DG:AIR direct to the Kendras. It is also noticed that Doordarshan Kendras/HPTs, etc. also directly approach the DG:AIR in such matters without consulting the Directorate.

In order to ensure proper co-ordination in matter of postings and transfers of Doordarshan Employees, all the Kendras, etc. are requested that they may approach only Doordarshan Directorate which will consider their request for issue of appropriate orders."

We find that this circular is an administrative instruction in the nature of co-ordination arrangement and does not help the applicant.

7. We are satisfied that the transfer is neither

malafide nor is it in violation of the transfer guidelines and therefore, we are not inclined to interfere with the transfer on this ground. We, therefore, come to the main ground urged by the applicant, relating to transfer being in violation of bifurcation scheme. Here the Respondents have stated that the Memorandum relating to bifurcation scheme, produced by the applicant, only amounts to a policy intention of the Government. This memorandum does not bring about a situation in which bifurcation can take place in practice in the absence of amendment of the rules or the formulation or introduction of new rules under Article 309 of the Constitution of India. In this connection, the Respondents contend that the Government memorandum, which is in the nature of executive instructions, cannot over ride the statutory rules. This is settled by a string of cases. AIR 1967 SC 1264 in I.N. Saxena V/s. State of M.P., where it was noted that when policy intention is not translated by a corresponding provision in the Rules under Article 309, rules will prevail and not the memorandum. AIR 1989 SC 411 in S.L. Sachdev V/s. Union Of India which lays down that any directives which go beyond rules, will be bad as lacking in jurisdiction and J.Kumar V/s. Union Of India AIR 1982 SC 1064 which lays down that if the impugned rule is statutory in origin, its validity cannot be affected by reason of any inconsistency with the provisions of a prior executive order. The Respondents have also produced a copy of All India Radio (Group 'C' Posts) Recruitment (Second Amendment) Rules, 1988 issued on 23.05.1988. These rules purport to amend All India Radio Recruitment Rules, 1961, interalia dealing with the

post in question. In the notes to the Rules, it is stated that "Common Seniority lists will be maintained for Clerk Grade-I/Store-Keepers/Reception Officer (Junior)/Care-takers working in All India Radio/Doordarshan Kendra Stations and Union Territories, as indicated below and promotion and transfers shall be made within a state or group of states and Union Territories on the basis of the said list." Under Note No.2 at Sl. No. 9, Maharashtra, Goa, Dadra-Nagar Haveli are shown as the Group of States and Station Director, All India Radio, Bombay, is shown as Zonal Officer. Therefore, according to the Respondents, the transfer was ordered by the Station Director, A.I.R., Bombay, was perfectly valid and cannot be challenged in the absence of any specific rules to the contrary, which the applicant has been unable to produce. The Respondents have also produced a letter dated 02.08.1994 from the Director General, All India Radio, New-Delhi, addressed to Station Director, A.I.R., in para 2 of which it is stated as below :-

"In so far as Administrative Cadre (comprising posts from Clerk Grade-II to Dy. Director) is concerned the officers holding these posts in All India Radio and Doordarshan have a combined seniority in the various grades constituting the cadre. The cadre has so far not been bifurcated."

The applicant states that this letter cannot be relied upon but we have no reason to disbelieve the same.

8. Regarding the implications of the bifurcation scheme and in particular <sup>so far as</sup> the Government Resolution dated 05.03.1976 and the subsequent letter dated 12.02.1988 are concerned, there is no doubt in our mind that these two



