

OA 3333/2012
With
OA 3335/2012
OA 3518/2011
OA 3336/2012
OA 3334/2012

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

1. Smt. Maheshwari Devi
Aged about 45 years
W/o Late Shri Vinod Singh Rawat
2. Akhilesh Singh Rawat
Aged about 21 years
S/o Late Shri Vinod Singh Rawat
3. Abhinesh Singh Rawat
Aged about 19 years
S/o Late Shri Vinod Singh Rawat
4. Raveen Rawat
Aged about 17 years
S/o Late Shri Vinod Singh Rawat

(Through Shri M.K. Bhardwaj, Advocate)

1. Union of India & ors. through
The Secretary
Ministry of Information & Broadcasting
Shastri Bhawan, New Delhi
2. Prasar Bharti through its CEO
PTI Building, New Delhi
3. The Director General

Doordarshan Bhawan,
Copernicus Marg,
New Delhi

... Respondents

(Through Ms. Vartika Sharma, Advocate)

OA 3335/2012

Ms. Meena
R/o Sec-IV/119
R.K. Puram,
New Delhi-110022

....Applicant

(Through Shri M.K. Bhardwaj, Advocate)

Versus

1. Union of India & ors. through
The Secretary
Ministry of Information & Broadcasting
Shastri Bhawan, New Delhi
2. Prasar Bharti through its CEO
PTI Building, New Delhi
3. The Director General
Doordarshan Bhawan,
Copernicus Marg,
New Delhi

... Respondents

(Through Ms. Vartika Sharma, Advocate)

OA 3518/2011

Smt. Neelam Chopra
W/o Shri Rakesh Chopra
R/o Flat No.421,
Sunehri Bagh Apartments
Plot No.15, Sector-13, Rohini
Delhi-110085

....Applicant

(Through Shri Som Dutta Sharma, Advocate)

Versus

1. Union of India & ors. through
The Secretary
Ministry of Information & Broadcasting
Shastri Bhawan, New Delhi
2. Prasar Bharti through its Director General
Mandi House,

New Delhi-110001

3. Directorate General
All India Radio,
Parliament Street,
New Delhi

... Respondents

(Through Ms. Vartika Sharma, Advocate)

OA 3336/2012

Raje Singh Rawat
R/o E-1585, Netaji Nagar,
New Delhi-110023

....Applicant

(Through Shri M.K. Bhardwaj, Advocate)

Versus

1. Union of India & ors. through
The Secretary
Ministry of Information & Broadcasting
Shastri Bhawan, New Delhi
2. Prasar Bharti through its CEO
PTI Building,
New Delhi
3. The Director General
Doordarshan Bhawan,
Copernicus Marg,
New Delhi

... Respondents

(Through Ms. Vartika Sharma, Advocate)

OA 3334/2012

Ms. Madhu
Doordarshan Kendra,
New Delhi-110001

....Applicant

(Through Shri M.K. Bhardwaj, Advocate)

Versus

1. Union of India & ors. through
The Secretary
Ministry of Information & Broadcasting
Shastri Bhawan, New Delhi
2. Prasar Bharti through its CEO
PTI Building,

New Delhi

3. The Director General
Doordarshan Bhawan,
Copernicus Marg,
New Delhi

... Respondents

(Through Ms. Vartika Sharma, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

OA 3333/2012, OA 3335/2012, OA 3518/2011, OA 3336/2012 and OA 3334/2012, all relate to the same issue and, therefore, they have been heard together. However, the facts have been taken from OA 3333/2012, OA 3335/2012 and OA 3518/2011.

2. The applicant in OA 3333/2012 was appointed as General Assistant on 1.11.1994. His claim is that he has been denied financial upgradation under Assured Career Progression Scheme (ACPS) dated 9.08.1999 in the pay scale of Rs.6500-10500 from the date of completion of 12 years of service with all arrears of pay.

3. The applicant's case is that he was appointed first as Casual Assistant in Doordarshan way back in 1982-83 in the then pay scale of Rs.3050-4590. It is stated that in the hierarchy of posts, the next promotion is to the post of Transmission Executive (TRES), which carries the pay scale of Rs.6500-10500.

4. The applicant has placed on record copy of office order dated 16.08.1999 (Annexure A-3) issued by All India Radio through which General Assistants (Sr./ Jr. Grade)/ Copyists etc. working in the office of All India Radio and Doordarshan under Delhi zone are upgraded under Assured Career Progression Scheme from the date(s) pay scales mentioned against their names. They were granted first/ second financial upgradation from 9.08.1999 in the pay scale of Rs.6500-10500.

