IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 6981/2011 & CM Nos. 16022/2011 (for stay) & 16346/2011 (for impleadment)

ASSOCIATION OF RADIO AND TELEVISION ENGINEERING EMPLOYEES AND ORS. ..... Petitioners

Through: Mr. Jayant Bhushan, Senior Advocate with Mr. Sanjai Pathak and Mr. Gautam Talukdar, Advocates.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr. Rajeev Sharma with Mr. Sahil Bhalaik, Advocates for R-2 to R-5. Mr. Sachin Datta, CGSC with Mr. Abhimanyu Kumar for R-1/UoI.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT
27.09.2011

1. An interesting question of law concerning the interpretation of the expression "service matters" defined in Section 3(q) of the Administrative Tribunals Act, 1985 ('ATA') arises for consideration in this petition.

2. The Association of Radio and Television Engineering Employees ('ARTEE'), All India Radio and Doordarshan Technical Employees Association ('ADTEA') and Programme Staff Association of All India Radio & Doordarshan ('PSA') have filed this petition seeking a large number of reliefs. The principal challenge is to an order dated 8th September 2011 issued by the Secretariat of Prasar Bharti, Respondent No. 2, which reads as under:

> "It has been decided that as no association of employees of AIR and Doordarshan falls in the category of recognized associations, no so called office bearer of any of these employees associations is to be extended any preferential treatment.
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> 2. All employees of Prasar Bharati are to be treated in a fair and transparent manner and the same principles as relates to service

conditions, transfers, posting, opportunities, etc should apply to each employees equally.

3. This policy should be applied absolutely without any distinction and no departure or interference should be allowed in its implementation.

4. It is further clarified that the earlier circular No. B-12017/7/2008-WL dated 18.12.2008 of DG: AIR be treated as ab-initio null and void and therefore withdrawn with immediate effect.

5. The issue with the approval of the Competent Authority."

3. A preliminary objection was raised by Mr. Rajeev Sharma, learned counsel for Respondent No. 2, as regards the maintainability of this writ petition in this Court. The submission is that inasmuch as the present petition concerns a 'service matter' the Petitioners should approach the Central Administrative Tribunal ('CAT') constituted under the ATA.

4. Mr. Jayant Bhushan, learned Senior counsel appearing for the Petitioners submits that the impugned order essentially concerns the withdrawal of recognition accorded to the Petitioner Associations. An incidental effect is the withdrawal of an earlier circular dated 18th December 2008 which stipulated that the posting of office bearers of a recognized associations/union at the zonal and national level should "as far as possible" remain "undisturbed." The submission is that the recognition earlier granted to the Petitioner Associations by virtue of an order dated 22nd February 2010 issued by Respondent No. 2, directing maintenance of *status quo* as regards the issue of recognition of associations/unions of the All India Radio ('AIR'), cannot be sought to be withdrawn by the impugned order.

5. Mr. Bhushan states that although the Petitioners are aggrieved by a large number of orders issued by Respondent No. 2, including orders transferring employees from one station to another, the Petitioners are confining the scope of the present petition to the extent that the impugned order dated 8th September 2011 withdraws recognition to the Petitioner Associations, and the consequential orders by which the office bearers of the Petitioner Associations have been transferred from their posting at New Delhi.

6. Referring to Section 3(q) ATA, Mr. Bhushan submits that the recognition of an association of employees would not fall within the ambit of 'service matters.'

Invoking the rule of *ejusdem generis*, he submits that when read as a whole, the provision makes it clear that the words "any other matter whatsoever" occurring in Section 3(q)(v) have to be read *ejusdem generis* with the matters specified in the preceding Clauses (i) to (iv) of Section 3(q) ATA. His submission is that the phrase "all matters relating to the condition of his service" appearing in the main portion of Section 3(q) has to be read as being controlled by the words "as respects" preceding the enumeration of the specific matters set out in Section 3(q)(i) to (iv). The 'other matters' referred to in Section 3(q)(v) would have to be of the same genus as the matters referred to in Section 3(q)(i) to (iv) ATA. According to him the addition of word 'whatsoever' at the end of Section 3(q)(v) would make no difference to this position. Mr. Bhushan places reliance on certain passages from the book ***Principles of Statutory Interpretation*** by Mr. G.P. Singh. Referring to the decision of the Division Bench of this Court in ***Smt. Babli v. Govt. of NCT of Delhi 2002 Lab IC 4*** which in turn relied upon in the decision of the Supreme Court in ***Union of India v. Rasila Ram (2001) 10 SCC 623***, it is submitted that the question whether the government employees were entitled to retain government accommodation allotted during their service tenure can bring a dispute before the CAT was answered by this Court in the negative. The said decision has recently been followed by another Division Bench of this Court in ***Union of India v. Surjeet Sangwan 2009 INDLAW DEL 2943*** where it was held that the CAT did not have jurisdiction to adjudicate a demand raised by an Estate Officer to recover damage/rent in relation to premises which was the subject matter of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ('PP Act'). Specific to the issue of recognition of associations/unions, Mr. Bhushan relies upon a judgment of the Full Bench of the CAT in ***Indian National NGOs v. Secretary Ministry of Defence*** [reported in *Full Bench Judgments of CAT Volume III at page 128*] which in turn has been followed by the CAT at Lucknow in ***All India PO and Rms Accountants Association v. Union of India 1999 INDLAW (CAT) 179***. He points out that the Full Bench of the CAT held that notwithstanding the question of recognition of Associations being subject matter of the Central Civil Services (Recognition of Service Association) Rules 1959 ['CCS (RSA) Rules'] as modified by the CCS (RSA) Rules, 1993 the issue of recognition of an Association would not come within the ambit of 'service matters' under Section 3(q) ATA. On the rule of *ejusdem generis*, Mr. Bhushan places reliance on ***In Re: Sir Stuart Samuel (1913) AC 514*** and ***Brownsea Haven Corporation Ltd. v. Poole Corporation (1958) 1 All ER 205***. He submits that merely because an incidental effect of the withdrawal of

