

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.344/95

Date of order: 31-7-1996

S.D.Shastri : Applicant

Vs.

Union of India & Ors. : Respondents

Applicant present in person

Mr.M.Rafiq : Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member.

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri S.D.Shastri, now functioning as Programme Executive, All India Radio (AIR), Sawai Madhopur, has prayed that the promotion list issued vide order dated 27.7.95 of Producers to Junior Time Scale of Indian Broadcasting Programme Service (IBPS) of AIR and the consequent posting orders issued vide order dated 31.7.95 may be quashed and the respondents may be directed to reappraise the matter giving the applicant an option for switchover to the Production Cadre and adopting the nonselection method of promotion. He has further prayed that the respondents may be directed to order the applicant's promotion w.e.f. June 1991 and his induction in the Junior Time Scale of Production Cadre of AIR with all consequential benefits. His still further prayer is that the respondents may be directed not to post any ASD (Assistant Station Director)/SD (Station Director) or the officers of 'equated' grades other than the applicant before completion of his tenure at Sawai Madhopur. He has also sought an order with regard to costs of the application.

2. The applicant had also prayed for grant of interim relief in the form of stay of the operation of the promotion list issued by the respondents and maintenance of status quo

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with regard to the post of Programme Head at Sawai Madhopur till the disposal of the O.A.

3. Before we discuss the facts of the case, it may be stated that vide order dated 3.8.95, the applicant's prayer for grant of interim relief was rejected by the Tribunal. The applicant had sought a recommendation from the Tribunal through M.A No.410/95 for transfer of the O.A and the M.A No.338/95 seeking condonation of delay in filing the O.A to the Principal Bench. He had also prayed for urgent hearing of the matter. The Tribunal observed that the applicant was free to approach the Hon'ble Chairman of the Tribunal for transfer of the O.A and the M.A in question from this Bench of the Tribunal to any other Bench. The M.A as such was dismissed on 6.9.95. On 19.9.95, the applicant stated before the Tribunal that his prayer for transfer of the O.A to the Principal Bench made to the Hon'ble Chairman had been rejected. On 19.9.95, once again the applicant's prayer for grant of any interim relief was rejected after hearing the applicant and counsel for the respondents. On 18.10.95 the applicant's M.A No.491/95 containing a prayer for maintenance of status quo with regard to 'Programme Headship' at AIP, Sawai Madhopur, till the disposal of the review petition dated 26.9.95 was rejected by the Tribunal by a detailed order. The application was admitted on 17.11.95 for adjudication. On that date the applicant had produced before the Tribunal a copy of the order dated 13.11.95 passed by the Hon'ble Supreme Court. In this order, the Hon'ble Supreme Court upheld the Tribunal's action in refusing to grant any interim relief to the applicant. The Hon'ble Supreme Court however further clarified that any promotions made would be subject to the result in the main O.A. The applicant's prayer for transfer of the case from Jaipur Bench of the Tribunal was however not acceded to by the Hon'ble Supreme Court. The

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Hon'ble Supreme Court directed the Tribunal to dispose of the matter as expeditiously as possible, preferably, within a period of three months from the date of the receipt of the order after giving opportunity to the respondents to file their counter and rejoinder, etc. The Hon'ble Supreme Court further observed that it was desirable that the Tribunal may request one of the Senior counsel practising in the Tribunal to assist the applicant as his amicus curiae and argue the matter on his behalf.

4. The applicant himself suggested that Shri R.N.Mathur, a Senior Counsel practising before the Tribunal at Jaipur may be appointed as his amicus curiae. Accordingly, at our request Shri Mathur agreed to act as amicus curiae on behalf of the applicant. Further proceedings continued with regard to filing of reply, etc. A Misc.Application, No.538/95 for production of certain documents before the Tribunal by the respondents was filed by the applicant. On 3.1.1996, the Tribunal directed that some of the records mentioned therein should be kept ready by the respondents for perusal of the Tribunal, at the time of hearing of the O.A, if necessary. The applicant filed yet another M.A containing a prayer for consideration by the Tribunal of "the substantial questions of facts and law involved". It was observed by the Tribunal that since in any case all questions of law and facts raised by the applicant in the O.A were to be considered by the Tribunal, the M.A was infructuous and it was dismissed accordingly. On 7.3.96, the respondents were directed to produce certain records, some of which had been sought by the applicant which included the ACR dossiers of six other officers.

