

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

O.A. No.1335/1995

Date of decision 26-7-2001

Sh. Jayant W. Nabar & Ors.

... Applicants

Sh. S. Natrajan

... Advocate for the
applicants

VERSUS

UOI and Ors.

... Respondents

Sh. M. I. Sethna, learned
Senior counsel with Shri
V. D. Vadhavkar counsel for the
official respondents.

... Advocate for the
respondents

Shri P. A. Prabhakaran
counsel for the intervenors.

CORAM

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V. K. Majotra, Member (A)

1. To be referred to the Reporter ~~or~~ *yes*
not?
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

OA 1335/1995

Mumbai this the 26th day of July, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri V.K. Majotra, Member (A)

1. Jayant V. Nabar
2. Smt. Usha Mehta
3. Smt. K. S. Rajalakshmi
4. Smt. K. Krishnamurthy
5. Smt. R. S. Dak
6. Smt. Saramma Jose
7. Mrs. Lidwin Fernandes
8. Mrs. V. P. Pillai
9. Mrs. Hilda D'Cunha
- 10 Mrs P. R. Naik
11. Mrs. N. J. Joshi
12. Smt. V. K. Borwankar
13. S. N. Solunge
14. Smt. V. S. Bedekar
15. P. K. A. Nair
16. Ms. V. S. Shetty
17. Smt. S. K. Maindon
18. H. I. Khan
19. Smt. R. C. Ghosh
20. P. S. Ravat
21. Smt. V. V. Iyer
22. Smt. Kamla Kendre

8/7/

- 23.S.H.Jambhekar
- 24.S.P.Mehta
- 25.Mrs.Veera Bharucha
- 26.Mrs.Madhuri M.Kelkar
- 27.Smt.Kalpana Khanivadekar
- 28.Mrs.N.D.Shetty
- 29.Mrs.Neelam Jaisinghani
- 30.Mrs.Shama Mohile
- 31.Mrs.Neela Inamdar
- 32.Sh.Vithai Poojari
- 33.D.S.Acherekar

..Applicants

(all working as Transmission
Executives/General Assistants
under AIR,Bombay.)

Address for service :

Jayant V.Nabar
A-9, Ojas Co-Op.Hsg.Society, Kol
Dongri, Andheri East Bombay.

(By Advocate Sh.~~S~~.Natrajan)

VERSUS

- 1.Union of India through the
Secretary, Ministry of Information
and Broadcasting, Shastri Bhawan,
New Delhi-110001
- 2.The Director General,
All India Radio, Akashwani Bhawan,
Parliament Street, New Delhi.
- 3.The Station Director
All India Radio, Broadcasting House,
Backbay Reclamation, Bombay-400020
- 4.Sh.Ajay Rajkarne
- 5.Sh.Ganesh Iyer
- 6.Sh.Mahesh Gokhale

7. Ganesh Sharma
8. Shailesh Malode
9. Ravish Mangalvadhe
10. Priti Deshmankar
11. Sameer Dixit
12. Suneel Kulkarni
13. Ramesh Gokhale
14. Bharti Dhar
15. Uma Dixit
16. Vinayak More
17. Zubair Khan

18. Shubendra Pradhan

.. Respondents

(By Advocate Sh.M.I. Sethna, learned
Senior counsel with Sh.V.D. Vadhavkar
counsel for the respondents 1-3)
(By Advocate Shri P.A. Prabhakaran
learned counsel for the respondents
4-18)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

This application has been filed by the applicants impugning the letter issued by the respondents dated 19.4.1995 denying them promotion to the posts of Production Assistant (Prod.Asstts.) with retrospective effect in terms of the Tribunal's order dated 27.2.1991 in Yayant V. Nabar and Ors. Vs. The Deputy Director, Vividh Bharti Service, AIR and others (OA 309/1989 with connected OAs).

