

Union of India

Vs

A. R. Shinde and Another

Civil Appeal No. 2732 of 1986

(M. P. Thakkar, B. C. Ray JJ)

19.02.1987

JUDGMENT

B. C. RAY, J. -

1. This appeal by special leave is against the order made on August 7, 1986 by the Central Administrative Tribunal, Principal Bench, Delhi ((1986) 1 ATC 440) holding that the order dated December 10, 1985 extending the appointment of respondent 2, Shri Suresh Mathur as the Director General of All India Radio is invalid.

2. The post of Director General, All India Radio is the highest post in the organisation carrying with it administrative responsibilities and also requiring from the incumbent holding the post, leadership qualities of a high order. Rules were framed for recruitment to the said post as well as to the equivalent post of Director General of Doordarshan under proviso to Article 309 of the Constitution of India and these rules are known as All India Radio (Recruitment of Director General, All India Radio) Rules, 1963. These rules provide that the post of Director General, All India Radio may be filled up either by promotion or by re-employment or transfer on deputation or by direct recruitment. These rules also provide that 50 per cent of the vacancies are to be filled up by promotion failing which by transfer on deputation and failing both by direct recruitment and 50 per cent by re-employment or transfer on deputation or direct recruitment. It was also provided that in respect of the second category the exact method of recruitment is to be decided upon in consultation with the Union Public Service Commission on each occasion. The post of Director General, All India Radio fell vacant on February 14, 1985. In accordance with the aforesaid recruitment rules the Additional Director General in the All India Radio who had also served for three years in the post of Additional Director General will be considered for promotion to the post of Director General. Respondent 1, Shri A. R. Shinde who was appointed as Additional Director General on August 24, 1982 did not acquire the requisite qualification for being considered for promotion to the post of Director General, All India Radio as he had not rendered three years service in the said grade of Additional Director General on the said date. The authorities concerned took recourse to make the appointment to the post by transfer on deputation. Accordingly on March 4, 1985 respondent 2, Shri Suresh Mathur who was an officer of the rank of Additional Secretary to the Government of India and was the Secretary, UPSC at that time was appointed by transfer on deputation initially for a period of six months. Before the expiry of the said period of six months i.e. in July-August 1985, the authorities concerned considered the proposals for continued appointment of Shri Suresh Mathur for a further period of two years. After approval by the Appointments Committee of the Cabinet the further continuation of respondent 2 as Director General, All India Radio till March 3, 1987 was notified on December 10, 1985 on the basis of the said proposal. This order of continuation of respondent 2 as Director General, All India Radio was assailed by respondent 1, Shri A. R. Shinde,

the Additional Director General, before the Central Administrative Tribunal, Principal Bench, Delhi on the ground inter alia that though he fulfilled all the requisite qualifications as provided in the said rules for being considered for promotion to the post of Director General, All India Radio, his case was not considered and the said order was made continuing the appointment of respondent 2 as Director General of All India Radio up to March 3, 1987.

3. The Central Administrative Tribunal after hearing the parties quashed the appointment of respondent 2 and directed for filling up the post of Director General, All India Radio in accordance with the rules and to consider the case of the applicant holding that the appointment of respondent 2 was not made in accordance with the said rules and respondent 1 though fulfilled the eligibility qualification was not at all considered and that respondent 2 also had not the requisite qualification as specified in the said rules for being appointed to the said post.

4. The learned counsel for the appellant has challenged the validity of the findings recorded by the Central Administrative Tribunal (Tribunal) on both the points, viz. :

(1) As regards the finding that the appointment of respondent 2 was bad on the ground that it was not in accordance with the rules; and

(2) that respondent 2 was not qualified to be appointed to the post.

5. Having given our anxious consideration to the submissions urged on behalf of both the sides and having accorded due weightage to the views expressed by the Tribunal, we are of the opinion that the findings recorded by the Tribunal on both the points are not sustainable.

6. Insofar as the validity of the appointment of respondent 2 is concerned, the Tribunal has overlooked the crucial circumstance that what was being done was extension of the original appointment to the post and not a regular appointment under the Rules. The relevant provisions in the background of which the question calls for consideration may be set out for the sake of convenience. Column 10 of the Schedule of Rules as amended in 1985 which provides for the method of recruitment and percentage of the vacancies to be filled by various methods in respect of the two posts specified in column 2, reads as under :

(i) 50 per cent by promotion failing which by transfer on deputation and failing both by direct recruitment.

(ii) 50 per cent by re-employment or transfer on deputation or direct recruitment, the exact method of recruitment to be decided in consultation with the Union Public Service Commission on each occasion.

7. Column 11 pertaining to the eligibility condition is as under :

Promotion. - Additional Director General, All India Radio/Doordarshan with 3 years regular service in the grade.

