

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.3107/2003

New Delhi, this the 24th day of January, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

1. Programme Staff Association of All India Radi & Doordarshan & Ors. Represented by its President V.A.Magazine, Director Transcription and Programme Exchange Service, Akashwani Bhawan, New Delhi-1
2. Dr. J.K.Das, Director
National Channel of All India Radio
Toda Pur, New Delhi – 12.
3. Hurikesh Pani, Director (PER)
Directorate General, All India Radio
Akashwani Bhawan
New Delhi – 1.
4. Smt. Alka Pathak, Director of Programme(SW)
Directorate General, All India Radio
Akashwani Bhawan
New Delhi – 1.
5. Shri Bhajan Sopori
Director of Programme (Music)
Directorate General, All India Radio
Akashwani Bhawan
New Delhi – 1.
6. H.C.Verma
Director, Staff Training Institute (Programme)
All India Radio, Nirankari Coloni
Delhi. ... Applicants

(By Advocate: Sh. S.Y.Khan)

Versus

1. Union of India through Secretary
Ministry of Information and Broadcasting
Government of India
Shastri Bhawan
New Delhi – 1.
2. Secretary
Department of Personnel & Training

North Block
New Delhi - 1.

3. Chief Executive Officer
Prasar Bharati
2nd Floor, PTI Building
Sansad Marg
New Delhi - 1. ... Respondents

(By Advocate: Sh. S.M.Arif)

O R D E R

By Mr. Justice V.S.Agarwal:

The Programme Staff Association of All India Radio & Doordarshan and 5 other private applicants have filed the present application seeking a direction to the respondents to consider their case treating the period of ad hoc service as regular from the initial date of ad hoc promotion, i.e., from 15.6.1999 against clear vacancies of the year 1998 in the Junior Administrative Grade of Indian Broadcasting (Programme) Service (in short 'IBPS') with consequential benefits.

2. The facts are with the narrow compass. The private applicants No.2 to 6 had joined the service as Programme Executives and Producers and after having been duly selected to the post of Assistant Station Director, they were promoted to the Junior Administrative Grade of IBPS on ad hoc basis on different dates. The representative order dated 10.6.1999 reads:

"The following officers of AIR Programme Production Cadre of IB(P)S promoted vide Ministry of I&B's order No.16/99-B (A) dated 8.6.1999 (issued from File No.32013/6/98-B(A) purely on ad-hoc basis of Junior Administrative Grade of IB(P)S for a period of one year or till regular incumbents become available, whichever is earlier, w.e.f. the date they assume charge of

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the post and until further orders, are posted to AIR Stations/offices mentioned against each:-

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The appointment of these officers in JAG of IB(P)S will be effective from the date they assume charge of their posts. The appointment will be purely, on ad-hoc basis and it will not confer on them any right or privilege for continued or regular appointment in that grade. These officers will stand automatically reverted to their parent grade i.e. Senior Time Scale of IB(P)S after completion of period of one year w.e.f. the date of their joining in the post."

3. Subsequently, it is stated that they were all made regular from the subsequent dates. The applicants contend that they should be regularized from the date the ad hoc promotion was made. Hence, the present application.

4. The application is being contested.

5. The respondents (Union of India) contend that ad hoc promotion was made on the basis of '**seniority-cum-fitness**' according to the instructions and that too, without convening a Departmental Promotion Committee. As per the Recruitment Rules, the prescribed criteria, for promotion to the Junior Administrative Grade, is '**selection**'. The said statutory rule was not strictly followed. It has also been pointed that Union Public Service Commission had earlier refused to be associated with promotion pertaining to the Prashar Bharati, which is an autonomous body. In the orders passed, it was categorically specified that the appointments of the applicants was ad hoc in nature and, therefore, their claim deserves to be rejected.

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6. It was not disputed at either end before us that promotion to the Junior Administrative Grade is in accordance with the Rules that have been framed. It had been made on regular basis after they had been promoted on ad hoc basis. The learned counsel for the applicants contended that once the regular posts were available, they had to be promoted by convening a regular Departmental Promotion Committee Meeting on annual basis. Panel should have been prepared. Accordingly, the applicants should have been given the regular promotion.

