

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1260/89

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~~Ex. No.~~ with
MF Nos. 2014/89,

2763/89, DATE OF DECISION 10.09.1990
529/90, 694/90 & 1767/90

Shri Kamesh Kumar

Petitioner

Shri Balraj Trikha

Advocate for the Petitioner(s)

Versus

The Directorate of Film Festivals, Respondent
Min. of Information & Broadcasting & Others

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGMENT

Hon'ble
(of the Bench delivered by Shri P.K. Kartha, Vice
Chairman(J))

The question whether the applicant is at present a Government servant or whether he is an employee of the National Film Development Corporation Limited (hereinafter referred to as 'NFDC'), is in issue in this application filed under Section 19 of the Administrative Tribunals Act, 1985. The issue has been keenly contested by both sides. The application was filed on 23.6.1989 and an ex-parte interim order was passed by the Tribunal on 27.6.1989 to the effect that the applicant may not be reverted to the NFDC. The interim order was continued thereafter till 10.11.1989 when the Tribunal heard both parties and saw no justification in

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continuing the said order and vacated the same. The applicant has filed various MPs seeking for various one ✓ directions including/for grant of subsistence allowance.

The Tribunal felt that the main application should be heard on the merits so that it would not be necessary to pass separate orders on the MPs filed by him. The issues raised in the MPs also require consideration of the merits of the case put forward in the main application.

2. At the outset, we may refer to the organisational set up of the Ministry of Information and Broadcasting and its attached offices, to the extent the same is relevant to the present proceedings before us.

3. Under the Ministry of Information and Broadcasting, Government of India, there is a Directorate of Film Festivals, which is a wing of the said ministry. The NFDC is a Government of India enterprise under the administrative control of the said ministry. From 1.7.1981, the work pertaining to the Directorate of Film Festivals was transferred to NFDC. On 30th June, 1988, the Ministry of Information and Broadcasting decided to transfer the Directorate of Film Festivals from NFDC to the said Ministry as its attached office w.e.f. 1.7.1988. Presently, the Directorate of Film Festivals is an attached office of the Ministry of Information and Broadcasting. It may also be mentioned that NFDC has its Head Office at Bombay with three regional offices located at Delhi, Madras and Calcutta. During the period when the

work pertaining to the Directorate of Film Festivals was transferred to NFDC, it functioned as the 5th constituent unit of NFDC located at Delhi.

4. We may now come to the facts of the case and the grievance of the applicant.

5. The applicant was initially appointed as Messenger on Daily Wages with effect from 27.11.1980 in the Directorate of Film Festivals, which was a wing of the Ministry of Information and Broadcasting. He worked as Messenger on daily wages in the Directorate of Film Festivals upto 30.6.1981. From 1.7.1981 to 1.5.1983 when the Directorate of Film Festivals was one of the constituent unit of the NFDC, he continued to work as Messenger on daily wages in the Directorate of Film Festivals. On 1.5.1983 when the Directorate of Film Festivals was a constituent unit of NFDC, the said Directorate issued an order appointing the applicant as Messenger on temporary basis with effect from 2.5.1983 (vide ^{Annexure 2} P.3, page 38 of the paper book). The terms and conditions of appointment clearly stipulated that he would draw his pay and allowances as admissible under the rules of NFDC, that he will be entitled to other facilities as admissible under the rules of NFDC, that he will be on probation for a period of one year which might be extended at the discretion of the NFDC, that he would be governed by the conduct rules of the NFDC, that no residential accommodation will be provided by NFDC to him and that though his Headquarters were at that time at New Delhi, he was liable to be transferred to any other station. He

was appointed as a Daftry on 7.5.1986. On 25.3.1988 the NFDC issued an order whereby the applicant was appointed to officiate as LDC-cum-typist.

6. The order dated 30th June, 1988 issued by the Ministry of Information and Broadcasting relating to the transfer of the Directorate of Film Festivals from NFDC to the said ministry with effect from 1.7.1988, states that the existing employees of the Directorate as on 30.6.1988 will be treated as transferred on ad hoc deputation to the Ministry of Information and Broadcasting without payment of deputation allowance on the terms and conditions mentioned therein, upto 31.1.1989 or till the regular process of selection was over, whichever was earlier. It was further stipulated that the existing employees of the Directorate of Film Festivals will be given an option by the Government either to continue in NFDC on their existing terms of employment or to serve under the Government of India on pay scales prescribed by the Government in respect of posts they are holding as on 30.6.1988. Such of the existing employees who opt to serve in the Government will be screened by the Selection Committees constituted for this purpose by the Government in order to ascertain their suitability for various posts. Only those existing employees of the Directorate of Film Festivals who opt to serve under the Government and are found suitable by the duly constituted Selection Committees will be absorbed on regular basis by the

Government. The rest would become surplus to the requirement of Government and would revert back to NFDC (vide Annexure R-4 to the counter-affidavit at pages 126-127 of the paper book).

