

(W)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA No.124/2003

NEW DELHI THIS^{5/4} DAY OF APRIL 2006

**HON'BLE SHRI JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE SHRI N.D.DAYAL, MEMBER (A)**

1. Programme Staff Welfare Association of All India Radio & Doordarshan (Regd.)
11 Annex, B Casting House,
All India Radio, New Delhi -110001
Through: Shri S.C. Bhatia, its Executive Vice President)
2. Shri Pramod Mehta S/o Shri Krishan Kumar,
R/o 309, Minto Road Hostel, Minto Road,
New Delhi-110002
Working as Programme Executive
Under the respondent No.2 Applicants

(By Advocate: Shri R.N.Singh)

VERSUS

1. Union of India
Ministry of Information & Broadcasting,
Shastri Bhawan, New Delhi-110001 Through: The Secretary)
2. Prasar Bharti,
Broadcasting Corporation of India,
PTI Building, Sansad Marg,
New Delhi-11001 (Through: Its Chief Executive Officer)
3. All India Radio
Akashwani Bhawan, Sansad Marg,
New Delhi.
4. Doordarshan,
Mandi House,
New Delhi-110001
(Through: Its Director General) Respondents.

(By Advocate: Shri S.M.Arif)

ORDER

By Hon'ble Shri N.D.Dayal, Member (A)

The applicants in this OA are the Programme Staff Welfare Association of All India Radio & Doordarshan (Regd)&Anr. who have by MA 112/2003 prayed to be

15

(2)

allowed to join together in filing this application as they are seeking the same relief.

The relief claimed in the OA is as under:-

- (i) declare the action of the respondents in not considering the eligible members of the applicant No.1 for promotion to the cadre of JTS (Programme Production Cadre) in spite of the provisions of relevant RRs therefor and not seeking option from them and in case of the options sought and received from the eligible members, the same being not considered, as illegal, arbitrary and discriminatory.
- (ii) Further declare that the Applicants are entitled for being considered for promotion to the cadre of JTS (Programme Production Cadre) in terms of their options in view of the relevant RRs at par with the candidates belonging to the feeder cadre of Producers and on being eligible and suitable by the DPC for actual promotion & posting to the said cadre in accordance with relevant rules and instructions;
- (iii) Order exemplary cost against the respondents and in favour of the applicants.
- (iv) May also pass any further order(s), direction(s) as be deemed just proper to meet the ends of justice.

2. During the hearing of this case numerous MAs have been introduced by the respondents, which need to be noticed. On 16.5.2004 the respondents filed MA 1153/2004 submitting that the judgment passed by the Jaipur Bench of this Tribunal in OA 344/1995 in 1996 was in favour of the applicants in the present OA whereas another judgement dated 26.3.2004 passed by the Principal Bench of this Tribunal in OA 2343/2001 and OA 399/2001 was in favour of the respondents in the present OA. It was submitted that the order passed by the Jaipur Bench was assailed in the Hon'ble Supreme Court and the SLP was dismissed. Therefore the order of Jaipur Bench became final, but was not brought to the knowledge of the Tribunal when the above two OAs were being heard by the Principal Bench. As such there being contradictory views it was prayed in the MA that the matter be referred to the full Bench of the Tribunal for adjudication. There is, however, no discussion in MA explaining how and in what manner there was any contradiction. No copy of the Apex Court order in SLP is produced.

15

(3)

3. An additional affidavit was submitted on behalf of the respondents on 9.9.2004. It was submitted that a Full Bench of the Tribunal was constituted at Madras which passed an Order dated 3.6.97 in OA 960/94 in view of conflicting orders in OA 1046/94 by Ernakulum Bench and in OA 344/94 by the Jaipur Bench of the Tribunal. Another Full Bench of the Tribunal was constituted in OA. 3281/2002 due to conflicting orders of the Principal Bench and Bangalore Bench and an order was passed on 12.9.2003 by the Full Bench. Thereafter, extracts from the order passed by the Principal Bench in OAs 2343/01 and 399/01 have been reproduced. It is stated that although Programme Executives were made eligible for promotion to the Production cadre, subsequently a conscious decision was taken to remove them from the feeder grade. However, no document indicating such decision has been placed. It is further stated that such decision had the approval of the Cabinet but there is no material produced in support thereof. It has been submitted that in case of Sh. Chetan Naik, Programme Executive and Smt. J.B Purnima, Producer, the Hon'ble Apex Court passed a common judgment which was wrongly interpreted by the Tribunal in favour of the Programme Executives. However, at the same it is stated that the latter are entitled for consideration to the Production Wing. It is pointed out that the Apex Court held that the criteria for JTS would be seniority cum fitness ~~in~~ non-selection. It could not therefore be clear with what objective the affidavit was filed. In reply dated 29.9.2004, the submissions were countered by the applicants in the present OA.