5. On 25.3.96, when the applicant was also present in person, the counsel for the respondents informed us that the applicant had filed another affidavit, copy whereof had been

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given to him on 19.3.96. The counsel for the applicant had earlier brought to our notice that day that he was unaware about filing of any such affidavit by the applicant. The Tribunal had observed that the filing of the affidavit was likely to delay disposal of the O.A further in spite of the directions of the Hon'ble Supreme Court for expeditious disposal of the O.A. The applicant, however insisted that the affidavit should be taken on record as it deals with certain important aspects of the matter. Accordingly the respondents were granted time to file reply thereto. On 24.5.96, the case was listed for hearing on 10.7.96. Thereafter the matter has been heard on day to day basis and the hearing was concluded on 15.7.96.

6. Although the directions of the Hon'ble Supreme Court were that the hearing should be completed as expeditiously as possible, considerable delay has been caused in the matter of disposal of the O.A by the applicant himself who has been filing applications and affidavit from time to time. In view of the fact that the applicant himself filed most of these applications and argued on these himself, we thought it proper not to deny any opportunity to the applicant in this regard. Ultimately the applicant chose to argue the matter himself at the time of hearing of the O.A in spite of the fact that we had granted adjournments on some earlier occasions when the counsel for the applicant could not appear for unavoidable situations such as the death of his relative.

7. The averments in the O.A are a hotchpotch of general observations concerning the functioning of the AIR/DoorDarshan, facts in general, facts relating to the case of the applicant, matters regarding which no relief has been claimed in this O.A, the arguments and citations of judgments. It has been extremely difficult for us to sort out relevant facts and grounds having a direct bearing on the case of the

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applicant for the purpose of disposal of this O.A. However, an attempt has been made in this direction.

8. The applicant's case is as follows. He was selected as Programme Executive (Hindi spoken word) through UPSC and was initially posted at AIP, Jaipur w.e.f. 16.2.1978. He is at present posted at AIP Sawai Madhopur, w.e.f. 20.2.95 in the same capacity, in the Management Cadre. The applicant possesses several academic qualifications and also has knowledge of several languages through his postings at various stations in the country. There has been considerable delay in promotions of Direct Recruit Programme Executives to higher grades/posts. The Indian Broadcasting (Programme) Service (IBPS) Rules were modified in November 1990 and implemented still later but meanwhile promotions to those posted as Producers were given, thereby taking away the share of Programme Executives for promotions. According to the chronology incorporated by the applicant in the O.A, IBPS Rules were notified on 5.11.90 and promotions of 45 Programme Executives and 24 Producers to the post of ASD were made, vide order dated 18.6.1991. Thereafter ad hoc promotions to these posts were made in June 1993 and April 1994 and later regular promotions were made vide order dated 18.7.94. Further promotions of Producers were made vide order dated 27.7.1995. In spite of the fact that the IBPS Rules were notified on 5.11.1990, promotions made in June 1991 were as per the old Rules. The applicant was denied promotion in June 1991 and also ad hoc promotion in June 1993. While granting promotions in July 1994, the merit order of the officers was changed, which showed that the method of 'selection' was adopted in making regular promotions in July, 1994, contrary to the IBPS Rules and the DFC Rules.

9. Further, according to the applicant, no objective criterion has been adopted in considering the options/choice

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relating to allotment of cadres given by the candidates seeking promotions. (The cadres for which option had been invited were Management Cadre of AIR, Management Cadre of Doordarshan Production Cadre of AIR and Production Cadre of Doordarshan). There has been discrimination and adoption of double standards in the matter of allotment of Production Cadre. The applicant has worked out in a tabular form the number of vacancies available on the basis of the initial strength in the Junior Time Scale (scale Rs.2200-4000) of IBPS (to which the applicant had been seeking promotion), beginning from 1.1.1985 and has tried to show that 77 vacancies in the AIR Management Cadre, 12 vacancies in Doordarshan Management Cadre, 37 vacancies in AIR Production Cadre and 18 vacancies in Doordarshan Production Cadre, were original vacancies and these cannot be treated as future vacancies. (The implication of this working, perhaps, is that these original vacancies which existed prior to the coming in force of the new IBPS Rules on 5.11.90 should have been filled up according to the old rules). Ad hoc promotions were also made in June 93 and although an ad hoc promotion is normally not permissible for more than one year, 6 months' further extension was granted to the ad hoc promotees. By the procedures adopted by the Department, many honest and devoted officers lost at least 3 chances of promotion.

