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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No. 759/96.
(SR1854/96)

Date: June 19, 1996.

Between:

1.Smt. A.Sarada.

2.Smt. B. Kusuma Kumari. Applicants.

and

1.Union of India, represented by
its Secretary, Ministry of Infor-
mation & Broadcasting, Sastry Bhavan,
New Delhi.

2.Director General, A.I.R., Akash Vani
Bhavan, New Delhi.

3.Station Director, A.I.R., Vijayawada.

Respondents

For the Applicants: Mr. D.S.N.V. Prasad Babu.

For the Respondents: Mr. N.R.Devraj, Senior Standing
Counsel for Central Government.

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMINISTRATION)

O.A.S.R.No.1854/96.

Date: June 19, 1996.

O R D E R.

(AS PER HON'BLE MR. JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.)

Mr. D.S.N.V. Prasada Babu for the applicants.

Mr.N.R.Devraj, Senior Standing Counsel for Central Government for the respondents.

2. By an internal communication dated 31.8.95/6.9.95, the Director of Programmes (Personnel), Office of the Directorate General, All India Radio, Government of India addressed to the Heads of all A.I.R., Stations and A & G Section of Directorate General, All India Radio, it was informed that the Announcers in AIR are going to be declared as "SHIFT DUTY STAFF" on the analogy of Doordarshan and it is a matter of notification only. All the concerned Heads of Offices ^{were} ~~were~~ advised to treat the Announcers also as "Shift Duty Staff" and extend all the benefits to them on the analogy of all other eligible "Shift Duty Staff" till the formal orders are issued by the Ministry in this regard. Relying upon this communication, the Applicant No.1, Smt. A. Sarada submitted a representation to the Superintending Engineer, All India Radio, Vijayawada on 26--9--1995 requesting for allotment of the quarter which had been allotted to another person by cancelling that allotment on the ground that staff quarters had to be allotted according to the seniority

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list updated by 19th of every month and as a quarter had fallen vacant in the month of September, 1995, she was eligible to be allotted that quarter on the basis of seniority placing reliance on the abovementioned communication dated 31--8--1995. The applicant was replied by the Office concerned on 30--9--1995.

3. By the aforesaid reply dated 30--9--1995, copy of which is produced by the learned counsel for the respondents, the applicant was informed amongst other things that "the communication regarding the declaration of Announcers as "Shift Duty Staff" has been received in the office on 12th September, 1995 which will be taken into consideration for allotment of quarters for the month of October, 1995 onwards. Under the circumstances, she may please note that allotment of quarter will be made to her in her turn". In spite of this reply, the 1st applicant has joined in filing this O.A. on 13--6--1996. In so far as the 2nd applicant is concerned, she has simply joined in this application as Applicant No.2 on the ground that her position is also similar to Applicant No.1. The applicants pray that the respondents may be directed to allot them staff quarters which were likely to fall vacant immediately.

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4. The case of the applicants is that despite the decision dated 31--8--1995/6--9--1995, the respondents have not treated the applicants as "Shift Duty Staff" and have not so far allotted them quarters in accordance with their seniority as "Shift Duty Staff" and therefore, the respondents are required to allot them the quarters as per their seniority. To substantiate their grievance, they rely upon the seniority list of Announcers, Grade III (Senior Grade as on 1--1--1993 in which the Applicant No.1 is at Sl.No.29 and Applicant No.2 is at Sl.No.30. They have produced a copy of the Waiting List of eligible ~~Officers~~ ^{Announcers} for allotment of quarters for the month of May, 1996 issued on 28--5--1996. The grievance of the 1st applicant is that her name has been included in the Waiting List in the category of "Non Shift Staff". The grievance of the 2nd applicant is that her name is not included in the waiting list at all.

5. It is submitted by Mr. Prasad Babu that the respondents have acted illegally in placing the name of the 1st applicant in the "Non-shift" category and not including the name of the 2nd applicant in the list at all. He submits that the waiting list is prepared erroneously and is contrary to the decision to treat the Announcers as "Shift Duty Staff". If the decision were to be correctly followed, the name

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of the 1st applicant would be at Sl.No.1 amongst the "Shift Duty Staff" in accordance with her seniority position and the name of the Applicant No.2 should figure at Sl.No.2 i.e., below the 1st applicant in that ~~place~~ ^{list}.

6. Mr. Devraj, learned Senior Standing counsel for Central Government on behalf of the respondents has produced certain documents by way of reply. These have been perused by the learned counsel for the applicants and we have heard his submissions thereafter.

