

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

O.A. No. 364/2001

WITH

M.A. No. 321/2001

DATE OF DECISION 9/4/2002

S.D. Shastri

... Petitioner

Applicant present in person.

Versus

Union of India & Ors. ... Respondents

Mr. T.P. Sharma

... Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice O.P. Garg, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

(A.P. Nagrath)  
Adm. Member

(Justice O.P. Garg)  
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 9/10/2002

1. O.A. No. 364/2001

with

2. M.A. No. 321/2001

S.D. Shastri son of Shri Haridas aged 56 years, J.T.S.  
Programme Officer (ASD), All India Radio, Jaipur - 302 001.

... Applicant.

versus

1. Union of India through the Secretary, Ministry of Information  
and Broadcasting, Shastri Bhawan, New Delhi - 110 001

2. The Director General, All India Radio, Akashvani Bhawan, New  
Delhi - 110 001

3. Ms. Pramila Rao, Dy. Director (Ad hoc STS Officer), All India  
Radio, Jaipur - 302 001

... Respondents.

Applicant present in person.

Mr. T.P. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice O.P. Garg, Vice Chairman

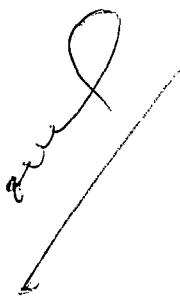
Hon'ble Mr. A.P. Nagrath, Administrative Member



: O R D E R :

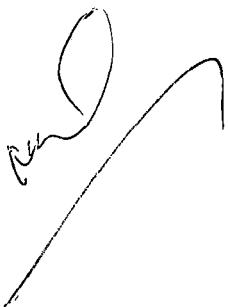
(Per Hon'ble Mr. Justice O.P. Garg)

Shorn of all superfluities, the thumb-nail sketch of the present case is that the applicant Shri S.D. Shastri who is presently working on ad hoc basis as Assistant Station Director, All India Radio, Jaipur, a post in Junior Time Scale, had initially joined on the post of Programme Executive (Hindi spoken word) on 16.02.1978. According to him, pursuant to the old rules governing the service conditions, he should have been promoted to the next post of Assistant Director (JTS) in Class-I cadre after qualifying service of five years. He was not promoted. The old rules were scrapped on being substituted by the Indian Broadcasting (Programme) Service Rules, 1990, notified on 5th of November, 1990 (for short "IBPS Rules, 1990"). After the enforcement of new Rules, 45 Programme Executives and 24 Producers were promoted as Assistant Station Director (in JTS Grade) in June, 1991. Some of these incumbents were junior to the applicant. The applicant, it is maintained, was denied the benefit of promotion as the sealed cover procedure was adopted in his case on the basis of a contemplated disciplinary action. In June, 1993, 147 Programme Executives and 86 Producers including respondent No.3, were promoted on ad hoc basis to the JTS Grade of IBPS and in course of time, their services were regularised. The applicant was informed that the disciplinary action against him was closed after administering him a simple warning by letter dated 13.11.1993. The representation made by the applicant to the departmental authorities did not evoke favourable response and therefore, he had to approach this Tribunal by filing O.A. No. 344/95 with the prayer that the respondents be commanded to promote him to JTS Grade with effect from June, 1991, with consequential benefits of promotion to STS Grade and payment of



arrears of salary etc. The said O.A. was dismissed on 31.07.96 by this (Jaipur) Bench of the Central Administrative Tribunal holding that the method of promotion to JTS Grade of IBPS from June, 1991, onwards was selection (Seniority-cum-merit). The applicant approached the Apex Court by filing S.L.P. No. 17189 of 1996, which was dismissed in limine on 16.09.1996.

