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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

OA.863/99

dt. 8.10.1999

Between

Smt. Yamuna Sanjiv : Applicant

and

1. Union of India, rep. by
Under Secretary
Min. of Information & Broadcasting
B(A), Section, Sastry Bhavan
New Delhi 1

2. Dy. Director General (A)
Doordarshan, Prasar Bharathi
Broadcasting Corpn. of India
Mandi House, New Delhi

3. Dy. Director (Admn.)
Doordarshan Prasar Bharathi
Broadcasting Corpn. of India
Mandi House, New Delhi

4. Director
Prasar Bharathi
Broadcasting Corpn. of India
Ramanthapur, Hyderabad-13

: Respondents

Counsel for the applicant : V. Venkateswara Rao
Advocate

Counsel for the respondents : V. Rajeswara Rao
CGSC

Coram

Hon. Mr. R. Rangarajan, Member (Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member (Judl)

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ORDER

Oral order (per Hon. Mr. B.S. Jai Parameshwar, M(J))

Heard Mr. V. Venkateswara Rao, learned counsel for the applicant and Mr. V. Rajeswara Rao, learned standing counsel for the respondents.

1. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 9-6-1999.
2. The facts of the case are in brief as follows:
 - a) While the applicant was working as TV Producer at Doordarshan Kendra (DDK), Hyderabad, Respondent No.3 by his office order No.78/93-S.III dated 9-6-93 (9-7-93?) (Annex.I) promoted the applicant to the post of Assistant Station Director on adhoc basis for a period of one year or till the regular incumbent was posted. She was posted as such at DDK, Hyderabad. The applicant took charge of this post on 17-6-1993. Her adhoc promotion was continued/extended from time to time.
 - b) By order No.3/49/92-SI(A) dated 8-11-95 (Annex.III) Respondent No.2 promoted the applicant and others to the grade of Junior Time Scale (JTS) of Programme Production cadre of Information and Broadcasting (Programme) Service and posted the applicant to All India Radio (AIR). The promotion from 8-11-1995 was issued on the basis of the Ministry of I&B order dated 27-7-1995 bearing No.9/9 SB(A). A copy of which is not produced but reference to it has been made in Annexure A.III.
 - c) It appears this order dated 8-11-1995 was challenged by the All India Joint Action Committee in CO No.14093/92

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before the Hon. High Court of ~~West Bengal~~, Calcutta.

The petition is pending adjudication before the Hon. High Court. The Hon. High Court has passed an interim order on the application filed on 31-7-1995. The interim order reads as follows:

bearing
"Upon the submissions made on behalf of the parties it is ordered that persons who have opted for promotions shall be able to utilise the opportunity for promotion in terms of the general order, as contained in Annexure 'A'. In the event there is any objection from any person to the same then and in that event, the Doordarshan authority will not give effect to the same insofar as the person raising such objection is concerned. It is clarified that objections ought to come from individual persons and not from the Unions as such. Be it, however, clarified that these promotional opportunities and these objections shall be subject to further orders of this Court and shall be without prejudice to the rights and contentions of the parties. Seniority position, however, shall not be affected in any way and will be subject to further orders of this Court."

d) As per the interim order the Respondent No.2 sought option from the promotees in the order dated 8-11-1995 (Annex.A.3) to express their willingness either to come over to AIR or to remain in DDK. The applicant submitted her willingness to continue in the DDK. It is stated that Respondent No.4 submitted her letter of option to Respondent No.2 through letter dated 28-11-1995. On that basis the applicant was allowed to continue as Assistant Station Director, Doordarshan Kendra, Hyderabad.

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e) Some of the officials of the Doordarshan Kendre who were promoted on adhoc basis and were regularised thereof had approached the Principal Bench of this Tribunal in OA. 958/97 praying for regularisation of their promotion from the date of earlier promotion on adhoc basis. The said OA was decided on 18-9-1997 considering the claim of the applicant therein. A copy of the order dated 18-9-1997 in OA. 958/97 has been produced along with the rejoinder to the reply.

f) The applicant submits that ^{the} Programme Production and cadre Programme Management of DDK and Programme Production and Programme Management cadre of AIR are entirely different.

g) The Respondent No.1 by his order dated 15-2-99 vide No.5/99-B(A) issued promotion orders on regular basis to those officers who expressed their willingness to go over to AIR effective from the date of their earlier adhoc promotion and cancelled the adhoc promotion of those officers (including the applicant), ~~who had expressed~~ ^{their willingness} to remain at DDK. A copy of the order dated 15-2-99 is at Annex.A.4. Cancellation of the promotion of those officers who had expressed their willingness to remain at DDK ~~is~~ to be found in para-2 of the order dated 15-2-1999. (annex.A-4).

h) The applicant challenges the cancellation of her promotion which was issued on 8-11-1995.