10. Most of the above averments are, as stated by the applicant himself, of a general nature. With regard to the applicant's own case, he has stated that he has been subjected to harassment and torture during his service career and he had to approach the Tribunal and the Hon'ble Supreme Court to seek redressal of his grievances. He was also transferred from one corner of the country to another contrary to the transfer policy of the Department. Salary for certain periods during 1981-82 has also not been paid to him. A disciplinary action

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was kept pending against him for about 5 years and it was concluded by issue of a simple warning. Due to this disciplinary action, promotion was denied to him in June 1991. His name was also not included in the list of ad hoc promotees in June 93. In November 1993, the disciplinary action against him was concluded. He had given his option for and later sent representations for inclusion in the Production Cadre of AIP in the Junior Time Scale, but he has received no response. At the AIR Shahdol, the applicant had to work under the supervision of one who was his junior for 4 years. At Sawaimadhopur, where the applicant was appointed as Programme Head w.e.f. 1.4.95, the Engineering Head subjected him to harassment in various ways and in matters of provision of various facilities to which he was entitled. In the posting orders passed on 31.7.95, 15 officers have been shifted from Doordarshan to AIP, "probably contrary to their options". Had the applicant been granted promotion in July 95, he would have been adjusted against the post of Station Director at Sawai Madhopur but now someone junior to the applicant can be posted there on transfer as ASD/SD (Assistant Station Director/Director). If the applicant is transferred from Sawaimadhopur it would cause further suffering to him. The applicant has been residing at Sawaimadhopur in the residential quarter earmarked for the seniormost Programme Officer. It appears that now the intention of the concerned authority is to throw the applicant out of the AIR Colony. The applicant by his functioning as Programme Head (Station Director) w.e.f 1.4.95 has improved the functioning of the office, in various ways, despite hurdles created in his way. Due to denial of promotion he has been suffering in his career and his life. His several representations for promotion have never been replied to. He has sought promotion w.e.f. June 91, when 34 of his juniors were promoted. In the promotion list

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issued in July 91 also, about 80 officers junior to him have been promoted whereas he has been left out.

11. The applicant has further stated that following the provisions of IBPS Rules, respondent No.2 had issued an O.M dated 4.8.92, calling for options for placement in one of the 4 Cadres of IBPS, (mentioned in para ⁹ above). The applicant submitted his option on 20.8.92. His first option was AIR Production Cadre. There is no reason to reject his option if a judicious exercise of judgment is made.

12. The applicant, according to him, is fully eligible for promotion for various reasons, including the fact that he is entitled to due weightage in promotion on account of his posting in the North Eastern Region, as per Govt. of India's decision dated 14.12.85. A note of this decision has been taken in the judgment dated 2.1.87 of the Guwahati Bench of the Tribunal in O.A Nos.245/86, 246/86 and 330/86 filed by the applicant, copy of which has been placed on record as Annx.A33 to the O.A. He has also stated, relying on Rule 7 of the IBPS Rules, that the DPC is also required to recommend the cadre as well as the media in which a person is to be appointed on promotion. Since the applicant has opted for Programme Production Cadre of AIR, he is entitled to appointment to the said Cadre on promotion. Since promotion has been delayed due to administrative lapses, he is entitled to promotion with retrospective effect. He has given details of 3 representations made by him with regard to denial of promotion and related matters, from 24.7.92 onwards, to which no reply has been received.

13. Two Misc.Applications filed by the applicant, one, No.338/95, for condonation of delay in filing the O.A with regard to promotions effected in June 91 during which he was overlooked and the other, No.537/95, containing the prayer that

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the adverse ACPs for the year 1988-89 and 1989-90 may be treated as washed out through the conclusion of the bogus disciplinary action taken against him which culminated in a simple warning being issued to the applicant are still pending. The contents of these application are to be considered while deciding the O.A.

14. The respondents in their reply have taken two preliminary objections to the maintainability of the OA. One is that although the applicant has sought relief to the effect that the promotion order dated 27-7-95 by which as many as 146 persons were promoted but the applicant was ignored should be quashed, he has not impleaded any of those persons as parties to the OA. The second objection taken by them is that although he has sought relief to the effect that he should be promoted w.e.f. June, 1991 to Junior Time Scale of Production Cadre of A.I.F., the OA has been filed on 2-8-95. On the applicant's own admission, he made his first representation against his supersession on 24-7-91. The applicant could have waited for only a period of 6 months for the outcome of the representation before filing the OA. Therefore, the claim for promotion w.e.f. June, 1991 is time barred and the application is liable to be dismissed on these two grounds alone.