2. A divergent view was taken in a similar matter by the Ernakulam Bench of the C.A.T. on 09.12.96 by holding that the method of promotion was non-selection (Seniority-cum-fitness). The decision of Ernakulam Bench was followed by the Bangalore Bench of the C.A.T. In order to resolve the conflicting position and to have an authoritative opinion on the point, a Full Bench of the Madras C.A.T. was convened, which agreeing with the view taken by the Jaipur Bench of C.A.T. held on 03.06.97 that the method of promotion to JTS Grade of IBPS was selection and not seniority. The Union of India and Others filed a Special Leave Petition No. 21747 of 1997 before the Hon'ble Supreme Court to challenge the decision of the Full Bench of Madras Bench of C.A.T. Smt. Lata Raju, one of the petitioners, had filed a writ petition before Hon'ble High Court, Madras, to challenge the order of Full Bench of Madras Bench of C.A.T. The said writ petition was transferred to the Apex Court from the High Court, Madras. It was registered as T.C. No. 08/99. The present applicant Shri S.D. Shastri, on coming to know of the case pending before the Apex Court, got himself impleaded as an intervener in T.C. No. 08/99. He also filed written arguments. Ultimately, Hon'ble Supreme Court by order dated 30.07.99 (Annex. A/3) dismissed the S.L.P. Nos. 21747 of 1997 and allowed the writ petition No. 8320 of 1997 filed in the High Court, Madras (registered as T.C. No. 08/99), setting aside the order of Full Bench of the Madras C.A.T. in O.A. No. 960/94. The said O.A. stood

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allowed. The view taken by the Ernakulam Bench and followed by Bangalore Bench of C.A.T. that the method of promotion to JTS post is on the basis of promotion by seniority subject to finding out the fitness of the candidate of the Programme Wing or the Production Wing, was approved. The natural consequence of the over-ruling of the decision of the Full Bench of Madras C.A.T. was that the view taken by the Jaipur Bench in O.A. No. 344/1995 filed by the present applicant was not approved. The law as stands is that the method of promotion after commencement of IBPS Rules, 1990, to the JTS of the Indian Broadcasting (Programme) Service is "seniority subject to finding out the fitness of the candidate", and not selection.

3. After the declaration of law by the Apex Court, the applicant made a detailed representaion dated 09.08.99 (Annex. A/4) to the respondents thereby asserting his claim for promotion as JTS officer with effect from June, 1991, and the consequential promotion to STS Grade with effect from March, 1997, with arrears of salary. This representation was followed by a reminder. The departmental authorities, it is alleged, did not move in the matter and since their inaction amounted to violation of law declared by Hon'ble the Supreme Court, the applicant initiated contempt proceedings. During the pendency of the Contempt Petition (No. 24/2000 filed on 12.01.2000), the respondents held out certain assurances before the Apex Court and on behalf of the Union of India / respondent-department, it was submitted that steps for convening the DPC had already been taken and the Union Public Service Commission was being approached and that the petitioner would be extended benefit in case he is found suitable, from the date he becomes entitled to it. In the light of the submissions made by the Additional Solicitor General, Hon'ble Supreme Court passed an order on 05.05.2000 in the contempt petition. Later on, certain documents were also summoned.



The contempt petition was ultimately dismissed on 13.02.2001 (Annexure A/11), which reads as follows:-

" In the first place, there is no mandatory order of this Court which the respondents can be said to have breached. The remedy of the contempt petitioner lies elsewhere. The contempt petition is dismissed."

4. The applicant thereafter, filed a writ petition before Hon'ble the Supreme Court under Article 32 of the Constitution claiming the following reliefs:-

- " (i) The respondents may kindly be directed to comply with the law declared by this Hon'ble Supreme Court in its order dated 30.07.99 in respect of promotion of this humble petitioner to JTS Grade to IBPS against the vacancy of 1988-89 or 1989 w.e.f. June, 91, and accordingly to promote him within a stipulated time.
- (ii) The consequential promotion to STS grade of IBPS w.e.f. March, 97, may also kindly be directed, from the date the juniors of this petitioner were promoted, on regular basis.
- (iii) This Hon'ble Court may also kindly be pleased to allow this petitioner the arrears of the salary w.e.f. June, 1991.
- (iv) Your Lordship may also be pleased to grant exemplary compensation against the damages caused to this petitioner from the malicious, harassing and torturous activities of the respondents during the last 10 years, including delaying tactics."

Writ Petition (Civil) No... D6222 of 2001 was dismissed by Hon'ble the Supreme Court on 13.08.2001 by passing the following order:-

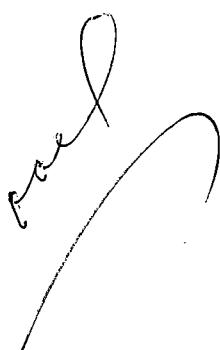
" We do not think that this is a writ petition which should be entertained under Article 32 of the Constitution. Accordingly, it is dismissed. If the petitioner so chooses, he may move the appropriate forum for relief."