Resolutions/letters indicate the Government intention to bifurcate All India Radio and the Doordarshan. These intentions, unless they are translated into formulation either of new rules or appropriate amendment to the existing rules, cannot by themselves lead us to the conclusion desired by the applicant, namely; that the Director General of All India Radio has no power to transfer her. Infact, as is clear from All India Radio Group 'C' Posts (Recruitment) Rules, 1988, which amendment it may be noted is post-bifurcation scheme, there is a common seniority list of the Clerk Grade-I, which is the post in question and the Station Director, All India Radio, Bombay, is the Zonal Officer. The contention of the applicant that the notes to the rules cannot be treated as part of the rules, is not accepted by us. The various judgements cited by the applicant, namely; I.N.Saxena, S.L. Sachdev and J. Kumar although all of them do not in <sup>terms of</sup> precise facts bear on the instant case, do clearly bring <sup>out</sup> that rules framed under Article 309 would prevail over any Government Resolution, which indicates only the policies. Thus, we find that even if we disregard the letter dated 02.08.1994 from the Director General, All India Radio, stating that the cadre has not been bifurcated so far, a plain interpretation of rules read with available Government Resolution leads us to the conclusion that the Director General, All India Radio, has the power to transfer the applicant.

9. Considering all the pleadings and arguments, therefore, we are of the view that the transfer of the applicant from Bombay to Nagpur was in accordance with

the applicable rules, which have not been challenged nor is the transfer malafide or in violation of guidelines. We, therefore, reject this application with no order as to costs.

O.A. NO.: 434 OF 1991.

10. In this O.A., the Doordarshan Programme Producers' Association and four Production Assistants of Doordarshan Kendra, Bombay, have challenged the orders dated 11.06.1991 by which 97 staffs and 96 Transmission Executives, as given in Annexure-I and II respectively, were promoted as Transmission Executives and Programme Executives respectively, in the respective A.I.R. Stations and D.D. Kendras. The applicants have made 49 staff artists/programme executives as Respondents vide Respondent Nos. 5 to 53. According to the applicants, these promotional transfers are illegal in as much as they violate the separation decision dated 05.03.1976 relating to separation of T.V. from A.I.R. It is also not in accordance with the recruitment rules, as contained in Doordarshan Manual which envisages that various posts should be filled in 50% by direct recruitment and 50% by promotion, whereas all the promotional appointments, which are included in Annexure-I are by direct recruits through U.P.S.C. According to the applicants, Applicant Nos. 2 to 4 are well qualified in their respective fields and in particular, have an extensive experience in the medium of Doordarshan whereas, the Respondents are mainly persons having experience in the Radio medium. According to the applicants, the media of Radio and the Television are entirely different and the attempt to combine them and

to post people with experience in one medium in the Second medium are violative of the guarantee of equality under Article 14 of the Constitution, in as much it amounts to equating unequals. In response to the reply filed by the Official Respondents, in which the stand was taken that it is not Rules in D.D. Manual but A.I.R. Group 'B' Posts Recruitment (Amendment) Rules, 1984 promulgated on 23.10.1984, which governs the appointment in question, the applicants have also challenged the Constitutional validity of these rules. The applicants have contended that not only the two media are distinct theoretically and not only did the Government take a decision to separate the two media for practical purposes by its Order dated 05.03.1976 but in practice, the Director General, D.D., has also made several appointments to the posts in the D.D., which shows that the Orders in question are an aberration and a departure from the normal rules. The applicants have referred to but not quoted a decision of Andhra Pradesh High Court in Writ Appeal No. 846 of 1984 in which the Union Of India was directed to implement the separation/bifurcation order. The applicants have also referred to Staff Inspection Unit Report, which recognised the distinct problems of D.D. as a medium and in which it is stated that D.D. does not require Assistant Station Directors or Programme Executives but producers and Managers. According to the applicant, the 1984 Rules are unconstitutional because the promotional chances of D.D. Production Assistants, who are required to complete 8 years to be considered for promotion as against 3 years, as laid down in the D.D. Manual. The rules are in contravention of Supreme Court Judgement in V.K. Mehta V/s. Union Of India AIR 1988 SC 1970 and National Union of All India Radio V/s. Union Of India vide AIR 1990 ACT 1720. Lastly, the Respondents contend that 1984 Rules are unworkable because they do not recognise the problems of the T.V. as a distinct medium, as could be seen from the judgement of Hyderabad Bench of this Tribunal in V. Arunagiri & Others V/s. Union Of India vide decision in O.A. No. 659/88 decided on 15.07.1991.