15. Coming to the merits of the OA, the respondents have stated, inter alia, that after the IBPS Rules were notified in November, 90, a lot of preparatory work such as inviting options for allocation of officers to different streams of IBPS, drawing up seniority lists as per new rules etc., had to be done which resulted in delay in holding DFCs. They have added that promotions were granted strictly in accordance with the rules and proper procedure was followed in holding DFCs. The applicant was considered for both regular and adhoc promotions but was not recommended for promotion on the ground of his service records. The promotions in 1991 were correctly granted as per the rules prevailing prior to 5-11-1990, as the vacancies filled up by these promotions related to the period prior to the notification of

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IBPS Rules. For adhoc promotions, the criterion is seniority-cum-fitness whereas for regular promotions the method is "selection". That the method for regular promotions is "selection" is also established by the fact that a member of the Union Public Service Commission (UPSC) is associated with the promotions to Junior Time Scale Group 'A' of IBPS. They have relied upon the instructions annexed as R1 to their reply to show that where UPSC is associated with the DFC for promotions to Group-A posts, the promotions are based on the principle of selection. Further, Programme Executives alone are eligible for promotion to the Junior Time Scale Management Cadre and likewise Producers and equated categories alone are eligible for promotion to Junior Time Scale of Production Cadre as per Schedule V of IBPS Rules. Programme Executives, the category to which the applicant belongs, do not form a part of the feeder grade for promotion to the Programme Production Cadre of A.I.R. and Doordarshan. Posts included in Schedule V (Col.4 of S.No.5 of IBPS) i.e. Producers etc., are in a dying cadre as no more recruitment are being made to these posts since October, 1984. Once this dying cadre is completely exhausted by way of promotions etc., the Programme Executives would be considered for promotion to Production Cadres of A.I.R. and Doordarshan. Keeping this eventuality in view, provision for options has been made in Rule 7(6)(a)(i) of the new IBPS Rules operative from 5-11-1990, regarding options to be obtained from officers in the field of promotion to Junior Time Scale of Programme Management Cadre of A.I.R. or Doordarshan for working in the Programme Management Cadre or in the Programme Production Cadre of either of the two media. The provisions of Rule 7(6)(a)(i) will be invoked after exhausting the present feeder grades of producers etc. by their promotion to Production Cadres and that too after amending the Recruitment Rules, making the Programme Executives a feeder cadre. At present the Programme Executives do not form a feeder grade and therefore the applicant cannot claim promotion to Production Cadre of A.I.R. and Doordarshan. They have denied the

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applicant's averments regarding harassment etc. and of any unfair treatment to him.

16. During the arguments the applicant stated that there is provision for obtaining options before effecting promotions to the Junior Time Scale of IBPS, as per Rule 7(6)(a)(i) of the 1990 Rules. The applicant had exercised his option for induction to Programme Production Cadre of the A.I.R. Once the options were called for and the applicant had exercised his option, the respondents could not go back on it and therefore had to appoint the applicant to the Junior Time Scale on promotion after a view had been taken about the cadre to which the applicant was to be allocated, having regard to the option exercised by him. Promotions ordered in June 91 were made in accordance with the Rules as existed prior to November, ¹⁹⁹⁰~~91~~. Since the new Rules of IBPS had already been notified on 5-11-90 and the promotions were ordered in June, 91, the respondents could not rely upon old Rules for making these promotions. Regarding the question whether the method to be adopted for promotion is "selection" or "seniority-cum-suitability", he stated that the new Rules are silent on this question. Where the rules are silent, the proper method of appointments would be seniority-cum-suitability. In this connection, he relied upon para 6.3.1. of the Office Memorandum dated 10th April, 89 reproduced in Swamy's Compilation of Seniority and Promotion in Central Government Service, Third Edition, February, 90. Parts of these instructions have, incidentally been also presented by the respondents as Annexure-R1 to their reply. He also relied upon para 17.2 of the aforesaid instructions in which it is provided that promotion should be made as far as possible in the order in which the names appear in the selection panel. He has assailed clubbing of vacancies by the respondents as a result of which the applicant's case for promotion has been prejudiced. This, according to him, has happened because with the enlargement of the cone of consideration by clubbing of vacancies, persons junior to the applicant were graded as

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having higher merit than the applicant and, therefore they have superseded him. He also assailed the promotion of 6 officers namely S/Shri Prabha Damar, F.L.Mohanty, L.P. Fipaliya, M.A.Than, Dr. Pramod Kumar Sinha and Smt. Naima Khan Upreti, who according to him did not possess higher merit based on their ACRs but were yet granted promotion ignoring the applicant and thereby they superseded the applicant. He had sought perusal of the ACRs of these officers by the Tribunal to establish that they did not possess higher merit than the applicant. Further, according to him, no special recognition was given to him in the matter of promotion on account of his serving in the North-East in view of the Government of India instructions referred to in the judgment of the Guwahati Bench of the Tribunal relied upon by him.