i) Thereafter the case of the applicant was considered for adhoc promotion as Assistant Station Director by order No.A.32013/1/96/SB Vol.4 dated 31-3-99 (Order 42/99/S.3). The applicant was promoted on adhoc basis to the grade of JTS in the scale of pay of Rs.800-1300 for a period of one year or till regular incumbent became available whichever

was earlier. By the said order the applicant has been transferred from DDK, Hyderabad to DDK, Bangalore.

j) Against the said order the applicant submitted a representation dated 5-4-99. A copy of the same is at Annex.13 page 45.

k) As her representation was not considered, the applicant approached this Tribunal in OA.592/99 on 16-4-1999. The said OA was disposed of directing the Respondent No.1 to dispose of the representation of the applicant taking into consideration various grounds she had made in the said OA.

l) Thereafter the applicant submitted additional representation dated 21-4-1999 (Annex.14 page 49).

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m) Respondent by order dated 7-6-1999 (Annex.17 page 53) considered the representation dated 5-4-1999 and informed the applicant that her request for continuing in DDK, Hyderabad could not be accepted.

3. The applicant has filed this OA for the following reliefs:

"to call for the records pertaining to the Order No.5/99-B(A) dated 15-2-1999 issued by the 1st respondent and the order No.23/99/S-III dated 28-2-1999 issued by the 2nd respondent, Order No.42/99/S-III dated 31-3-1999 issued by the 3rd respondent and the Order No.12(17)99-AI/TVH dated 5-4-1999 issued by the 4th respondent and the office memorandum No. 745013/10/99-B(A) dated 7-6-99 issued by the 1st respondent and quash the same in so far as they relate to the applicant herein by declaring them as illegal, arbitrary, and unconstitutional by holding that she is entitled to be treated as a regular promotee to the grade of junior time scale to be retained at Hyderabad with effect from 17-6-1993 with all consequential benefits such as seniority promotion etc.

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4. The respondents have filed their counter stating that in accordance with ^{the} Indian Broadcasting (Programme) Service Rules, 1990 framed under Article 309 of the Constitution of India creating the following four distinct sub-cadres:

- i) Programme Management Cadre of All India Radio,
- ii) Programme Management Cadre of Doordarshan,
- iii) Programme Production Cadre of All India Radio; and
- iv) Programme Production Cadre of Doordarshan.

That as per the rules, ^{produced in the} AIR and DDK formed a common cadre for promotion to Programme Production Cadres of AIR and DDK in Junior Time Scale of pay of IB(P) S Rules that a duly constituted DPC has to assess the suitability of the officers in the feeder category for promotion to the Junior Time Scale and prepare year-wise panel for promotion to Programme Production cadres ^{of} AIR and DDK separately basing of their seniority in the feeder cadres.

That in such situation ^a officers who are promoted have to be adjusted (allocated) against the vacancies of the other medium keeping in view the options of the officials, vacancy position, coupled with the grading in a particular year of the vacancy. Once the officers are allocated to a particular medium, their seniority will be in that medium ^{that} and cadre and they will not be considered against the vacancies of the subsequent years of their parent medium/ ^{the} cadre. As the provisions of ^{the} IB Rules, options have to be obtained from all the officers who are in the ^{zone of} considerations for promotion to the junior time scale and accordingly, options were obtained. That the promotions are on All India Basis. That a proposal for convening regular DPC was submitted to the UPSC and that there was some delay

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due to administrative reasons and hence certain officers were promoted purely on adhoc basis during the years 1993-94. That the process of convening ^{the} DPC was in the initial stages and was accepted. That a regular panel would be available. That the allocation in the proposed DPC could not be presumed by the competent authority. It is for the DPC to allocate a particular officer to a particular medium i.e. AIR or DDK. That therefore the adhoc promotion granted earlier were continued in the interest of the smooth functioning of the media. That a regular DPC was available only in 1995 and ^{the} officers were promoted on regular basis depending upon the allocation made by the regular DPC. They submit that the DPC has the discretion to allocate officers from one medium to another medium. That allocation made by the DPC is irrevocable. That is the allocation by the DPC ^{is} permissible under the IB Rules. That some of the officers in the Doordarshan were allocated by the regular DPC to AIR in accordance with ^{the} rules. But they approached the Hon. High Court of ~~West Bengal~~ Calcutta. That an interim direction was given by the Hon. High Court. That in accordance with the interim direction the persons opted for promotion should be able to utilise opportunity for promotion in terms of the order of Ministry of I&B. That in the event there is any objection from any person to the same then and in the event the DDK authority will not give effect to the same in so far as the persons raising the objection is concerned. The applicant had objected for her being posted to the All India Radio. She had expressed her unwillingness to move to AIR. Hence, the promotion of the applicant ordered on 8-11-1995 was not carried out. That after ~~the~~ prolonged deliberations, correspondence and in consultation with the Ministry of Law, Justice it was decided to cancel the

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empanelment of these officers who raised objections to the promotion and that the said order has been passed subject to the outcome of the writ petition pending before the Hon. High Court of Calcutta. That accordingly orders were issued dated 15-2-1999 (Annex.1) to the reply. That the allocation given by the DPC to those officers is pending adjudication before the Hon. High Court. That applicant was promoted purely on adhoc basis. That she cannot claim to be a JTS officer since 17-6-1993.

