

Central Administrative Tribunal
Principal Bench

OA No. 2021/2002

New Delhi, this the 20th day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

Shrimati Sneh Lata Aggarwal,
W/o Sh. Mukesh Chand,
H.No.393, Nanakpura, New Delhi-2. Applicant

(By Advocate: Shri S.Y. Khan)

Versus

Union of India through

1. Secretary to the Govt. of India,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi-110001.
2. The Director General,
Doordarshan, Mandi House,
Delhi-110001.
3. Head of the News,
Central Production Complex,
Khelgaon, New Delhi. Respondents

(By Advocate: Shri R.N. Singh)

ORDER

Shri Govindan S. Tampi

Smt. Sneh Lata Aggarwal is aggrieved at the denial of regularisation to her as General Assistant/LDC/GC Operator, a facility extended to her juniors.

2. Advocates S/Shri S.Y. Khan and R.N. Singh appeared for the applicant and the respondents respectively.
3. Respondents used to engage staff as on casual basis and on contract basis. Casual basis engagement was converted into assignment basis appointment later. The staff engaged thus have in fact been employed after a selection process. When the scheme for absorption of the Casual Staff was formulated completion of 365 days in any of block years of 1974-77, 1975-79, 1976-79 and 1977-80

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was taken as the basis. The applicant who has been engaged in the above manner on 11.7.88, is continuing to date in the same capacity as General Assistant with additional duties of CG Operator. This Tribunal had on 8.2.91, directed while disposing the OA 844/900 that a scheme for regularising casual artists with 120 days of service be formulated which the respondents did by issue of OM of 9.6.92 which was updated and clarified by OM dated 17.3.94. In terms of the scheme for purposes of regularisation one day's payment was treated as equivalent to 2.5 days. The instant applicant had become eligible for regularisation on account of her completing the requisite service in 1988 itself. She had worked for the requisite period, though in December, 89 she could not attend to work on account of child birth, in connection with which she was entitled for maternity leave and the said 135 days of leave had to be treated as eligible period of service and accounted accordingly. This was the position in all the subsequent years upto 2000. The applicant was indeed averaged when she joined service and she was therefore entitled for relaxation of upper age limit as has been done in a few other cases. Applicant's case called for relaxation of 3 years and 5 months and relaxation upto four years had in fact been given in a few cases. The above has been the decision of the Tribunal and the same was the decision of the Hon'ble Apex Court in DG. Doordarshan & Ors. Vs. Lalit Vikram and others (1998) 8 SCC 760. However, instead of extending the period for regularisation the respondents stopped the regularisation and decided to have the work done by making use of retired personnel upto 62 years. This was incorrect and malafide and against the direction of the Hon'ble Tribunal itself.

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4. Grounds raised in this OA are as below:

- i) The order was discriminatory and illegal in that the respondents failed to consider the case of the applicant for regularisation after granting relaxation;
- ii) the applicant's case was even otherwise covered as at the time of original engagement she was below 30, the prescribed age for General Assistant as accepted in the case of UOI & Ors. Vs. R.N. Heade 1992 SCC(L&S) 2612
- iii) when juniors have been considered for regularisation the applicant could not have been left out;
- iv) engagement of retired persons was against the instructions of the Hon'ble Supreme Court and in violation of DoPT's instructions; and
- v) law laid down by the Hon'ble apex court was to be granted to all those who are similarly situated as shown in Inderpal Yadav Vs. UOI 1985(2) AISLJ 58.

5. Respondents strongly contest the above. According to them, the OA is not maintainable on account of the wrong averments made by the applicant as well as on account of delay and laches. The applicant's case was not covered by the scheme for regularisation of casual workers of 1992 or 1994 and she was not eligible for empanelment for

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regularisation as she was averaged at the time of her original engagement in 1988 itself. Her contentions were baseless, misleading and misconceived. Casual workers were only booked for 10 days to work and not more than 120 days a year. Following the decisions of the Hon'ble Supreme Court and of the Tribunal on 14.2.92 in OA 563/86 (Shri Anil Kumar Mathur Vs. UOI), the Competent Authority decided to regularise the casual artists against available vacancies in the erstwhile staff artists category subject to the selection being made Kendra-wise. The scheme came into effect in 1992 and was liberalised in 1994. The payment to those regularised were also approved by the Competent Authority. The applicant could not be regularised as she was averaged and she did not fulfil the conditions of the scheme. The applicant's plea about her eligibility for maternity leave was wrong as no order of Govt. of India contained any such concession for the casual staff. All the persons considered for regularisation were within the age limit of 25 years while the applicant was 29 years old when she was first engaged and thus averaged in terms of I&B Ministry's letter No.5/99/74-TU of 3.8.77. While the applicant's case was not covered by the scheme, respondents point out that no relaxation at all was given to any one and therefore the applicant cannot claim any benefit under the scheme. Lalit Vikram specifically referred to by the applicant as the beneficiary of the scheme was within the age limit at the relevant time. It is also pointed out that no retired hand had been engaged as consultant. The applicant being totally ineligible for being considered for regularisation having

been averaged at the time of original booking itself, the OA has no legs to stand and deserves rejection outright according to the respondents.

