

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
A.R. SHINDE & ANR.

DATE OF JUDGMENT 19/02/1987

BENCH:
RAY, B.C. (J)
BENCH:
RAY, B.C. (J)
THAKKAR, M.P. (J)

CITATION:
1987 AIR 1004 1987 SCR (2) 339
1987 SCC (2) 1 JT 1987 (1) 487
1987 SCALE (1) 397

ACT:

Central Administrative Tribunal Act, 1985: Director General AIR--Appointment of--By Government by transfer of deputation--Whether valid--'18 years' of experience in a 'supervisory capacity'--What is--Order of Tribunal set aside.

Civil Services: All India Radio (Recruitment of Director General A.I.R.) Rules 1963 Schedule Columns 7(ii) 10 & 11--Director General A.I.R.--Recruitment of--'18 years' in 'supervisory capacity'--What is--Mere fact that original appointment to the post was for period of six months and extended--Whether valid.

Words and Phrases: '18 years' of experience in a 'supervisory capacity'--What is.

HEADNOTE:

The All India Radio (Recruitment of Director General, All India Radio) Rules, 1963 provided that the post of Director General, All India Radio be filled up either by promotion or by re-employment or by transfer on deputation, or by direct recruitment, and (i) 50% of the vacancies be filled up by promotion failing which by transfer on deputation, and failing both by direct recruitment, and (ii) 50% by reemployment 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. The Additional Director General in the All India Radio who had served as such for three years was also eligible under the Rules for promotion to the post of Director General.

The post of the Director General fell vacant on February 14, 1985. The authorities took recourse to make appointment to the post by transfer on deputation as there was no body eligible for promotion, including the first respondent from the grade of Additional Director General. The second respondent, who was an officer of the rank of the Additional Secretary to the Government of India, was appointed by transfer on deputation initially for a period of six months, and before the expiry of

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this period, his continuation for a further period of two

years was recommended as nobody was eligible for promotion even at that time and after approval of the competent authority the second respondent's continuation was notified on December 10, 1985.

The aforesaid order of continuation was assailed before the Central Administrative Tribunal by the first respondent, who was working as the Additional Director General, on the ground that though he fulfilled all the requisite qualifications provided in the Rules for being considered for promotion to the post of the Director General, his case was not considered and the impugned order continuing the appointment of the second respondent upto March 3, 1987 was made.

The Central Administrative Tribunal held that the appointment of the second respondent was not made in accordance with the Rules, that he had not the requisite qualification for being appointed to the post and though the first respondent fulfilled the eligibility qualification, was not considered at all, and quashed the appointment of the second respondent. It also directed that the post be filled up in accordance with the rules and that the first respondent be considered for the post.

In the appeal to this Court, the findings recorded by the Central Administrative Tribunal that the appointment of the second respondent was bad on the ground that it was not in accordance with the rules and that he was not qualified to be appointed to the post, were challenged.

Allowing the appeal, this Court,

HELD: 1.1 There were only three modes of making recruitment viz. (1) by promotion, failing which (2) by deputation; and failing which (3) by direct recruitment. [346B-C]

1.2 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 the second respondent was made by transfer on deputation which was the next mode of appointment in the order of preference. Thus, the initial appointment of the second respondent is unexceptionable. [346D-G]

1.3 The appointment to such a sensitive post by the very nature of things has to be considered in advance and if when the proceedings were initiated, the first respondent had not yet qualified for being appointed

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to the post, his name could not have been considered. 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. [347B-C]

1.4 The mere fact that the original appointment of the second respondent, which was rightly made initially, 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 the second respondent by transfer on deputation which was the approved mode for appointment as per the relevant rules. [347C-D]

1.5 The very fact that the 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. [347D-E]

1.6 Merely by reason of the fact that it was not brought to the notice of the Appointments Committee that the second respondent would qualify for being considered for promotion

shortly would not justify characterising or quashing the appointment as illegal under the Rules. [347F]

2.1 The criteria for appointment has been projected in Column 7 of the Schedule of Rules. The second respondent fulfils the first part of the criteria as he is holding the post of Additional Secretary to the Government of India. [347G-H]

2.2 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. [348A-B]

2.3 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 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
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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. [348B-D]

2.4 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 the institutions 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. along with adequate general administrative experience with capacity for organisation. The criteria is being specified in the context of officers belonging to the All India Services of 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. [348D-F]

2.5 The second respondent was duly qualified having regard to the fact that he had to his credit 29 years of administrative experience and had held senior positions including the post of Joint Secretary in the Ministry of Information and Broadcasting and was holding the post of Additional Secretary with effect from October, 1983. The very fact that he had worked as Joint Secretary in the Ministry of Information and Broadcasting 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. [349H; 350A-B]

3. The Tribunal was, therefore, in error in taking the view that the extension of the term of appointment of the second respondent which is due to expire on March 3, 1987 was invalid and that he was not qualified for being appointed by transfer on deputation to the said post as per the Rules. [350C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2732 of 1986.

