

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT  
HYDERABAD.

C.A. NO. 776/93.

DATE OF JUDGMENT: 19-07-95.

BETWEEN:

J. Shantiswarup

.. Applicant.

AND

1. The Director General,  
Directorate General,  
Govt. of India, Doordarshan,  
Mandi House, New Delhi-1.

2. The Director (BA),  
Ministry of Information & Broad-  
Casting, Govt. of India,  
New Delhi-1.

3. The Director,  
Doordarshan Kendra,  
Govt. of India,  
Ramanthapur, Hyderabad-13.

.. Respondents.

COUNSEL FOR THE APPLICANT: SHRI V. Venkateswara Rao,

COUNSEL FOR THE RESPONDENTS: SHRI V. Bhimanna,  
Ex/Addl. CGSC.

CORAM:

HON'BLE SHRI JUSTICE V. NEELADRI RAO, VICE CHAIRMAN  
HON'BLE SHRI R. RINGRAJAN, MEMBER (ADMN.)

SL

(a)

OA.776/93

Judgement

( As per Hon. Mr. Justice V. Neeladri Rao, VC )

Heard Sri V. Venkateswara Rao, learned counsel for the applicant and Sri V. Bhimanna, learned counsel for the respondents.

2. This OA is filed praying for direction to the respondents to :

- i) Consider the case of the applicant for the grant of scale of pay of Rs.3000-4500 in the category of News Presenter; and
- ii) Create channel for promotion of News Presenters of Doordarshan Kendra, Hyderabad, with all consequential benefits such as arrears of pay and allowance, promotion etc.

3. The facts which are relevant and material for consideration of this OA are not in controversy. The applicant was initially appointed in August, 1978 as News Presenter in Hyderabad, Doordarshan Kendra, on monthly renewal contact basis for a period of six months in the pay scale of Rs.650-1200. He was offered the post as a Staff Artist on contract basis for a period of three years with effect from 1-3-1979 in the same scale. It was extended twice as an Artist for five years with effect from 1-9-1983 and 6-10-1988.

4. In 1982 a scheme was introduced for the staff artists of both the All India Radio (AIR) and Doordarshan (DD) whereby pension scheme was introduced. Further as per the said scheme ~~an option~~ was given to the staff artists who want to be on five year contract basis. But

Yours

for those who opted for Government service the following three scales were offered:

<u>Old/3rd pay scales</u>	<u>New/4th Pay scales</u>
Rs.550-900	Rs.1640-2900
Rs.650-1200	Rs.2000-3500
Rs.1100-1600	Rs.3000-4500.

Then the applicant opted for continuation as artist on five year contract basis with effect from 1-9-1983.

5. The National Union of AIR Staff Artists filed CWP.13636/83 in the Apex Court challenging the said ~~scheme~~. By interim order dated 24-4-1988 the Government of India was directed to review the entire scheme of 1982 relating to conversion of staff artists into Government servants and to prepare a fresh scheme in accordance with the law having regard to the nature of duties performed by each category of Staff Artists.

Accordingly, a revised scheme was prepared and submitted to the Supreme Court in 1988 for further directions.

By judgement dated 5-4-1990 CWP.13636/83 was disposed with a direction to the Government of India to constitute a Committee for examination of the objections with reference to terms of the scheme. A High Power Committee under the Chairmanship of Additional Secretary Secretary Ministry of Information and Broadcasting, was appointed. On the basis of the report of the said Committee, the scheme of 1982 has been revised vide Ministry of I&B letter dated 29-11-1991 (vide Annexure-1 to the OA).

According to the above revised scheme all staff artists/ Artists under the 1982 scheme working in AIR & Doordarshan who <sup>were</sup> ~~are~~ in service as on 6-3-1982 and those appointed ~~to~~

Subsequently will be deemed as Government servants unless opted out of the new scheme within a period of six months. As the applicant had not opted out of the new scheme within the stipulated period, he had been declared as Government servant with effect from 6-3-1982 as per the order dated 31-1-1992.

6. Recruitment rules (by) providing channel promotion were framed in regard to Assistant Engineers, Programme Executive, and Producers (Producers were initially recruited on contract basis in the pay scale of Rs.650-1200), after they had been declared as Government servants on the basis of the new scheme, and some of them had become Station Engineers/Asstt. Station Directors/Deputy Directors in the pay scale of Rs.3000-4500.

