

FORM NO. 4

(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI.

ORDER SHEET

Review APPLICATION NO. 9 OF 2001

APPLICANT (s) Union of India in O.A 279 (T) / 2000

RESPONDENT (s) C. P. R. Naik

ADVOCATE FOR APPLICANT(s) A. Deb Roy, Dr. Case

ADVOCATE FOR RESPONDENT(s) R. P. Sarma

Notes of the Registry	dated	Order of the Tribunal
This Review application has been filed by the Counsel for Union of India u/s 22 (3) (f) of the CAT Act, 1985 against the Judgement and order dated 21.5.2001 passed by this Hon'ble Tribunal in O.A. 279 (T) / 2000.	11.2.02 mb 26.2.02	List on 26.2.2002 after removing the defect. 11/1/02 Member Post the matter only when the deficiency is done.
Leave before the Hon'ble Court for further orders.	mb	16/1/02 Member Vice-Chairman
<u>Section Officer</u> <u>21/1/2002</u>		Vice-Chairman
Defects are to be enclosed the photocopy of the Judgement O.A. 279 (T) / 2000		

Refuel is not yet
remove till to day.

JK
23/9/04

Incident No
Sample No

02

21 AUG 2001
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
Guwahati Bench

R.A. NO. 297 OF 2001
IN O.A. NO. 279(T) OF 2000

Filed By
A. DEBNATH
S. C. C. G.
C. A. T., Guwahati Bench

IN THE MATTER OF

A Review Application under section 22(3)(f) of the Central Administrative Tribunal Act, 1985 for review of the judgement and order dated 21.5.2001 passed in O.A 279(T)/2000.

- AND -

IN THE MATTER OF

1. The Union of India represented by the Secretary to the Govt. of India, Ministry of Information and Broadcasting, New Delhi.

2. The Director General, All India Radio, New Delhi.

3. The Director General, Doordarshan, New Delhi.

..... Respondent.

- VS -

Shri C.P.R. Nair

Deputy Director (STS)

Doordarshan Kendra, Shillong

..... Opposition Party
Applicant

Contd....

The humble review application on behalf of the above named respondents.

MOST RESPECTFULLY SHEWETH

1. That the opposite party as applicant filed the OA ~~279(7)/2000~~ before, the Hon'ble Tribunal praying proper.
2. That the respondents contested the O.A. by filing written statement and advancing oral arguments in the case.
3. That after hearing both the sides the Hon'ble Tribunal allowed the O.A. by its judgement and order dated 21.5.2001 and the respondents are directed to confer the applicant with all consequential benefits.
4. Thus being highly aggrieved by and dissatisfied with the aforesaid judgement and order dated 21.5.2001 respondents prefer this Review Applications on the following amongst other grounds :-

- GROUND^S -

1. For that there is error apparent on the face of the records and as such the impugned judgement is liable to be reviewed.

2. For that Indian Broadcasting (Programme) Service Rules, 1990 were notified in the Gazette of India on 5.11.1990 and a copy of the same is enclosed as Annexure I which comprises following four independent cadres :

- (a) Programme Management Cadre of AIR
- (b) Programme Management Cadre of Doordarshan.
- (c) Programme Production Cadre of AIR &
- (d) Programme Production Cadre of Doordarshan.

3. For that the promotion to (a) & (b) and (c) & (d) in Junior Time Scale is made from the common cadre of Programme Executive and Producers etc. respectively of All India Radio and Doordarshan. Since there is a bifurcation of cadre which takes place, options were obtained from the officers in the feeder grade as envisaged under IB(P)S Rules.

4. For that the vacancies in JTS are to be filled up by the method of 50% by promotion and 50% by direct recruitment. It was necessary to prescribe the selection procedure for promotion. A perusal of Schedule IV to the IB(P)S rules clearly shows that it stipulates the selection procedure in respect of all grades whereas for JTS post, only the quota has been

prescribed. The selection procedure was inadvertently left out which is a lacuna in the rules. This lacunae was filled by adopting executive directions and procedure of "Selection" was adopted.