From the Judgment and Order dated 7.8. 1986 of the Central Administrative Tribunal. New Delhi in O.A. No. 27 of 1986.

A.K. Ganguli, P. Parmeshwaran and A. Mariaputham for the Appellant.

S.C. Gupta, M.N. Shroff and K.M.M. Khan, for the Respondents.

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The Judgment of the Court was delivered by

B.C.RAY, J. This appeal by special leave is against the order made on 7.8.1986 by the Central Administrative Tribunal, Principal Bench, Delhi holding that the order dated 10.12. 1986 extending the appointment of respondent No. 2, Shri Suresh Mathur as the Director General of All India Radio is invalid.

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 on 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 reemployment 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 14th February, 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. The respondent No. 1, Shri A.R. Shinde who was appointed as Additional Director General on 24.8. 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 the respondent No. 2, Shri Suresh Mathur who was an officer of the rank of Additional Secretary to the Government of India and was the Secretary, U.P.S.C. 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

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of two years. After approval by the Appointments Committee of the Cabinet the further continuation of respondent No. 2 as Director General, All India Radio till 3rd March, 1987 was notified on 11th December, 1985 on the basis of the said proposal. This order of continuation of respondent No. 2 as Director General, All India Radio was assailed by respondent No. 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 No. 2 as Director General of All India Radio upto March 3, 1987.

The Central Administrative Tribunal after hearing the parties quashed the appointment of respondent No. 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 No. 2 was not made in accordance with the said rules and respondent No. 1 though fulfilled the eligibility qualification was not at all considered and that the respondent No. 2 also had not the requisite qualification as specified in the said rules for being appointed to the said post.

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 no. 2 was bad on the ground that it was not in accordance with the rules; and
- (2) that respondent No. 2 was not qualified to be appointed to the post.

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.

In so far as the validity of the appointment of respondent No. 2 is concerned, the Tribunal has overlooked the crucial circumstance that what was being done was extension of the original appointment to the

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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% by promotion failing which by transfer on deputation and failing both by direct recruitment.

(ii) 50% 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."

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."

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."

Clause (ii) of Column 7 reads as follows:-

"18 years experience in a supervisory capacity in educational, cultural, publicity or profes-

sional institution/organisation, including adequate general administrative experience with ability and capacity for organisation."

Thus, in order to satisfy the requirement as regards 50% 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 No. 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 promo-

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tion. Under the circumstances, appointment by promotion was not feasible. That is the reason why Respondent No. 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.

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 No. 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:-

"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 or by promotion."

Thus the appointment of respondent No. 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 No. 2 was extended upto March 3, 1987. The Tribunal has taken the view that "even if the proposal was initiated earlier the entire position as on 3.9.1985 when the post fell vacant ought to have been clearly

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presented to the Appointments Committee and considered." 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 No. 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 No. 2. The mere fact that the original appointment of respondent No. 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 No. 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 No. 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.

So far as the second point is concerned, the view taken by the Tribunal is that respondent No. 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 No. 2 fulfils the first part of the criteria in as much as he is holding the post of Additional Secretary to the Government of India. Whether or not the second part of the criteria which

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requires "possessing experience of the type mentioned in clause (ii) of column 7" may be examined presently.

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 No. 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. along with 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 No. 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 on 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
- 349 included Development of small-scale industries by organising infrastructure, raw material and marketing, promotion of the development of hand looms and handicrafts industry and establishment of co-operative movement in the tribal area.
- 1969 -- Deputy Secretary in Cabinet Secretariat. Later, Director in-charge of Man-power & 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.
- January, 1973
- 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.

In the present case respondent No. 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-

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charge of State-level Plan in the Planning Commission, Additional Chief Secretary and Chief Secretary in the Gov-

ernment 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 Broadcasting 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 No. 2 was not qualified or eligible under the rules for being appointed to the post.

The Tribunal was accordingly in error in taking the view (1) that the extension of the term of appointment of respondent No. 2 which is due to expire on March 3, 1987 was invalid, and (2) that the respondent No. 2 was not qualified for being appointed by transfer on deputation to the said post as per the rules.

The question regarding the filling up of the vacancy upon the term of respondent No. 2 coming to an end on March 3, 1987, will shortly arise. Respondent No. 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 No. 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 No. 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.

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.

N.P.V.
allowed.
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Appeal