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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.647 of 1999

DATE OF JUDGMENT: th 20 APRIL, 2000

BETWEEN:

1. Smt. M.Surya
2. G.S.Anantha Raghavan,
3. V.Vijaya Kumar.

.. APPLICANTS

and

1. Union of India rep. by its
Secretary, Ministry of Information
and Broadcasting, Sastry Bhavan,
New Delhi,
2. The Director General,
All India Radio, Parliament Street,
New Delhi 110 001,
3. The Director General,
Doordarshan, Mandi House,
Copernicus Marg,
New Delhi 110 001,
4. The Station Director,
All India Radio,
Saifabad, Hyderabad,
5. The Director,
Doordarshan Kendra,
Ramanthapur,
Hyderabad.

.. RESPONDENTS.

COUNSEL FOR THE APPLICANTS: Mr.J.SUDHEER

COUNSEL FOR THE RESPONDENTS: Mr.K.NARAHARI, Adl.CGSC

CORAM:

HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

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JUDGEMENT

ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.J.Sudhir, learned counsel for the applicants and Mr.K.Narahari, learned standing counsel for the respondents. Mr.A.K.Pahdi, Director (Personnel), All India Radio, New Delhi was present.

2. There are 3 applicants in this OA. They were initially appointed as General Assistants (Staff Artists) in Doordarshan Kendra, Hyderabad in the years 1976, 1977 and 1977 respectively. In the year 1982, Government issued a Scheme through which the Staff Artists were equated and merged with those of regular Government servants. In view of the above, though the said scheme was introduced in the year 1982, the three applicants herein were treated as regular Govt. servants with effect from 1976, 1977 and 1977 respectively.

3. When the matter stood thus, it was decided to merge the post of Staff Artist with the post in the Government Departments and equated to the civil posts of Clerks Gr.I and II in the administrative cadre. For that purpose, the Recruitment Rules of Head Clerks/Accountants were amended in 1983. The said Recruitment Rules dated 29.10.93 are enclosed at Annexure R-III at page 39 to the reply. The General Assistants/Copyists of All India Radio were not happy with the above decision of the Government. Hence, they approached the Bombay Bench of the Central Administrative Tribunal seeking that their avenue of promotion in the channel of Production Assistants should be continued as earlier. The Bombay Bench of the Tribunal by (Annexure R-IV at page 43 to the reply) its order dated 27.2.91 held that the applicants therein who were General Assistants/Copyists of All India Radio were entitled to be promoted as General Assistants Senior Grade and Production Assistants in the Programme cadre and

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that their channel of promotion should be protected. It was also declared that the notification amending the rules of Gr.I and II have no application to them.

4. The Recruitment Rules of 1976 for Staff Artists on Broadcasting side (excluding Doordarshan and Foreign Languages Staff of All India Radio) were issued (Annexure R-I at page 18 to the reply). Another notification dated 29.5.92 (Annexure R-VI at page 50 to the reply) for filling up the post of Transmission Executive (General and Production) was also issued.

5. In view of the orders of the Bombay Bench of the Tribunal, promotion to the General Assistants/Copyists etc. for All India Radio as Transmission Executive (General and Production) was rationalised by the order No.2/26/89-SV II(Vol.II)/ dated 4.4.94 (Annexure R-VII at page 56 to the OA) and on that basis, the notification dated 25.2.94 (Annexure R-V at page 48 to the OA) was issued terming the Rules as "All India Radio and Doordarshan (Transmission Executive) Recruitment (Amendment) Rules, 1994". The said notification is enclosed at Annexure R-V at page 48 to the OA.

6. After the introduction of the notification dated 25.2.94, the applicants herein who are General Assistants of Doordarshan were promoted as Transmission Executives (General and Production). The 1st applicant was promoted by the order NO.TVH/1(7)/94-Admn(APT) dated 30.6.94 (Annexure A-III at page 31 to the OA). The 2nd applicant was promoted by the order NO.1(6)94-S/5838 dated 25.6.94

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(Annexure A-IV at page 32 to the OA) and the 3rd applicant was promoted by the order NO.1(5)94-S/3318 dated 8.6.94 (Annexure A-V at page 33 to the OA).