17. Regarding the plea of limitation taken by the respondents, he has drawn attention to the averments in his MA which is still pending disposal. Regarding non-joinder of necessary parties, he stated that all that he is seeking is relief against incorrect orders passed by the Government of India and therefore it was not necessary for him to implead persons who had superseded him. In any case, he clarified, he was not seeking a higher seniority over those who have been promoted by virtue of orders passed in June, 91. He has also filed a Misc. Application praying for ignoring the adverse ACRs for the years 1988-89 and 1989-90. According to him, however, he would be eligible for promotion even on merits. He further argued that the Tribunal is competent to issue a direction to the respondents to grant promotion to the applicant if it is found that the applicant has been wrongly ignored for promotion and it is not that the Tribunal can merely direct reconsideration of the case of the applicant for promotion. He sought perusal of his ACRs and claimed that since he is entitled to promotion on merit basis, the Tribunal should issue a direction to the respondents to grant promotion to the applicant and since he was unjustifiably ignored for promotion from June, 91, the promotion

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should now be granted to him with retrospective effect and with all consequential benefits.

18. On conclusion of his arguments, the applicant submitted ^{before} us a long list of judgments relied upon by him in support of his various averments and arguments. In our view, it is not necessary for us to refer to all the judgments cited by the applicant, because the same point is repeated in several of them and some of the judgments do have even a remote relevance to the issues in relation to which these have been cited. Important amongst the judgments cited by the applicant are referred to below alongwith the applicant's conclusions therefrom. On the question whether the Tribunal can straightway direct grant of promotion to the government servant, he referred to the powers of the Tribunal as mentioned in the judgment of the Hon'ble Supreme Court in Shri S.P. Sampath Kumar Vs Union of India and others, ATE 1987 (1) SC 34. His view was that in view of the fact that the Tribunal is intended to be a substitute for the High Courts in service matters, it has the power to order promotion to a higher post straightway. He has also referred to the judgement of the Hon'ble Supreme Court in P.L.Pamchandra Iyer and others Vs. Union of India and others, AIR 1984 SC 541, wherein the Hon'ble Supreme Court had directed that the petitioners in that case should be put in the revised scale of pay from the date when others selected on the post were awarded the revised scale. This judgment has also been relied upon by the applicant for the view that promotion can be ordered with retrospective effect. On the issue that once the applicant was asked to give option regarding the cadre to which he was to be inducted in A.I.F./Doordarshan and once he had given his option the respondents were restrained from not acting upon the option on the ground of promissory estoppel, he has relied upon the judgement of the Principal Bench of the Tribunal in Smt. Lalita Pani Vs Union of India and Anr., ATE 1990 (1) CAT 97. In this case the Principal Bench of the Tribunal

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had held on the facts of that case before it that once the name of the applicant had been included in the select list after proper examination, the applicant was entitled to be appointed, inter alia, on the ground of promissory estoppel and that if there was a shortfall in the qualifying period of service that could not stand in the way of his promotion. He also relied upon the Full Bench Judgment in Shri B.N.Pangwani Vs Union of India and others, ATF 1988 (1) CAT 633 on the question of what documents could be disclosed before the Tribunal and whether these could be made available to the applicant also for perusal. As held by the Full Bench in this judgment, the claim of privilege regarding disclosure of documents before the Tribunal would be subject only to provisions of Sections 123 and 124 of the Evidence Act. In this judgment, the Tribunal dealt with a case where the applicant had been prematurely retired under FR-56(j) and the Tribunal had held that the person challenging his premature retirement under FR 56(j) is entitled, subject only to provisions of Sections 123 and 124 of the Evidence Act, to inspect the official record of the appropriate authority on which such a decision is based. On the question of delay in filing the application, the applicant has relied upon the judgment of the Hon'ble Supreme Court in Uday Ehan Gupta Vs Hari Shankar Bansal and others, AIR 1984 SC 1469, in which the Hon'ble Supreme Court held that in the circumstances of the case High Court should afford opportunity to the appellant to seek condonation of delay in filing the revision appeal before it against a judgment of the lower court. He also relied upon the judgement of the Hon'ble Supreme Court in Union of India Vs M.P. Singh and others, AIR 1990 SC 1098, in support of the plea that it was not necessary to implead others who had been granted promotion ignoring the applicant. He had also cited a number of judgments on the issue of unfairness, discrimination, abuse of power, malice etc. but in our view, these judgments have no direct bearing on the present case and in order to save time and avoid

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unnecessarily lengthening the order, these are not being ^{referred to have} ~~considered~~.