7. Akashvani Announcers' Association, Andhra Pradesh State, filed OA.751/93 on the file of this Bench. It was alleged as under in para-7 of the counter filed in the above OA :

"7. The contention made in this para is denied. The facts regarding recruitment/promotion in the cadre of Announcers are furnished as under (and are shown in details as in Annexure R-I) :

Method of recruitment / Promotion

i) Announcer Gr.IV Payscale Rs.1400-2600	100% by direct recruitment
ii) Announcer Gr.III payscale Rs.1640- 2900)	100% by promotion amongst the Announcers Gr.IV having <u>regular service in that grade</u> , on seniority-cum-fitness basis.
iii) Announcer Gr.II Payscale Rs.2000-3500	100% by promotion amongst the announcers Gr.III <u>who have 3 years regular experience in Gr.III</u> on seniority-cum-merit basis
iv) Announcer Gr.I	100% by promotion amongst the Announcers Gr.II <u>having 8 year experience of regular service in that grade</u> , on seniority-cum-merit basis.

26

It is further submitted that the posts of Announcer are sanctioned only in the lowest grade (i.e. Gr.IV) and higher grades, these are determined on the basis of ratio e.g. the sanctioned posts in Gr.III are determined by the ratio 2:3 (i.e. if 2 are the sanctioned posts in Grade IV then 3 should be in Grade III) and so on. So, it is incorrect to say that no post in Grade I has been sanctioned in Andhra zone. The posts in Grade I are determined by the ratio 10:1 (i.e. if 10 posts are sanctioned in Grade II, then 1 post should be in Grade-I). It is also added here that the posts of Announcer Gr.I are determined on all India basis and not on Zonal basis."

8. When representation dated 2-8-92 and 4-8-92 were sent to the Ministry of I&B through Hon. Sri Dharmanna M. Sadhu, Hon. MP, reply dated 1-10-1992 was given to the effect that "Recruitment Rules and Promotional channels" of News Presenters as Government servants have yet to be finalised", and as such it is not possible to upgrade the applicant alone and he will be considered for promotion alongwith others on merit based on the recruitment rules. It is stated for the applicant that as neither posts in the Grade I were sanctioned nor recruitment rules were framed, The applicant was constrained to file this OA on 29-6-93. Even in the counter affidavit filed on 31-3-1994 in this OA it is alleged as under :

"Since the applicant and similarly placed persons have been declared as Government servants and three scales of pay viz. Rs.550-900; Rs.650-1200; and Rs.1100-1600; have been provided for, instead of earlier single pay scale of Rs.650-1200 action is being taken separately for creation

✓

..5.

158

of civil posts finalising their classification, mode of recruitment etc., for induction to the above grades. However, as it involves consultation and approval of various Departments viz. Ministry of I&B, DOP, UPSC, Ministry of Law etc., it will take some time before the formal recruitment rules in this behalf are notified and appointments made to the new grades in accordance with such rules. Promotion to higher grades also depends on availability of posts, seniority and record of service. There is no rule or law to promote any Government servant to higher grade bypassing the above factors. As such there is nothing illegal or violation of Article 14 of the Constitution in this case."

9. When this OA had come up for consideration on 2-1-1995, we felt after hearing the arguments at length that it is necessary for R-1 to file reply statement as counter affidavit of R-2 is not clear in regard to the following aspects :

- i) Whether the posts in Gr.I News Presenters were sanctioned, and if so whether any of those posts are vacant, and if the posts are sanctioned and if they are vacant, why promotions cannot be considered for Grade I pending formulations of new recruitment rules; and
- ii) Whether in view of delay of the formulations of the Recruitment Rules, promotions are going to be given with retrospective effect as they are non-functional.

10. But even till today no reply statement is filed for R-1. Sri V. Bhimanna, the learned counsel for respondents submitted that R-1 had written a reply to the effect that no posts in Gr.I in the category of News Presenters in the Doordarshan were created.

(36)

11. The learned counsel for the applicant submitted as under :

Of course creation of posts and the formulation of recruitment rules are policy matters in regard to which the Court/Tribunal cannot give directions. But the inaction on the part of R-1 in not taking decision about creation of posts in Gr.I for News Presenters is arbitrary and thus violative of Article 14 and 16 of the Constitution, when the posts were sanctioned in Gr.I for Announcers in AIR, who discharge the duties similar to the duties of News Presenters in Doordarshan, and even-though ~~both~~ the News Presenters in Doordarshan and Announcers in AIR had been declared as Government servants with effect from 6-3-1982, when they had not opted out of the New Scheme; and when the recruitment rules were formulated and the posts in the various cadres were sanctioned even in regard to producers in Doordarshan joined either prior to 6-2-1982 on the contract basis in the payscale of Rs.650-1200 or joined subsequent to 6-2-1982 and some of them were already promoted to the higher scales of Rs.3000-4500 while the News Presenters in Doordarshan are deprived of the said benefit.