recognition of the Petitioner associations is that their office bearers would not be able to demand that they remain posted in Delhi, the central issue in this writ petition would not become a 'service matter' for the CAT to adjudicate on it. In other words, the CAT cannot by a sidewind adjudicate the question regarding non-recognition of the employee associations, when it otherwise does not have jurisdiction to deal with such an issue.

7. Mr. Rajeev Sharma, learned counsel for Respondent No. 2, on the other hand, refers to Article 323A of the Constitution and the Statement of Objects and Reasons ('SOR') of the ATA to highlight the legislative intent in enacting the ATA. This was to provide for adjudication by the Administrative Tribunals "of disputes and complaints with respect to recruitment and conditions of service of persons appointed of public services and posts in connection with the affairs of the Union or of any State…" It is submitted that the rule of *ejusdem generis* is not meant to be applied in a mechanical way. It is only a subsidiary rule of construction, constituting an exception to the general rule of plain construction. Referring to the decision of the Supreme Court in ***Lila Vati Bai v. State of Bombay AIR 1957 SC 521***, followed in ***Jage Ram v. State of Haryana 1971 (1) SCC 671***, it is submitted that where the plain meaning of the statute is clearly discernible, a restricted meaning need not be given particularly where the context and the object of the statute do not require it. It is further submitted that the claim of an office bearer of an association or union to be posted at a certain place by virtue of holding such office would certainly constitute a "condition of his service" and, therefore, would definitely fall within the ambit of "service matters" under Section 3(q) ATA.

8. Mr. Sharma, pointed out that the President of Petitioner No. 1 Association in his individual capacity along with certain other employees has already approached the CAT by filing OA No. 3455 of 2011 challenging the specific order of transfer. However, there is no challenge in the said application to the order dated 8th September 2011 withdrawing recognition of the Petitioner Associations. He added that the CAT has not passed any interim order in the matter. He submitted that the CAT would have jurisdiction to examine whether in the context of the conditions of service of the office bearers of the Petitioner Associations being adversely affected, the order dated 8th September 2011 was validly issued.

9. Since the arguments largely centre around the applicability of the rule of *ejusdem generis* it would be useful to begin this discussion by referring to the relevant passages from the classic work, **Principles of Statutory Interpretation** by Mr. G.P. Singh [12th Ed., 2010, LexisNexis Butterworths Wadhwa]. The rule itself is explained in the following words: (@ 504-505)

> "When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule which is known as the rule of *ejusdem generis* reflects an attempt "to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be superfluous". The rule applies when '(1) the statute contains an enumeration of specific words; (2) the subjects of enumeration constitute a class or category; (3) that class or category is not exhausted by the enumeration; (4) the general terms follow the enumeration; and (5) there is no indication of a different legislative intent.' If the subjects of enumeration belong to a broad based genus as also to a narrower genus, there is no principle that the general words should be confined to the narrower genus."