5. Inspired from the observation made by Hon'ble the Supreme Court in the above quoted order, the applicant has filed the present O.A. claiming the reliefs which are identical to the reliefs claimed in the writ petition under Article 32 of the Constitution. It has been averred by the applicant in the present O.A. that after passing

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of the order dated 30.07.99 by Hon'ble the Supreme Court, all the previous legal proceedings, including orders passed in O.A. and S.L.P. filed by the applicant, have become irrelevant as they stand over-ruled; that the stand taken by the respondents in their affidavit dated 23.11.2000 filed in the contempt petition with regard to the denial of promotion to the petitioner on the basis of his having been not found fit for promotion with effect from June, 1993, is based on erroneous assumption and facts. According to the applicant, since he was entitled for promotion with effect from June, 1991, against the vacancy of 1988-89 or so and the promotion of June, 1991, is absolutely covered by the order of Hon'ble the Supreme Court and also by the IBPS Rules, 1990, the question of considering him for promotion with effect from June, 1993, did not arise.

6. A detailed reply has been filed on behalf of the respondents. It is asserted that the decision of the Apex Court dated 30.07.99 does not apply in respect of promotions made to the cadre of Assistant Station Director against the vacancies existing prior to the commencement of IBPS Rules; that the promotions made in the year 1991 in the cadre of Assistant Station Director, were for the vacancies which occurred before commencement of IBPS Rules of 1990; that the applicant was duly considered by the DPC in 1991, but he was found unfit and as such, he was not promoted; that the case of the applicant was duly considered by the review D.P.C. in pursuance of the order of Hon'ble the Supreme Court, but he could not be promoted as he was again found unfit for promotion. The pleas with regard to limitation in the light of the provisions of Section 21 of the Administrative Tribunals Act, 1985, as well as that of constructive res judicata have also been raised.

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7. Heard Shri S.D. Shastri, the applicant, who appeared in person, and argued his case, as well as Shri T.P. Sharma, learned counsel for the respondents.

8. Shri T.P. Sharma, learned counsel for the respondents raised preliminary objection that the present O.A. is not maintainable atleast for two reasons: firstly, that the relief claimed by the applicant is barred by limitation as stipulated under Section 21 of the Administrative Tribunals Act, 1985, and, secondly, the controversy raised in the present O.A. has already been convassed, considered and determined in the earlier O.A. No. 344/95 and consequently, the principle of constructive res judicata comes in the way of the applicant to reopen the matter. Before embarking upon the factual matrix of the case, we would do well to clear the decks from the cobwebs of the preliminary legal objections about the maintainability of the present O.A. We, therefore, first take up the question of limitation. The applicant is claiming promotion to JTS grade of IBPS with effect from June, 1991 (against the vacancy of 1988-89 or 1989) in compliance with the law declared by Hon'ble the Supreme Court in its order dated 30th July, 1999 passed in T.C. No. 8/99, a copy of which is Annex. A/3 and consequential benefit of STS promotion w.e.f. March 1997 along with arrears of salary etc. As would be discussed and shown presently, the decision of the Apex Court relied upon by the applicant, has nothing to do and has no bearing on the promotion of the applicant to JTS grade against the vacancies of the year 1988-89. Suffice it to say, that the decision of the Apex Court dated 30.7.1999 related to the interpretation of various provisions of IBPS Rules, 1990. The controversy before the Apex Court was, whether in view of the provisions of IBPS Rules, 1990, the method of promotion to JTS grade of IBPS was 'selection' i.e. (seniority-cum-merit ) or 'non-

