

19
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2045/1999

New Delhi, this the 6th day of August, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampli, Member (A)

Malcum David,
S/o Shri Marshall Cray
JG3, 123B, Vikas Puri
New Delhi.

...Applicant
(By Advocate Shri S.Y.Khan)

V E R S U S

1. Ministry of Information and Broadcasting
Through its Secretary
Shastri Bhawan
New Delhi.
2. Director General Doordarshan
Mandi House, New Delhi.
3. Director, Doordarshan Kendra
Parliament Street
New Delhi.

...Respondents~
(By Advocate Shri S.M.Arif)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

This is the second round of litigation by the applicant, in which his main prayer is that a direction should be given to the respondents to give him seniority immediately below one Shri Suraj Narain Ram, in accordance with his date of booking."

2. We have heard learned counsel for the parties and perused the records. In our order dated 22-5-2001, when the case was part heard, the following has been noted :-

"3. During the hearing, Shri S.M.Arif, learned counsel has disputed that the applicant was assigned first as CFA on 14-5-1976. However, it is noted from the documents on record, including the seniority list of CFAs in Doordarshan as on 1-1-1996, that one Shri Anil Kumar Mathur whose name is given at Serial No.7 of the earlier seniority list issued in 1999 has been shown as having been booked first time on 25-12-1976 and regularised on 14-12-1992. In other words, the

B

main claim of the applicant is that since he had been booked first time on 14-5-1976 i.e. prior to the date of Shri Anil Kumar Mathur, his date of regularisation should also be an earlier date.

Accordingly applicant has filed MA 1160/2001 for amending the OA. Shri S.Y.Khan, learned counsel has submitted that he does not press the prayers regarding the transfer of the applicant at a future date, as mentioned in paragraph 2 (iii) of the aforesaid MA. His main contention is that as already noted in Tribunal's order dated 22-5-2001, applicant should be given his date of regularisation prior to Shri Anil Kumar Mathur, who has been booked for the first time on 25-12-1976, Whereas the applicant was booked on 14-5-1976. He also relies on the seniority list of Casual Floor Assistants on assignment basis (Annexure A-2) in which the applicant's name has been shown at Sl.No.3 whereas Shri Anil Kumar Mathur has been shown at Sl.No.7 and ~~has and has and has~~ has been regularised w.e.f. 14-12-1992. That is the date the applicant also claims regularisation and not from 1-11-1994 as given by the respondents. Shri S.Y.Khan, learned counsel, during the hearing, has submitted that this is the only claim the applicant was making in this OA, which is a sequence of the order passed by the Tribunal in OA 566/94.

3. We have also heard Shri S.M.Arif, learned counsel for the respondents. He has relied on the reply filed by the respondents in MA 1160/2001. According to them the applicant's services have been regularised with effect from the due date.

4. We find from the reply filed by the respondents that no satisfactory explanation has been given as to why the applicant has been regularised

12

w.e.f. 1-11-1994, whereas according to the seniority list of Casual Floor Assistants published by them by OM dated 10-6-1999, the applicant is shown senior to Shri Anil Kumar Mathur who has been so regularised w.e.f. 14-12-1992. This is again a question of fact as already pointed out by the Tribunal in OA 566/94 [in which one of us [Hon'ble Smt. Lakshmi Swaminathan, VC (J) was also a ~~party~~ ^{Member,}]. It was, therefore, incumbent on the respondents to verify their records and avoid such factual errors.

5. In the facts and circumstances of the case, Shri S.Y.Khan, learned counsel has relied on the judgement of the Tribunal (PB) in Smt. Poonam Mulwani Vs. UOI and Ors. (2000 (3) ATJ 283) and submits that all arrears of pay and allowances must be given to the applicant as consequential benefits. This has been opposed by Shri S.M.Arif, learned counsel who has submitted that the respondents have correctly followed the principle of 'no work no pay' and that judgement will not be applicable to the facts in this case. Shri S.Y.Khan, learned counsel also relied on the judgement of the Tribunal (PB) in Anil Kumar Mathur Vs. D.G.Doordarshan (OA 569/86 with connected cases decided on 14-2-1992), copy placed on record, and claims that consequential benefits by way of pay and allowances should be ordered to be paid to the applicant from December, 1992. This has been again opposed by Shri S.M.Arif, learned counsel who submits that the facts in that case are not applicable to the facts in the present case, as in this case the applicant's claim has yet to be scrutinised by the respondents. He, therefore, submits that the principle of 'no pay no work' would apply in the

circumstances of the present case.

6. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

7. In pursuance of the Tribunal's order dated 19-4-1996 in OA 566/94, the respondents have issued the order dated 6-4-2000. By this order they have changed the date of appointment of the applicant to 1-11-1994, instead of 15-2-1997 for all purposes like seniority, notional increments etc. By this order they have also clearly stated that he will not be entitled for any arrears prior to 15-2-1997. The applicant has mainly relied on the seniority list of Casual Floor Assistants (Annexure A-2) showing date of his booking as 14-5-1976, whereas that of Shri Anil Kumar Mathur is shown as 25-12-1976. However, we note that neither date has been given or who has issued this seniority list. It is also not clear as to why the applicant could not have relied on this document when he filed OA 566/94, in case it had already been issued earlier. In the circumstances of the case, we are unable to agree with the contentions of the learned counsel for the applicant that based on this document, the applicant should be regularised from a date prior to that of Shri Anil Kumar Mathur. It is further noted from the reply filed by the respondents to MA 1160/2001 that in furtherance of Tribunal's order dated 19-4-1996 in OA 566/94, they have passed the necessary order by granting the applicant notional fixation of seniority from the date his immediate junior was regularised, without any entitlement of arrears of pay.

8. In the facts and circumstances of the case,

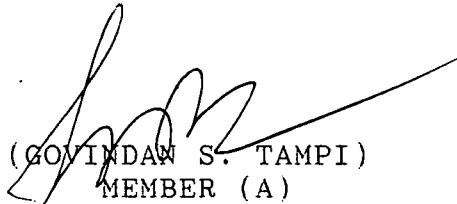
as there is vagueness in the averments made by both the parties which is of a factual nature, we have no other alternative but to dispose of the OA with the following directions :-

(i) The respondents to re-check their records to verify the claim of the applicant, with particular reference to the fact that Shri Anil Kumar Mathur has been engaged from a subsequent date and, if so, grant him regularisation, subject to his fulfilling other eligibility conditions, from the date when Shri Anil Kumar Mathur had been so regularised ;

(ii) Taking into account the particular facts and circumstances of the case, the claim of the applicant for consequential benefits by way of arrears of pay and allowances with interest is rejected ;

(iii) He shall, however, be entitled to notional fixation of pay, and seniority if he so found suitable from the earlier date.

No order as to costs.


(GOVINDAN S. TAMPI)
MEMBER (A)


(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)

/vikas/