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2 The applicants rely on the Recruitment Rules(RRs.) notified under Order dated 27.2.1976 and circulated by Memo.dated 20.3.1976 (Exhibit A-2). According to the applicants,under these Rules the posts of Prod.Asstts.were to be filled 100% by promotion by limited selection from among senior grade General Assistants/Copyists with five years service along with the other categories of staff. They had earlier challenged certain amendments brought out by the respondents by Notifications dated 19.9.1983 and 29.10.198 to include the posts of Genl.Assistants/Copyists junior grade as well as Senior Store Keepers in the Recruitment Rules of Clerk Grade-1 which was disposed of by order dated 27.2.1991 in J.V.Nabar's case (supra).Shri S. Natrajan learned counsel for the applicants has submitted that an interim order was granted by the Tribunal(Bombay Bench) by order dated 12.5.1989 in OA 315/1989, in which the respondents were directed that any appointments as Prod.Asstts.made by them hereafter would be subject to the result of this application and all such appointees should be suitably advised.He further submits that later on, this OA had been dismissed as withdrawn by order dated 28.6.1994. The other bunch of 25 applications were disposed of by a common order dated 27.2.1991 on which the applicants rely upon. Learned counsel has submitted that a SLP

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filed against this order by the UOI was also dismissed by the Hon'ble Supreme Court by order dated 5.8.1992 and thereby, the Tribunal's order had become final and binding.

3. The grievance of the applicants is that the respondents have not taken any action to implement the aforesaid order, though they have even sent a notice to which the impugned order dated 19.4.1995 was issued by the respondents. They have submitted that in the meantime, in respect of the posts of Prod.Asstts., the respondents have issued Notification dated 25.2.1994 amending the All India Radio and Doordarshan (Transmission Executive) Recruitment Rules, 1992. Under these RRs, the posts of TRES (Genl and Prod.) will be filled from amongst Senior grade General Assistants/ Copyists etc. with at least five years continuous service. The respondents by order dated 28.4.1994 had promoted the applicants as TRES (Genl.and Prod.) on regular basis in which name of the applicant No.1 in the present application, i.e.Shri Jayant V.Nabar, appears at Serial No.31. Learned counsel for the applicants has submitted that in the last paragraph of this promotion order it has been mentioned that the Genl.Asstts./Copyists(Jr.and Sr.) who have availed of promotional avenues by opting to administrative cadres are to be reverted to the post of

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Genl.Asstts./Copyists(Jr.and Sr.) held by them earlier and they will have to forgo the financial benefits availed by them by the earlier Memo.dated 4.4.1994. He has drawn our attention to the Office Order dated 3.5.1994 by which in pursuance of the undertaking exercised vide his letter dated 29.4.1994,one Shri P.K.A.Nair,Clerk Grade- I was reverted to the post of General Assistant (Jr.Grade) w.e.f. 21.10.1987(FN) i.e. the date of promotion as Clerk Grade-1. Learned counsel has submitted that the withdrawal of the promotions with retrospective effect by the respondents is illegal and not in accordance with the Rules.

4. The main contention of the applicants' counsel is that there were a number of vacancies in the cadre of Prod.Asstts. during the period from 1983 till the implementation of the Tribunal's order dated 27.2.1991 on which the applicants should have been promoted, which has been denied to them. He has in particular relied on the directions contained in Paragraph 6(iii) of the Tribunal's order in which it has been stated "that 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". He has, therefore, contended that the applicants are entitled for promotion in the Prod.Asstts. cadre from the date the vacancies arose in

7. During the hearing, Shri P.A.Prabhakaran, learned counsel has submitted that they have no objection to the prayer of the applicants being allowed i.e. for being considered for promotion in terms of the 1976 RRs till the Rules were amended in 1992 and 1994 in respect of TRES cadre. He has submitted that the applicants are working as TRES(Genl. and Prod.) and this category of TRES was in existence right from 1974 i.e. prior to the year 1976 when the RRs of Prod.Assts.were promulgated in 1974. The 1974 RRs were for transmission Executives as a composite class. There is mention of TRES(Genl. and Prod.) under Col.8 item No.A of 1992 Rules. From 1994, the said Rules were divided into two parts, namely, TRES simpliciter and TRES (Genl. and Prod.). He has submitted as seen from the 1994 Rules, 10% is by promotion from the applicants. Shri N.Natrajan, learned counsel has also been heard in rejoinder.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

9. In Tribunal's order dated 27.2.1991 in OA 309/1989 (with two other connected cases) the Applications were allowed with the following declaration:-

"(i) The Government of India Notification No.45011/83/82-B(A) dated 19.9.1993 and Government of India Notification dated 29.10.1982 being amendments of Recruitment Rules

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of Clerk Grade-1 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."