5. For that the application of "Selection" criterion was challenged before various Benches of this Hon'ble Tribunal and in OA No.1046/94, it was held that the criterion shall be "Seniority-cum-fitness". There were contradicting judgement from various Benches of this Hon'ble Tribunal and the Full Bench constituted at Madras held that the criterion shall be "Selection".

Reliance was placed in Union of India Vs Amrik Singh, (1994) 1 SCC 269 in support of the view that the Government was competent to issue administrative instruction in matters relating to conditions of service of the personnel working under them in areas which were not specifically covered by the rules framed under Article 309 read with Article 148(5) of the constitution. However, the Hon'ble Supreme Court's judgement dated the 30.7.99 declared that the criterion shall be "Seniority-cum-fitness". As sequel implementation of the judgement delivered by the Apex Court, a review DPC was held under the Chairmanship of Union Public Service Commission and results were declared vide Annexure A1 to the OA No.980/2000.

6. For that the operative part of the judgement dated the 27th March, 2001 delivered by the Hon'ble CAT, Ernakulam Bench in OA No.980/2000 is reproduced below for the sake of convenience.

We have very carefully gone through the pleading and other material placed on record and have heard the learned counsel on either side. The contention of the respondents that the reversion of the applicant was necessitated as the review DPC allocated the applicant to Programme Management Cadre of Doordarshan is wholly unsustainable, for it is not the role of the DPC to make allocation. As has been explained in the judgement of the Apex Court the DPC has to consider the suitability of the official for promotion and not to make allocation to different wing. The applicant having been promoted on a regular basis with effect from 18.7.94 in obedience to the order of the Tribunal in OA No.1046/94 declaring that the applicant was entitled for such regular promotion in the Programme Management Cadre of AIR, the reversion of the applicant from JTS of the cadre by the impugned order is solely unsustainable. Since the applicant holds a post in JTS substantively in the Programme Management Cadre of AIR with effect from 18.7.94 as per the order dated 11.4.97 (A-3), the allocation of the applicant to the Programme Management Cadre of Doordarshan on the basis of a foregone option which has

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not been acted upon and his consequent reversion from STS are also wholly unjustified.

In the light of what is stated above, we find that the applicant is entitled to succeed in this application. The impugned order A-1 is set aside to the extent it relates to the reversion of the applicant from JTS as also STS of the Programme Management Cadre of AIR with consequential benefits no costs."

7. For that it is submitted that the allocation of cadre was not a dispute before the Hon'ble Apex Court whereas the adoption criterion i.e. "Selection" or "Seniority-cum-fitness" was before it. Finally, the Apex Court in judgement dated 30.7.99 held that it shall be "Seniority-cum-fitness".
8. For that it is further submitted that rule 7(6) (a) (ii) of IB(P)S Rules clearly stipulated, the power rests with the DPC in the matter of allocation of cadres which reads as follows :-

"The Department Promotion Committee, as specified in Schedule VI, shall, after due consideration of the preference and suitability thereof for acceptance, will recommend the cadre as well as the media in which they shall be appointed on promotion."

9. For that the above provision laid down in the IB(P)S Rules that the DPC will also recommend the cadre as well as the media (i.e. AIR or Doordarshan has never been challenged in Court of Law including the Apex Court or quashed by them.

10. For that is is further submitted that the Hon'ble Apex Court in judgement dated 30.7.99 have not denied the role of DPC but overruled the decision of the Hon'ble CAT, Ernakulam Bench in OA No. 1046/94 i.e. no need to hold DPC and effect promotion on the result of screening. For the sake of convenience, the operative parts of the judgement dated 09.12.1996 in OA No.1046/94 and dated 30.7.99 in SLP No.21747/97 are reproduced below :-

O.A. No.1046/94

"It is seen from the reply statement in OA No. 1046/94 that while giving ad-hoc promotions applicants have been subjected to screening as a result of which they have been found fit for promotion to the JTS posts. In the view we have taken since no selection process is to be adopted for the 50% promotional quota in the JTS, we declare that the applicants are eligible to be promoted to the JTS on regular basis against the 50% promotional quota. Respondents 1 & 2 will pass appropriate orders in this regard within two months. Applicants will be entitled to receive all the benefits consequent to their

promotion to the JTS cadre in accordance with the above direction."

