

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

C.A. No. 370/99

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T.A.No.

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DATE OF DECISION 22-9-2000

Inder Sharma

....Petitioner

Sh.S.Y.Khan

....Advocate for the  
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.S.M.Arif

....Advocate for the  
Respondents.

COURT

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other  
Benches of the Tribunal No.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan )  
Member (J)

Central Administrative Tribunal  
Principal Bench

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O.A. 370/99

New Delhi this the 22<sup>nd</sup> day of September, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Inder Sharma,  
S/o Shri Gyan Chand,  
R/o B-3, Lovely Apartments,  
Mayur Vihar Extension,  
Phase-I,  
Delhi-110 092.

... Applicant.

(By Advocate Shri S.Y. Khan)

Versus

Union of India, through

1. Secretary to C/I,  
Min. of Information and  
Broadcasting,  
Shastri Bhawan, New Delhi.
2. Director General,  
Akashwani Bhawan,  
Parliament Street,  
New Delhi.
3. Station Director,  
All India Radio,  
Jammu (J&K).

... Respondents.

(By Advocate Shri S.M. Arif)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application challenging the order passed by the respondents dated 12.3.1998, on the ground that it is not only a non-speaking order but is illegal and arbitrary. By this order, the respondents have rejected his request for regularisation as Production Assistant/Transmission Executive under the relevant Scheme as he had not worked for 72 days in a calendar year.

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(27)

2. The applicant has stated in paragraph 4.1 of the O.A. that he had been approved after having been auditioned and screened by Selection Board for regular engagement as Casual Artist/Production Assistant. He has stated that he had completed 72 days work assigned to him in different years for the purposes of regularisation as Production Assistant as per the Scheme notified by the respondents in May, 1995 (Annexure A-3) following the order of the Tribunal in OA 822/91 dated 18.9.1992. In paragraph 4.3, the applicant has stated that he had been initially screened and selected as Casual Artist as far back as 1984 and has given the details of working in that paragraph. According to Shri S.Y. Khan, learned counsel, the applicant has sufficient days of working as per the Scheme to entitle him for regularisation as Production Assistant. He has been discontinued from work from 1998 which he has stated is totally arbitrary. He has relied on the copies of contract documents issued by All India Radio and he states that these will show that the applicant has worked for a number of days, as contended by him, entitling him for regularisation as Production Assistant. He has also filed additional documents in which he has disputed the statements made by the respondents that the log book and contract registers are not available with them. According to him, he could obtain copies of the relevant papers from the Proposal and Contract Register from All India Radio, Jammu & Kashmir and he has very vehemently contended that the entire records are available with the respondents, who are deliberately avoiding to place them before the Court and are giving false statements. He has filed an affidavit

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of Shri Mangal Dass, Library Attendant dated 28.7.2000 which, however, has been retracted by the same person in the later affidavits dated 1.8.2000 and 30.8.2000 (Annexures R-IV and R-V). He has also submitted that the Scheme for regularisation of Casual Artists in Doordarshan formulated by the same respondents in May, 1995 is more liberal in nature and should be applied to the facts of this case. He has also submitted that because of the extremely difficult conditions prevailing in Jammu & Kashmir, a sympathetic view should be taken in the case to direct the respondents to regularise the applicant as Production Assistant/Transmission Executive.

3. The respondents have stated in their reply that as the applicant has not been found eligible for regularisation as Production Assistant/Transmission Executive under the relevant Scheme as he had not put in the required number of days, in any calendar year, hence his claim was rejected. Shri Arif, learned counsel has also submitted that the Scheme formulated by Doordarshan for regularisation of Casual Artists is not applicable to Casual Artists of All India Radio organisation to which the applicant belongs. Learned counsel has submitted that from the verification of the records available with the respondents, the claim of the applicant with regard to the number of working days set out in paragraph 4.3 is not correct. They have stated that "Presently, the record is not traceable. The moment it is traced out, the same shall be placed before the Hon'ble Tribunal". However, till the hearing was completed, no further record was placed before

the Tribunal and the repeated contentions of the respondents' counsel was that the applicant was not entitled for regularisation as he has not put in 72 days as Casual Artist required under the relevant Scheme. (29)