19. The learned counsel for the respondents produced before us the ACPs of the applicant and also of the other 6 officers mentioned above who, according to the applicant, did not have better record of service than the applicant and were yet granted promotion ignoring the applicant. He also produced before us other records summoned by us, namely, the file in which the representations submitted by the applicant against the adverse remarks in his ACPs were dealt with, DFC proceedings for the promotions made by orders passed in June, 91, July, 94 and July, 95, file relating to allocation of cadres, file regarding year-wise determination of vacancies for promotions and a chart containing the summary of the ACPs of the applicant in respect of the considerations made by each DFC. He argued that the promotions made in June, 91 were on the basis of recommendation by a particular DFC but this DFC has considered officers in the cone of consideration separately for vacancies for each year. The applicant's case was also considered separately for vacancies of each year viz. 1989 and 1990 alongwith the names of others in the cone of consideration. Thus, according to him, there was no clubbing of vacancies, in that there was not a single cone of consideration for all promotions made by order dated June, 91. The same procedure had been followed while passing subsequent promotion orders which have been impugned by the applicant. The result of the deliberations of the DFC on the basis of which promotions were made in June 1991 was kept in a sealed cover as far as the applicant was concerned, and after the disciplinary proceedings were concluded, the sealed cover was opened but since the applicant had been found to be "unfit" for promotion by the DFC, he was not granted promotion. The applicant had also not been found fit by the DFC held for promotions made in July, 94. There were adverse

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remarks in some of the ACRs of the applicant during the relevant periods which were considered by the DPCs. The adverse remarks for the periods from 1-1-84 to 11-5-84 and for 12-5-84 to 31-10-84 had been communicated to the applicant. As regards 1988-89 and 1989-90, the applicant has moved the Tribunal against the adverse remarks recorded in ACRs but the applicant's OA on this point was dismissed by the Tribunal. Therefore these adverse remarks had become final. All these adverse remarks figured in the assessment by the DPCs of the performance of the applicant and therefore he could not be granted promotion. The promotions made in July, 94 related upto the year 92-93 and therefore adverse remarks of 1988-89 and 1989-90 figured during the deliberations of the DPC for the years upto 1992-93. Even otherwise the applicant had not earned remarks higher than "Good" for those years for which he had not got adverse remarks. Therefore, he was not found fit by the DPCs for promotion.

20. The learned counsel for the respondents added that the criterion adopted by the DPCs for judging fitness for promotion was "selection". The promotion orders made in June, 91 were on the basis of the old rules prevailing prior to 5-11-90 and the method prescribed for promotion in those rules was selection. As regards the new Rules of 1990, on the basis of which promotions were made as per the order passed in July, 94, these are silent on the question whether the method for promotion to be adopted was selection or seniority-cum-suitability. However, he drew our attention to the instructions relied upon in the written reply (Annexure-P1) which had been incorporated in the OM dated 10-4-1989 issued by Department of Personnel

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and Training, Government of India, on which reliance had been placed by the applicant also, to the effect that where UPSC is associated for promotions to Group-A posts, the criterion for promotion would be "selection". Therefore, the method "selection" had rightly been adopted for effecting all these promotions.

21. Further, according to him, as seen from the ACEs of other 6 officers whose promotion has been impugned by the applicant though by not making them respondents in the OA, they had much better record of service as seen from their ACEs. Regarding the allocation of cadres, he drew attention to Rule 13 of the new Rules which provided for relaxation of any of the rules. By virtue of this provision the Government had exercised this power and had decided to ignore the options given earlier for various cadres by the candidates seeking promotion, for reasons recorded as follows in a communication dated 4/8th February, 1994 addressed to the UPSC in connection with the holding of the DPC.

"As per IB(P)S Rules, the Programme Executives, Farm Radio Officers and Extension Officers do not form feeder cadre for filling up of the posts in the Programme Production Cadre of All India Radio and Doordarshan in Junior Time Scale grade. As such, these officers are not eligible for consideration to this Programme Production Cadres. However, the provision in Rule 7.(6)(a)(i) has been incorporated in the IB(P)S Rules with the view that the Producers and other equated categories, ie. feeder grade to Programme Production Cadre is a dying cadre as no more

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recruitment is made. Once all the number of officers are exhausted, the vacancies will be filled up from amongst Programme Executives etc. only. As such, the option exercised by the Programme Executives for allocation to Programme Production Cadre may be ignored. The DPC has been given inherent power for allocation of cadre by sub-rule (6)(a)(ii) of Rule 7. To sum up, the Programme Executives etc. may be considered only for the vacancies of Programme Management Cadre of AIF and Doordashan in Junior Time Scale grade and their option to Production Cadre of AIF and Doordarshan may be ignored."