7. In support of his claim, the learned counsel for the applicants relied upon the decision of a Bench of this Tribunal in the case of **J.A.Singhal v. Union of India** OA 2926/2004, decided on 17.12.2004. In the said case, the applicant was promoted as Income Tax Officer on 30.11.1994. As per the statutory rules of Indian Revenue Service Rules, 1988, 50% vacancies of the post of Assistant Commissioner are to be filled up by departmental promotion. The applicant had become eligible in 1997 and no DPC was held for years 2003-2004 and 2004-2005, despite there being vacancies. He had filed OA 1810/2004. On 21.9.2004, this Tribunal had issued the following directions:

“15. For the reasons states above, we direct that the respondents shall hold the DPC for consideration of promotion of the Income Tax Officer to the post of Assistant Commissioner of Income Tax against 50% quota which is to be filled up by promotion within a period of 45 days from today. Counsel for respondents indeed submitted that the date of the meeting is to be decided by the UPSC which is not a party to the matter but we do expect that the respondents shall take up the matter

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with the UPSC and prevail upon it to hold the meeting as directed above. In the circumstances, we leave the parties to bear their own costs. OA stands disposed off in terms of the above order. Copy of the order be given dasti to the counsel for the respondents for its delivering to the appropriate authority of the respondents."

8. Despite these directions, when no action had been taken, a fresh OA was filed. It was in this backdrop that this Tribunal held that non-promotion in case where a person retired due to delay in holding DPC, was objectionable. He had right to be considered for promotion. The application was disposed of directing to hold a Departmental Promotion Committee Meeting and consider the suitability of the applicant.

9. It is obvious from the facts to which we have referred to above that keeping in view the earlier orders passed by this Tribunal, the directions had to be issued. Necessarily majesty of law had to be held. The ratio deci dendi of the case does not come to the support of the applicant. The decision must be held to be confined to the peculiar facts of that case.

10. Strong reliance was further placed on the decision of the Division Bench of the Delhi High Court in UNION OF INDIA V. CENTRAL ADMINISTRATIVE TRIBUNAL (Civil Writ Petition No.7073/2001) reported as ATJ 2004 (1) P-112. At the outset, we deem it necessary to mention that a judgment is good precedent when the principle of law laid applies. In the cited case, the private respondents had joined Central Forensic Laboratories. They became eligible for the next promotion as Principle Scientific



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Officer in 1990 because an officer with five years regular service becomes eligible for next higher post. When they were promoted as Principle Scientific Officer, they represented because, according to them, they were entitled to have seniority of the year when they became eligible in 1990. The representation was rejected. Thereafter, a seniority list of Principle Scientific Officer was issued. There were some other litigations, to which we are not presently concerned. It is these facts, which prompted this Tribunal to grant them the seniority. The Delhi High Court upheld the order of this Tribunal.

11. It is well settled that regularization or confirmation are certain incidents of service. The decision, referred to above, in the case of **UNION OF INDIA V. CENTRAL ADMINISTRATIVE TRIBUNAL** was concerned with the seniority of the private respondents. We have no hesitation in concluding that it has no application in the present case before us. There is no dispute of seniority that has arisen which requires consideration. It is, therefore, distinguishable.

12. Reliance further was being placed on two decisions, i.e., in the case of **O.P.Singla and Another v. Union of India & Others**, (1984) 4 SCC 450 and in the case of **Rudra Kumar Sain & Ors. v. Union of India & Ors.**, 2000(3) ATJ 392.

13. Perusal of the decisions so much thought of, reveals that they were confined to the question of seniority. Interpretation of Rules 16 and 17 of Delhi Higher Judicial Service Rules was under consideration before the Supreme Court. It was on reading of

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those Rules that the Supreme Court held that those who were officiating but regularly appointed against higher post, would be entitled to seniority. This is not the dispute before us because in the present case, as already referred to above, the applicants had not been promoted by calling regular Departmental Promotion Committee Meeting when they were so promoted on ad hoc basis.