5. That further convening of the DPC depends upon the outcome in the writ petition also the outcome of the SLP pending before the Hon. Supreme Court. Hence, the case of the applicant was considered for promotion on adhoc basis and by order dated 31-3-1999 the applicant was promoted to JTS on adhoc basis and posted to BDK, Bangalore.

6. That as per the direction given by this Tribunal in the earlier OA the Respondent 1 considered the representation of the applicant and felt it not proper to concede to the request of the applicant to retain at Hyderabad due to administrative exigencies. Further they submit that since the applicant did not join the AIR at her/^{own} volition, the applicant can never be regarded to have held the post of JTS on regular basis either in the Doordarshan or in the AIR. That the applicant has been working at Hyderabad since 1980. That JTS post is a supervisory level post and carries All India Transfer liability. That the officers in the supervisory level post have to be rotated from one station to another in the interests of service and also to enable the officers to acquire various experience and to shoulder the higher responsibilities.

7. Thus they submit that there are no merits in the OA and the OA is liable to be dismissed.

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8 . The applicant has filed a rejoinder contending that the order promoting the officers on regular basis could not have been issued on account of pendency of writ petition before the Hon. High Court of Calcutta. She has disputed the competency of the DPC to allocate a particular officer a particular media i.e. AIR or Doordarshan. She submits that the allocation of media has to be made only on the basis of the options exercised by the individual officer in accordance with the recruitment rules.

9. The applicant in the OA.760/99 has produced the IB(P) Service Rules, 1990. During the course of hearing, our attention was drawn to Rules 6 and 7 of the IB(P) Service Rules.

10. After considering the various averments made by the parties in the application, rejoinder, additional affidavits and additional reply and after hearing the learned counsel for the parties the following points arise for our consideration :

- a) Whether the applicant's promotion on adhoc basis by the impugned order dated 31-3-1999 is irregular on the basis of her earlier promotion to the JTS cadre on regular basis by promotion order dated 8-11-1995?
- b) Whether the applicant's transfer (to Bangalore OA 863/99) is in the administrative exigencies?
- c) Whether the impugned transfer of the applicant is liable to be interfered with?
- d) To what order?

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11. The applicant was working as Assistant Station Director (JTS) purely on ad hoc basis with effect from 17-6-1993. However, she was promoted to JTS cadre on regular basis by order dated 8-11-1995 and was posted to the All India Radio wing. The applicant submits that even before the impugned order dated 31-3-1999, she was holding the post of JTS cadre. It is now to be seen whether her contention can be accepted or not. Though she was promoted to JTS cadre by order dated 8-11-1995 she had not opted to work in the All India Radio. She gave her option to continue in the Doordarshan. The order dated 8-11-1995 was not implemented. But she was allowed to continue in the same cadre (on adhoc basis).

12. However, the respondents by their order dated 15-2-1999 cancelled her regular promotion ordered on 8-11-1995. The said cancellation order is enclosed to the reply. The respondents submit that they took decision, however, subject to outcome of the Writ Petition pending before the Hon'ble High Court of Calcutta. When that is so, it may not be proper for us to interfere with the order dated 15-2-1999.

13. It is now to be considered whether the respondents were justified in issuing the order dated 15-2-1999 cancelling the promotion of the applicant to JTS cadre by its earlier order dated 8-11-1995. The fact remained that the applicant was by order dated 8-11-1995 promoted to the cadre of JTS, IB(P) Service and posted her to All India Radio. In view of the interim order of the Hon. High Court of Calcutta they obtained option from the applicant. The applicant expressed her willingness to continue in Doordarshan. That means she was not willing to move over to All India Radio in terms of the promotion order dated 8-11-1995. As per the option the respondents allowed the applicant to work in the same post. There after they discussed the matter and obtained advise from the Ministry of Law and issued order dated 15-2-1999 cancelling the promotion of the applicant.

