

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 11948-11950 OF 2016

UNION OF INDIA & ORS.

.....Appellants

Versus

E KRISHNA RAO & ORS ETC. ETC.

.....Respondents

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 The appeals arise from a judgment of the High Court of Andhra Pradesh dated 20 March 2014. The High Court rejected a challenge to an order of the Central Administrative Tribunal¹ directing the appellants to provide to the Respondents all benefits of service and to consider their cases for promotions in accordance with the Indian Broadcasting (Programme) Service Rules 1990.²

¹ The "Tribunal"

² The Indian Broadcasting (Programme) Service Rules 1990 are referred to in this judgment as the Rules.

2 The First Respondent was engaged as a TV News Correspondent on contract for a period of five years on 6 August 1988. The second Respondent was engaged as a TV Assistant News Correspondent on contract on 12 August 1988. The Rules came into effect on 5 November 1990. They did not have a specific provision for the posts of TV News Correspondent and TV Assistant News Correspondent. The Rules define the expression 'departmental candidates' thus:

“(c) “Departmental Candidates” means-

“(i) Officers appointed on regular basis in consultation with the commission or on the recommendations of the Departmental Promotion committee, and who hold posts on regular basis or hold, lien in Group 'A' programme cadre of All India Radio and Doordarshan on the date of commencement of these rules and

(ii) All officers appointed on regular basis to the post of video executive in Doordarshan in the pay scale of Rs.3000-4500;”

Rule 6, which provides for the initial constitution of the service, reads thus:

“6. Initial Constitution of the Service:-

(1) Subject to the provisions of sub-rules (2), (3) and () all departmental candidates holding posts or regular basis in the scales of pay of Rs. 5900-6700, Rs.3700-5000, Rs.3000-4500 and Rs. 2200-4000 shall from the date of commencement of these rules, be deemed to have been appointed to the corresponding posts and grades in the Service.

Provided that nothing in this sub-rule shall apply, to those Department Candidates who have been granted Selection Grade in the scale of Rs. 2200-4000.

(2) (a) The Departmental Candidates referred to in sub-clause (i) of clause (c) of rule 2 shall be required to convey their

options in writing for inclusion in any one of the four Cadres of the Service.

(b) In the event of options not being received within the stipulated time, the Departmental Candidates shall be deemed to have opted in the respective cadre of the All India Radio or Doordarshan, as the case may be, where they are working.

Provided that the Departmental Candidates referred to in sub-clause (ii) of clause (c) of rule 2 shall merge with the Programme Production Cadre of Doordarshan and will maintain their separate identity as indicated in Schedule VII.

(3) (a) The commission shall constitute a Selection Committee with the Chairman or a Member of the Commission, as President and not more than three representatives of the appropriate status to be nominated by the Controlling Authority to consider all the options from the departmental Candidates referred to in sub-rule (2) and recommend the cadre and the Medium to which such Departmental Candidates may be appointed, and submit lists of officers considered suitable for such appointment to the Commission, which shall forward to the Controlling Authority its recommendations thereon.

(b) The decision of the Controlling Authority in respect of appointments based on the recommendations of the Commission shall be final and such appointments shall be deemed to have been made with effect from the date of constitution of the Service.

(c) After such departmental candidates have been so allocated to a particular Medium or a cadre thereof they will continue to serve in the cadre of that medium to which they have been so assigned:

Provided that the commission may, while making such recommendations, in respect of Departmental candidates, referred to in sub-rule (2), include a recommendation that officers considered suitable for appointment to a grade shall, if sufficient number of vacancies are not available in that grade,

continue to hold the post held by them before the commencement of these rules and for this purpose such posts shall be deemed to have been excluded from the service so long as such offices continue to hold the said posts.

Explanation: The absence of a member other than the chairman or a Member of the Commission shall not invalidate the proceedings of the Selection Committee.

(4) (a) Notwithstanding anything contained in rule 7, officers referred to in the proviso to sub-rule (3) shall be included in the Service when vacancies in the said grade are available.

(b) Such persons who are included in the Service at a later date will rank—en-bloc junior to the person inducted into the Service at the initial constitution.

(5) Departmental Candidates who do not desire to be absorbed in the Service shall, within a period of three months from the date of commencement of these rules, communicate their decision in writing to the Controlling Authority and they shall thereafter and subject to the other provision of these rules be deemed to continue to hold the posts held by them immediately before the commencement of these rules, and for this purpose, such posts shall be deemed to have been excluded from the Service so long as they hold the said posts.