11. The Respondents have opposed the contention of the applicants. According to them, it is true that, by a Government Resolution dated 05.03.1976, issued by the Ministry of Information & Broadcasting, the Doordarshan was separated from All India Radio with effect from 01.04.1976 as a separate Directorate General. However, this separation does not preclude the Government from having a common cadre of Programme Staff. According to the official Respondents, the back ground to the issue of the impugned orders is as below :-

"The officers in the categories of Production Assistants and Producers Gr.II and some other categories were appointed as Staff Artists under contracts which were extended from time to time and they were not treated as Government servants and were accordingly not entitled for any pension. However, in 1982 the Government of India in the Ministry of I & B decided to make the aforesaid staff Artists as Govt. Servants and accordingly, they were to be screened for deciding about their fitness to become Govt. servants. For this purpose, their options had also been obtained. Once they became Govt. servants it was also necessary that their promotion etc. was governed by recruitment rules in exercise of the powers conferred by the Proviso to Article 309 of the Constitution. Accordingly, Govt. under the Ministry of I & B notified by amendment, Recruitment Rules for the post of Programme Executive. This post of Programme Executive also includes the posts designated as under :-

1. Programme Executive.
2. Translator.
3. Editor (Scripts).
4. Editor.
5. Producer.
6. Producer Gr. II
7. Reference Officer.

The posts at Sl. No. 6 & 7 belong only to Doordarshan whereas posts at Sl. No. 2 to 5 belong to All India Radio. The post of Programme <sup>Executive</sup> at Sr. No. 1 were both in AIR and Doordarshan even prior to promulgation of these aforesaid rules. After

Rule 4, Rule 4A was inserted to cover the Staff Artists who had opted to become Government employees. It will also be noticed from column 11 of the aforesaid rules that Production Assistants were also included for promotion to the grade of Programme Executive which also included all the posts of Programme Executive/Producers Gr.II and Reference Officer in Doordarshan Kendras and the Directorate General. After the aforesaid applicants became Govt. servants, the recruitment rules for their promotion to the post of Producer Grade-II are the ones which were notified on October 23, 1984 as mentioned above. Since they were no longer Staff Artists, old rules meant for Staff Artists were not applicable to them for promotion to the post of Producer Grade-II.

Since the aforesaid applicants were appointed as Staff Artists, at that time the Recruitment Rules meant for staff artists were to be applied in their case, for their recruitment but once they become Govt. servants, the Recruitment Rules 1979 for Staff Artists in Doordarshan could not be made applicable to them after new rules for (Programme Executive) Govt. servants had come into force, as made clear from the Note mentioned at page 124 of the Doordarshan Manual Vol.III which states as under :-

"All the staff Artists in Doordarshan except the five categories mentioned in para 4.5.2 of Doordarshan Manual Viz. (i) News Presenter,

(ii) Presentation Announcer (Sr.), (iii) Presentation Announcer (Jr.), (iv) Instrumentalist and (v) Music Composer have since been covered/are being covered as regular Govt. servants and such posts are treated as Civil posts in Group A or B or C as the case may be. These Recruitment Rules will however be valid till any revision is made and in the case of those who continue as Staff Artists."

After the October 1984 Recruitment Rules came into force, seven Departmental Promotion Committee meetings for promotion of Staff Artists (Declared Govt. Servants /Transmission Executives) to the grade of Programme Executive had taken place for filling up the vacant posts of Programme Executives in AIR/Doordarshan, which also included the post of Producer Gr.II of Doordarshan. As a result, 588 Staff Artists/Transmission Executives of AIR/Doordarshan have so far been promoted to the grade of Programme Executives."

12. According to the Respondents, the Order dated 11.06.1991 issued by Respondent No. 3 is according to the Recruitment Rules referred to above and is, therefore, legal.