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selection' i.e. (Seniority subject to fitness). The unequivocal stand taken by the applicant is that his claim for promotion to JTS grade of IBPS w.e.f. June 1991, against the vacancies of 1988-89 was based on the old rules, i.e., which existed prior to the commencement of IBPS Rules of 1990. The applicant, therefore, cannot take advantage of the decision of the Hon'ble Supreme Court dated 30.7.1999 for the purpose of enlarging the period of limitation for one simple reason that the judgement on which he has based his claim in the present O.A. has no bearing on the controversy pertaining to promotion against the vacancies which occurred in 1988-89. As stated above, the applicant had earlier filed an O.A. No. 344 of 1995, which was decided on 31.7.1996 by this Bench. In that O.A. the question of limitation was raised. A copy of the judgement in the aforesaid O.A. has been filed by the respondents with the reply. In paras 37 and 38, the question of limitation has been dealt with and after a detailed discussion, it was held that '..... regardless of the merits of the applicant's case for promotion with reference to the orders passed in June 1991, the applicant's prayer for grant of promotion from June 1991, is time-barred. The applicant's M.A. seeking condonation of delay in filing the O.A. is rejected'. The applicant challenged the order dated 31.7.1996 passed in O.A. No. 344 of 1995 by filing S.L.P. No. 17189 of 1996 before the Hon'ble Supreme Court. It was dismissed on 16.9.1996. The finding that the O.A. filed in the year 1995 for grant of promotion from June 1991 was barred by time, became final. The present O.A. has been filed after about 6 years of the institution of the earlier O.A. No. 344 of 1995. We fully agree with the reasoning adopted in the judgement dated 31.7.1996 to hold that the O.A. No. 344 of 1995 was barred by limitation. In view of the fact that the O.A. which was instituted in the year 1995 for the same relief, was found to be barred by limitation, the subsequent

O.A. filed after about 6 years, i.e., on 21.8.2001, has of necessity, to be held to be barred by limitation.

9. The other preliminary objection that the present O.A. is not maintainable, as it is barred by the principle of constructive res judicata, may now be thrashed out. In the earlier O.A. No. 344 of 1995, the applicant has, in unambiguous terms, claimed promotion to JTS grade of IBPS w.e.f. June 1991 against the vacancies of 1988-89 with consequential benefits. Except for the subsidiary reliefs which may have become available to the applicant on account of passage of time, the basic relief claimed by him, is that he should be treated to have been promoted to JTS grade w.e.f. June 1991. The main plank on which the applicant has grounded his claim in the two OAs, i.e. earlier O.A. No. 344 of 1995 and the present O.A., remains the same. In the earlier O.A. it has been held that the applicant was not entitled to promotion of JTS grade of IBPS w.e.f. June 1991 as in the assessment by the Departmental Promotion Committee (D.P.C.), the applicant was not found fit on account of the adverse entry in his ACR. Before deciding the said OA, the relevant ACRs were produced before the Tribunal and after going through the same, it was observed in para 32 that ".... we can only say that since the applicant was not found fit for promotion (by DPC), which finding has not been interfered with by us, the question of issuing any direction to the respondents either to grant promotion to the applicant or even to reconsider his case for promotion does not arise". As said above, the applicant has preferred a Special Leave Petition before Hon'ble the Supreme Court but was not met with any better luck as it was dismissed. The judgement in the O.A. filed by the applicant himself has become final. It cannot be reopened by means of a subsequent O.A. Whatever has been canvassed by the applicant before us on the merits



of the case in the present O.A. has been duly considered in the earlier O.A. No. 344 of 1995. Unfortunately, the applicant was un-successful in establishing the case in his favour. The same controversy cannot be allowed to be reagitated time and again and if such a course is permitted to be adopted, the very purpose of the principle of res judicata or for that matter, constructive res judicata, would be rendered otiose.

10. The applicant, however, urged that since the Hon'ble Supreme Court has over-ruled the decision dated 31.7.1996 in O.A. No. 344 of 1995, while deciding T.C. No. 8 of 1999 and thereby also over-ruled the view taken by the Full Bench of C.A.T., Madras, whatever has been pleaded, argued and decided in the earlier O.A., is of no relevance and, therefore, the principle of constructive res judicata, would not be attracted. This submission has been stated simply to be rejected. In O.A. No. 344 of 1995, one of the questions which required determination, was whether 50% quota by promotion to the post of JTS, was to be filled by selection, i.e. seniority-cum-merit or the method to be adopted for promotion, was non-selection i.e., (seniority subject to fitness). This Bench in the said O.A. took the view that 50% quota by promotion to the post of JTS is to be filled by selection and not by seniority. This view was in opposition to the view taken by the Ernakulam Bench followed by the Bangalore Bench of the C.A.T. The Full Bench of C.A.T., Madras, did not accept the view of the Ernakulam and the Bangalore Benches. The Apex Court while deciding T.C. No. 8 of 1999 and other related Special Leave Petitions, upheld the view taken by the Ernakulam and the Bangalore Benches of C.A.T. The decision of the Jaipur Bench was not completely over-ruled or wiped off. The over-ruling of the decision of the Jaipur Bench was limited to the controversy with regard to the view that the method of promotion to the post of JTS