4. Meanwhile, in reply also filed on 29.9.2004 to MA 1153/2004 the applicants brought to notice that the order passed in OA 344/95 by the Jaipur Bench was discussed by the Full Bench at Madras in order passed in OA 960/94. This judgement has been discussed by the Apex Court in UOI and Ors Vs. Shri Chetan S. Naik which was considered by the Principal Bench in its order dated 26.3.2004 in OA 2343/2001 and OA 399/2001. Thus, it was contended that the plea taken by the respondents in the MA is misconceived. Since the order has been passed in OAs 2343/2001 and

7

(3)

(4)

399/2001 after taking into account the earlier judgment there would prima facie appear to be no requirement to bring in a Full Bench on this issue as proposed by the respondents in this MA.

5. In November, 2004 an MA 2306/2004 was filed by the respondents to submit that hearing in MA 1153/2004 be deferred for 8 weeks in the interest of justice because certain negotiations have been taken up with the Staff side, which are at an advanced stage. MA 2306/2004 was found to be devoid of merit as counsel for respondents was not a position to satisfy what negotiations were being held. The MA was rejected by order dated 10.1.2005.

6. Another MA No.911/2005 was filed on 3.5.2005 by the respondents in which little is conveyed except that the order passed by the Tribunal in OA 2343/2001 and OA 399/2001 has been reproduced with a prayer to decide the present OA in terms of the orders passed by the Principal Bench therein, thus virtually retracting the plea in MA 1153/2004 and finally bringing down the curtain on their exertions in this regard. On 20.5.2005 it was decided that MA 911/2005 would also be heard at the time of final disposal of the OA. We have, therefore, taken up MAs 112/2003 and 911/2005 along with this OA. During the hearing of this OA on 16.1.2003 it was directed by the Tribunal that if any promotion is made that would be subject to the decision of the present OA.

7. In this OA, the applicants are basically seeking the implementation of the Recruitment Rules which are the Indian Broadcasting (Programme) Service Rules 1990. These came into force on 5.11.1990 and are placed at Annexure A-3. The case of the applicant is that they are Programme Executives and are eligible for promotion in Junior Time Scale (JTS) of the Programme Management cadre and also Programme Production cadre of AIR and Doordarshan. In terms of Rule 7 (6) (a) (i) and the Note (2) below Sl.No.5 in Schedule IV annexed with these Rules, they are entitled to be asked for their choice in writing, in the order of preference, for

7

(2)

(5)

working in the Programme Management Cadre or in the Programme Production Cadre of either of the two media. They further claim that as provided in Rule 7 (6) (a) (ii) the DPC 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. It is contended that the Programme Executives who are eligible in terms of these Rules are either not being asked for their option or if option is given, they are not being considered by the DPC for Programme Production cadre and, instead, if promoted they are being accommodated in the Programme Management cadre. Even if the Programme Executives are not included specifically in the categories mentioned against Sl. No.5 of Scheduled V, and the cadre of Producers gets promotion to the Programme Production cadre as per provisions of Rule 7 (6) (b) (i) and (ii), it does not mean that they are to be considered for the Programme Production cadre as per their option only when the remaining Producers eligible for promotion are exhausted being a dying cadre. This would be contrary to the Recruitment Rules. It is alleged that the DPC does not give fair consideration to them for promotion to the JTS of Programme Production cadre and invariably adjusts them in the Programme Management cadre only. It is submitted that the duties and functions of Programme Executives include work which is of similar nature and is done by the Producers as well. Hence, the experience and knowledge acquired by them on this account could not be discounted and should be given credit in the matter of promotion to the Programme Production cadre.

