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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 1247/89 .. Date of decision: 05.02.93

Sh. S.K. Bhardwaj .. Applicant

Versus

Union of India & Others.. Respondents

Sh. T.C. Aggarwal .. Counsel for the applicant

Sh. A.K. Behra .. Proxy counsel for Sh.P.H.

Ramchandani, Counsel for the

Respondents.

CORAM

Hon`ble Sh. P.K. Kartha, Vice Chairman (J)

Hon`ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be
allowed to see the judgement? *Y*

2. To be referred to the Reporters or not? *Y*

JUDGEMENT

(Of the Bench delivered by Hon`ble Sh. B.N.

Dhoundiyal, Member(A)

This O.A. has been filed by Shri S.K. Bhardwaaj an
actor working in the Song and Drama Division, praying that he
may not be reverted and be regularised from 30.11.1984, the
date from which he is holding the post of actor.

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2. The applicant joined as Performer (Staff Artist) at Simla on 26.5.67. He was transferred on compassionate ground to Delhi but as there was no vacancy on the acting side, he was adjusted against a vacancy of singer in the same scale of pay. He continued to perform acting jobs but an entry in his character roll of 1980 described him as misfit for the post of Singer. He was promoted on Adhoc basis as Actor on 30.11.84 and had been working as such till the time of filing this O.A. in 1989. A Selection Committee was convened on 14.10.88 which considered the cases of his other two colleagues who were singers but deferred consideration of his case as there were no acting experts in the Committee. Thus, he has not been regularised so far though the Supreme Court has held in the case of Dr. A.K. Jain & Ors. Vs. U.O.I. & Ors. (1989 (1) SLJ (SC) 168) that those holding a post on adhoc basis for three years or more are to be regularised on the basis of their character rolls.

3. On 23.6.89, the application was admitted for only one relief i.e. that the applicant be considered as a regular employee from 30.11.89. At that time, there was no order of reversion in existence. However, while considering M.P. 1566/89 on 25.7.89, this Tribunal restrained the respondents from holding selections for the post of actor. This interim order continues till date.

4. The respondents have contended that the applicant is not holding the civil post of Actor. He was a staff artist on contract in the scale of Rs. 1400-2600 working from 30.11.84.

His appointment letter makes it clear that this would not entitle him to claim regularisation. The appointment would not be taken into account for fixing seniority or determining eligibility for the next higher post. As his performance was not satisfactory, reversion orders were served on him on 11.7.1989. They have admitted that he joined ^{6y} as Performer at Simla in 1967 and was transferred to Delhi in 1978 and was adjusted against a post of Singer. During 1984, it was decided to screen all adhoc staff artists for regularisation. The applicant did not appear before the Selection Committee and the onus for non-regularisation rests with him. Recruitment Rules for the category of Actors finalised during March, 1980, prescribed five years experience as Performer for appointment as Actor. The last regular appointment for this post was made in July, 1984 whereas the applicant was appointed as Actor on adhoc basis on 30.11.84. Shri Swaran Singh was recommended by the D.P.C. to be promoted as Actor in 1981 when the applicant failed to apply for the post. The Selection Committee which met on 14.10.88 could not consider the case of the applicant due to non-availability of a representative. Another meeting was fixed on 26.7.89 but the selection was stayed by this Tribunal on the request of the applicant.

5. We have gone through the records of the case and heard the learned counsel for both the parties. Under the rules as amended on 19.3.80, the post of Actor is to be filled up 50% by promotion from Performers having five years service in the grade in the field of acting, failing which by direct

recruitment and 50% by direct recruitment. The respondents have admitted that 2 vacancies of Actor were due to be filled up on promotion basis in 1981. However, the method adopted seems to have been to invite applications rather than preparing a panel of those falling in the zone for consideration according to their seniority. They have also admitted that the Selection Committee which met on 14.10.88 could not consider the case of the applicant due to non availability of a representative and that selection process in 1989 was stayed by this Tribunal. A better qualified senior cannot be ignored for promotion while his juniors are being considered (Dharamvir Singh Tomar Vs. Administrator, Delhi Administration- 1991 (17) ATC 923). While the applicant has a right to be considered for promotion, we are not persuaded that he should be promoted as Actor without going through the process of selection prescribed under the rules.

6. In the facts and circumstances of the case, we direct the respondents to convene a review D.P.C. to consider the cases of those falling in the eligibility zone for promotion to 2 posts of Actor in 1981 as well as during subsequent years. As the applicant was wrongly adjusted against the post of a "Singer" from 1978 to 1984 at Delhi, though continuing to perform the duties of an actor, this period shall also be counted towards experience. Meanwhile, the applicant shall be considered for adhoc appointment as Actor as per his seniority. These orders shall be complied with expeditiously and preferably within 3 months from the date of communication of this order.

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There will be no order as to costs.

B.N. Dhundiyal
(B.N. Dhundiyal) 5/2/93

Member(A)

~~DR. S. J. S. J.~~
(P.K. Kartha)

Vice Chairman(J)