5. The learned counsel for the applicant drew our attention to order dated 8.10.2004 by Chandigarh Bench of this Tribunal (Circuit at Srinagar) in **Javid Ahmad Wani and others Vs. Union of India and others**, T.A. No.60/JK/2004 with connected matter. The applicants in those cases were appointed to the post of General Assistant (Staff Artist) at Doordarshan Kendra Srinagar and were seeking promotion as TRES. Our attention was drawn to para 10 of the order, which records the amendments in the Recruitment Rules (RRs) and for the post of TRES, promotion quota of 10% was open to Senior/Junior Grade General Assistants/ Copyists/ Tape Librarians/ Instruments Repairers etc. with five years continuous service in the grade. The OA was decided in favour of the applicants and they were found eligible to be considered for promotion to the post of Transmission Executive (TRES).

6. It is pointed out by the applicants that after almost 22 years, the respondents have now changed their cadre to that of Lower Division Clerk (LDC) and, therefore, denied them first

upgradation under Modified Assured Career Progression (MACP) Scheme to the next post in the hierarchy namely Transmission Executive (TREX) in the pay scale of Rs.6500-10500.

7. Learned counsel for the respondents argued that order dated 16.08.1999 and the order of the Tribunal in Javid Ahmad Wani (supra), referred to by the applicants, have no relation to them. Narrating the brief background of the case, it is stated that the cadre of General Assistant was declared as a dying cadre way back in 1971. Doordarshan introduced a Scheme for regularization of Staff Artists in 1992/1994 under which several persons who were working as Casual Staff Artist were regularized as General Assistant after the cadre was declared as a dying cadre. The applicants were also regularized under that very Scheme of 1992/1994. However, they were wrongly designated as General Assistant. In fact, it is pointed out that seven such persons were wrongly designated as General Assistant including one Shri Sudesh Sehgal but he was re-designated back as LDC in the year 2005 and granted ACP/MACP upgradations as per eligibility. It is further stated that the respondents have now corrected the mistake vide orders dated 12.08.2015 and 27.01.2016.

8. It is clarified that according to a report of the Study Group on Cadre Structure of Staff Artists of AIR constituted by Ministry of I&B in March 1981, the posts of General Assistants included in the clerical group had been declared dying cadre with effect from 1.04.1971. Therefore, the revised RRs of 1976 for Staff Artists

on broadcasting side did not also include the post of General Assistant (Junior Grade) in the lower grade of Rs.110-180.

9. It is further explained that vide notification dated 25.02.1994, **as a one time measure**, various feeder grades including General Assistants (Junior Grade) and General Assistants (Senior Grade), were granted opportunity for promotion as TRES by making the post of TRES as 100% promotional. This was done to ensure that there was no General Assistant in position so that the RRs of TRES (G&P) could also be changed to make them 90% by direct recruitment to be filled up through Staff Selection Commission (SSC) as in case of other TRESs. However, it was clarified that benefits of promotion to the post of TRES (G&P) would be available to the category of persons who had been recruited as per 1976 RRs or common RRs of the post of General Assistant/Copyist notified prior to 1976. It was also mentioned in the said communication that benefits of this one time arrangement would not be available to General Assistants/Copyists etc. recruited after issue of Notification dated 19.09.1983 and Government of India Notification dated 29.10.1983 (the amendment to the RRs of CG-I and Head Clerks respectively).

10. As part of further clarifications on DG, AIR's communication dated 4.04.1994 and communication dated 11/25.07.1996, it was made clear to Heads of All Zonal AIR Stations and DG, Doordarshan vide DG, AIR's communication no. 3/5/95-SVII/347 dated 7.04.1997 that the benefit of promotion

to the grade of TREX (G&P) arising from the directions of CAT, Principal Bench, Mumbai in OA no. 309, 634, 684 to 705 of 1989 filed by J.V. Nabar and others would be available to the categories of persons who had been recruited as per 1976 RRs or common RRs for the post of General Assistant/Copyist notified prior to 1976 and that the Staff Artists RRs of 1976 were applicable only to Staff Artists of AIR and, therefore, General Assistants /Copyists recruited in Doordarshan in accordance with their RRs are not eligible for promotion as TREX (G&P). Learned counsel for the respondents states that a circular was issued on 25.07.2000 wherein it was stated that the General Assistant who have completed 12 years in the present grade will be financially upgraded to the pay scale of Rs.6500-12000 and those who have completed 24 years in the present grade will be financially upgraded to the pay scale of Rs.7500-12000. However, this circular dated 25.07.2000 was reexamined in consultation with Ministry of I&B and it was found that this OM dated 25.07.2000 be revised as same is not correct. That thereafter a revised OM no.18/3/2005-SVII dated 12.08.2005 was duly issued wherein the pay scale of Rs.5000-8000 to senior grade General Assistant as Ist ACP be granted.