12. The posts in the promotional category can be created either on the need basis or in order to avoid stagnation. Generally, in regard to the category of Announcers, News Presenters, Station Masters etc. the question of need does not arise for sanction of posts in the higher grades. But in order to avoid stagnation, some percentage is adopted in order to determine the number of posts for each grade and the sanction of posts is for all the categories

✓

put together. The counter affidavit in OA.751/93 discloses that the same is followed for determination of number of posts in Gr.I Accounters in AIR. In 1982 itself it was announced that the Announcers in the AIR are having four grades viz. Rs.425-640; Rs.550-900; Rs.650-1200; and Rs.1100-1600, while for the News Presenters in Doordarshan three scales were announced and they are Rs.550-900; Rs.650-1200; and Rs.1100-1600. Thus there is no distinction between the Announcer in the AIR and News Presenter in regard to the three scales applicable to News Presenter in Doordarshan, and the fourth scale applicable to the Announcers is lower than the lowest scale prescribed for News presenter in the Doordarshan.

13. Thus, it is a case where Announcers and News Presenters were recruited on contract basis in the pay scale of Rs.550-900; Rs.650-1200; or Rs.1100-1600. On the basis of the new scheme, all of them were deemed to be the Government servants with effect from 6-3-1982 when they had not chosen to opt out of the said scheme. The number of posts in each grade for Announcer in AIR was already sanctioned and promotions from lower grade to higher grade were also considered on the basis of the recruitment rules formulated after they were declared as Government servants. Thus, the Announcers in AIR are enjoying the benefit of promotion to the higher grade of Rs.1100-1600 corresponding to Rs.3000 to 4500.

14. As already observed, the said higher grade is available even in the News Presenters in Doordarshan. But those who are in the grade of Rs.650-1200 corresponding to Rs.2000-3500 are not enjoying the benefit of higher

58

pay scale of Rs.1100-1600 to Rs.3000-4500 as no decision is yet taken in regard to the number of posts in Gr.I, and as recruitment rules were also not formulated in regard to the promotion to the same. As the sanctioned posts in Gr.I in the pay scale of Rs.3000-4500 for Announcer in AIR depends upon the number of posts in Gr.II of the Announcers, and in view of the nature of duties it can be stated that the sanction of posts in Gr.I for Announcer is not on the basis of need but only to avoid stagnation. The same thing holds good even in regard to the News Presenters in Doordarshan.

15. Then it cannot be stated that there is no force in the contention for the applicant that it is arbitrary when decision was taken as referred to in regard to the number of posts of Gr.I for Announcer in AIR and when such decision was not taken in regard to the News Presenters in Doordarshan. It is well settled that no direction can be given to the authorities in regard to policy matters. Still when the challenge is on the basis of the provisions of the Constitution, it is necessary for the Court/Tribunal to advert to the same. When the contention for the applicant on the ground of arbitrariness basing upon the Articles 14 and 16 of the Constitution has to be acceded to, it is necessary for the Tribunal to give direction to R-1 to take a decision in regard to creation of posts in Grade I in the pay scale of Rs.3000-4500 in regard to News Presenters in Doordarshan, especially when their counterparts in the AIR had also become government servants on the same day i.e. on 6-3-1982 on which the News Presenters had become Government servants.

29

9-

15. In the result, this OA is disposed of as under :

R-1 has to take decision by 31-1-1996 in regard to the creation of posts in Grade I in the pay scale of Rs.3000-4500 for News Presenters in Doordarshan, and if there is going to be delay in formulation of the Recruitment Rules for the said posts, executive instructions have to be given in regard to the various conditions for promotions to Grade I. If the decision is not going to be taken in regard to the above by 31-1-1996, then the instructions in regard to the determination of number of posts in Grade I for Announcers in AIR have to be treated as instructions in regard to determination of number of posts in Gr.I in the News Presenters in Doordarshan, and the promotion to the Gr.I in News Presenter has to be considered on the basis of the Recruitment Rules for promotion to Grade I for Announcers in the AIR by treating them as executive instructions in regard to Gr.I News Presenters in Doordarshan, and the said promotions have to be given with effect from 1-2-1996. The same have to be followed till a decision is going to be taken in regard to number of posts in Gr.I and Doordarshan and also formulation of Recruitment Rules for the said post.

No costs.//

One  
(R. Rangarajan)  
Member (Admn.)

Neeladri Rao  
(V. Neeladri Rao)  
Vice Chairman

Dated : July 19, 1995  
Dictated in Open Court

sk

*Aruln*  
Deputy Registrar 27.7.95  
(S) cc

THPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

VICE CHAIRMAN

A N D

THE HON'BLE MR.R.RANGARAJAN: (M(ADMN))

DATED ---1995.

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

in  
OA.No. 776/93.

TA.No. (W.P.)

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

