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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2110/2003**

**ASSOCIATION OF UPSC RECRUITED PROGRAMME OFFICERS &  
ANR.** ..... Petitioners

Through: Mr. Samrat Nigam, Advocate.

versus

**UNION OF INDIA & ORS.** ..... Respondents

Through: Mr. Rajeev Sharma, Mr. T. Rajat  
Krishna and Mr. Saket Chandra,  
Advocates for R-1 to 3.  
Mr. Pankaj Kumar Singh, Advocate  
for R-6.

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE TALWANT SINGH**  
**ORDER**  
% **03.02.2020**

**Review Petition No. 112/2017**

1. This Review Petition has been filed by the Petitioners pursuant to the leave granted to them by the Supreme Court by its order dated 18<sup>th</sup> January, 2017 in CA No.4387/2007, which reads as under:

“Heard learned counsel for the parties.

In view of Judgments of this Court in *Union of India v. M.A. Chowdhary - (1987) 4 SCC 112* and *National Union of All India Radio and Other v. Union of India & Anr. - (1990) 3 SCC 596*, the artists recruited on contract basis were treated as civil servants. They were promoted long back. In this background, we do not see any ground to interfere with the



impugned order.

Only other contention raised on behalf of the appellants-Association is that their claim for promotion should be considered against any available vacancies in accordance with law. This aspect does not appear to have been adverted to in the Judgment of the High Court.

In these circumstances, we leave that question open, to be examined by the High Court on merits, if the appellant(s) move the High Court by way of a review application within a period of one month from today. The said aspect may be considered distinctly by the High Court as expeditiously as possible.

The civil appeal is accordingly disposed of. No costs.

Pending applications, if any, shall also stand disposed of.”

2. Before us, there was a contention raised by Mr. Rajeev Sharma, learned counsel appearing for both the Prasar Bharti as well as the Ministry of Information & Broadcasting (‘MIB’) that the present Review Petition, which seeks promotions for Programme Executives i.e. the Petitioners herein, from when they became eligible for such promotions, would go far beyond the scope of the Review Petition.

3. The Court is unable to agree with the above submission. The Court has examined the prayers in the Original Application No. 821/2001 filed before the Central Administrative Tribunal, Principal Bench, New Delhi (‘CAT’) and in particular, the second prayer in that application which specifically dealt with the issue of seniority and promotions of the Petitioners viz, the Programme Executives vi-a-vis the Staff Artistes. In its judgment dated 25<sup>th</sup>



July, 2006 while dismissing the W.P.(C) No.2110/2003, this Court did not deal with the issue. It only dealt with the issue of regularization of the Staff Artistes, which it upheld.

4. It is for this reason that the Supreme Court in the aforementioned order dated 18<sup>th</sup> January 2017, granted liberty to the present Petitioners to file a Review Petition to raise this issue i.e., “of their claim for promotion against any available vacancies in accordance with law”.

5. In that view of the matter, the Review Petition is disposed of by recalling the order dated 25<sup>th</sup> July 2006 and restoring W.P.(C) No.2110/2003, limited to considering the above issue of the Petitioner’s claim for promotion against available vacancies in accordance with law.

**CM APPLs. 10096/2018 (permission to file additional documents), 542/2019 (for impleadment in Review Pet. 112/2017)**

6. For the reasons stated therein, the applications are allowed.

**W.P.(C) No.2110/2003 & CM 38005/2018 (stay)**

7. The Court has examined the affidavit dated 28<sup>th</sup> April, 2018 filed by the Deputy Director (Administration), Directorate General of All India Radio, New Delhi (‘AIR’) where *inter alia* in paras 10 to 13, the vacancy position in both the AIR and the Doordarshan which now have been combined in the Parsar Bharti, have been set out. This was controverted by the Petitioners by filing a reply affidavit dated 1<sup>st</sup> May, 2018.

8. Thereafter, several hearings took place. In particular, reference requires to be made on the detailed recommendations made by the Directorate General



AIR ('DGAIR') on 1<sup>st</sup> December, 2017 which was reiterated on 29<sup>th</sup> January, 2018, 9<sup>th</sup> April, 2019 and lastly on 20<sup>th</sup> November, 2019, supporting the case of the Petitioners for their promotions not being restricted to Senior Time Scale, but even beyond, on notional basis by holding review DPCs.

9. Despite this, in its letter dated 5<sup>th</sup> December, 2019, addressed to the Chief Executive Officer, Prasar Bharti, the MIB has taken the stand that the Petitioners will be considered for promotions only upto the Senior Time Scale as per the provisions contained in Indian Broadcasting (Programme) Service Rules, 1990. It is this narrow controversy that remains to be considered by this Court. The Court finds that the MIB has not accepted the stand of the DGAIR on the tenuous ground that promotions can only be prospective whereas the concept of notional promotions from an earlier date is well accepted in service law. Therefore, the stand of the MIB is rejected.

10. In response to the query about availability of vacancies, Mr. Rajeev Sharma, learned counsel for the Respondents, sought to contend that there would be no vacancies available for accommodating the Petitioners if they were to be granted promotions. He, however, needs time for instructions on the aspect of review DPCs being held to grant the Petitioners notional promotion from the dates they became eligible for such promotions, irrespective of vacancies now being available on such promotional posts.

11. The Court directs both the Prasar Bharti as well as the MIB to file a joint affidavit within four weeks indicating the correct position of vacancies since 1986, and in particular answer the following queries:



- (i) When did the Petitioners' turn for promotion mature, and what was the vacancy position at that point?
- (ii) What are the promotional posts against which the Petitioners have been working on an ad-hoc basis and since when?
- (iii) The possibility of holding, in time-bound manner, the Review DPCs to consider the Petitioners for promotion to posts on which they have been working on an ad-hoc basis and from the dates they have been so working.

12. The response if any to the said affidavit be filed by the Petitioners before the next date.

13. List on 23<sup>rd</sup> March, 2020.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**FEBRUARY 03, 2020**

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