11. The respondents referred to order regarding Shri Sudesh Sehgal (Annexure-C) where the grade pay under MACP has been fixed at Rs.2800/- in PB-1 treating him as LDC. Similarly, reference was made to order dated 20/24.01.2011 whereby again Shri Sudesh Sehgal's pay has been fixed as LDC. Further, reference was made to order dated 7.06.2008 by which the

designation of Shri Sudesh Kumar Sehgal was changed from General Assistant to CG-II/LDC. Our attention was also drawn to order dated 26.07.2005, which reads as follows:-

"The Ministry of I&B vide its letter No.514/3/92-IV(A) dated 15.11.94 and communicated by Directorate General, Doordarshan vide its order No.19/31/89-SII (Vol.5) dated 21.12.1994 has approved the regularization of eligible casual General Assistants against the vacant post of CG-II now redesignated as LDC.

It has been noticed that as per above letter Shri Sudesh Kumar Sehgal should have been given the offer of LDC instead of General Assistant.

Hence the designation of Shri Sudesh Kumar Sehgal is hereby changed from General Assistant to LDC."

12. Learned counsel also referred to order dated 12/24.02.1997 relating to four General Assistants which states that they have been exempted from typing test. The argument of the learned counsel for the respondents is that typing test is only for LDCs. The original appointment order of Shri Sehgal filed by the respondents dated 22.02.1995, however, indicates that his appointment was against the post of General Assistant.

13. The learned counsel for the respondents further pointed out that vide order dated 12.08.2015, correction has been carried out in case of some of the employees who were wrongly designated as General Assistant and now designated as LDC.

14. In reply, the learned counsel for the applicants drew our attention to order dated 06.01.2009 issued by Radio Kashmir, Srinagar whereby Shri Ab. Shakoor Hussaini, General Assistant, Doordarshan Kendra, Srinagar has been appointed as TREN

(G&P) in the pay band-2 (Rs.9300-34800) with grade pay Rs.4200, thus countering the argument of the respondents that the applicants cannot be promoted as TRES.

15. On the question of Shri Hussaini being promoted, the respondents clarified that Shri Abdul Shakoor Hussaini was initially engaged as Casual General Assistant and subsequently regularized with effect from 16.12.1992 in accordance with above said Doordarshan scheme and was not eligible to be considered for the post of TRES in AIR. It is stated that the department has taken action to modify the order and thus the applicants cannot cite the case of Shri Hussaini as a precedent.

16. Lastly, it was argued by the learned counsel for the applicants that the order dated 12.08.2015 redesignating them as LDC from the post of General Assistant has been stayed in OA 3399/2015 by this Tribunal vide interim order dated 11.09.2015 and, therefore, respondents cannot rely on order dated 12.08.2015 now.

17. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited by either side.

18. From the facts of the case, it is clear that the applicants were initially appointed as Casual Assistants. Later on, in November, 1994 they were appointed as General Assistants. The applicants were regularized as per 1992 Scheme. When the **one time measure** of opening the doors for General

Assistants/Copyists etc. for promotion to the post of TREX in 1994 was undertaken, the stipulation was that only those will be considered who came after 1976 RRs only. The applicants were not recruited as per the said rule. They were casual and regularized under 1992/1994 scheme. The cadre of General Assistant was declared as a dying cadre with effect from 1.04.1971. It was further clarified at that time that those General Assistants/Copyists recruited after issue of 19.09.1993 and 29.10.1983 notification amending the RRs of CG-I and Head Clerk would not get the benefit of **one time measure** of promotion to the post of TREX (G&P). Due to some mistake at some level, the applicants were shown as General Assistants whereas they should have been redesignated as LDCs like Shri Sudesh Kumar Sehgal long back. It would appear from the order dated 26.07.2005 redesignating Shri Sudesh Kumar Sehgal, LDC that Ministry of Information and Broadcasting vide its letter dated 15.11.1994 and communicated by DG, Doordarshan vide its order dated 21.12.1994 has approved the regularization of eligible Casual General Assistants against the vacant posts of CG-II now redesignated as LDC. Despite this, in the case of Shri Sehgal, redesignation happened in July 1995 and in the case of applicants, it never happened.

19. Now the applicants have tried to demonstrate to us that they belong to the same category as those covered by order of the Chandigarh Bench of the Tribunal in Javid Ahmad Wani (supra) as well as those covered by office order dated 16.08.1999. In our opinion, the two belong to different

categories. The instructions throughout are very clear from various orders that the applicants were wrongly designated as General Assistant and they should have been LDCs. Even if corrections were made in case of Shri Sudesh Kumar Sehgal, we find it a deep mystery why similar corrections were not made in case of applicants in re-designating them as LDC. The applicants argument that order dated 12.08.2015 has been stayed by this Tribunal in OA 3399/2015, does not affect applicants at all in this case. What is relevant is whether the applicants belong to same category as those covered by order dated 16.08.1999 and Wani (supra) matter. From the facts of the case it has clearly been demonstrated by the respondents that the answer is in the negative. The applicants have tried to compare apples with oranges.

20. In the light of facts narrated above, we are of the opinion that the OA has no merit as the claim has been made based on wrong and distorted facts. The OAs are, therefore, dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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