

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 12th day of November, 2009

ORIGINAL APPLICATION No.79/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

Ajay Sharma
s/o Shri B.L.Sharma
r/o E-139, Amba Bari, Jaipur
at present working as Production Assistant,
Doordarshan, Jhalana Doongari,
Jaipur.

..Applicant

(By Advocate: Mr. Rajendra Soni)

Versus

1. The Union of India through
the Secretary, Information and Broadcasting,
A-Block, Shastri Bhawan,
New Delhi.
2. Director General, Doordarshan,
Directorate of Doordarshan,
Mandi House,
New Delhi.
3. Director (P&EA),
Office of Directorate General of India,
All India Radio,
Broadcasting Corporation of India,
Prasar Bharti,
New Delhi.

4. Director,
Doordarshan Kendra,
Jhalana Doongari, Jaipur.

.. Respondents

(By Advocate: Mr. Tej Prakash Sharma)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA thereby praying for the following reliefs:-

- i) By issuing an appropriate order or direction the impugned order dated 25/2/2005 reverting the applicant from the post of PEX to the post of Production Assistant by withdrawing the promotion order dated 23/7/2002 and not regularly promoting him on the post of PEX from the date persons junior to his from TREX side has been so promoted with all consequential benefits and promoting separately a large number of TREX in clear contravention of the judgment passed by the Hon'ble Tribunal dated 7/7/2005 and 22/8/2003 be quashed and set aside with all consequential benefits in favour of the applicant and the impugned order dated 25/2/2005 be ordered to be withdrawn.
- ii) Any other appropriate order or direction which this Hon'ble Tribunal deem think fit and proper in the facts and circumstances of this case may kindly be passed in favour of the applicant.
- iii) Cost of the original applicant may also be awarded in favour of the applicant.

2. Briefly stated, facts of the case are that the applicant was initially appointed on the post of Production Assistant. He has earlier filed OA No.420/97 thereby challenging the illegal action of the respondents by which promotion on the post of Production Executive (PEX) were not being made on the basis of the seniority based on entry into service but such promotion were being made on the basis of maintaining 1:1 ratio of Production Assistant of

Doordarshan and Transmission Executive (TREX) of Akashwani. However, during the pendency of the OA, the applicant was given ad-hoc promotion on the post of PEX on the basis of seniority vide order dated 23.7.2002 (Ann.A/2). Vide the impugned order dated 25.2.2005, persons who were given promotion on ad-hoc basis since 24.12.1998 till 4.10.2002, and whose period of deputation was also extended upto 31.12.2004, were reverted to the substantive post of TREX or PEX etc. with immediate effect. This is the order which is under challenge before this Tribunal.

It may be stated that while issuing notices, this Tribunal has stayed operation of the impugned order Ann.A/1 till the next date which order was further modified till further orders vide order dated 18.3.2005 confining it to the applicant and not to those persons who were granted ad-hoc promotion by different orders w.e.f. 1998 onwards.

Further case of the applicant is that the matter was decided by the Full Bench of this Tribunal on 7.7.2003 and rule 4.A(1)(f) of the All India Radio (Group B Posts) Recruitment (Amendment) Rules, 1984 was quashed and the respondents were directed to redraft the rules.

3. Notice of this application was given to the respondents. The respondents have stated that the Production Assistants were engaged on contract basis and they belong to Staff Artists category. It is further stated that the Production Assistants, who were available as on 6.3.1982 were made regular Government employees and this category of employees were made eligible for