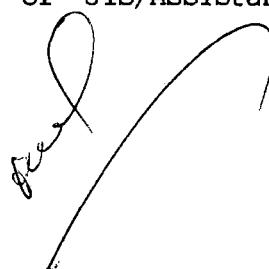
was by way of selection and not seniority. In all other respects, the findings recorded in the judgement of Jaipur Bench stood firm in relation to the applicant who, himself was the architect of the said O.A. and the judgement attained the finality on all other decided points as the S.L.P. filed by the applicant was dismissed. It cannot, therefore, be said that since a limited controversy came to be decided by Hon'ble the Supreme Court in some other cases the findings which went against the applicant in the O.A. which was filed against him, would stand totally effaced. It would hardly be of any consequence that the applicant had intervened and filed arguments in T.C. No. 8 of 1999 whereby the decision of the Full Bench of the C.A.T., Madras, was challenged.

11. In our view, the preliminary objections raised on behalf of the respondents are well merited and we are of the opinion that the present O.A. is not only barred by limitation but is further not maintainable on account of the operation of the principle of res judicata.

12. Without repeating the facts all over again, so far as the controversy raised by the applicant in the present O.A. is concerned, it came to be finally decided in O.A. No. 344/95, which was dismissed by the Jaipur Bench of C.A.T. on 31.07.96. Aggrieved, the applicant went in S.L.P. before the Apex Court, which was dismissed on 16.09.96. The applicant, therefore, could not have reagitated the issues which stood concluded, of course, against him. It so happened that on account of divergent views taken by the Jaipur Bench, on the one hand, and the Ernakulam Bench followed by the Bangalore Bench of C.A.T., on the other, a reference was made for decision by the Full Bench in O.A. No. 960/94. The matter was referred for opinion of the Full Bench of the C.A.T., Madras. The

Full Bench disagreeing with the view of the Ernakulam and Bangalore Benches, approved the view taken by the Jaipur Bench. The decision of the Full Bench was assailed before the Apex Court from different quarters. As said above, Hon'ble the Supreme Court overruled the decision of the Full Bench of C.A.T., Madras, as well as that of Jaipur Bench. The applicant who was earlier silenced by the final decision made in O.A. No. 344/95 became active and armed with the observation, i.e., "if the petitioner so chooses, he may move the appropriate forum for the relief", made by the Apex Court dismissing the writ petition filed by the applicant under Article 32 of the Constitution of India has come forward to file the present second O.A. In nutshell, the sheet-anchor of the case of the applicant to claim the reliefs in the present O.A. is the decision of the Apex Court dated 30.07.99 (Annex. A/3). Now it is the time to examine and determine as to how far the aforesaid decision of the Apex Court helps the applicant and whether the controversy which has been earlier agitated and finally decided can be reopened?

13. The applicant has proceeded on the premise that the earlier litigation which culminated in the dismissal of O.A. No. 344/95 as well as S.L.P. No. 17189 of 1996 has to be totally ignored as the view taken earlier in the O.A. filed before the Jaipur Bench stands totally nullified by the subsequent decision of the Apex Court and since the applicant was allowed to intervene and to submit arguments in the second round of litigation before the Hon'ble Supreme Court, he has acquired an indefeasible right to reopen and to reagitate the matter. This submission has been repelled by the learned counsel for the respondents with all vehemence at his command. It is maintained that the decision dated 30.07.99 rendered by Hon'ble the Supreme Court does not apply in respect of promotions made to the cadre of JTS/Assistant Station Director for the