14. Further, they submit that because of the pending litigation the DPC could not be convened for considering promotion to the post of JTS cadre. They submit that an SLP is pending before the Hon'ble Supreme Court and the Writ Petition regarding transferring the personnel attached to the Doordarshan to the All India Radio is pending before the Hon'ble High Court of Calcutta. It is in these circumstances the respondents felt to fill up the posts of JTS cadre on adhoc basis. Accordingly, they considered the case of the applicant for adhoc promotion and promoted her to the JTS cadre on adhoc basis and posted her to Doordarshan, Bangalore by the impugned order dt.31.3.99. We feel that the action of the respondents in taking decision to issue order dt.15-2-99 and impugned order dt.31-3-99 were in the interest of smooth functioning of both the media. Hence, we are of the opinion that the respondents were justified in consider the case of the applicant for adhoc promotion.

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15. Transferring the personnel of the Doordarshan to AIR and vice-versa or the competency of the DPC to allocate a particular officer who is within the zone of consideration for promotion to JTS a particular medium or not is the point to be adjudicated by the Hon'ble High Court of Calcutta.

16. Further, whether the regular promotion is to take effect from the date of earlier adhoc promotion of an officer has already been decided by the Principal Bench of this Tribunal in OA.958/97. The applicant herein is not challenging the IB(P) S Rules. Here adhoc promotion with effect from 17-6-1993 has to be considered for regularisation if she is covered under the decision of the Principal Bench of this Tribunal when she is regularly promoted.

17. Cancellation of the promotion of the applicant (which was ordered on 8-11-1995) by order dated 15-2-99 is in accordance with the interim direction given by the Hon'ble High Court of Calcutta. The interim direction has been extracted above. The interim direction given by the Hon. High Court of Calcutta is clear in regard to seniority, and in regard to option or objections exercised by the promoted officer. The Hon. High Court has made it clear not to enforce promotion against the officer raising the objection to the promotion and allocation to a particular medium.

18. Hence this Tribunal may not be justified in considering all these factors which are pending adjudication before the Hon. High Court of Calcutta.

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19. As already observed since the applicant had expressed her willingness to continue in the DDK, her promotion to the JTS ordered by order dated 8-11-1995 has been cancelled by the order dated 15-2-1999. This cancellation is also subject to outcome of the Writ Petition.

20. Since the WP is pending before the Hon'ble High Court of Calcutta and also the SLP is pending before the Hon'ble Supreme Court, the respondents could not convene the DPC for regular promotion to the officers to JTS Cadre.

21. It is in this back ground the respondents considered the case of the applicant for promotion on adhoc basis issued her promotion on adhoc basis by order dated 31-3-1999 and as per her own willingness, she has been transferred to DDK, Bangalore.

22. The order dated 31-3-1999 can be considered by this Tribunal. As it stands applicant has been transferred to DDK, Bangalore. She has been transferred as per the option exercised by her. Her transfer is in the interest of Public Service. Further, the respondents justified her transfer on the ground that the applicant has been working at Hyderabad since last 19 years.

23. Lastly, the respondents submit that the sanctioned strength of JTS officers at Doordarshan Kendra, Hyderabad is only four whereas there are six JTS officers positioned at DDK, Hyderabad. Hence, the transfer of the applicant

became inevitable. They submit that the applicant being an officer overstayed at DDK, Hyderabad, they decided to transfer the applicant to DDK, Bangalore, as per her own option. These aspects have not been controverted by the applicant. Further, she has not denied the fact that she has been working at Hyderabad for the last 19 years.

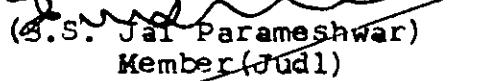
24. She had submitted a representation dated 5-4-1999 explaining certain personal inconvenience, ill health etc. The respondent No.1 considered these aspects as per the direction given in the earlier OA and felt it not to concede her request for retention at Hyderabad. She has got seven years of service. It cannot be said that she has to be allowed to work all the seven years at Hyderabad only.

25. Transfer is an incidence of service. The applicant cannot as a matter of right claim to work only in DDK, Hyderabad. The legal aspects are concerned, this court cannot interfere with the transfer ordered by the Respondent No.1. All her contentions regarding her earlier adhoc promotion with effect from 17-6-1993, regularisation from the date of her being promoted to JTS post on regular basis, the validity of her option given by her expressing her willingness to continue at DDK, are still to be considered and adjudicated by the Hon. High court of Calcutta.

26. We have not dwelt upon these aspects of the matters though the applicant tried to contend these facts. The main grievance of the applicant is that she has been transferred by order dated 31-3-1999 to DDK, Bangalore.

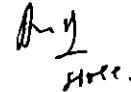
27. Considering these facts we are of the opinion that the applicant cannot claim any relief in the OA.

28. For the reasons stated above, we find no merits in the OA and has to be dismissed. Accordingly we dismiss the OA. No order as to costs.


(S.S. Jai Parameshwar)
Member (Jud1)


(R. Rangarajan)
Member (Admn.)

Dated : 8.10.99


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