8. With regard to transfer on deputation it is provided as under :

Officers of All India Services or Central Services Group 'A' working in or eligible for appointment to the post of Additional Secretary to the Government of India and possessing experience of the type mentioned in clause (ii) of column 7.

9. Clause (ii) of column 7 reads as follows :

18 years experience in a supervisory capacity in educational, cultural, publicity or professional institution/organisation, including adequate general administrative experience with ability and capacity for organisation.

Thus, in order to satisfy the requirement as regards 50 per cent recruitment by promotion, one of the two posts has to be filled by promotion. The post of Director General fell vacant on February 14, 1985 and admittedly on that date respondent 1 was not yet eligible for appointment to the said post. So also no other Additional Director General in the organisation having three years' service was qualified for promotion. Under the circumstances, appointment by promotion was not feasible. That is the reason why respondent 2 Shri Suresh Mathur who was of the rank of Additional Secretary to the Government of India and was Secretary, Union Public Service Commission at the material time, was appointed by transfer on deputation for six months.

10. There were only three modes of making recruitment in order of preference viz. :

(1) By promotion; failing which

(2) by deputation; and failing which

(3) by direct recruitment

Since the appointment by promotion was not at all possible and such an important and sensitive post could not be kept vacant, the appointment of respondent 2 was made by transfer on deputation which was the next mode of appointment in the order of preference. Even the Tribunal has accepted this position, as is evident from the following passage : [(1986) 1 ATC p. 445, para 8]

Although the applicant has contended that even this appointment by transfer on deputation was illegal, we are unable to accept this contention. Neither the applicant nor anyone else was qualified to be promoted as Director General, All India Radio in accordance with the rules on that day. The method of promotion to the post of Director General, AIR had thus failed when the vacancy occurred in February 1985. No exception can, therefore, be taken to the appointment by transfer on deputation instead of by promotion.

Thus the appointment of respondent 2 made in February 1985 is unexceptionable. Exception, however, has been taken to the further extension of the appointment for the period expiring on March 3, 1987. The question of filling up the vacancy was taken up for consideration in advance as the initial appointment was due to expire on September 3, 1985. But even at that time no one was qualified for promotion. Under the circumstances the appointment of respondent 2 was extended up to March 3, 1987. The Tribunal has taken the view that "even if the proposal was initiated earlier, the entire position as on September 3, 1985, when the post would fall vacant, ought to have been clearly presented to the Appointments Committee and considered". [(1986) 1 ATC p. 446, para 8] Both the respondents would have then qualified to have been considered for the post by the Departmental Promotion Committee, the Tribunal adds. In our opinion, this line of reasoning cannot be sustained. The appointment to such a sensitive post by the very nature of things had to be considered in advance and if when the proceedings were initiated respondent 2 had not yet qualified for being appointed to the post, his name could not have been considered. In any case failure to consider his name in anticipation that he would have qualified by the date on which the initial

appointment came to an end does not constitute any illegality which vitiates the appointment. The Tribunal does not say that there were mala fides. And we think the Tribunal was right in not drawing such a sinister inference for there was nothing on record to suggest that the appointing authority had any animus against respondent 2. The mere fact that the original appointment of respondent 2 which was rightly made initially, even according to the Tribunal, was extended for a further period by reason of the fact that when the proposal was mooted for consideration nobody else was eligible for promotion, cannot vitiate the appointment of respondent 2 by transfer on deputation which was the approved mode for appointment as per the relevant rules. The very fact that extension was made only till March 3, 1987 shows that there was anxiety to fill up the vacancy ultimately by promotion which was the first preferential mode of appointment, if possible. If it was otherwise, the initial appointment itself could have been made without restricting the appointment by a time limit. It therefore appears that there was anxiety to make the appointment by way of a stop-gap arrangement in order that the regular appointment could possibly be made by promotion which was the first preferential mode of appointment to the post. We do not think that merely by reason of the fact that it was not brought to the notice of the Appointments Committee that respondent 2 would qualify for being considered for promotion shortly would not justify characterising or quashing the appointment as illegal under the rules. We are, therefore, unable to uphold the finding recorded by the Tribunal on this point.

11. So far as the second point is concerned, the view taken by the Tribunal is that respondent 2 was not qualified under the rules for being appointed for transfer on deputation. The criteria for appointment as projected in column 7 has already been extracted. Now, admittedly respondent 2 fulfils the first part of the criteria inasmuch as he is holding the post of Additional Secretary to the Government of India. Whether or not the second part of the criteria which requires "possessing experience of the type mentioned in clause (ii) of column 7" may be examined presently.