7. By the order No.2/26/89-S.VII9vol.II)/312 dated 11/25.7.1996 (Annexure R-VIII at page 58 to the reply), a clarification was issued to the Directorate's letter dated 4.4.94 (Annexure R-VII at page 56 to the reply). By that clarification it was informed that the promotion to the post of Transmission Executive (General and Production) is available only to those who are recruited as per 1976 Recruitment Rules and promoted to the Clerk Grade-I/Store-keeper/Accountant in the clerical cadre and not to Clerk Grade-II and Clerk Grade-I who have been appointed on the basis of the Recruitment Rules of the latter post. Hence it was directed that all promotions to the post of Transmission Executives (G&P) should be from the prospective date and those promoted already are to be reviewed as per the clarification given. By the order No.3/5/95-S.VII/347 dated 7.4.97 (Annexure R-IX at page 59 to the OA) it was further directed that the categories of persons who have been recruited as per 1976 Recruitment Rules or common Recruitment Rules for the post of General Assistant/Copyist notified prior to 1976 are only eligible for promotion to the grade of Transmission Executive (General and Production) arising from the direction of the Bombay Bench of this Tribunal and it will not be available to the General Assistants/Copyists recruited in Doordarshan in accordance with the Recruitment Rules.

8. In view of the above, the impugned order No.B/5/95-SVII/229, dated 15.4.99 was issued to the effect



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"not to regularise the ad-hoc promotion of the three applicants herein who are G.A./Copyists in Doordarshan as they were not entitled as per the Staff Artist Recruitment Rules of 1976. Hence they are to be reverted to their grade already held prior to their promotion".

9. Aggrieved by the above, the three applicants herein have filed this OA for setting aside the impugned order dated 15.4.99 issued by R-2 by holding the same as illegal, bad, arbitrary, irrational, illogical, discriminatory, void-ab-initio, without jurisdiction and violative of the Articles 14, 16 and 21 of the Constitution of India and opposed to the principles of natural justice and for a consequential direction to the respondents herein to retain and continue the applicants herein as Transmission Executives (General and Production) and further to regularise their services as such with effect from the date of their joining the said post with all consequential ~~benefits~~ and attendant benefits such as arrears of salary, seniority and promotion etc.

10. An interim order was passed in this OA on 26.4.99 whereby "the respondents were directed not to disturb the status-quo as obtaining today till further orders". In view of the interm orders, it is stated that the applicants are still continuing as Transmission Executives (General and Production).

11. The applicants contend that they were appointed earlier on the basis of the common Recruitment Rules. Even though they were not General Assistants/Copyists of All

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India Radio, the 1994 Rules i.e, 4.4.94 Rules give them the right for considering for promotion to the post of Transmission Executive (General and Production) as can be seen from the title of the Rules. The duties performed by them and the duties performed by the General Assistants/Copyists of All India Radio are more or less same. Hence in view of that only the Recruitment Rules of 25.2.94 were issued providing promotional opportunities to the post of Transmission Executives (General and Production) along with the General Assistants/Copyists of All India Radio by the common Recruitment Rules dated 25.2.94. Even though the 1976 rules were issued for the Staff Artists of All India Radio, the rules had been amended bringing the applicants herein also for consideration to the post of Transmission Executives (General and Production) by the notification dated 25.2.94. This notification cannot be read as applicable only to the Staff of All India Radio. The Recruitment Rules issued on 29.5.92 also provides for promotion to the combined cadre of All India Radio/Doordarshan to the post of Transmission Executive (General and Production). Having amended the rules under Articles 309 of the Constitution of India in supersession of the earlier rules of 1976, the respondents cannot now state that 1994 Recruitment Rules are not applicable to the Doordarshan staff. The executive instructions issued on 4.4.94 on the basis of the orders of the Bombay Bench of this Tribunal clearly indicate that the notification issued in 1994 has to be applied even to the staff of Doordarshan for promotion to the post of Transmission Executive (General and Production). The relevant portion i.e, Sub paragraphs (I) and (IV) of paragraph 2 of the letter dated



4.4.94 clearly states that the General Assistants/Copyists of Doordarshan are also eligible for promotion to the post of Transmission Executive (General and Production). The said two sub-paragraphs are reproduced below:-

"2. In compliance of the judgement of the Hon'ble Tribunal the posts of Transmission Executive (General and Production) are to be filled by promotion from among the General Assistants etc. The Recruitment Rules have been amended and a copy of the Notification dated 25th February 1994 is enclosed. All Heads of Zonal All India Radio stations are, therefore, directed to fill up the existing vacant posts of Transmission Executive (General and Production) in All India Radio stations/Doordarshan Kendras falling under their respective zone by convening a meeting of Departmental Promotion Committee as early as possible. The Heads of Zonal All India Radio stations are advised to follow the existing instructions of the Government on the subject and the following course of action in the matter of holding DPC meeting:-

(I) According to amended Recruitment Rules, the posts of Transmission Executive (General & Production) will be filled by promotion by the method

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"Selection" from amongst senior grade General Assistants/Copyists/Tape Librarians/Instrument Repairers/Caretaker (Music Instruments) and Junior Grade General Assistants/Copyists/Tape Librarians/Caretakers of Musical Instruments/Instrument Repairers with at least 5 years continuous service in that grade.