13. So far as the Constitutionality and the legality of the All India Radio Group 'B' Posts Recruitment Amendment Rules 1984 is concerned, various arguments adduced by applicant need not detain us because that question is no longer res-integra, The Hyderabad Bench of this Tribunal in O.A. No. 389/88 having gone into this question and holding that the rules are constitutional and legal. We are, therefore, not required to go into the question. In O.A. No. 659/88, to which the Respondents have made a reference, the issue involved was, whether the grades of Production Assistant (New and Current Affairs) and

Producers Grade-II (New and Current Affairs) are covered by 1988 Rules. On a detailed examination, the Tribunal found that they are not so covered. At the same time, the Tribunal also noted that the Staff Artists Rules, as contended in Doordarshan Manual, are also not applicable since the declaration as Government servants. The Tribunal, therefore, granted relief in the following terms :-

"(i) It is declared that the grades of Production Assistants (News and Current Affairs) and Producer Grade-II (News and Current Affairs) are not covered by the All India Radio (Group 'B' Posts) Recruitment (Amendment) Rules, 1984 and the Schedule thereunder :-

(ii) The Respondents are directed to frame the requisite promotion policy in the light of the discussion above, and consider the case of the applicants for promotion to the grade of Producer Grade-II (N & CA).

14. In the present case, the applicants have not argued that the 1984 Recruitment Rules do not cover the particular category of Production Assistants at present working in Bombay Kendra of Doordarshan. The Challenge is a general one, to the rules as such and to the rules being unworkable. As noticed above, it is not open to us to go into the question of constitutionality of the rules, that having been settled and since staff Artists Rules 1979 do not apply, the question of invoking them, also does not arise. The applicants have referred to the Supreme Court Judgement in National Union of All India Radio Staff V/s. Union Of India but that judgement related to the declaration of Staff Artists, as Government

Servants and that question is no longer open Government, having conceded the demand. So far as the implications of the bifurcation are concerned, we have already dealt with the issue in our judgement in the cognate case, namely; O.A. No. 547/89, namely that the rules under Article 309 of the Constitution would prevail over any Government Resolutions <sup>in the nature of</sup> policy intention relating to bifurcation of two electronic media.

15. We, therefore, do not consider that there is any merit in the O.A., which is liable to be dismissed and which we accordingly dismiss. There would be no order as to costs.

(D. C. VERMA)  
MEMBER (J).

(M. R. KOLHATKAR)  
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, PRESCOT RD, 4th FLOOR,

BOMBAY - 400 001.

REVIEW PETITION NO.36/95 in

ORIGINAL APPLICATION No.434/91.

Dated : 3-1-96

CORAM : Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri M.R.Kolhatkar, Member (A).

Doordarshan Programme Producers'  
Association & 4 Ors.  
(Advocate by Shri S.P.Dharmadikari)  
V/s.

... Applicants

Union of India & 52 Ors.  
(Advocate by Shri V.S.Masurkar)

... Respondents

O R D E R

{ Per Shri M.R.Kolhatkar, Member(A) }

In this OA, the Review Petitioners who are the original applicants have prayed for review of our judgement dated 3/2/1995 which was a common judgement delivered in OA-547/89 and 434/91. The challenge is to the portion of judgement relating to OA-434/91 which was filed by applicants in representative capacity namely Doordarshan Programme Producers' Association. It has come out that OA-547/89 relating to transfer of an employee has been taken in SLP to the Hon'ble Supreme Court and the judgement in that OA has been stayed. The Stay however does not operate in respect of portion of judgement relating to OA-434/91.

2. The main grounds for review are that the judgement contains an error apparent on the face of the record in as much as 1988 Doordarshan Programme (Technical/Group

'C' posts) Recruitment Rules 1988 and 1990 Rules (Indian Broadcasting (Programme) Service Rules 1990) which had a vital <sup>ing</sup> ~~bear~~ on the outcome of the OA were not available to the original applicants i.e. <sup>who</sup> ~~them~~ the Review Petitioners/could not trace/despite due and diligent search. The existence of these rules being the later rules has the effect that the later rules namely 1988 <sup>and</sup> 1990 rules would prevail over the <sup>ie 1984 rules</sup> earlier/in view of the general principle that the later special rules shall prevail over the earlier general rules. The petitioners have also relied on the judgement of Madras Bench of the Tribunal in OA-659/1988. The Government namely, respondents <sup>original</sup> in this petition and the/official respondents have opposed the review petition. According to the respondents the All India Radio (Group 'B') Recruitment (Amendment) Rules 1984 are by and large meant for making recruitment/promotion to the grade of PEX which includes the posts designated as Producer Grade-II. As per these rules, production assistants are one of the feeder grades for promotion to the PEX. whereas the Doordarshan Programme (Technical Group 'C' posts) Recruitment Rules, 1988 are meant for making recruitment to the posts of Production Assistants. Thus, 1984 and 1988 Rules have separate purposes. Regarding 1990 Rules, feeder cadre for promotion to Junior Time Scale of Programme Production Cadre are Producer Grade-II etc. which are erstwhile Staff Artists categories and declared Government servants. With the 1984 amendment, the post of Producer Grade-II has been equated with