Therefore, the respondents were justified in ignoring the option exercised by the applicant for allocation to the Programme Production Cadre of A.I.R. Regarding consideration of the other qualifications of the applicant, special recognition for service in North-East region, etc., he stated that the entire matter was before the DPCs in the form of the ACRs of the applicant in which the applicant's own assessment of his performance had also been recorded and it was for the DPC to decide in what manner to assess the performance of the applicant. Maybe the bad points of the applicant outweighed the good points and therefore the DPC decided not to consider the applicant as fit for promotion. As regards non-promotion of the applicant by the orders passed in July, 1995, the learned counsel for the respondents stated that the cone of consideration for promotion was restricted to Producers and therefore the applicant not being a Producer but a Programme Executive was not considered for promotion at that time.

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22. On the question whether the Tribunal could take up the exercise of judging whether a person was fit for promotion or not, he relied upon the judgment of the Hon'ble Supreme Court in Ramesh Motiram Ramchandani Vs Union of India and others, 1995 Supp (2) SCC 139, wherein the Hon'ble Supreme Court held that a Tribunal would not be justified in its evaluation by itself how the DFC has to consider the relative merits of the candidates. Therefore, according to him, the Tribunal cannot sit on the judgment over the assessment of the performance of the candidates for the purpose of promotion. Virtually the same point, according to him, has been made by the Hon'ble Supreme Court in S.L.Soni Vs State of M.P. and another, 1995 Supp (3) SCC 156 when the Hon'ble Supreme Court held that it could not itself evaluate the relative merits of the candidates seeking promotion and had noted that a High Level Committee had objectively considered the appellant's claim in that case and had found him not fit for promotion on merits. He urged that the Tribunal would also, therefore, not be justified in taking upon itself the task of assessing the relative merits of the candidates seeking promotion.

23. He next cited a judgment of the Hon'ble Supreme Court in State of M.P. and others Vs Vishnu Dutta (VS) Dubey and others, 1995 Supp (4) SCC 461, wherein it was held that the Tribunal in that case was not justified in directing that the respondent be promoted to the post of Dy. Superintendent of Police and that the Tribunal could only send the case back to the State Government with a direction to consider the respondent for promotion. This judgment was

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cited by him to show that the Tribunal would not be justified in itself directing grant of promotion to an applicant but it can direct consideration or reconsideration of his case. He cited yet another judgment of the Hon'ble Supreme Court in Administrator of Union Territory of Daman and Diu and others Vs E.D. Valand, 1995 Supp (4) SCC 593 on the question whether a delayed application could be entertained. In this case Shri Valand had submitted a representation sometime in 1985 requesting the administration to consider him for promotion to the post of Asstt. Engineer w.e.f. August, 1977 when some persons junior to him were promoted. The representation was rejected in October, 1986 but he made several representations thereafter which were also rejected. Finally, in March, 1990 he filed the application before the Tribunal which was allowed by the Tribunal. The Hon'ble Supreme Court held that the Tribunal was not justified in entertaining the stale claim. A cause of action had arisen to Shri Valand when he was promoted to the post of Junior Engineer in 1979 w.e.f. Sept. 1972. Even after his representation was rejected in October, 1986, he did not approach the court for 4 years and finally he filed the application before the Tribunal in March, 1990. The Tribunal, according to the Hon'ble Supreme Court, fell into patent error in brushing aside the question of limitation by observing that the respondent has made his representations from time to time and as such the limitation would not come in his way. He then relied upon the judgment of the Hon'ble Supreme Court in Secretary to Government of India and others Vs Shiv Ram Mahadu Gaikwad, 1995 Supp (3) SCC 231 to urge that where the plea of

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limitation was raised on behalf of the respondents and it was urged that the application was barred by Section 21 of the Administrative Tribunals Act, the Tribunal would not be justified overlooking this question altogether. He urged that, therefore, the pleas of limitation raised by the respondents in this case with regard to the claim of promotion w.e.f. June, 91 should be suitably dealt with by the Tribunal.

24. Thereafter, he referred to the judgement of the Hon'ble Supreme Court in Union of India and Anr. Vs Amrik Singh and Ors., (1994) 1 SCC 269, in which it was held that the Comptroller and Auditor General was competent to issue administrative instructions in matters relating to conditions of service of the personnel working under him in areas which were not specifically covered by the rules framed under Article 309 read with Article 148 (5) of the Constitution. On the same analogy, he suggested that the Government was competent to issue instructions with regard to areas not specifically covered by the rules. The government had accordingly taken a decision that the promotions under the IBPS Rules brought into force w.e.f. 5-11-90 to the Junior Time Scale of the service should be by selection. He then relied upon the judgment of the Hon'ble Supreme Court in Ajeet Singh Singhvi Vs State of Rajasthan, 1991 Supp (1) SCC 343, wherein it was held that when the Government, being itself the author of the rule, keeps to itself as a matter of prudence, the right to remove any ambiguity, the view of the Government in respect of the rule should normally clinch the matter. This judgment was cited to support the view that if there is any ambiguity in the Rules, it could be removed by the Government