(II) xxxxx xxxxx xxxx xxxxx
 (III) xxxxx xxxxx xxxxx xxxxx

(IV) The vacant posts of Transmission Executive (General and Production) of All India Radio stations/offices and Doordarshan Kendras and the vacant posts of Production Assistant since redesignated as Transmission Executive (General and Production) in All India Radio stations/offices under the zone will be pooled together and these will be filled by the General Assistants etc. on the recommendations of the DPC."

12. On that basis only, the notification dated 25.2.94 was issued under Article 309 of the Constitution of India. The Recruitment Rules issued under the constitutional provisions cannot be ⁿanulled by the executive instructions dated 11/25.7.96 and the executive instructions dated 7.4.97. These two executive instructions cannot over-ride

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the provisions of the Recruitment Rules formulated under the provisions of Article 309 of the Constitution of India and hence the two executive instructions have to be termed as nonest.

13. In that view, the applicants herein submit that their promotion to the post of Transmission Executive (General and Production) is in accordance with the Recruitment Rules and hence they cannot be reverted by the impugned order which is challenged in this OA.

14. The respondents have filed a reply. Their main contention is that the Recruitment Rules of 1976 are applicable only to the staff of All India Radio and not to the staff of Doordarshan. As per these rules, General Assistants/Copyists etc., in the junior grade with 5 years service as Staff Artist were to be promoted to the senior grade on the basis of seniority-cum-fitness. These categories in the senior grade and the junior grade of All India Radio with 5 years of service had promotional opportunity as Production Assistant by the method of limited selection. The Recruitment Rules for the Staff Artists of Doordarshan were framed in 1979. The General Assistants of All India Radio and Doordarshan had different set of Recruitment Rules. The General Assistants of Doordarshan were not having the avenue of promotion to the post of Production Assistant. It is admitted that the General Assistants (Senior) in Doordarshan had no further promotional avenues. The judgement of the Bombay Bench of this Tribunal is only for consideration of the General Assistants/Copyists of All India Radio ~~xxxx~~ and not for



Doordrshan, to the post of Transmission Executive (General and Production) as it protected the channel of promotion available to the applicants before the Bombay Bench in terms of the Recruitment Rules of 1976. The Recruitment Rules for Doordarshan did not provide for avenue of promotion for the General Assistants/Copyists of Doordarshan for the post of Production Assistant. The said order of the Bombay Bench of the Tribunal did not give any direction to create additional promotional avenues to the General Assistants/Copyists of Doordarshan. They also submit that the posts of Production Assistant in Doordarshan which is having a different nature of duties and different Recruitment Rules were retained as a separate category without any change of designation. The Recruitment Rules of Transmission Executive of 1992 were amended by the notification of 1994 insofar as it related to the promotional posts of General Assistants/Copyists as provided in 1976 Recruitment Rules. The amended rules provide by promotion to the extent of 100% from amongst the General Assistants/Copyists etc. on selection basis from the erstwhile All India Radio staff. It is also stated that the posts of the Production Assistants of Doordarshan have not been redesignated as Transmission Executives and included either in the Recruitment Rules of Transmission Executives notified in 1992 or amended in 1994. There is no justification for consideration of the applicants for promotion to the grade of Transmission Executive (General and Production). It is also admitted that R-4 herein had committed an error by including the names of General Assistants/Copyists of Doordarshan in the eligibility list for promotion to the grade of Transmission Executive (General and Production) and while carrying out the



instructions of the Govt. as contained in Memo. dated 4.4.94, that error was detected and instructions were issued by the memo dated 11/25.7.96 and 7.4.97 to avoid further complications. In view of the above, continuation of the applicants herein against the post of Transmission Executive (General and Production) was reviewed by R-2 and it was decided to revert them to the previous grade as promotions were erroneously ordered for which they were not entitled to. Hence the applicants did not have any legitimate claim for promotion to the grade other than what has been specified by the Bombay Bench of the Tribunal. The respondents contend that the applicants 1 and 3 were promoted only on adhoc basis as Transmission Executive (General and Production) whereas the Applicant No.2 was appointed as Transmission Executive (General and Production) on regular basis inadvertantly. However, all these promotions were reviewed by the respondent-authorities and the impugned order was issued.