7. This compilation contains two material documents; first is the letter from the Directorate General, All India Radio, Government of India bearing No.16/1/95-A&G(Vol.II) dated 13--10--1995 addressed to the Superintending Engineer, All India Radio, Vijayawada giving a clarification regarding declaration of Announcers as "Shift Duty Staff". It has been stated that "there is no change or amendment in the AIR, Allotment Rules, it remains the same and quarters may be allotted accordingly." He further states that Announcers have not been included in Shift Duty Staff of AIR, Allotment Rules in the seventh schedule so far. By letter No.10/4/93-SVIII dated 18th October, 1995, the Directorate General, Office, All India Radio informed the Heads of all A.I.R., Stations etc.,

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on the subject regarding declaration of Announcers as "Shift Duty Staff" as follows:

"It is clarified that Announcers' have not yet been declared as "Shift Duty" Staff, as the matter is still under consideration in the Ministry of Information and Broadcasting/ Ministry of Finance/Department of Personnel and Training. Hence, all the concerned Heads of Offices are advised Not to treat Announcers as 'Shift Duty' Staff, till the formal orders are issued by the Competent Authority in this regard. No financial benefit is to be extended to any Announcer in compliance with Directorate's above quoted circular, until the notification to this effect is issued by the Ministry."

8. It is apparent that the Waiting List d/28.5.1996 might ~~may~~ have been drawn in view of the above cited letter d/18.10.1995 ~~and it seems to have been prepared~~ according to the earlier rules wherein Announcers were not treated as "Shift Duty Staff".

9. The learned counsel for the applicants has ~~truthful~~ ^{two fold} grievance in this respect -- firstly, he submits that the decision conveyed by the letter d/31-8-1995/6.9.1995 could not be reversed ~~for the time being~~ in the manner as is purported to have been done by letter dated 18--10--1995 particularly as no reasons have been shown to justify the stand taken in the letter dated 18--10--1995. He, therefore, submits that the waiting list was required to be drawn as per the decision dated 31--8--1995/-6--9--1995, and the

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quarters should have been allotted to the Applicants on the basis of their seniority as Shift Duty Staff. Secondly, the learned counsel for the applicants submits that the preparation of the waiting list dated 28--5--1996 and non-allotment of quarters to the applicants so far on the basis that they were to be treated as "Non-shift Duty" staff is arbitrary and illegal.

✓ 10. The learned counsel for the applicants seeks to rely on a decision rendered by a Single Member (Administration^{ive}) of Cuttack Bench of Central Administrative Tribunal in O.A.No. 282/1996 (SUBASH CHANDRA NAYAK & ANOTHER V. UNION OF INDIA) AND 4 others) in support of the above submissions.

11. We have carefully gone through the aforesaid decision, but with respect, we find it difficult to apply the same to the Applicants.

✓ 12. A careful reading of the decision shows that prima facie the decision was given on the basis of the letter dated 31--8--1995 (supra) although no notification had been issued ^{incorporating} ~~formulating~~ the said decision. In that decision, the question^xposed for consideration^{was} thus:

"When the notification will be issued?"

and it has been stated in that connection as follows:

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"since a decision has been arrived at as early as 31--8--1995, or even before, there is no point in delaying the notification. After hearing the counsel, I direct that the notification shall be issued declaring the Announcers of AIR as Shift Duty Staff and extend all the benefits to them on the analogy of other eligible shift duty staff within six weeks from the date of receipt of this Order."

✓ 13. The above observation clearly implies that a notification was essential to make the decision contained in the letter dated 31--8--1995 effective. Yet, after stating that this decision was admittedly taken and until the notification to formalise the said decision was to be issued, the Announcers were entitled to enjoy the status and consequential benefits of "Shift Duty Staff" from the date of the Order i.e., 26--4--1996. We find it somewhat difficult to appreciate as to how, on one hand the direction is given for issuance of a notification which means that the issuance of a notification was essential for giving effect to the decision that had been taken and at the same time, without waiting for such a notification to be issued the decision was made applicable from 26--4--1996 for extending the benefit thereof to the Announcers. It is also pertinent to note that the case was filed on behalf of two individuals, but the direction for extending the

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benefit from 26--4--1996 was relating to all the Announcers which could have wider impact.

✓ ~~14.~~ We have our own reservations and with respect we are not inclined to issue a direction on similar lines to make the benefit of the policy decision dated 31--8--1995 available to the applicants till the notification is issued by the Ministry.

✓ ~~15.~~ Another aspect in this connection is that the two applicants in the case before Cuttack Bench had mainly the grievance in respect of following the pattern of six working days a week and it was their contention that when all essential staff at AIR Stations which has not been declared as "Shift Duty Staff" was actually deployed on duty in shifts the refusal of the authorities to extend the benefit of five day week to them was illegal and was liable to be quashed. They prayed that the respondents (in that case) be directed to declare the applicants as shift duty staff and to extend all the consequential benefits to them within a time prescribed by the Tribunal. It appears that while canvassing the case for five days week, larger reliefs were included in the prayer and have been allowed. It is, therefore, difficult to read the decision as conclusive on the point of applicability of the respondents' decision dated 31--8--1995 (supra) even before a notification was issued.