8. The applicants have quoted the case of Sh.S.D.Shastri, now Assistant Director AIR Jaipur who had opted on 15.5.2002 for the Programme Production Cadre of AIR in terms of the Rules but was given Programme Management cadre only. Similarly, Smt. C.S.Kumudum was also given the Programme Management cadre without any reason. On the other hand, some Producers who had opted for the Programme Management cadre were given the same. The applicants are apprehensive

Y

18

(6)

that for the forthcoming DPC their options may not be called and if called they may be ignored and the DPC may not consider their cases for promotion to the JTS of the Programme Production cadre at par with those who are seeking the same from the Producers cadre. In fact, some of the Producers who have in the past been given promotion to the Programme Production cadre were juniors. Thus, it is necessary that their candidature for promotion to the JTS of Programme Production cadre should also be considered by the DPC, after seeking option from them, for actual promotion to the same as per Recruitment Rules.

9. The respondents have denied the prayer of the applicants on the ground that Column (4) against Sl. 5 of Schedule V of the Recruitment Rules 1990 indicates that the Programme Executives do not form part of the feeder grade for promotion to JTS of Programme Production cadre of AIR and Doordarshan. In fact they are the feeder grade for Programme Management cadre as per Column (4) of Sl. 5 in Schedule IV. It is asserted that once the feeder grade of Producers stands exhausted by promotion, retirement etc. it would have to be decided by amending the Rules whether Programme Executives could thereafter be given opportunity of promotion to Programme Production cadre. The respondents have stated that the issue of promotion of Programme Executives to the Programme Production cadre is already subjudice in OA 2343/2001 with OA.399/2001 and MA. 1932/2003 filed before the Tribunal by the Association of UPSC Recruited Officers of AIR and Doordarsan. It is clarified that Sh. S.D.Shastri and Smt. Kumudum were Programme Executives and given promotion to the Programme Management cadre since they were not eligible for Production Management cadre. The Producers were given Programme Management cadre as per the Rules and no irregularity was committed. It is wrong to say that options are not being called for. But since Programme Executives are not in the feeder grade exercise of option by them does not confer any right for promotion in the Production cadre. Even the seniority of Programme Executives and

(5)

(7)

Producers is maintained separately because they are in different streams and therefore they are not comparable.

10. In the rejoinder, the applicants have contended that the stand taken by the respondents only confirms that their options for promotion in JTS on the Production side are not being considered even though the Rules stipulate otherwise.

11. The applicants have brought to notice the judgement of the Hon'ble Supreme Court in U.O.I. Vs. Sh. Chetan Naik reported in 1999 (6) SCC 457 wherein after noticing the decisions of the Full Bench of the Tribunal at Madras and the Jaipur Bench, it was held that the DPC's role is limited to the selection for either the Programme Wing or the Production wing as the case may be. Thus, it is emphasized by the applicants that the DPC is required to consider their options and recommend their allocation to either of the two wings as also enjoined in the Rules. They have relied upon certain other judgments as well to buttress their case.

12. We have heard the learned counsel for both sides and gone through → the pleadings. An identical controversy has already been considered and decided by the Principal Bench of the Tribunal by order dated 26.3.2004 passed in OA 2343/2001 with OA 399/2001. This order was passed after the pleadings were complete in the present OA. A perusal thereof shows that the averments made by the applicants and the grounds taken in opposition by the respondents are almost entirely similar to those put forward in the present case. The issues raised were decided by the Tribunal in that matter inter-alia keeping in view the Recruitment Rules of 1990, the judgement of the Hon'ble Supreme Court in U.O.I. Vs Chetan S.Naik decided on 30.07.1999 and in particular Rule 7 of the Recruitment Rules 1990, taking into consideration Rule 7 (6) (a) (i) and (ii) and the Schedules annexed to the Rules. In Chetan Naik (supra) the Apex Court was dealing with two SLPs preferred against the judgement of the Karnataka Bench of this Tribunal in OA 1221/1994 and OA 1904/1995 dated 25.2.1997. There was also a transferred case relating to WP No. 8320/1997 of the

(5)

(8)