(6) (a) The regular continuous service of Departmental Candidates prior to their appointment to the Service shall count for purposes of promotion and confirmation.

(b) To the extent the controlling Authority is not able to fill the authorised strength of the various grades in the service in accordance with the provisions of this rule, the same shall be filled in accordance with the provisions of rule 7.”

Note 3 of Schedule I of the IBPS Rules is as follows:

“Note 3, Schedule I of IBPS Rules

“3) The number of posts sanctioned for various schemes after 1.1.1985 in All India Radio and Doordarshan will be deemed to have been included in the service and such posts will be added to the strength shown therein.”

The posts which have been specified in Schedule I together with their scale of pay are reflected in the following table :

Sl. No	Grade	All India Radio	Doordarshan	Scale of pay
1	Senior administrative Grade Deputy Director General (Management)	10	11	Rs.5900-200-6700
2	Junior Administrative Grade (Selection grade) Senior Director	-*	-*	Rs. 4500-150-5700
3	Junior Administrative Grade Director/ Controller	44	15	Rs. 3700-125-4700-150-5000
4	Senior Time Scale Deputy Director/ Deputy Controller	130	32	Rs. 3000-100-3500-125-4500
5	Junior Time scale Programme Officer	144	37	Rs. 2200-75-2800-EB-100-4000

	Total	328	95	
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Schedule II provides for the Programme Production Cadre.

3 On 29 November 2011, the Union Ministry of Information and Broadcasting sought options from the Respondents on whether they desired to be treated as government servants or whether they wished to continue as contractual employees. The First Respondent opted to be treated as a government servant. On 21 March 1992, the Director of Doordarshan Kendra, Hyderabad by a Memorandum bearing no. TVH / 23 (6) 92-S) declared the First Respondent as a government servant with effect from 31 March 1992. The Memorandum reads thus:

“MEMORANDUM

The option exercised by Shri E KRISHNA RAO in the category of T. V. NEWS CORRESPONDENT has been considered. Accordingly Shri E KRISHNA RAO, Doordarshan Kendra, Hyderabad, has been declared as Government Servant with effect from 6.8.88 Vide Director General letter No. 45011/29/91 Bd (R) dt. 29.11.91.

All the existing rules/regulations and benefits, including pensionary benefits, the age for retirement etc. Which are applicable to the regular Civil Government Servants will be applicable to him/her. Consequently the contract entered into with him/her will stand terminated with effect from 6.8.88.

The post of Staff Artists in the category of T.V. NEWS CORRESPONDENT which was hitherto held by Shri E KRISHNA RAO is here by converted into Civil post with effect from 6.8.88 without change of designation. The fee scales in which She/he is employed will from 6.8.88 be considered as pay scales of the corresponding post and the fee drawn by him/her will be the pay drawn by him/her with effect from

6.8.88. This post would be treated to have been created as temporary post with effect from 6.8.88 to be converted into permanent post in due course in accordance with the prescribed procedure.

For Director.”
Administrative Officer”

The Memorandum states that all the rules/regulations and benefits, including pensionary benefits, age of retirement etc., which are applicable to regular government servants, would also apply to the First Respondent with effect from 6 August 1988, thereby terminating the contract which he had entered into at the time of his recruitment. The Second Respondent was similarly declared to be a government servant.

4 The Respondents were not given any promotion for twelve years. Aggrieved by this, they filed OA 916 of 1999 and OA 1010 of 1999 before the CAT, claiming that they had not received any promotion, as they were not treated as members of the Indian Broadcasting Programme Service by the appellants. The Tribunal allowed the applications of the Respondents and directed the government to grant them all benefits under the Rules and consider their cases for promotion.

5 The appellants challenged the order of the Tribunal before the High Court of Andhra Pradesh. They submitted that since the posts of TV News Correspondent and TV Assistant News Correspondent have not been included in the Rules, the Respondents cannot be considered for promotion to the post of Junior

Administrative Grade (selection grade) and therefore, the Tribunal had no jurisdiction to issue such a direction.