15. From the above facts and the ^{Contentions}~~connections~~ of the case, the short question that arises in this case is whether the three applicants herein are entitled for promotion to the post of Transmission Executive (General and Production).

16. We have given careful consideration to the facts of this case. The 1994 Amended Recruitment Rules were framed under Article 309 of the Constitution of India whereby All India Radio and Doordarshan Transmission Executive Recruitment Rules, 1992 were amended. The material amendment for the purpose of this case are at Columns 11 and 12 of the Schedule to the All India Radio and Doordrshan (Transmission Executive) Recruitment Rules,

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1992. The amended columns read as follows:-

"(iii) for the entries in column 11, the following entries shall be substituted, namely:-

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| (a) Transmission Executive
and all posts other
than Transmission
Executive (General and
Production) included in
Transmission Executive. | (i) 90% by direct
recruitment

(ii) 10% by promotion,
failing which by
direct recruitment. |
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For the purpose of allocation of vacancies between the direct recruitment quota and promotion quota the vacancies at all the Stations or Offices of All India Radio and Doordarshan in a particular state or Union Territory will be pooled together by Head of All India Radio Stations as indicated in each case in Annexure-A to this Schedule.

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|--|---|
| (b) Posts designated as
Transmission Executive
(General and Production)
and included in Transmission Executive. | 100% by promotion failing
which by direct recruitment. |
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(iv) for the entries in column 12, the following entries shall be substituted, namely:-

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Promotion

- (i) For Transmission Executive and all posts other than Transmission Executive (General and Production) included in Transmission Executive:

From amongst Senior Librarians (including those of the Directorate General: All India Radio, New Delhi) with 3 years' regular service in the grade, failing which from amongst Programme Secretaries, Studio Executives, Junior Librarians (including those of Directorate General: All India Radio, New Delhi) with 5 years' regular service in the respective grades;

- (ii) For posts designated as Transmission Executive (General and Production) and included in Transmission Executive:

From amongst Senior Grade General Assistants/Copyists/Tape Librarians/Instrument Repairers/Caretaker (Musical Instruments) and Junior Grade General Assistants/Copyists/Tape Librarians/Caretakers of Musical Instruments/Instruments repairers with atleast five years' continuous service in that grade."

17. From the above amendments, it is clear that the method of appointment which was 100% by direct recruitment in 1992 Rules has now been altered in respect of Transmission Executives other than Transmission Executive (General and Production) to 90% by direct recruitment and 10% by promotion. For the post of Transmission Executive (General and Production) it is 100% by promotion failing which by direct recruitment. Para 2 (iv) (ii) of the





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notification of 1994 amendment makes it abundantly clear that for the post of Transmission Executive (General and Production), the General Assistants, Copyists etc. are entitled for consideration they being the feeder posts. Thus, the General Assistants and Copyists in All India Radio and Doordarshan are entitled for consideration for promotion. This is also evident from the title of the rules which is "All India Radio and Doordarshan (Transmission Executive) Recruitment (Amendment) Rules, 1994". It is also not in dispute that the seniority list of Copyists/General Assistants has been revised and they are also shown as eligible for promotion to the post of Transmission Executive as on 1.1.96. It is a combined seniority list of General Assistants and Copyists in all India Radio and Doordarshan. The applicants were put to a selection process by convening a DPC and their promotion to the post of Transmission Executive (General & Production) was given on the basis of the seniority from out of the list which included the employees from Doordarshan.

18. There also appears to be some justification in the contention of the learned counsel for the respondents. In fact in 1992 Rules for the Transmission Executives of the All India Radio and Doordarshan either the applicants in Doordarshan or the General Assistants or Copyists in the All India Radio are not shown as eligible for promotion. By the time the rules of 1992 had come into force, the Bombay Bench had given a direction in the OAs filed by the General Assistants/Copyists of All India Radio allowing their claims. The respondents therein were directed to consider their case for promotion to the posts of