14. Our attention has also been drawn to another decision of the **Supreme Court** in the case of **SURAJ PARKASH GUPTA & OTHERS v. STATE OF J & K OTHERS**, 2000(1) SLJ 427. The Supreme Court considered the various facets of the controversy and finally held:

"75. Summarising the position, we therefore hold that the ad hoc/stop-gap service of the promotees cannot be treated as non-est merely because PSC was not consulted in respect of the continuance of the ad hoc/stop-gap service beyond six months. Such service is capable of being regularized under Rule 23 of J&K (CCA) Rules, 1956 and rectified with retrospective effect from the date of occurrence of a clear vacancy in the promotion quota, subject to eligibility, fitness and other relevant factors. There is no 'rota' Rules applicable. The 'quota' Rule has not broken down. Excess promotees occupying direct recruitment posts have to be pushed down and adjusted in later vacancies within their quota, after due regularization. Such service outside promotee quota cannot count for seniority. Service of promotees which is regularized with retrospective effect from date of vacancies within quota counts for seniority. However, any part of such ad hoc/stop-gap or even regular service rendered while occupying the direct recruitment quota cannot be counted. Seniority of promotees or transferees is to be fixed as per quota and from date of commencement of probation/or regular appointment as stated above. Seniority of direct recruit is from the date of substantive appointment. Seniority has

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to be worked out between direct recruits or promotees for each year. We decided point 3 accordingly.

Point 4:

direct recruits cannot claim appointment from date of vacancy in quota before their selection."

15. Findings clearly show that basic dispute once again was of seniority. It was held that there was no 'rota' rule applicable. The 'quota' rule had not broken. The service outside promotee quota will not count for seniority. For the reasons already recorded, it must follow that it has little application to the controversy before us.

16. Similarly, in the case of AJIT KUMAR RATH v. STATE OF ORISSA & ORS., 2000(1) SLJ Page 1, the facts were totally distinguishable. The appellant before the Supreme Court was promoted to the post of Assistant Engineer on ad hoc basis in the year 1972. It was against the permanent vacancy, but in accordance with rules, for a period of six months. It was held that he would be entitled to the seniority. The Supreme Court had observed:

"24. These facts clearly indicate that the promotion of the appellant was a regular, though provisional, promotion made against a permanent vacancy in accordance with the Service Rules. The Chief Engineer was the officer authorized under the Rules to make the selection on the basis of merit. In the instant case, such selection was made by the Chief Engineer and pending concurrence of the Commission, the selected persons were appointed by the Govt. on ad hoc basis. It has already been indicated above that the Govt. is the final authority in making the selection of

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officers for promotion to the post of Asstt. Engineer on the basis of the recommendations made by the Commission. There is no dispute that the appellant and respondent No.12 were appointed as Asstt. Engineers by the Govt. in 1972 and four years later, that is to say, in 1976 they were appointed on a regular basis on the recommendation of the Orissa Public Service Commission.

25. It is thus clear that the appellant was promoted on a regular, though provisional, basis pending concurrence from the Orissa Public Service Commission. The promotion having been made in accordance with the Rules, the entire period of ad hoc service beginning from 1972 to 1976, when the appellant was appointed on a regular basis on the concurrence of the Commission, would have to be counted towards the seniority of the appellant vis-à-vis the contesting respondents. The Tribunal, in these circumstances, had rightly invoked the principles laid down by this Court in Direct Recruit Class-II Engg. Officers Association's case (*supra*).

17. The facts also show that therein, the appellant before the Supreme Court had regularly been promoted. Though provisional promotion was made against the permanent vacancy but it was in accordance with service rules. That is not the matter before us because the dispute pertaining to seniority is different from the dispute that he must be regularized, though he was promoted not following the rules.

18. In fact, the learned counsel strongly relied upon a decision of the Supreme Court in the case of **UNION OF INDIA & ORS. v. N.R.BANERJEE & ORS.**, 1997 (1) SLR 751 = 1997 (9) SCC 287. A decision earlier referred to by this Tribunal in that matter, i.e., **N.R.Banerjee & Ors. v. Union of India & Others**, OA 219/1995 (**Jabalpur Bench**), decided on 14.8.1996 is also

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available. The direction had been given by this Tribunal to prepare a panel by holding a Departmental Promotion Committee Meeting for four vacancies in accordance with the instructions and the rules on yearly basis. The Union of India had challenged the said decision in the case of **N.R.Banerjee** before the Supreme Court.