6 The High Court upheld the Tribunal's decision that acceptance by the Respondents of benefits under the Annual Career Progression scheme did not disentitle them to get equivalent pay scales. The High Court examined the meaning of the expression 'departmental candidate' in Rule 2 (c) alongwith Rule 6 and Note 3 of Schedule I. The High Court held:

"A bare perusal of above definition would clearly go to show that the person who holds posts on regular basis can also be treaded as "department candidate". It is not in dispute before this Court that by virtue of proceedings dated 31 March 1992 the applicants were declared as Government Servants with retrospective effect from 6 August 1988 and 12 August 1988 respectively. Therefore the applicants fit into the definition of "department candidate" as defined under Section 2 (c) of the IBPS Rules, 1990. Rule 6 of the IBPS Rules is that subject to the provisions of sub-rules (2), (3) and (4) all departmental candidates holding posts on regular basis in the scales of pay of Rs. 5900-6700, Rs. 3700-5000, Rs. 3000-4500 and Rs. 2200-4000 shall, from the dates of commencement of these Rules, be deemed to have been appointed to the corresponding posts and grades in the Service."

Hence, the High Court held that the Respondents fulfill the definition of a departmental candidate under section 2(c) of the Rules. Rule 6 provides that subject to the provisions of sub- rules (2), (3) and (4), all departmental candidates holding posts on a regular basis in the scales of pay of Rs. 5900-6700, Rs. 3700-5000, Rs. 3000-4500 and Rs. 2200-4000, shall, from the date of commencement

of the Rules, be deemed to have been appointed to the corresponding posts and grades in the Service. The High Court has also relied on Note 3 of Schedule I to the Rules, under which posts sanctioned for various schemes in All India Radio and Doordarshan after 1 January 1985 are deemed to have been included in the service and such posts shall be added to the strength of the cadre.

7 Intervention Applications have been filed. The intervenors state that they fall in the same category as the First and Second Respondents and hence the Rules should also apply to them. It was also submitted that the Petitioner offered promotion to the First and Second Respondents and to similar persons after a probation of 2 years, but even after its completion they were not promoted. The Intervenors have also submitted in their written submissions that two days after the final hearing on 9 August 2018, the appellants published a Gazette notification online showing truncated Recruitment Rules 2014 that exclude the Group A posts of TV Assistant News Correspondents to prevent the affected parties from benefitting.

8 On hearing the submissions made by the Petitioner and the Respondents, we are of the view that the Tribunal and the High court are correct in their findings and conclusions.

9 Rule 6 which provides for the initial constitution of the service stipulates that from the date of the commencement of the Rules, departmental candidates who held posts on a regular basis in the stipulated pay scales would be deemed to have been appointed to corresponding posts and grades in the service. Rule 2(c) provides for the definition of the expression “departmental candidates”. The effect of Note 3 to Schedule I is that posts sanctioned after 1 January 1985 in All India Radio and Doordarshan would be deemed to have been included in the service and will be added to the strength shown therein. The High Court has observed that on the date of the commencement of the Rules, the pay scales of the applicants were Rs. 3000-4500 and Rs. 2200-4000 respectively. As a result of the deeming provision in Note 3, it was held that they would be appointed to corresponding posts and grades in service. This finding is unexceptionable. It was not in dispute before the High Court that the posts of TV News Correspondent and TV Assistant News Correspondent were regular sanctioned posts. Based on this, it was held that having due regard to Rule 6 read with Rule 2(c) and Note 3 of Schedule I, the posts held by the Respondents shall be deemed to have been included in the service. This interpretation of the High Court is borne out by the Rules. Once they were declared to be government servants, it would be unfair and inequitable to deny to them all the benefits, including of pay scales and other conditions of service applicable to posts in the equivalent pay scale.

10 While affirming the judgment of the Tribunal, we clarify that

- (i) promotions which have already been effected and the existing seniority shall not be affected;
- (ii) in the case of employees who have retired, a notional pay fixation shall be carried out and retiral benefits, including pension, if any, shall be determined on that basis; and
- (iii) individual cases for promotion would be considered against vacancies available, keeping seniority in view.

11 The appeals are accordingly disposed of in the above terms. Pending applications, if any, are disposed of. There shall be no order as to costs.

.....CJI
[DIPAK MISRA]

.....J
[Dr Dhananjaya Y Chandrachud]

.....J
[INDIRA BANERJEE]

New Delhi;
September 26, 2018.