4. As can be seen from the claim of the applicant and the replies filed by the respondents, the main issue in this case is one of fact i.e. whether the applicant has completed 72 days work in a calendar year or not. To ascertain this, the records are absolutely essential. As mentioned above, the respondents themselves have stated in the reply dated 26.10.1999 that "Presently, the record is not traceable. The moment it is traced out, the same will be placed before the Hon'ble Tribunal". In the impugned letter dated 12.3.1998, they have, however, stated that it has not been found possible to consider the case of the applicant for regularisation as Production Assistant/Transmission Executive under the Scheme in force since he has not been booked for 72 days in a calendar year. As the respondents have stated that the records were not traceable, it is not clear on what basis they have categorically stated that the claim of the applicant is not correct. The applicant, on the other hand, relies on photo copies of documents he has annexed from All India Radio, Jammu, that he has worked for the requisite number of days entitling him for regularisation in the post of Production Assistant/Transmission Executive.

5. In the later affidavits filed by the applicant, while the applicant states that the records are available in the office of the respondents at Kashmir, the respondents state that whatever record pertaining to the applicant was available with All India Radio, Jammu, has been submitted

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before the Visiting Team and no such Proposal Register was available with them. The Library Attendant Shri Mangal Dass has also later denied that he had given any paper or photo copies of the documents to the applicant. The respondents have in their additional affidavit filed on 11.9.2000 reiterated that whatever record was available with the respondents has already been placed before the Tribunal and no further record is available with them to show that the applicant had completed the required number of days for regularisation of his service. They have further submitted that a direction should be given to the applicant to place the originals of all the photo copies which he has already placed with the affidavit. When the respondents themselves have stated that their records are not traceable and considering the fact that the documents have been originally issued from All India Radio, Jammu, to expect the applicant to produce the original documents would not appear to be reasonable or practicable in this case. This is more so when the respondents themselves had earlier stated that the records are not traceable and they would produce the same before the Tribunal which they have later stated that they are unable to do.

6. Shri Arif, learned counsel has submitted that as the Log Book, Proposal and Contract Registers are not available for the relevant period, they are not able to verify the applicant's claim regarding the number of days he has worked as a Casual Artist. However, they have stated that the respondents have once again verified and examined the claim from Pay Order book available with them and according to them the applicant was engaged only for a period of 61 days for which he has been paid. They have, however, stated in the additional affidavit filed on

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26.5.2000 that it is not possible for them to verify "whether the payments have been made for rendering duty as casual Production Assistant or otherwise". The applicant has also relied on the certificate dated 22.12.1988 issued by the Programme Executive, Radio Kashmir Jammu. In this certificate, it is mentioned, inter alia, that the applicant has been offered six bookings in a month and he has, therefore, contended that this would mean that the applicant has put in 72 days work in one year. To this, in the additional affidavit filed by the respondents on 26.5.2000, they have stated that the Log Book, Proposal and Contract Registers are not available with them for the relevant period, it was not possible for them to verify whether the payments have been made for rendering the duty as casual Production Assistant or otherwise.

7. As mentioned above, the main issue in this case is regarding the factual veracity of the applicant's claim that he has worked 72 days in a year as a Production Assistant and hence, he is entitled for regularisation in that post, whereas the respondents state that it is only 61 days. It is clear from what has been stated in the replies filed by the respondents that some relevant records are not traceable and they also stated that it is not possible for them to verify whether the payments made to the applicant have been given for duty rendered as Production Assistant or otherwise. Shri S.Y. Khan, learned counsel has submitted that the applicant is out of job and he has also prayed that because of the situation prevailing in Jammu and Kashmir, sympathetic consideration may be given to the claim of the applicant.

*PS,*

8. In the light of what has been stated above, taking into account the totality of the facts and circumstances of the case, and in the absence of relevant documents being produced by the respondents to substantiate the stand taken in the impugned rejection letter dated 12.3.1998 that the applicant had not worked for 72 days in a calendar year, the claim of the applicant to the contrary cannot be rejected outright. On a preponderance of probabilities based on the copies of the contract documents annexed by the applicant from AIR, J&K, the O.A., therefore, succeeds and is allowed directing the respondents to regularise the applicant as a Production Assistant/Transmission <sup>Executive</sup> Assistant in accordance with the provisions of the relevant Scheme. This shall be done within two months from the date of receipt of a copy of this order. Parties to bear their own costs.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member(J)

'SRD'