

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.502 of 1994

This 5th day of April, 1994

(3)

Hon'ble Mr Justice S. K. Dhaon, Vice Chairman(J)
Hon'ble Mr B. K. Singh, Member(A)

S. Dilip Kumar
Qtr.No.D-59, L. Block
DDA Flats, Saket
NEW DELHI

... Applicant

By Advocate: Shri A. K. Behera

VERSUS

1. Union of India, through
The Secretary, Ministry of
Information & Broadcasting
Shastri Bhawan
NEW DELHI

2. The Director General
Directorate of Doordarshan
Mandi House
NEW DELHI

3. The Director
Doordarshan Kendra
Sansad Marg
NEW DELHI

... Respondents

By Advocate: Shri M. L. Verma

O R D E R(Oral)

Hon'ble Mr Justice S. K. Dhaon, VC(J)

The principal relief claimed in the application is that the respondents, Doordarshan, may be directed to regularise the services of the applicant as a Film and Video Editor.

2. A counter-affidavit has been filed by the respondents. In it, it has been highlighted that the applicant's services cannot be regularised on two counts. Firstly, the applicant is over-age. Secondly, he does not have the requisite three years' experience at his back.

3. The Doordarshan had adopted a practice of engaging casual artists etc., for

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short and intermittent terms. The matter came up before this Tribunal at Delhi as well as at Allahabad. A Division Bench of the Principal Bench, New Delhi as well as a Division Bench at Allahabad formulated a draft scheme with a view to giving succour to the casual artists who had been engaged for short terms. Both the Benches directed the respondents (Doordarshan) to frame a scheme in accordance with the draft scheme prepared by them (Benches). There was a further direction that the scheme shall be approved by the Tribunal after it had been finalised by the respondents. Accordingly, the scheme was framed by the Doordarshan and that scheme got a stamp of approval from a Division Bench of this Tribunal in the case of Anil Kumar Mathur & Anr. in O.A. No.563/83 and other connected OAs decided on 14.2.92.

4. We may now refer to the relevant provisions of the scheme as approved by the Tribunal. Paragraph-5 of the scheme states:

"The Casual Artists who are to be regularised should possess the requisite educational qualification and/or experience as stipulated in the recruitment rules or other administrative instructions (in the absence of RRs) existing for the post when the casual worker was initially engaged."

Paragraph-6 of the scheme says:

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"The upper age limit would be relaxed to the extent of service rendered by the casual artists at the time of regularisation. A minimum of 120 days service in the aggregate, in one year shall be treated as one year's service rendered for this purpose. The service for less than 120 days in a year will not qualify for age relaxation."

5. In paragraph 17 of the order of this Tribunal dated 14.2.92 in the case of Anil Kumar Mathur (supra) it was observed:

"Regarding para 5, the learned counsel for the applicant stressed that recruitments once made even though on casual basis prior to framing of any new recruitment rules as regards academic qualification and age factor should not affect the casual employees for purpose of regularisation. Even if it were so, the respondents should use their power to relax. We agree that if any educational qualification or age limit was prescribed either by the then existing recruitment rules or by notifications and if the casual worker fulfilled those criteria at the time of initial intake, a higher educational qualification prescribed later should be considered for relaxation. In this view of the matter we are of the opinion that para 5 should be modified as follows:-

The Casual Artists who are to be regularised should possess the requisite educational qualification and/or experience as stipulated in the recruitment rules or other administrative instructions (in the absence of recruitment rules) existing for the post when the casual worker was engaged."

6. To give effect to the scheme as approved by this Tribunal, on 10.6.92, the Director General, Doordarshan issued an office memorandum containing therein the guidelines for implementation of the scheme for regularisation of Casual Artists in Doordarshan. In relation to relaxation of age limit, in substance, it is provided that a person will be eligible for age relaxation of 5 years in relation to the recruitment rules prevalent in 1987. The

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number of years of relaxation allowed in a particular case should be added to the maximum age limit prescribed in the relevant rules, at the time of initial engagement. In case his present age is within the age so arrived at, he will be eligible for consideration, otherwise not.