10. Mr. G.P. Singh, in the aforementioned book, discusses the interpretation of the word 'whatsoever' following certain general words. Referring to the decision in ***Tillmans & Co. v. SS Knutsford Ltd. (1908) 2 KB 385*** and ***Brownsea Haven Properties***, he notes that the mere use of that word "does not exclude the application of *ejusdem generis* principle." Referring to the decision in ***Kavalappara Kottarathil Kochuni v. State of Madras AIR 1960 SC 1080*** and ***Tribhuwan Parkash Nayyar v. Union of India AIR 1970 SC 540***, Mr. G.P. Singh further observes as under: (@ 512-513)

> "The rule of *ejusdem generis* has to be applied with care and caution. It is not an inviolable rule of law, but it is only permissible inference in the absence of an indication to the contrary, where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. As stated

by Lord Scarman [*Quazi v. Quazi (1979) 3 All ER 897*]; "If the legislative purpose of a statute is such that a statutory series should be read *ejusdem generis*, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfill the purpose of the statute. The rule like many other rules of statutory interpretation, is a useful servant but a bad master". So a narrow construction on the basis of *ejusdem generis* rule may have to give way to a broader construction to give effect to the intention of Parliament by adopting a purposive construction."

11. In ***Lila Vati Bai v. State of Bombay*** the Supreme Court explained in the context of Section 6 of the Bombay Land Requisition Act, 1948 ('BLR Act') that the words 'or otherwise' used in the Explanation (a) to Section 6 BLR Act intended to cover other cases which may not come within the meaning of the preceding clauses and that the legislative intent was to "cover all possible cases of vacancy occurring due to any reason whatsoever." Consequently, "far from using those words *ejusdem generis* with the preceding clauses of the explanation, the legislature used those words in an all inclusive sense." Elaborating further, it was observed that the rule of *ejusdem generis* should not be applied to whittle down the scope and ambit of the provisions of a statute where the legislative intent was to the contrary. Further, it was observed as under: (AIR @ 529)

"The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. In our opinion, in the context of the object and mischief of the enactment there is no room for the application of the rule of ejusdem generis. Hence it follows that the vacancy as declared

by the order impugned in this case, even though it may not be covered by the specific words used, is certainly covered by the legal import of the words "or otherwise".”

12. The above decision was followed by the Supreme Court in ***Jage Ram v. State of Haryana*** where the Court interpreted the scope of Section 17(2)(c) of the Land Acquisition Act, 1894. In paras 13 to 15 it was observed as under: (SCC @ 676-677)

> “13. The *ejusdem generis* rule is not a rule of law but is merely a rule of construction to aid the courts to find out the true intention of the legislature. If a given provision is plain and unambiguous and the legislative intent is clear, there is no occasion to call into aid that rule *ejusdem generis* rule is explained in *Halsbury's Laws of England* (3rd Edn.) Vol. 36 p. 397 paragraph 599 thus:
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> > “As a rule, where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, and subject to the primary rule that statutes are to be construed in accordance with the intention of Parliament. For the ejusdem rule to apply, the specific words must constitute a category, class or genus; if they do constitute such a category, class or genus, then only things which belongs to that category, class or genus fall within the general words ....”
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> 14. It is observed in *Craies on Statute Law* (6th Edn.) p. 181 that:
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> > “The ejusdem generis rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being, what it is, a mere presumption in the absence of other indications of the intention of the legislature. The modern tendency of the law, it was said, is "to attenuate the application of the rule of ejusdem generis". To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects.”

> 15. According to *Sutherland Statutory Construction* (3rd Edn.) Vol. II p. 395, for the application of the doctrine of *ejusdem generis*, the following conditions must exist.
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> (i) The statute contains an enumeration by specific words;
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> (ii) The members of the enumeration constitute a class;
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> (iii) The class is not exhausted by the enumeration;
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> (iv) A general term follows the enumeration and
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> (v) There is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires."

13. The law as explained by the Supreme Court in the above decisions makes it clear that the doctrine of *ejusdem generis* does not automatically apply to restrict the scope of words used in a statute, if otherwise the legislative intent is clear. The doctrine will be applied only where the legislative intent is manifest that the general terms shall not be given a broader meaning than required.

14. In the context of the ATA, which has been enacted with reference to Article 323A of the Constitution, it is plain that the legislative intent is that all service matters concerning conditions of service of employees of either the central or the state government should, in the first instance, be taken before the Administrative Tribunals for adjudication. In the above context, the language of Section 3(q) is such that a broad meaning has to be given to the expression 'service matters'.

15. Section 3(q) ATA reads as under:

> "**Section 3. Definitions (q)** - "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects-
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> (i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;"

16. The phrase "all matters relating to the condition of his service" appearing in the substantive part of Section 3(q) ATA is very significant. It is indicative of the kinds of disputes that can be taken before the Administrative Tribunals for adjudication. The words 'as respects' have also to be read in the context of 'all matters'. If so read, along with clauses (i) to (v) which follows the words 'as respects', it is clear that the matters are not limited to those specified in Clauses (i) to (iv) of Section 3(q) ATA. Also, addition of the word 'whatsoever' to the words 'any other matters' in Clause (v) of Section 3(q) ATA is significant. When the word 'whatsoever' is read with the words "all matters relating to the condition of his service", it is clear that the words "service matters" have to be given the broadest possible meaning and would encompass all matters relating to conditions of service of an employee.