promotion to the post of PEX by the Recruitment Rules notified on 23rd October, 1984 on the basis of their year to year strength. It is also stated that consequent upon this process, the posts of this category became vacant due to non-induction after 1984 and these posts were added to the strength of TREX. The reason for not giving further extension beyond 31.12.2004 vide impugned order Ann.A/1 as can be seen from reply affidavit is that the (Department of Personnel and Training (DOPT) did not agree with the proposal for extending the ad-hoc promotion beyond 31.12.2004. According to the respondents, continuance of ad-hoc promotion does not confer any right on the promotee to hold the post for ever. It is stated that the effect of non-extension of ad-hoc appointment by the DOPT would have resulted into abolition of higher posts. Since the department was facing shortage of staff, as such, the only viable solution was that the eligible officials had to be promoted afresh on ad-hoc basis to safeguard the posts from getting abolished as well as to cope up with the essential needs of the department. Regarding making regular promotion on the aforesaid posts, the stand taken by the respondents in the reply is that no doubt the Hon'ble CAT, Jaipur Bench while relying upon the judgment of the Cuttack Bench dated 16.8.2000 in OA No.255/1994 has quashed the rule 4.A(1)(f) of the All India Radio (Group-B posts) Recruitment (Amendment) Rules,1984 but according to the respondents the said rule has not been declared ultra vires or illegal by the Hon'ble J&K High Court in the case of Mohd. Asraf Lone. The respondents have further stated that the judgment of the CAT is

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under challenge before the Hon'ble High Court and in view of this conflicting judgments, it is not possible to make regular promotion to the post of PEX till the matter is finally decided by the Hon'ble High Court.

The respondents by way of MA No. 41/2006 has placed on record letter dated 1.12.2005 whereby all the PEXs whose ad-hoc promotion was extended upto 31.12.2004 and were reverted vide the impugned order Ann.A/1 were given extension beyond 31.12.2004 upto 30.6.2005. It is further mentioned in that letter that case of ad-hoc PEX beyond 30.6.2005 for one year upto 30.6.2006 has also been referred to the Ministry of Information and Broadcasting/DOPT and thus, according to the respondents, the OA regarding reversion vide impugned order Ann.A/1 has become infructuous.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. During the course of arguments, attention of the Tribunal was invited to order No.4/7/2008-SI(B) dated 10.12.2008 whereby regular promotion has been granted to TREX and PEX as indicated in Annexure I and II with immediate effect. Perusal of Annexure I and II reveals that as many as 206 TREX have been granted regular promotion in the grade of PEX and as many as 66 persons have been promoted in the grade of PEX from the category of Production Assistant. The ~~name~~ ^{name} of the applicant does not find mention in the annexure appended with the aforesaid order. The learned counsel for the applicant submits that the said promotions

have not been made in accordance with the directions given by the Full Bench whereas the persons promoted vide order dated 10.12.2008 have been granted promotion on the basis of quashed rule 4.A(1)(f) of All India Radio (Group-B Posts) Recruitment (Amendment) Rules, 1984.

6. We have given due consideration to the submissions made by the learned counsel for the applicant. Since the grievance of the applicant was regarding his reversion vide Ann.A/1 which order has been subsequently withdrawn by the respondents and the period of ad-hoc promotion of the applicant as well as other persons who were reverted vide Ann.A/1 was further extended, as such, the OA does not survive qua this aspect in view of this subsequent development. As regards, grievance of the applicant that regular promotion made subsequently were not in conformity with the directions given by this Tribunal, we are of the view that validity of the aforesaid order dated 10.12.2008 which is not under challenge in this OA cannot be gone into and in case the respondents have made regular promotion contrary to the directions given by this Tribunal and on the basis of the quashed rules, it will be open for the applicant to file substantive OA qua this aspect on all permissible ground and no relief or finding regarding validity of the order dated 10.12.2008 can be given in this OA.

7. With these observations, the OA is disposed of with no order as to costs. However, in the facts and circumstances of this case we are of the view that the respondents shall maintain status-quo qua

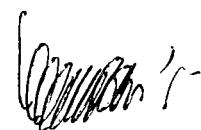
the applicant for a further period upto 31.12.2009, so that he can challenge the legality and validity of order dated 10.12.2008.

8. In view of disposal of the OA, no order is required to be passed in MA No.41/2006, which shall stand disposed of accordingly.

(B.L.KHATRI)

Admv. Member

R/



(M.L.CHAUHAN)

Judl. Member