that of PEX, which is a common Cadre of All India Radio/Doordarshan and there has been no further recruitment as Producer Grade-II after 23.10.94. But there are Officers who were appointed/promoted as Producer Grade-II as per earlier Staff Artists Rules and with a view to provide promotional avenues to these Officers they have been made one of the feeder grades for promotion to Junior Time Scale of the Programme Production Cadre of IB(P)S.

3. We have considered the submissions made by the respective parties and we have also gone through the 1988 and 1990 rules whose existence according to review petitioners warrants a review of our judgement. In the schedule of 1988 rules, in column No.12, it is specified that the method of recruitment to this cadre is 100% by direct recruitment. It is therefore clear that 1988 rules are made for direct recruitment <sup>leading to</sup> the cadre of Doordarshan Programme (Technical Group-C posts) and have no bearing on the promotion which was the issue in the OA.

4. Regarding 1990 rules, the clarification given by the respondents appears to be in order.

5. We are therefore not impressed by the arguments that our judgement requires review because of 1988 and 1990 rules whose existence could not be pointed out to us by the applicants earlier. So far as the reliance placed by the review petitioners on the decision of Madras Bench in OA-659/88, in our judgement we had referred to OA-659/88 vide para-13

and we were of the view it did not help the applicants. We have gone through the said judgement afresh and we have noticed that the claim of the applicants in that case was for promotion against the post of Production Assistant, (News and Current Affairs) for which there were vacancies and for which applicants claimed to be qualified. The Tribunal while upholding the legality of amendment rules of 1984, states its reasoning in para-13 as below:-

"It may be noted that the term Programme Executive in the schedule extracted above includes only those posts which are designated as Programme Executive, Translator, etc. as reproduced above. In order to come within the purview of this term in the Schedule, any post must be designated as one of the seven categories specified therein. If a category is not specified and is not found to be one of the seven categories designated there the Schedule provisions obviously will not apply. Whereas the category of Producer and Producer Grade-II simpliciter is designated in the list of seven categories, the category of Producer Gr.II (News and Current Affairs) is not found to be so designated. In view of this fact, it follows that the category of Producer Grade-II (N & CA) is not covered by the schedule item and, therefore, not covered by the 23.10.1984 Recruitment Rules cited above."

6. The contention of the respondents that the Producer Grade-II mentioned in the schedule is the general description and covers even Producer Grade-II (News and Current Affairs) was not accepted by Tribunal and the relief as mentioned in para-13 of our judgement was granted in the facts and circumstances of the case.

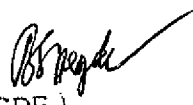
7. The statement in the review petition/<sup>as</sup> vide page 14 & 15 that this Tribunal ought to have accepted the findings recorded by another Division Bench of the Tribunal

at Madras where it granted this specific relief that the Grade of Production Assistants and Producers Grade II (News and Current Affairs) are not covered by All India Radio (Group 'B' posts) Recruitment (Amendment) Rules, 1984 in view of rules framed under Article 309 of the Constitution of India in 1988 lacks legal foundation. Infact, the Madras Bench nowhere refers to 1988 rules in their judgment. In the result we find no merit in the review petition and dismiss the same. We had given a preliminary hearing to both the parties and accordingly the Judgment is being pronounced in the open court.

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(M.R. KOLHATKAR)  
MEMBER (A)

(B.S. HEGDE)  
MEMBER (J)

abp.