17. In the context of the present case, there can be no manner of doubt that Respondent No. 2 has sought to bring about two consequences simultaneously. The first is to direct that "no association of employees of AIR and Doordarshan falls in the category of recognized associations." The second, as a direct consequence, is that "no so called office bearer of any of these employees associations is to be extended any preferential treatment." It is plain, therefore, that the impugned order dated 8th September 2011 came to be issued only so that office bearers of the employee Associations are not extended any preferential treatment. What that preferential treatment is, is plain from the contents of the impugned order. Para 2 states that "All employees of Prasar Bharti are to be treated in a fair and transparent manner and the same principles as relates to **service conditions, transfers, posting**, opportunities, etc. should apply to each employee equally." Then it proceeds to state that the order dated 18th December 2008 issued by the Director General of the AIR "be treated as ab-initio null and void and therefore withdrawn with immediate effect." As already noticed, the order dated 18th December 2008 had stated that office bearers at zonal and

national levels of recognized associations should, as far as possible, not be disturbed from their places of posting. It is nobody's case that issues concerning transfers and postings are not "service matters" although they have not been specifically enumerated as such in Section 3(q) (i) to (iv) ATA. The immediate and direct effect of the impugned order dated 8th September 2011 is that an office bearer of an Association who earlier may have enjoyed preferential treatment regarding his place of posting would no longer have that privilege. In fact para 2 of the impugned order dated 6th September 2011 itself expressly indicates that it concerns the 'service conditions' of the office bearers of the Associations. The question of validity of the impugned order dated 6th September 2011 would therefore certainly be a matter pertaining to 'conditions of service' and would clearly therefore fall within the ambit of 'service matters' in Section 3(q) ATA.

18. It is a moot question whether a simpliciter issue concerning recognition of an association of employees in terms of CCS (RSA) Rules can be entertained by the CAT as a 'service matter'. Such a question was answered in the negative by the Full Bench of the CAT in ***Indian National NGOs v. Secretary Ministry of Defence***. However, as far as the present case is concerned, there should no difficulty for the CAT to examine the validity of the impugned order dated 8th September 2011 insofar as it denies the office bearers of the Petitioner Associations preferential treatment in the matter of their postings and transfers. It is a composite question that the CAT would be called upon to answer when approached by the Petitioner Associations.

19. At this juncture it must be noted that Mr. Bhushan submitted that only an 'individual' and not an 'association' could file an application before the CAT. This submission is not borne out on a contextual interpretation of the words "a person aggrieved" occurring in Section 19 ATA. Those words have to be understood in the context of the dispute concerning the impugned order dated 6th September 2011 when brought before the CAT. The ATA itself does not define the word 'person'. Under Section 3(42) of the General Clauses Act, 1897 'person' would include an association of individuals as well. When the context of the dispute before the CAT so requires the words 'a person aggrieved' occurring in Section 19 ATA could include an association of individuals as well.

20. The cases sought to be relied upon by Mr. Bhushan in the context of Section 3 (q) ATA require to be dealt with. The facts in ***Union of India v. Rasila Ram*** (decided by the Supreme Court), which was followed in the ***Babli*** case by the Division Bench of this Court, related to proceedings under the PP Act. The PP Act is a special enactment. Section 15 thereof bars the jurisdiction of all civil courts. In that context it was observed by the Supreme Court in ***Rasila Ram*** as under:

> "Once, a Government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination the expression, "any other matter," in Section 3(q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971."

21. The facts both in ***Babli*** as well as ***Surjeet Sangwan*** arose in the context of proceedings under the PP Act. These decisions are plainly distinguishable in their application to the facts of the present case.

22. Consequently, this Court upholds the preliminary objection raised by counsel for Respondent No. 2 as to the maintainability of the present petition in the present form, even after its scope was sought to be restricted by learned Senior counsel for the Petitioners.

23. It is clarified that notwithstanding the fact that some of the individual employees, including the President of Petitioner No. 1 in his individual capacity, have already approached the CAT with applications challenging the individual transfer orders, the Petitioner Associations can file applications before the CAT questioning the validity of the impugned order dated 8th September 2011 on the ground that it adversely affects the conditions of service of the office bearers of the Petitioner Associations.

24. For the aforementioned reasons, this Court holds that the Writ Petition (Civil) No. 6981 of 2011 is not maintainable in its present form in the first instance in this Court. It is dismissed as such. It is clarified that it would be open to the Petitioners to approach the CAT, in the manner indicated hereinbefore, for relief. CM No. 16022 of 2011 is also therefore dismissed. Resultantly, no order is required to be passed in CM No. 16346 of 2011 and it is disposed of as such.

S. MURALIDHAR, J.

SEPTEMBER 27, 2011
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