

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA. No. 1354 of 1994

New Delhi, this 16th day of August, 1999.

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HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

1. Trilok Singh Rawat
S/o Shri Bachan Singh Rawat
R/o P. Block, Gali No. 6
House No. 78, Mangol Puri
New Delhi-83.

2. Jeet Singh
S/o Shri Joginder Singh (Late)
R/o H-191, Nanakpura
New Delhi-21

... Applicants

By Advocate: Shri T.C. Agarwal

versus

Union of India, through

1. Director General
Doordarshan
Mandi House
New Delhi.

2. Director
Doordarshan Kendra
Akashvani, Parliament Street
New Delhi-1.

... Respondents

By Advocate: Shri S.M. Arif

O R D E R (ORAL)

By Reddy .J

The applicants were appointed as Floor Assistants in the office of the Director, Doordarshan, New Delhi. 1st applicant joined service in 1981 and 2nd applicant in 1975. The applicants submit that they were directed to work as Floor Managers from 21.5.90. They however submit that they were not ~~regularly~~ regularly appointed or promoted to the said post. 1st applicant was further directed to work as Transmission Executive by order dated 2.12.93, ~~which is annexed as Annexure A/4.~~ He worked for one year in the post of Transmission Executive and thereafter he continued to work as Floor

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Manager as on date. The grievance of the applicants is that though they have been working in higher post^A with effect from 21.5.90, they were not paid the remunerations that is payable for the said higher post^A. It is submitted that they made repeated representations with the Director, Doordarshan, but their request^w was not complied with. Hence they have approached this Tribunal by way of filing this OA.

2. It is contended by the learned counsel for the applicants that the applicants are entitled for the pay payable in the higher post and there was no reason for delaying this. Learned counsel for the respondents however takes preliminary objection that the OA is barred by limitation. It is contended that the cause of action arose for the applicants on 25.5.90 and the OA filed in 1994 is barred by limitation. It is further contended that as the applicants were not appointed to the higher post, they are not entitled for any pay in the higher post. He further pointed out that the applicants had actually not worked in the higher post. They were only asked to work in the Sections of Floor Manager and Transmission Executive, therefore, they cannot claim the pay of higher post.

3. We are not satisfied that the OA should be dismissed at the threshold on the ground of limitation. The applicants are seeking payment of the higher pay which they are allegedly entitled to with effect from 21.5.90. It is their case that they have been making several representations to the ^{authorities} Tribunal for such payments and they were under the impression that their request would be considered favourably. It should be noticed that they were continuously working from 21.5.90 till December 1990 when again 1st applicant was asked

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to work, according to them, as Transmission Assistant. This OA pertains also to the payment of the higher pay... to either 1st applicant in post of Transmission Executive. The OA having been filed in 1994, we do not accept that ~~there are many laches and it~~ is hit by limitation, particularly for the reason that the matter is of 1994 and the matter has been admitted in 1994. At this stage it is not desirable and appropriate to dismiss the OA on grounds of limitation. The learned counsel for the respondents also contended that the OA is premature inasmuch as no representation has been filed by the applicants against the impugned orders and that there was no occasion for the respondents to consider the claim of the applicants and pass an order. We do not see any force in this contention also. Since the OA has already been admitted in 1994, if the respondents desired to pass appropriate order considering the claim of the applicants, they could have done so ^{by now}. This is not the case where the respondents had no opportunity to consider the claim of the applicants. In the circumstances, it cannot be said that the OA is premature.

4. The claim of the applicants depends upon two orders, i.e Annexure 2 & 4. In Annexure-2 order dated 21.5.90 the applicants are only requested to work in the Floor Manager Section. There was no direction directing the applicants to work as Floor Manager ^{and} though it is asserted that the applicants were

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not working as Floor Manager and that there was no administrative order issued in the regard. It was averred in the counter that the office note dated 21.5.90 was not an administrative order, but it was given just to manage the work in the Floor Manager Section. They had asked the applicants to work in the Floor Manager Section to cope up with the additional load of work of non-statutory nature.

5. The applicants have filed Annexure A-5 in support of their assertion that they have been performing the duties of Transmission Executive and Floor Manager. The names of the applicants are no doubt shown for the period from 8.3.93 to 14.3.93. From this duty chart it cannot be concluded that the applicants have been working from 21.5.90 as Floor Manager till date particularly in view of the assertions made by the respondents and coupled with Annexure A-2. Likewise, in A-4 the applicants along with others were asked to man the duty room on shift duty basis as there was shortage of work in Delhi Doordarshan Kendra and it was also stated that this was temporary arrangement for smooth working in the Doordarshan. In the duty chart filed by applicant, the name of the 1st applicant is shown as on shift duty. However, the material placed before us would disclose that the applicants might have worked for some periods as Floor Manager and as Transmission Executive. But, we are not prepared on the basis of the slender evidence placed before us, to hold, positively in favour of the applicants and to give them the relief prayed for.

6. Learned counsel for the applicants has cited some judgements, viz. 1990 (13) ATC 242, SC SLJ 1999 (1) 178,

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S.L.J.

1997 (3) LCAT 1. In 1999 (1) SLJ 178, their Lordships considering the order dated 28.1.92 whereby the Director of Education ordered transfer of the petitioner therein to the Andaman & Nicobar Islands to look after the duties of the Secretary (Scouts) and his pay would be drawn in the post of Secretary (Scouts), held that the petitioner therein was entitled for the pay scale of the Secretary (Scouts) during which time he actually worked on the said post. Again in 1990 (13) ATC 242, the Court was considering the question whether an employee was entitled to the pay scale of Hindi Master during which period he worked on the said post the Supreme Court held in affirmative. It was found in the said case that the appellant had been discharging the duties of the Hindi Master. In the circumstances, the Court directed the appellant to be treated as on duty having continued in the service from the date the job fell vacant till regular incumbent was selected by the Union Public Service Commission.

S.L.J.

7. 1997 (3) LCAT, is a case where a claim was made for the grant of pay for doing actual work. It was found by the Court that the applicants therein were actually directed to work as Cashiers and the roster showed that they had worked as Cashiers. In view of the above factual position, the claim of the applicants therein was allowed.

8. In the present case, the material placed before us, would not positively lead to a presumption that the applicants had been working in the higher posts from the dates shown by them.

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9. Learned counsel submits that a direction be issued for the production of the relevant registers in support of their contention. As the matter pertains to 1990 and as we are in 1999, we are of the view it would not be desirable to drag on the matter any further. No relief can be granted in the O.A., the OA therefore deserves to be dismissed.

10. However, we are of the view that if the applicants are actually found in any enquiry the authorities concerned, to have worked on the higher posts, it cannot be disputed that the pay of the higher posts should be paid to them. In the circumstances, in the interests of justice, we direct the Director Doordarshan, to enquire into and if it is found that the applicants have performed or performing the duties of Floor Manager and Transmission Executive for any period or periods, they should be paid the pay of the said posts for the said periods.

11. The OA is accordingly disposed of, leaving the parties to bear their own costs.

Shanta Shastry

(Shanta Shastry)
Member (A)

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice Chairman