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16. The next aspect of the decision is that although it was rendered as late as ^{on} 26--4--1996, the learned Additional Standing Counsel appearing for the Union of India and Directorate General, A.I.R., etc., had not brought to the notice of the learned Member (A) of Cuttack Bench, the letter of the Directorate General dated 18--10--1995 mentioned earlier. It must be remembered that the letter dated 31--8--1995 was issued on 6th September, 1995 and was received in the Office of the respondents concerned in the instant case admittedly on 12--9--1995. Only after about a month by letter dated ¹³⁻¹⁰⁻¹⁹⁹⁵ ~~13--10--1995~~ the Directorate General had clarified that the Announcers had not been included in the "Shift Duty Staff". It does not appear to have been stated on behalf of the respondents before that Bench that the decision dated 31--8--1995 could not be implemented unless the Allotment Rules were amended by issuance of the Notification by the Ministry. The letter dated 18--10--1995 is specific in stating that the Announcers had not been treated as Shift Duty Staff and should not be so treated till formal orders were issued by the Competent Authority in that regard by issuance of a notification by the Ministry. We have no doubt in our mind that had these letters been brought to the notice of the learned Member (A) the orders as passed may possibly have been different. Even otherwise, as the decision

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was rendered by a single Member (A) it is open to us as a Division Bench to take a different view independently of that decision.

✓ 17. For the reasons indicated above, we

do not look into the said decision as a persuasive precedent.

✓ 12. ~~precedent.~~^{12.} The respondents have annexed to their compilation a copy of the AIR (Allotment of residential Quarters) Amendment Rules, 1992 published on 17--9--1992.

These rules make a provision for Shift Duty Staff and Shift Duty Pool. The existence of these rules shows that the allotment rules have been made in pursuance of provisions of Rule 45 of the Fundamental Rules by the President of India. It, therefore, follows that merely the letter dated 31--8--1995/6--9--1995 could not amount to amending the rules and cannot override the provision of the allotment Rules. That necessarily means, that the decision as communicated in the letter was intended to be brought into force by amending the allotment rules by issuing the requisite notification. Thus in the absence of a notification amending the allotment rules, the decision merely in the shape of a letter of the Directorate General cannot be read as a rule validly made as regards the allotment of quarters to Shift Duty Staff. That being the legal position, in respect of the

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efficacy of the letter dated 31--8--1995, it was fully within the competence of the Directorate General to clarify by the letters dated 13--10--1995 and 18-10-1995 that the decision would not be effective till the notification was issued by the Ministry. Such a notification not having been so far issued, the applicants cannot claim any rights based on the letter dated 31.8.1995. The applicants therefore, are not entitled to get the relief as they have prayed.

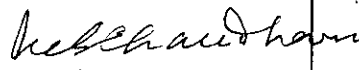
13.18. The name of Applicant No.1 has been included in the waiting list as non-shift duty staff. It follows from the above discussion that it cannot be said to have been done in breach of any rule applicable to the applicants. More over, we do not know as to why the name of the 2nd applicant does not figure in the waiting list dated 28--5--1996 and there is nothing in the O.A., to elucidate her position. That, however, is not for us to probe at this stage in this application. If the 2nd applicant believes that she is entitled to be included in the said list, it is for her to agitate that question before the respondents. It is not necessary for us to go into that aspect on the frame of the instant application.

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19. For the foregoing reasons, we find no merit in this application and it is ~~summarily~~ rejected.

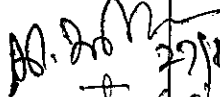
20. We, however, make it clear in the interests of justice, even though such a request was not made by the learned counsel for the applicants, that the entitlement of the 1st applicant for allotment of a quarter in her turn ~~xxx~~ as shown in the Waiting List dated 28--5--1996 and as informed by letter No.9(2)95-G dated 30--9--1995 does not stand affected ipso facto by the rejection of this O.A.


(H. RAJENDRA PRASAD)
Member (Admn.)


(M.G. CHAUDHARY, J)
Vice-Chairman.

Date: June 19, 1996.

Dictated in open Court.


27/6/96
Deputy Registrar

O.A.759/96

To

1. The Secretary, Ministry of Information and Broadcasting, Sastry Bhavan, Union of India, New Delhi.
2. The Director General, A.I.R. Akashvani Bhavan, New Delhi.
3. The Station Director, A.I.R.Vijayawada.
4. One copy to Mr.D.S.N.V.Prasada Babu, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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9/7/96

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 19-6-1996

~~ORDER~~ JUDGMENT

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

O.A.No. 595/96 in 759/96
T.A.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.

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