SLP No.21747/97

"Keeping in view the relevant Rules, we, thus, find that the view taken by the Bench is the correct view in the sense that the method of promotion to JTS posts is on the basis of promotion by seniority, subject to finding out the fitness of the candidate for the Programme Wing or the Production Wing, through the DPC. The Karnataka Bench, therefore, rightly followed the Ernakulam Bench decision. We therefore, do not see any reason to interfere in the two Special Leave Petitions. As a consequence the full Bench view of the Madrass Tribunal in OA No.1221 of 1994 cannot be said to be laying down the correct Law."

11. For that it is further submitted that a perusal of the judgement in OA No.1046/94 will clearly reveal that there was no direction for promoting the applicant to the Programme Management Cadre of All India Radio as indicated in the instant judgement dated the 28th March, 2001. The order of the Hon'ble Tribunal was only to promote the applicant to JTS without adopting the selection process. After review DPC the applicant in OA No. 1046/94 (Shri K.A.Muraleedharan) has been promoted to Programme Management Cadre of JTS of IB(P)S.

As such, the direction of the Hon'ble Tribunal has been complied with in letter and spirit.

12. For that it is further submitted that a number of officers who were left out by the original DPC of 1994 included in the review DPC as sequel to adoption of the criterion of "Seniority-cum-fitness". The empanelment of new officers by the review DPC has necessitated the re-allocation of cadres keeping in view the vacancy position, seniority of the applicant option received from applicant etc. etc.

13. For that it is further submitted that a number of officers who found place in the panel of original DPC are not now figuring in the panel of review DPC due to the change of criterion. These officers are also reverted to the substantive post vide Annexure - A.1 to the OA No.980/2000.

14. For that in the written statement in para 4 it has been mentioned that the Hon'ble Supreme Court has emphasised the need for selecting candidates through the DPC and not by a Screening Committee which did not associate the Union Public Service Commission while making ad-hoc promotion in 1995.

15. For that there is an apparent error in the judgement resulting in issuance of the direction to confer Shri C.P.R.Nair with all consequential benefits as such it is a fit case to review the impugned judgement.

16. For that at any rate the impugned judgement is liable to be reviewed,

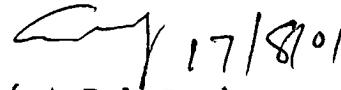
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It is therefore, respectfully prayed that, the Hon'ble Tribunal may be placed to admit the Review Application, call for the records, issue notice to the opposite party and after hearing the parties, review the impugned judgement and decide the original Application in accordance with law.

And for this act of kindness the petitioners as in duty bound shall ever pray.

C E R T I F I C A T E

Certified that the above grounds are good grounds of review and I undertake to support them at the time of hearing.


(A. Deb Roy)

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A F F I D A V I T

I, Sri PAOKHOLIEN SINGSON, aged about 55 yrs. son of LATE SIELPU SINGSON, presently working as DY. DIRECTOR GENERAL (NER) do hereby solemnly affirm and declare as follows :-

1. That I am the petitioner in the instant petition and I am fully acquainted with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 2, 4(3), 4(4), 4(5), 4(7) ⁴⁽⁴⁾ of the accompanying application are true to my knowledge and those made in paragraphs 1, 3(2), 4(6) being matter of records are true to my information derived therefrom which I believe to be true. The grounds urged are as per the legal advice.

20/8
And I sign this affidavit on this 20/8/01 day of August, 2001.

I identify by
A. Deb Roy
Advocate 20/8/01

P. H. Sengar
DEPONENT
Dy. Director General NER
Doordarshan, Guwahati.

Solemnly affirmed and declared before me by the deponent being identified by Shri A. Deb Roy, Advocate on this 17/8 day of August, 2001.

Alphor Das -
ADVOCATE 20th Aug '01