10. In the Schedule to the 1976 RRs 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 RRs will be framed". It was submitted that there is no denial to the effect that no fresh Rules in this behalf have been framed so far. In the order dated 27.2.1991 by which the applications were disposed of, reference has also been given to the Notifications dated 19.9.1993 and 29.9.1983 which had been challenged by the applicants. It was also submitted during the hearing that the present applicants were also applicants in those cases. In the reply filed by the respondents they have contended that the Tribunal had only protected the channel of promotion available to them in the cadre as per the 1976 Rules which has not affected the vacancies of Prod.Asstts.under the TRES (Genl. and Prod.) that occurred in 1983 to 1991. However, it is relevant to note that in terms of the

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order dated 27.2.1991, the applicants were entitled for protection of the channel of promotions available to them in accordance with the RRs of 1976. They, therefore, were to be considered for promotion in terms of these Rules which has not been done by the respondents.

11. The respondents have promoted the applicants after approval of the DPC as TRES /Copyists (Genl and Prod.) by order dated 28.4.1994 with a proviso that they were to be reverted to the posts of General Assistants/Copyists (Jr.and Senior) held by them earlier and they will have to forgo the financial benefits availed by them in getting the promotions. The respondents have stated that the posts of Prod.Asstts.were equated and amalgamated with that of TRES and RRs for TRES have been referred to as the Rules of AIR and Doordarshan (Transmission Executive) Recruitment Rules, 1992. Therefore, till these Rules were notified and have come into force, the applicants were entitled to be considered for promotions to the post of Prod.Asstts. in accordance with the 1976 Rules.The Tribunal had also earlier noted that in the Schedule a note was put that the method of recruitment for the post of Prod.Asstts., 100% by limited selection from among senior Grade General Assistants/Copyists etc.will be for a period of five years from the date of

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implementation of these Rules. It is also stated that, thereafter, fresh recruitment Rules will be framed which apparently were notified only in 1992 and further amended in 1994. Therefore, till such time the RRs were framed by the respondents in terms of the aforesaid order of the Tribunal dated 27.2.1991 and the provisions in the 1976 RRs the applicants were entitled to be considered for promotion in accordance with those Rules. We see force in the submissions made by the learned counsel for the applicants that they are entitled to protection of the channel of promotions available to them in terms of the RRs of 1976 and they were also eligible for consideration for such promotion. The appeal filed by the respondents against the Tribunal's order dated 27.2.1991 has also been dismissed by the Hon'ble Supreme Court vide their order dated 5.8.1992 and the order has become final and binding.

12. Therefore, in the facts and circumstances of the case and having regard to the aforesaid orders of the Tribunal as well as the Supreme Court, we are of the view that the applicants are entitled to be considered for promotion in the vacancies that arose during the relevant years from 1982/1983 till the Rules were amended in 1992/1994 (See the judgement of the Hon'ble Supreme Court in Y.V.Rangiah Vs.J.Srinivasa Rao (1983)SCC (L&S)382 and T.Radhakrishnan Nair Vs.UOI (1997(35)ATC 612).

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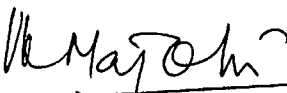
13. In the result, for the reasons given above, the OA succeeds and is allowed with the following directions to the respondents:-

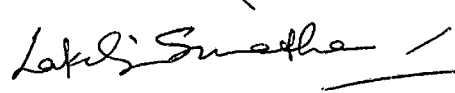
(i) They are directed to consider the applicants for promotion against any vacancies arising during the relevant period till the time the Recruitment Rules of 1976 subsist;

(ii) This shall be done by holding DPCs in accordance with the relevant Law, Rules and instructions within six months from the date of receipt of a copy of this order;

(iii) In case the applicants are found eligible and are so promoted to the higher posts, they shall be entitled to all consequential benefits, including arrears of pay and allowances, from the due date in accordance with the law.

No order as to costs.


(V.K. Majotra)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)