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vacancies existing prior to the commencement of IBPS Rules, 1990. The promotions made in the year 1991 in the aforesaid cadre were for the vacancies which occurred before the new rules came into being. We have thoroughly scanned the decision of the Apex Court dated 30.07.99, a copy of which is Annexure A/3 to the application, and find that it was confined to the interpretation of certain provisions of IBPS Rules, 1990, and the law as has been declared by Hon'ble the Supreme Court and which is undoubtedly binding on all authorities by virtue of Article 141 of the Constitution of India, is that the method promotion after commencement of IBPS Rules, 1990 to the JTS is seniority subject to finding out the fitness of the candidate and not selection. The said decision of the Apex Court does not embrace within its ambit the cases of promotion against the vacancies which occurred prior to the commencement of IBPS Rules, 1990. The decision positively deals with the method of promotion within the parameters provided under the new Rules. The applicant, in the earlier O.A. No. 344/95 and now in the present O.A. also, is claiming promotion since June, 1991, against the vacancies which occurred in the year 1988-89. The new Rules came into force on 05.11.1990. The case of the applicant, therefore, relates to the promotion against the vacancies which occurred under the old Rules or to put differently, prior to commencement of the new IBPS Rules, 1990. Shri Shastri, the applicant, took pains to point out that the DPC for promotion against the vacancies of the year 1988-89 was convened in June, 1991, i.e., at the time when the old Rules stood repealed and the new IBPS Rules had come into force. A reference was made to Rule 16 of the IBPS Rules, 1990, which deals with **Repeal and Saving** situations. Shri T.P. Sharma, learned counsel for the respondents, however, urged that notwithstanding the repeal and saving clause, the old vacancies, that is occurring prior to the commencement of the Rules of 1990, were required to be filled up in

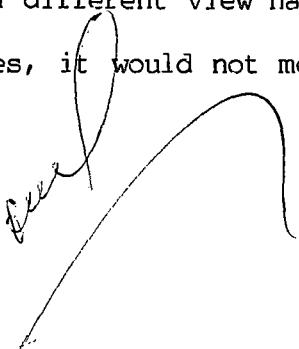
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accordance with the old Rules. In support of his contention, he placed reliance on the decision of the Apex Court in the case of Y.V. Rangaiah vs. J. Sreenivasa Rao, 1983 SCC (L&S) page 382. In the said case, the Apex Court had to consider the question about applicability of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules which laid down the procedure for appointment by promotion to the posts in that service. Considering the said rules it was observed that when the said rules enjoined the appointing authority to prepare panels for selecting promotees yearwise in old vacancies to be filled in by promotion if panels were not prepared at appropriate time the authorities could be directed to prepare such panels and while preparing those panels for the earlier years the then existing statutory rules of recruitment had to be applied. In another case of P. Ganeshwar Rao vs. State of Andhra Pradesh and Another, 1989 SCC (L&S) page 123, the Apex Court had to consider the question whether the process of filling up of 51 vacancies which had been notified by the Public Service Commission for direct recruitment under the then existing recruitment rules which permitted clubbing of temporary vacancies also for the purpose of recruitment, could be continued further if pending such recruitment process the rules of recruitment got amended and only  $37\frac{1}{2}$  % of substantive vacancies could be filled up by direct recruitment. The answer to this question was that the amendment to the recruitment rules referred to future vacancies only as the explanation which was introduced by way of amendment to Special Rules on 28.04.1980 contained the crucial words "37 $\frac{1}{2}$  % substantive vacancies arising in the category of Assistant Engineers shall be filled by direct recruitment...". The words vacancies arising in the category were emphasised to mean future vacancies and which could not cover earlier erstwhile vacancies and, therefore, it was held that for filling up the earlier vacancies which had arisen

prior to the amendment, the old rules would apply. A reference may also be made on the point to the decision of the Apex Court in the case of P. Mahendran vs. State of Karnataka, 1990 SCC (L&S) page 163.

14. The reliefs claimed by the applicant clearly revolve round the vacancies which had occurred prior to the commencement of the IBPS Rules, 1990. In order to claim the basic relief, the applicant had relied upon the old rules. He cannot, therefore, be permitted to hold loose and fast by taking shifting stands to suit the exigencies of his case. On the one hand, he is seeking his promotion against the vacancies occurring prior to the commencement of the IBPS Rules, 1990, and on the other hand, he is seeking the benefit of the decision of the Apex Court which centres round the interpretation of the Rules concerning the method of selection under the new IBPS Rules, 1990. The two contradictory positions cannot be reconciled. In our view, the subsequent decision of the Apex Court dated 30.07.99 is hardly of any assistance to the applicant and is not in any manner germane to the controversy and the reliefs claimed by him in the earlier O.A. No. 344/95.