Madras High Court wherein the full bench judgement of Madras Bench of this Tribunal in OA 960/1994 dated 3.6.1997 and consequential order was in question. The Karnataka Bench had allowed the OAs following the decision of the Ernakulam Bench of this Tribunal in a batch of three OAs dated 9.12.1996. It was noted that the full bench at Madras had accepted the view of the Jaipur Bench that 50% quota by promotion to JTS was to be filled by selection and not seniority. The observations of the court were related primarily to the basis of promotion and it was held that the method of promotion to JTS posts would be by seniority subject to fitness for the Programme Wing or for the Production Wing through DPC. The contention of the applicants in para 11 above is borne out by the judgement. As such while the orders in OA 2343/01 and OA 399/01 dated 24.3.2004 cannot be said to be per incuriam as per the ratio of decision by the Constitution Bench of the Apex Court in para 7 of their judgement in Central Board of Dawoodi Bohra Community & anr. v. State of Maharashtra & anr. (2005(2) SCC 673), they are also not in conflict with order in OA 344/1995 delivered by the Jaipur Bench. The entire order of the Tribunal in OA 2343/01 and OA 399/2001 reads as if it is in response to the grounds taken in the present OA after exhaustively dealing with the submissions made. The following directions were passed by the Tribunal in that case :

“ 20. Having regard to the discussions made above, both OAs are allowed and impugned order dated 25.8.2000 is declared illegal as the same has been passed without giving option to the Programme Executives whether they are being considered for Production cadre or for Management cadre. Respondents are further directed to conduct review DPC and also give an option to the officers belonging to Programme Executive cadre whether they want to go to Programme Management cadre or for Production cadre and the DPC will also consider their option and may allocate the cadre to be allocated and recommended by the DPC as per rules. This exercise should be completed within a period of three months but in the meanwhile officers who are working on production side or on production programme cadre, they should not be disturbed till the exercise is completed. No costs. OA is accordingly disposed of.”

(6)

(9)

13. The counsel for the applicants contended that Rule 7 (6) (b) had not been discussed or referred to in the order passed by the Tribunal in OA 2343/2001 with OA. 399/2001. Further, the specific points with regard to discipline and media were not clarified and the question of seniority as indicated in Rule 8 had not been dealt. The counsel for respondents argued that no other relief is required to be granted by the Tribunal in the present OA in view of the order already passed in OA → 2343/2001 etc. In fact those orders also cover Rule 7 (6) (b) and therefore no fresh directions are necessary on this account.

14. Rule 7 (6) (b) relates to officers in the field of promotion to JTS of Programme Production cadre who are also required to give their choice in order of preference for working in any of the specialized disciplines in the Programme Production cadre of the respective media as per Schedule VII and the DPC convened for such promotion is required to recommend the cadre (including the discipline) as well as the media in which they shall be promoted. A perusal of the orders passed by the Tribunal shows that the above Rule has been reproduced on pages 5 – 6 thereof and thereafter the submission of the applicants therein with regard to para 7 have been taken into consideration. At any rate, the relief sought by the applicants in that case was granted by the Tribunal based primarily upon Rule 7 (6) (a) (i) and (ii) and Rule 7 (6) (b) was evidently not an impediment to the grant of such relief.

15. In view of the above discussion, we find that the case of the applicants herein is covered by the orders of the Tribunal dated 26.3.2004 passed in OA 2343/2001 and OA 399/2001. The respondents are, therefore, directed to extend to the applicants the benefit of the orders passed by the Tribunal dated 26.03.2004 by giving them the option to express their choice for being considered for promotion in JTS of the Programme Management cadre as well as the Programme Production cadre in terms of the Recruitment Rules of 1990 accordingly. The candidature of the eligible applicants should be considered by the DPC in terms of their option in accordance

7

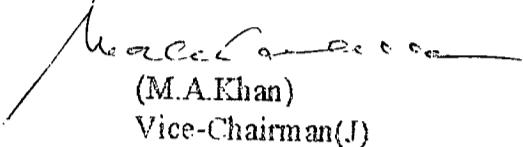


(10)

with the Recruitment Rules and relevant instructions for promotion to the JTS of the Programme Management cadre and the Programme Production cadre and allocate them to one of the two sides. The application and MAs are disposed of as above. Interim order is vacated. No costs.


(N.D. Dayal)

Member (A)


(M.A.Khan)

Vice-Chairman(J)

/kdr/