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by issuing a suitable clarification. Regarding non-impleadment of necessary parties, the learned counsel for the respondents relied upon the Full Bench judgment of the Tribunal in H.S.Pamamoorthy and Anr. Vs union of India and others delivered on 16-12-94 and reported in Vol.3 of Full Bench Judgments of Central Administrative Tribunal, 1991-94, page 430, published by Bahri Brothers, Delhi, in which it was held that the seniority of those who had not been impleaded by the applicant in the OA could not be affected by the judgment of the Tribunal. He also relied upon another Full Bench judgment of the Tribunal in T.S.Gopi and Ors. Vs Deputy Controller of Customs and Ors. delivered on 31-3-89 and published in Full Bench Judgements of the Central Administrative Tribunals, 1986-89 Vol.1, page 341, published by Bahri Brothers, Delhi wherein it has been held that a necessary party is one without whom no order can be made effectively. He added that all persons who had become senior to the applicant by virtue of their having been granted promotion, ignoring the applicant, were necessary parties who ought to have been impleaded by the applicant in the OA. Therefore, according to him, non-impleadment of such parties is fatal to the applicant's claim.

25. By way of rejoinder, the applicant stated during his oral arguments that once the old Rules had been repealed by making a specific provision in the new Rules, those old Rules could not be applied for granting promotions. According to him all promotions from June, 91 onwards should have been under the new Rules. The respondents chose arbitrarily to apply one or the other set of Rules as it suited them. He contended that as per para 12.1 of the

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Government of India's OM dated 10-4-89, to which a reference had been made earlier, adverse remarks pertaining to 3 immediately preceding years prior to the year in which DPC had held have to be ignored. Therefore, according to him, all the adverse remarks taken into account by the respondents should not have been taken into account and accordingly the proceedings of the DPC were vitiated on account of consideration of irrelevant remarks in the ACRs. He also alleged that the ACRs beyond 1987 were not available in his ACE folder and therefore, also the proceedings of the DPC were vitiated due to non-consideration of the remarks therein.

26. We have heard the applicant and the learned counsel for the respondents and have perused the records and the judgments cited before us.

27. Before considering other issues raised in this O.A, we may, in the first instance, consider the question whether the promotions in this case to the Junior Time Scale of IBPS (post of Asstt. Station Director) were to be made on the basis of the method of 'selection' or on the basis of seniority cum suitability and whether the applicant would be entitled to promotion by the DPCs held in June 1991, July 1994 and July 1995. The respondents have taken the stand that since promotions made in June 1991 were with regard to vacancies of the periods prior to 5.11.1990, the date on which new rules were brought into force, these were made on the basis of the old rules which clearly prescribe the method of 'selection'. The old rules placed by the applicant on record show that the post of Asstt. Station Director, which is in Junior Time Scale and to which the applicant is seeking promotion is to be filled up by 'selection' (page 296 of the paper book, part of rejoinder to the reply of the respondents). The applicant's case is that the since new rules were brought into force w.e.f.

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5.11.1990 and promotions were made thereafter, the new rules should apply. The new rules are silent on the question whether promotion to Junior Time Scale of IBPS should be on the basis of selection or seniority cum fitness. Unquestionably, the respondents have adopted the mode of selection for making promotions by orders passed in June 1991 and July 1994. We need not decide the question whether promotions should be made as per the old rules or the new rules. But even if the applicant's plea is accepted that the promotions should be in accordance with the new rules, which are silent on the question whether the promotions should be on the basis of the method of selection or seniority cum suitability, question is whether the government was in error in adopting the method of selection for making promotions from June 1991 onwards. The O.M dated 10.4.89 issued by the Department of Personnel and Training, Govt. of India, relating to Departmental Promotion Committees, (Swamy's Compilation of Seniority and Promotion 3rd Edition, February 1992, page 72 onwards) consolidates the instructions on the subject. These have been relied upon by the applicant also. Para 2.2 of these instructions provides that the UPSC should be associated with DPCs in respect of all Central Civil Services/posts belonging to Group 'A' where promotion is based on the principles of selection unless it has been decided by the Government not to associate the UPSC with a Group 'A' DPC. The para further provides that the UPSC need not be associated in respect of posts belonging to Group 'A', if the promotion is not based on the principles of selection but on seniority cum fitness. The UPSC was associated with making promotions made by orders issued in June 1991 and July 1994. The fact that the UPSC was associated with these promotions means that the Government had decided that these promotions should be on the basis of selection. Even if new rules are applicable to all the promotions effected from June 1991 onwards and further even if

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