15. It would not be out of place to mention that the earlier decision of the Jaipur Bench of C.A.T. dated 31.07.96 in O.A. No. 344/95 and as affirmed by the Apex Court by dismissing the S.L.P. filed by the applicant on 16.09.96 encompassed all the possible pleas which the applicant could take and has taken in the present O.A. In so far as the applicant is concerned, most of the findings in O.A. No. 344/95 remain undisturbed and have acquired finality. It was in respect of the method of promotion that there has been deviation in view. If a different view has been taken by the Apex Court in some other cases, it would not mean that findings on all

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other issues recorded in O.A. No. 344/95 stood effaced. In our view, except for the finding with regard to the method of promotion, the findings recorded in respect of other matters remain unaffected or undisturbed.

16. Now taking the best case in favour of the applicant that all the previous findings in O.A. No. 344/95 have to be ignored and on account of the subsequent decision of the Apex Court dated 30.07.99, the applicant is entitled to reagitate the matter, we have no hesitation in coming to the conclusion that the applicant is not entitled to the reliefs claimed. On merits, he has no case. The DPC which was convened in June, 1991, did not find the applicant fit for promotion. In subsequent years also, he was superseded on account of his being unworthy or unfit for promotion.

17. The matter was reviewed pursuant to the order dated 05.05.2000 passed by the Hon'ble Supreme Court in Contempt Petition No. 94/2000, which reads as follows:-

" Mr. K.N. Raval, learned Additional Solicitor General submits that effective steps have been taken for convening of the DPC and the UPSC has been approached for the purpose, which has drawn up a schedule. We hope that the matter shall be resolved before we take up the matter on the next date and the party is able to avail of the benefit of the order of this Court. The learned Additional Solicitor General submits that as and when the decision is taken by the DPC, in case the decision is in favour of the petitioner, he shall be given the benefit from the date from which he becomes entitled to it."

Accordingly, a review DPC was convened. By our order dated 11.03.2002, we had directed the respondents to produce before us the related documents with regard to the proceedings of review DPC. The original documents were placed before us. Photostat copies of the proceedings have been kept on record. The Chairman of review DPC was a member of UPSC while DDG, Doordarshan and the Director, Ministry of Information & Broadcasting were the Members. The review

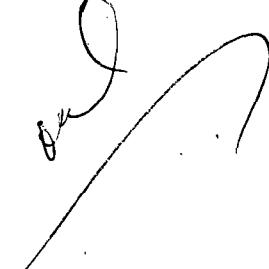


DPC was constituted with regard to promotion to Programme Management Cadre of AIR/Doordarshan (Group 'A') in Junior Time Scale of Indian Broadcasting (Programme) Service as a sequel to implementation of judgement delivered by the Hon'ble Supreme Court. The recommendation of the review DPC was approved by the UPSC as would be apparent from the letter dated 17.08.2000 addressed by Shri P.R. Dhiman, to the Secretary to the Government of India, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi. In the assessment for the year 1990-91, the name of the applicant is at serial No. 30. He was found to be unfit for promotion. In the assessment year of 1991-92, the name of the applicant is at serial No. 2. He was again found unfit. Similarly, in the assessment year of 1992-93, the applicant, whose name was shown at serial No. 2, was categorised as unfit. The documents brought before us clearly indicate that the case of the applicant was duly considered for promotion by the review DPC but the applicant was not recommended for promotion as he was not found fit for the purpose. The fact, therefore, remains that the service record of the applicant was scrutinised, scanned and marshalled time and again and whatever reasons there may be, on objective assessment, he was found unfit for promotion. The controversy whether the method of promotion was selection or seniority loses significance in view of the categorical repeated assessment of the applicant as unfit for promotion by a high powered DPC and for that matter the review DPC.

18. The applicant made an attempt to convass before us that on account of certain machinations and manipulations of the departmental authorities, he was deprived of his legitimate right to get promotion. The bald submission or assertion of the applicant without any tangible material on the point cannot be accepted. He has not been able to establish that any one or more of the Members