The Supreme Court had held:

"Preparing of action plan for consideration by the DPC of the respective claims of the officers within the zone and thereafter for setting in motion the process of preparation of panel on year wise basis is elaborately laid down in the instructions issued by the Government of India, Ministry of Personnel and Training. In case of failure on the part of the departmental authorities to do so, what further procedure is required to be followed is also indicated in these instructions. It manifests the intention of the rule maker that the Government should estimate the anticipated vacancies, regular vacancies and also vacancies arising thereafter due to various contingencies and get the ACRs prepared and approved. It has also been laid down in these instructions that the DPC should sit on regular basis to consider the case of the eligible candidates within the zone of consideration. The object is that the Government should keep the panel ready in advance so that the vacancies arising soon thereafter may be filled up from amongst the approved candidates whose names appear in the panel.

The departmental instructions prescribe one year as the life of the panel. It is, therefore, essential that appointing authorities concerned should initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like ACRs, integrity certificate, seniority list etc. for placing before the DPC.

The DPC is required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the

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year being filled up. The required material should be collected in advance and merit list finalized by the appointing authorities and placed before the DPCs for consideration. The requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion of that no officers are due for confirmation, during the year in question.

The instructions also specifically mention about the preparatory action to be taken for assessing the number of vacancies. The authorities are required to anticipate in advance the vacancies for promotion on regular basis including long term deputation posts and additional posts created and then to take action for finalizing the ACRs, preparation of the selected list and place necessary material before the DPC for consideration of the candidates within the zone of consideration, as are found eligible for the relevant year/years.

It is true that the Government is under no obligation to fill up a vacancy and empanelment of a candidate does not create any right in his favour, yet the administrative instructions issued by the Government of India clearly indicate the need for taking action for preparation of panel well in advance to fill up the clear vacancies or anticipated vacancies. The preparation and finalization of yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel can not be prepared for any justifiable reason, year-wise panel of all the eligible candidates within the zone of consideration for filling up of the vacancies each year should be prepared and appointments made in accordance therewith."

7. After quoting the aforesaid passage from the judgment, the Tribunal observed:

"It is clear from the aforesaid judgment that preparation of yearly panels is a mandatory requirement. UPSC's letter dated November 1, 1995 makes it clear that the applicants were found fit in the year of their eligibility for in-situ

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promotion to the grade of PSO. Obviously, there were three vacancies for the year 1990. In our considered view basically there was no need for the UPSC to have given a separate consolidated panel. When they had recommended different panels for different years there was no need for consolidating them. The scheme for in-situ promotion aims at accelerating promotions of the personnel. If they are not promoted as per their eligibility despite existence of vacancies, the objective behind the scheme of in-situ promotion gets defeated. If the idea behind formulating one consolidated panel is not to accord in-situ promotion of the applicants for respective years when they became eligible then there was no need to put the candidates in separate panels for a single consolidated panel could have been recommended by the UPSC. In our view whereas the UPSC recommended separate panels for separate years they have unnecessarily (sic) panel is meaningless in our view. In the light of the ratio of N.R. Bannerjee (supra) the applicants who were eligible and were empanelled for the year 1990 for in-situ promotion to the grade of PSO have to be accorded in-situ promotion with effect from the year 1990."

19. The Supreme Court thereafter hastened to add that mere inclusion of the name in the list does not confer a right of appointment. In fact, the reason for doing so is obvious but if yearly panel is not prepared, the zone of consideration is widened. That was the scope which prompted the said direction to be passed. It has nothing to do in the present case that the concerned persons should be regularized from the back date.