12. Now, it would not be legal or proper to bodily lift and transplant clause (ii) literally and word by word as the requisite criteria for appointment by transfer on deputation as is being contended on behalf of respondent 1. Due importance must be attached to the expression "possessing experience of the type mentioned in clause (ii) of column 7". The emphasis in substance, is on possession of experience of the general nature mentioned in clause (ii). It would therefore not be right to inject or read into the eligibility criteria the requirement of "18 years' experience in a supervisory capacity in educational, cultural, publicity or professional institution/organisation" as the requisite criteria for appointment on transfer by deputation. If the rule-making authority was so minded, it could have expressly transplanted all the requirements of clause (ii) of column 7. If such were the intention the rule-making authority would not have referred to experience of the 'type' mentioned in clause (ii) of column 7. On a true, fair and reasonable reading of the eligibility criteria, it cannot be said that it requires either experience of '18 years' or experience in a 'supervisory capacity' in any of such institutions as are mentioned in clause (ii) of column 7. All that is required is experience of that type viz. experience in the sphere of education, culture, publicity etc. alongwith adequate general administrative experience with capacity for organisation. Be it realized that the criteria is being specified in the context of officers belonging to the All India Services or Central Services Group A. By the very nature of things therefore they could not have 18 years' experience in professional or supervisory capacity in any educational institution. The service history of respondent 2 may now be briefly stated with the end in view to examine whether he fulfilled the criteria in the aforesaid sense. Shri Mathur had to his credit 29 years of administrative experience (as of 1985) as an officer belonging to the Indian Administrative Service, of which he had been in the rank of Joint Secretary to Government of India or above for 13 years. His service included terms as Joint Secretary in the Planning Commission in charge of State Plans and Multi-level Planning, Additional Chief Secretary,

and as Chief Secretary, Government of Manipur, Joint Secretary in the Ministry of Information and Broadcasting, as Secretary, UPSC etc., the details of which are :

#1956 - Joined IAS (Madhya Pradesh Cadre) 1967 - Managing Director, Tribal Co-operative Development Corporation, where his duties included development of small-scale industries by organising infrastructure, raw material and marketing, promotion of the development of handlooms and handicrafts industry and establishment of co-operative movement in the tribal area. 1969 - Deputy Secretary in Cabinet Secretariat. Later, Director in-charge of Manpower & Employment. August 1972 to - Secretary to Chief Minister, Government of West Bengal. January 1973 - Chief of Division and later as Joint Secretary to the Government of India in charge of State Plan and Multi-level Planning Division in the Planning Commission. May 1977 - Hill Commissioner, Secretary, Planning, Finance, PWD, Power, Food and Civil Supplies in the Government of Manipur. Later, Additional Chief Secretary and Chief Secretary to the Government of Manipur. July 1980 - Joint Secretary in the Ministry of Information & Broadcasting when he dealt not only the Broadcasting Media, namely, AIR and Doordarshan but also the Information Media, viz. Film Documentaries, Press, Advertising and Visual Publicity. October 1983 - Appointed as Additional Secretary to the Government of India and posted as Secretary, UPSC.##

13. In the present case respondent 2 was duly qualified having regard to the fact that he had to his credit 29 years of administrative experience and had held such senior positions as Joint Secretary in charge of State level Plan in the Planning Commission, Additional Chief Secretary and Chief Secretary in the Government of Manipur, Joint Secretary in the Ministry of Information and Broadcasting. With effect from October 1983 he was holding the post of Additional Secretary to the Government of India. The very fact that he had worked as Joint Secretary in the Ministry of Information and Broad-casting itself coupled with his other experience would satisfy the requirement of the eligibility criteria for being appointed to the post of Director General, All India Radio. We are, therefore, of the opinion that the Tribunal was in error in reaching the conclusion that respondent 2 was not qualified or eligible under the rules for being appointed to the post.

14. The Tribunal was accordingly in error in taking the view

(1) that the extension of the term of appointment of respondent 2 which is due to expire on March 3, 1987 was invalid, and

(2) that respondent 2 was not qualified for being appointed by transfer on deputation to the said post as per the rules.

15. The question regarding the filling up of the vacancy upon the term of respondent 2 coming to an end on March 3, 1987, will shortly arise. Respondent 1 has by now become eligible for being promoted if he is otherwise found suitable. The competent authority will of course, be required to consider the question as regards the suitability of respondent 1 for being promoted to the post of Director General in the context of filling up of the post upon the expiry of the term of respondent 2 on March 3, 1987. We have no doubt that the question will be considered objectively, in the larger interest of the organisation and in larger public interest, and an appropriate decision on merits will be taken in accordance with law.

16. We accordingly allow this appeal and set aside the judgment and order of the Central Administrative Tribunal. There will be no order as to costs.

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