of the DPC/review DPC entertained a bias against him or was actuated by malafides. The law on the point is well settled. Where a DPC has considered the candidature of an employee on the basis of his service record and made appropriate objective assessment, it is not open for the Court or for that matter a Tribunal to sit in judgement over the assessment made by the DPC as an appellate authority and to substitute its own findings for those of the DPC. In the case of S.L. Soni vs. State of M.P. and Another, 1995 (2) SLR page 760, Hon'ble Supreme Court had found that where a High Level Committee which had a Member of the UPSC as Chairman, had objectively considered the claim of an employee for promotion and it found him unfit for promotion on merit, the Court or the Tribunal in exercise of its judicial power cannot itself evaluate the relative merits of the candidates. In Ramesh Motiram Ramchandani vs. Union of India and Others, 1995 Supp (2) SCC 139, the Apex Court held that the Tribunal would not be justified in evaluation by itself how the DPC has to consider the relative merits of the candidates. In the case of Nutan Arvind vs. Union of India & Ors., (1996) 33 ATC page 228, Hon'ble Supreme Court observed that ".... when a High Level Committee had considered the respective merits of the candidates, assessed the grading and considered the case for promotion, the Court cannot sit over the assessment made by the DPC as an appellate authority...". The Court or the Tribunal cannot act as a Selection Body (Dr. Kripa Ram Mathur vs. State of U.P. and Others, 2000 (1) All India Services Journal page 347). In a series of decisions, the Apex Court has ruled that normally it is wise and safe for the Courts to leave the decision to the experts who are more familiar with the problems they face than the Courts generally are. The area of interference by the Courts would be limited to whether the expert body had contravened any statutory or binding rule and while doing so, the Court should show due regard to the appraisal or the opinion



expressed by the experts and on whose recommendations, the departmental authorities had acted. Where the decision or the appraisal by the DPC <sup>mannered</sup> meant by higher official having no prejudice or pique against the applicant, is based on objective consideration the Court would not in any manner interfere with the matter, unless the findings are adjudged to be perverse or afflicted by malafides or malice. In the instant case, the minutes of the proceedings of the review DPC leave no doubt in our mind that the assessment of the applicant and other candidates who were junior to him was based on objective consideration of the service record, including ACRs. After due deliberation, an appraisal was made. There has been a comparative assessment. The legal position is that no employee has a right to promotion but he has only a right to be considered for promotion according to rules. In the instant case, the applicant was considered for promotion at different stages against the vacancies whether they were governed by old rules or the new rules. But on consideration of his ACRs, he was labelled as "unfit" for promotion by the DPC or review DPC comprising of senior Members of the various departments, including UPSC.

19. Whatever may be the impact of the decision of the Apex Court dated 30.07.99 on the basis of which the applicant has founded the present O.A., he is not entitled to the reliefs claimed as he was found to be unfit for promotion against the vacancies which occurred in the years 1988-89 or subsequent thereto. As said above, this Court cannot sit over the assessment made by the DPC/review DPC as an appellate authority. DPC could come to its own conclusion after appraisal of the materials placed before it. The exercise was undertaken again pursuant to the orders of the Apex Court. The applicant was not found fit for promotion. Thus, there is no manifest error of law in not promoting the applicant against the

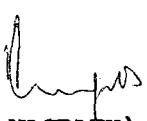
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specified vacancies calling for interference. The applicant, therefore, is not entitled to any one of the reliefs claimed in the present O.A.

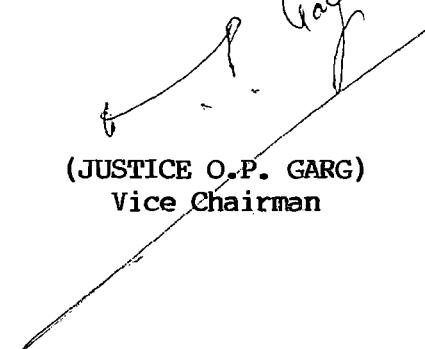
20. In the result, the O.A. turns out to be devoid of any merit and substance.

21. In the present O.A., the applicant has filed Misc. Application No. 321/2001 in which he has prayed the relief of mandatory injunction for directing the respondents Nos. 1 and 2 to prohibit the respondent No. 3 and other juniors, who have been permitted to function as his senior. A detailed reply to the said M.A. was filed by the respondent-department. Since we have decided the O.A. on merits and have found no merit in the case of the applicant, the relief of mandatory injunction claimed in the M.A. No. 321/2001 turns out to be misconceived and unwarranted.

22. For the reasons stated above, both the O.A. No. 364/2001 and M.A. No. 321/2001 are hereby dismissed without any order as to costs.

  
(A.P. NAGRATH)  
Adm. Member

  
(JUSTICE O.P. GARG)  
Vice Chairman

  
cvr.