

UNION OF INDIA AND ORS. A

v
SHRI CHETAN S. NAIK ETC.

JULY 30, 1999

[DR. A.S. ANAND, CJ., M. JAGANNADHA RAO AND B
N. SANTOSH HEGDE, JJ.]

Service Law :

Indian Broadcasting (Programme) Service Rules, 1999 : C

Rule 7(2)(b) Schedules IV and V—Posts at serial no. 5—Indian Broadcasting (Programme) Service—Junior Time Scale posts—50% posts to be filled by promotion—Held, the word 'promotion' at serial no. 5 for JTS posts is not to be given the same meaning as selection at serial no. 3—For appointment to posts in JTS at serial no. 5 no selection by assessment of comparative merit is contemplated either in the Rules or in Schedule IV or in Schedule V. D

Words and Phrases :

Words 'promotion' and 'selection'—Meaning of. E

CIVIL APPELLATE JURISDICTION : Special Leave Petition (c) No. 21747 of 1997 Etc.

From the Judgment and Order dated 25.2.97 of the Central Administrative Tribunal, Bangalore in O.A. No. 1221 of 1994. F

R.N. Trivedi, Additional Solicitor General, Ms. Indra Sawhney, Hemant Sharma, B.K. Parasad, B.V. Balram Das and V. Balachandran for the Petitioners.

R. Thyagarajan, Senthil Jagadessan, S.N. Bhat and Shail Kumar Dwivedi for the Respondent. G

Intervenor-in-person for the Respondent.

The following Order of the Court was delivered :

These two special leave petitions have been preferred against the H
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- A judgments of the Central Administrative Tribunal (Karnataka Bench) in O.A. No. 1221 of 1994 and O.A. No. 1904 of 1995 dated 25.2.1997. The Transferred Case relates to Writ Petition No. 8320 of 1997 (Madras High Court) wherein the judgment of the Full Bench of the Central Administrative tribunal (Madras Bench) in OA No. 960 of 1994 dated 3.6.1997 and the consequential order dated 3.6.1997 are in question. The Karnataka Bench allowed that OAs following the decision of the Ernakulam Bench in OA No. 1046 of 1994 and 1069 of 1994 dated 9.12.1996. It has held that the 50% quota for promotion to the post of Junior Time Scale (for short 'JTS') in the Indian Broadcasting (Programme) Service (hereinafter called the 'IBPS') has to be filled not by selection but by '*seniority*'. On the other hand the Jaipur Bench in OA No. 344 of 1995 dated
- B C 31.7.1996 has held that the promotion to the post of JTS is to be made by '*selection*'. The Full Bench of the Central Administrative Tribunal (Madras Bench) has accepted the view of the Jaipur Bench that the 50% quota by promotion to the posts of JTS are to be filled by '*selection*' and not seniority. The Full Bench has not accepted the view of the Karnataka Bench and the Ernakulam Bench. The special leave petitions from Karnataka are by the Union of India while in the Transferred Case the petitioner is questioning the correctness of the decision of the Full Bench of the Tribunal (Madras Bench).

- E Rule 7(2)(a) of the IBPS rules, 1990 prescribes that 50% of JTS posts are to be filled by direct recruitment and Rule 7(2)(b) clearly states that the remaining 50% shall be filled by '*promotion*', as specified in Schedule IV and Schedule V. Rule 7(3) again says that notwithstanding anything in rule 7(2), all vacancies in JTS shall be filled by promotion for a period of 2 years from the date of commencement of the Rules (from 5.11.1990). By amendment dated 7.4.1994, the period is amended as 4 years from the date of commencement of the principal Rule. Schedule IV and Schedule V respectively deal with posts in the Programme Management and Programme Production wings. In each wing we have the JTS posts at serial No. 5 and certain other higher posts at serial No. 1 to 4. We shall refer to the posts at serial No. 3, 4, 5 in these two wings i.e. Schedule IV and V for the present purpose. In regard to the higher posts at serial No. 3 in Schedule IV as well as Schedule V, i.e. the management and Programme wing posts in JTS - the recruitment is by '*selection*'. In regard to the posts at serial No. 4, below serial No. 3, it is by '*promotion-cum-fitness*' and in regard to JTS posts in question at serial No. 5, i.e. below serial No. 4, the recruitment is 50% by direct recruitment and remaining 50% by *promotion*.
- H On a plain interpretation of the word '*promotion*' occurring in rule 7(2)

in regard to 50% and the words 'promotion' at serial no. 3, 4 and 5 of Schedule A IV and Schedule V, it is clear that for the 50% JTS posts at serial No. 5, the appointment is by 'promotion' while for appointment to the post at serial No. 3, it is by 'selection' and for appointment to posts at serial No. 4 it is by 'promotion-cum-fitness'. Thus for the appointment at these three levels, the rule-making authority has used different and distinct words, 'selection', 'promotion-cum-fitness' and 'promotion' and that indicates that the word 'promotion' at serial No. 5 for JTS posts is not to be given the same meaning as 'selection' at serial No. 3. In other words, for appointment to posts in JTS at serial No. 5, no selection by assessment of comparative merit is contemplated either in the Rules or in Schedule IV and Schedule V.

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The Full Bench at Madras and the Jaipur Bench have relied upon the Note 2 below Schedule IV and Schedule V to hold that even for JTS posts at serial No. 5, appointment is by 'selection'. It is no doubt true that Note 2 uses the words 'field of selection' but that, in our opinion, is meant for the purpose of considering the "options" to be exercised by those in the feeder category-choice is to 'opt' for being allocated to the Management or the Programme wings of JTS posts-but the 'selection' process under Note 2 is limited to considering the suitability of those in the feeder category to be allocated either to the 'Programme Wing' or to the 'Production Wing', as the case may be, among the JTS posts. The DPC's role is, thus, limited to the selection of the promotees for either of these two wings. That Note, in our view, has no bearing on the meaning of the words 'promotion' in Rule 7(2) or on the words 'promotion' at serial No. 5 in Schedule IV and V.

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Keeping in view that relevant Rules, we, thus, find that the view taken by the Ernakulam 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 Madras Tribunal in OA No. 1221 of 1994 cannot be said to be laying down the correct law.

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As a result, the special leave petitions No. 21747 of 1997 and 1452 of 1998 are dismissed. In so far as the Transferred Case No. 8/99 is concerned, for the reasons given above, we allow the writ petition No. 8320 of 1997 (Madras High Court) and set aside the order of the Full Bench of the Madras

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A Tribunal in OA No. 960 of 1994 dated 3.6.1997 and other consequential orders. OA No. 960 of 1994 (Central Administrative Tribunal, Madras) stands allowed. There will be no order as to costs in the Transferred case.

R.P.

Petitions and T.C. dismissed.