7. In the short reply filed by the respondents it is stated that the cut-off date for the purpose of relaxation is 9.6.92. The date of birth of the applicant is 9.6.92. The date of birth of the applicant is 10.5.63 and on the said cut-off date the applicant should be 29 years and 29 days old. Now the question to be considered is as to what was the age of the applicant on 21.6.88, the date of the first booking. The further question would be as to whether there was any rule or instruction providing for the age limit on the said date (21.6.88). Our attention has been drawn to the rules framed under the proviso to Article 309 of the Constitution. These rules were formulated in 1987 and admittedly they were in force on 21.6.88. According to these rules, the age limit prescribed in the recruitment rules for the post of Film Editor was between 21 and 30 years. Therefore, the upper limit was 30 years.

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8. We have indicated earlier that on the cut-off date, i.e. on 9.6.92, the applicant was 29 years and 29 days old. Therefore, on 21.6.88, the date of first booking, the applicant was well within the age limit. The learned counsel for the applicant is right in his submission that the applicant need not claim any age relaxation in accordance with the guideline's referred to above.

9. We now come to the question of experience. The short reply filed by the respondents indicates that in the year 1989 the applicant had put in 120 days' service and, therefore, in accordance with the scheme as approved by this Tribunal, it should be presumed that the applicant has atleast one year's experience in 1989.

10. Paragraph 5 of the scheme has already been referred to above. The substance of paragraph 5 of the scheme, as relevant for the purpose of experience, is that if the relevant recruitment rules or some administrative instructions (in the absence of any recruitment rules) stipulate any experience for the post when the casual worker was initially engaged, that experience alone would be taken into consideration for judging the eligibility for relaxation.

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4) Admittedly ⁱⁿ the statutory rules which were in existence in 1987, i.e. on the date immediately preceding the initial appointment of the applicant, there was no requirement of any experience. However, it appears that the Doordarshan on 5.8.86 issued an advertisement. A perusal of the same indicates that if candidates with a degree or diploma in film editing are not available then candidates with a minimum of 3 years experience of film editing in the film industry or reputed film/video staff, would be considered as a special case. This shows that there was in existence of some sort of administrative instructions that there should be an experience at the back of a candidate. We have before us a notification dated 16.7.88 containing fresh set of rules promulgated under ^{the} proviso to Article 309 of the Constitution. These rules provide that a candidate desiring to be a Film Editor should have the essential qualification of 3 years experience in film/video editing in a film/video studio. In the counter affidavit filed on behalf of the respondents, it is admitted that during the year 1989 the applicant put in 120 days complete service in Doordarshan. Therefore the applicant acquired one year's experience during the said year. In the rejoinder affidavit filed in this U.A. the applicant has annexed a photostat copy of a certificate dated 27.4.87 alleged to have been issued by one Deepak Roy,

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Project Director, Angik Film Makers. The learned counsel for the respondents is right in his submission that this document having been produced in the rejoinder affidavit, they had no opportunity of making inquiry about its authenticity. In these circumstances, we are unable to record any positive findings that the applicant has three years' experience at his back.


11. To sum up, we record the finding that the applicant is not over-age for being considered for regularisation ⁱⁿ accordance with the relevant scheme, referred to above. The respondents shall examine the question of experience of the applicant after giving him full opportunity to satisfy the authority concerned about the genuineness of the firm, Angik Film Makers and also of the authenticity of the certificate alleged to have been issued by the Project Director of that firm. If the respondents come to the conclusion that the applicant has at least two years' experience outside Doordarshan, then, they shall, after taking into consideration the experience of the applicant during 1989, register him for being regularised in service in accordance with rules as and when his turn comes. If the respondents come to the conclusion that the applicant is entitled to be regularised, then they shall also fix the inter-se seniority of the applicant qua the persons junior to


him who have been allegedly regularised in
service.

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12. We have no doubt that the respondents will
act expeditiously but not beyond a period of
four months from the date of presentation of a
certified copy of this order by the applicant
before them.

13. With these directions this O.A. is
disposed of. There will be no order as to costs.


(B. K. Singh)
Member (A)


(S. K. Dhaon)
Vice Chairman (J)

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