Production Assistants in accordance with 1976 Rules as the posts of Production Assistants in All India Radio have been amalgamated into the posts of Transmission Executive (General and Production). In order to implement the directions given, the amendment was brought out in 1994 as can be seen from the letter dated 4.4.94 (Annexure R-VII at page 56 to the reply). The extracted portion at para 2 (I) and (IV) clearly indicates that it is meant for the General Assistants/Copyists etc. of Doordarshan also. Hence even though the submission of the learned counsel for the respondents appears to be sound and logical one, the rules are amended for some reason or the other to include the staff of Doordarshan. It is also to be noticed that the applicants herein who were the General Assistants and Copyists in Doordarshan are handicapped in that they had no avenues of promotion. It is an admitted fact by respondents themselves. In all fairness, the employees in Doordarshan, to create career opportunities for them, are also entitled for promotion to the post of Transmission Executive (General and Production). We do not find any difference in the duties of the General Assistants/Copyists in All India Radio even though there may be some slight variation in the duty list due to the nature of the activities performed by the All India Radio and Doordarshan. Such a minor variation cannot be quoted to contend that the duty list is different. It is also to be held that the judgement of the Bombay Bench of the Tribunal cannot be read as an embargo to consider the cases of the applicants herein for being eligible for consideration for promotion. Considering all these facts and circumstances of the case, the Government might have thought that there can be no good reason for

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discriminating the employees in Doordarshan and hence the rules were amended.

19. The learned counsel for the applicant relying on the reported judgements in AIR 1952 SC 324 (Shamrao v. District Magistrate, Thana), AIR 1972 SC 971 (State of M.P. v. C.J.Patel submits that, "While interpreting the Statutes, statutory provision capable of two constructions one consistent with constitutionality and the other offending the Constitution, a court will lean in favour of former if it is compatible with the object of the Act and the mischief sought to be prevented." The above proposition is a well known law. No further analysis of the observations of the Apex Court is considered necessary. We had also held that 1994 amended rules are explicit and hence the applicants herein are entitled for promotion to the post of Transmission Executive (General and Production).

20. The learned standing counsel for the respondents relying on the reported judgement in (1993) 3 SCC 371 (State of West Bengal v. Aghore Nath Dey) popularly known as Maharashtra Engineering case, submits that the applicants herein were appointed in violation of the rules and hence their reversion is in order.

21. The above contention, in our opinion, is not tenable. We have already held that 1994 Recruitment Rules provide for promotion to the post of Transmission Executive (General and Production) even for the feeder categories of Doordarshan and the feeder categories of All India Radio.



Hence, we do not see any violation of the rules in promoting the applicants herein. As a matter of fact, the applicants herein were put to a selection test by convening a DPC and they were promoted in accordance with the seniority following the rules. Hence their initial promotion, in our opinion, is not contravening the provisions of the Recruitment Rules. Hence this judgement aids the applicants rather than aiding the respondents. As the applicants were appointed in accordance with the rules, they should be treated as having been promoted regularly from the date of their adhoc promotion.

22. The learned counsel for the respondents also relying on the reported judgement in AIR 1996 SC 2775 (Surinder Singh Jamwal v. State of J & K) states that even though the applicants have put in more number of years of service on adhoc basis as Transmission Executive (General and Production), they can be reverted. This judgement does not help the respondents herein as we had already held that the promotion of the applicants is in accordance with the rules and there is no reason to set-aside that order of their promotion.

23. The learned counsel for the applicants submits that the executive instructions cannot over-ride the recruitment rules prepared under Article 309 of the Constitution if the executive instructions are contrary to the Recruitment Rules. Hence the executive instructions dated 11/25.7.96 and 7.4.97 cannot be taken note of for reverting the applicants herein. We agree with the submission of the applicants. If the rules are read as they





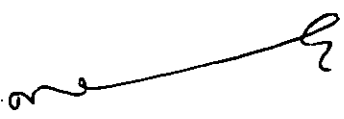
are, the applicants are entitled for consideration for promotion. The executive instructions given by the respondents in the letters dated 11/25.7.96 and 7.4.97 cannot have any force of law as they are directly contrary to the statutory rules. The rules are framed under Article 309 of the Constitution and they are still in force and hence they are enforceable. The administrative instructions can be followed only in the absence of statutory rules and not when the rules are very clear on the subject and hold the field.

24. In view of what is stated above, we are of the opinion, that the impugned order of reversion of the applicants herein dated 15.4.99 cannot be upheld. Hence, the impugned order No.B/5/95-SVII/229, dated 15.4.99 is hereby set-aside. The applicants having been promoted in accordance with the rules are entitled for seniority and other consequential benefits arising there of from the date of their promotion as Transmission Executive (General and Production).

25. The above direction of ours is also in consonance with the directions given by the Principal Bench of this Tribunal in OA 1582/98 dated 11.2.2000 on the file of the Principal Bench.

26. The OA is ordered accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 20th APRIL, 2000

Hyderabad

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