20. The **three Judges Bench of the Supreme Court** in the case of UNION OF INDIA AND OTHERS v. MAJRI JUNGAMAYYER & OTHERS, 1977 AISLJ SC 90, in the facts of that case, observed that the promotion to the post of Assistant

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Commissioner on the basis of select list prepared by the Committee should be made prospectively and not retrospectively. The Supreme Court held that:

“57. The respondents contended that the regularization of 107 promotees had to be done from the date of original promotions on ad hoc basis. In this connection, the respondents relied on the observations of this Court in **Bishan Sarup Gupta's case** (supra) at p. 506 of the report. The observations relied on are that after the fresh seniority list is made in accordance with the direction given by this Court in **Bishan Sarup Gupta's case** (supra) would it be open to any direct recruit or promotee to point out to the department that in the selection made to the post of Assistant Commissioner from 1962 onwards he, being otherwise eligible, is entitled on account of the new seniority given to him to be considered for promotion to the post of Assistant Commissioner.

58. The observations of this Court in **Bishan Sarup Gupta's case** (Supra) are that if a result of the fresh seniority list it is found that any officer was eligible for promotion to the post of Assistant Commissioner on account of his place in the seniority list, the department might have to consider his case for promotion on his record as on the date when he ought to have been considered, and if he would be selected his position will be adjusted in the seniority list of Assistant Commissioners. The object is to see that the position of such a person is not affected in the seniority list of Assistant Commissioners he is actually promoted later pursuant to the new seniority list, although according to the new seniority list itself he should have been promoted earlier. The observations does not mean that although the Committee can meet for the selection of officers for promotion to the post of Assistant Commissioner only after the seniority list is approved by the Court, the selection would be deemed to be made at the time when a vacancy in the post of Assistant Commissioner occurred and the eligibility of officers for selection will be determined by such deemed date of selection. No employee has any right to have a vacancy in the higher post filled

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as soon as the vacancy occurs. Government has the right to keep the vacancy unfilled as long as it chooses. In the present case, such a position does not arise because of the controversy between two groups of officers for these years. The seniority list which is the basis for the field of choice for promotion to the post of Assistant Commissioner was approved by this Court on 16 April, 1974. Promotions to the post of Assistant Commissioners are on the basis of the selection list prepared by the Committee and are to be made prospectively and not retrospectively."

21. More close to the facts of the case is the decision of the Supreme Court in the case of **BAIJ NATH SHARMA v. HON'BLE RAJASTHAN HIGH COURT AT JODHPUR AND ANOTHER**, 1998 SCC (L&S) 1754. In the cited case, the appellant was a Judicial Officer. He retired on 1.6.1996. His grievance was that before his retirement, there were vacancies. He claimed promotion from the date of the vacancies. The Rajasthan High Court had taken a decision not to make further promotions till the recruitment was made from the Bar. The Supreme Court held that as no person junior to the applicant had been promoted, he could not insist that he should have been considered and promoted on the available vacancies. The findings read:

"7. In *Union of India v. K.K. Vadera* [AIR 1990 SC 442] this Court with reference to the Defence Research and Development Service Rules, 1970, held that the promotion would be effective from the date of the order and not from the date when promotional posts were created. Rule 8 of those Rules did not specify any date from which the promotion would be effective. This Court said as under: (SCC pp. 626-27, para 5)

"5. There is no statutory provision that the promotion to the post of Scientist 'B' should take effect

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from July 1 of the year in which the promotion is granted. It may be that rightly or wrongly, for some reason or the other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientist 'B' should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal."

22. Reverting back to the facts of the present case, it is obvious that:

- a) the private applicants had been promoted on ad hoc basis without convening the regular DPC. This was not done in accordance with the Recruitment Rules. The regular DPC was held later on and the applicants were promoted regularly.



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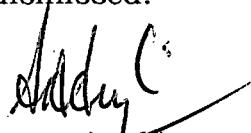
b) No person junior to the applicants has scored a march over them. In fact, there is no seniority dispute that is being attached claiming seniority. It is only a dispute pertaining to their regularization from the back date.

c) No malafides or motives have been alleged and the applicants are not suffering from any financial loss.

d) A person has a fundamental right of consideration but not of being promoted. Once they were considered on merit, they cannot claim as of right that they should be regularized from back date particularly when respondents have explained the delay in convening the DPC because the Union Public Service Commission was not associating itself with it.

23. Sum and substance, therefore, would be that the applicants could not be regularized from the back date.

24. Resultantly, the OA, being without merit must fail and is dismissed.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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