6. In the rejoinder, the applicant forcefully reiterates her pleas that she was fully covered by the scheme for regularisation in 1992 and 1994 as she had been properly screened in 1988 at the time of her original booking and she could not have been denied regularisation granted to her juniors. She also points out that in the OA No.1199/001 filed by Shyam Sood, the respondents themselves have averred that the period for which the candidates were averaged at the time of initial engagement was condoned and they were treated as having been recruited at the maximum of the prescribed age under the RRs on 31st December of the year in which they were originally engaged. It is also pointed out that services of as many as 34 persons who were similarly averaged like herself at the time of initial engagement were regularised, a fact not denied by the respondents. The objection on limitation has no basis as the applicant's cause of action arose with the decision of granting benefit to others who are similarly placed, but denying the same to her. Her case was fully covered by the regularisation scheme and by no stretch of argument could she have been denied the scheme. The only basis for rejection of her claim is on the ground of her being averaged, which did not come in the way of regularising other similarly placed. OA should in the circumstances succeed, pleads Shri S.Y.Khan, learned for the applicant.

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7. During the oral submissions Shri R.N. Singh, appearing for the respondents urged that the applicant's only right was for consideration for regularisation and after such consideration as she was found not fit, she cannot have any further grievance. He also relied upon the decision of the Hon'ble Apex court in support of his proposition that the question of age relaxation can be considered only in accordance with the scheme, in which consideration, he felt the applicant has rightly lost out. On the other hand according to Shri S.Y. Khan there is nothing on record to show that the applicant was considered at all and she had in fact been condemned unheard.

8. We have carefully considered the matter. The applicant in this OA, who has been working with the respondents as casual artist (General Assistant) since 1988 and continuing to be so has sought regularisation for her in terms of the decisions contained in the scheme formulated for the purpose in 1992 and amended in 1994. While according to her she was entitled for regularisation the respondents state that she did not fulfil the conditions of the scheme as she was averaged at the time of initial booking in 1988 and no relaxation in age could be given to her. Respondents also aver that she has come to the Tribunal too late in the day and her claim is hit by laches and limitation. This objection does not have any merit as hers is a continuous cause of action and only on similarly placed individuals being given the benefit she has come to the Tribunal. Reliefs could therefore be moulded by the Tribunal, if it is decided to allow the OA. The preliminary objection is thus overruled.

2. On the merits we find that the applicant was engaged in 1988, when she was already averaged in terms of the letter of the Ministry of I&B No.5/99/74-TV of 8.3.77, a letter issued much before her engagement. The said letter records as below "Age - between 18 and 25 years as on the last date of the receipt of the applications. Upper age limit relaxable in cases having exceptional qualification and experience". Obviously, therefore, the applicant's case met the standards for relaxation at the time of original booking. However, when her turn had come for regularisation, in terms of the scheme, enunciated in DG, Doordarshan's order N o.2(3)/88-S1 dated 9.6.92, as modified on 17.3.94 the respondents have found her as not fulfilling the requirements of the scheme. Though nothing has been brought out to show the nature of the consideration of her case, which they undertook, it is seen that their only plank of their argument is that she was overaged at the time of her original booking for which they are seeking to rely upon the decisions of the Hon'ble apex court in R.N.Heade's case to the effect that the applicant's claim to regularisation including relaxation of age could be considered only in accordance with the scheme set out by OM dated 9.6.1992 and modified subsequently by OM's of 17.3.1994 and 5.7.1994. Respondents do not have any answer as to how similarly placed individuals who were also overaged at the time of their original booking like Shri Krishna Verma, Deepak Raj and others were regularised as brought out by the Tribunal on 16.7.02 while disposing the OA 1199/2001 filed by Shyam Sood. Respondents plea that no retired persons have been engaged to perform the duties of General Assistants is

also disproved by the findings of the Tribunal in OA 2323/01 filed by Subhash Chander & Ors. decided in December, 2002. This would show that the respondents have clearly discriminated against the applicant for no justifiable grounds. This cannot be countenanced in the interest of justice.

10. In the above view of the matter, the OA succeeds and is accordingly allowed. The respondents are directed to consider the case of the applicant for regularisation, including relaxation of age, in terms of the Scheme for regularisation of 1992 and 1994, as has been done in the case of others, including her juniors those originally engaged after 1988 and if found fit to grant her regularisation, with all consequential benefits. However, she would be entitled for monetary benefits of arrears from the regularisation, only from 30.7.2001, i.e. one year immediately preceding the filing of this OA. No costs.

/gtv/

(Govindan S. Tampi)
Member (A)

(V.S. Aggarwal)
Chairman