7. On 8.7.1988, the NFDC issued an order stating that consequent on the transfer of the Directorate of Film Festivals, NFDC, to the Ministry of Information and Broadcasting, vide Ministry's order dated 30.6.1988, the employees of the Directorate of Film Festivals mentioned therein shall stand transferred to the Ministry of Information and Broadcasting with effect from 1.7.1988. The name of the applicant figures at S.No.40 in the list of employees mentioned in the order (vide Annexure P.7, page 36 of the paper book).

8. On 20.7.1988, the Directorate of Film Festivals, Ministry of Information and Broadcasting issued an order to the effect that consequent upon the transfer of the Directorate of Film Festivals from NFDC to the Ministry of I&B as an attached office, the Directorate of Film Festivals has appointed the persons mentioned therein to various posts on temporary ad hoc deputation basis (without payment of deputation allowance) with effect from 1.7.1988 till 31.1.1988 or till completion of process of regular selection. The applicant's name figures in this list also at S.No.48 (vide Annexure P-5, page 29 of the paper book).

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9. The applicant thus worked as an LDC in the Directorate of Film Festivals on ad hoc deputation when the Directorate of Film Festivals was part of the Ministry of I&B. He continued to work in that post from 1.7.1988 to 31.5.1989. On 31.1.1989, the respondents placed him under suspension in exercise of the powers conferred by Rule 10(1) of the CCS (CCA) Rules, 1965. It was further ordered that during the period of his suspension, his Headquarters will be New Delhi (vide Annexure P-11, page 68 of the paper book).

10. The Directorate of Film Festivals, Ministry of Information and Broadcasting issued an Office Memorandum on 6.4.1989 asking the Group 'C' and Group 'D' employees in the Directorate of Film Festivals to furnish their clear option in the prescribed proforma by 20.4.1989. It was added that in case the option was not exercised by the prescribed date, it would be presumed that the concerned employee had not opted to serve under the Government and he/she would stand reverted back to NFDC at the end of the deputation period upto 31.5.1989. It was further clarified that merely by virtue of exercising the option to serve under the Government, it should not be presumed that the staff members have been automatically absorbed in the Government service. As a result of screening, those employees who are found suitable

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by the Selection Committee will alone be absorbed on regular basis by the Government and the rest would become surplus to the requirement of the Government and would revert back to NFDC (vide Annexure P-2, page 21 of the paper book). It may be mentioned that the aforesaid Office Memorandum was in line with the Directorate of Film Festivals (Group 'C' and Group 'D' posts) Recruitment Rules, 1988 which was notified on 21.3.1989 (vide Annexure R-9 to the sub rejoinder of the respondents, pages 136 to 138 of the paper book). This has not been challenged in the present proceedings.

11. Instead of exercising an option as directed in the Office Memorandum dated 6.4.1989, mentioned above, the applicant wrote to the Deputy Director (Administration), Directorate of Film Festivals on 20.4.1989 to the effect that "earlier the Directorate of Film Festivals has been a constituent of National Film Development Corporation but now upon transfer, it is wholly illogical to ask for fresh option because we have already become a part and parcel of the strength of Directorate of Film Festivals, Ministry of Information and Broadcasting. No question arises either to repatriate ^{me} ~~him~~ to National Film Development Corporation or to forfeit my earlier period of service ever since the original date of appointment..... As such I express my willingness to continue to serve under the Government of India, Ministry of Information and Broadcasting and also

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place on record that my conditions of service should not be changed to my detriment because such a course of action would be contrary to law"(vide Annexure P.3, pages 24-25 of the paper book).

12. The Directorate of Film Festivals, Ministry of Information and Broadcasting issued an order on 31.5.1989 whereby the persons mentioned therein were appointed as Group 'C' and Group 'D' employees in the said Directorate who had been found suitable by the duly constituted Selection Committee for absorption in Government service in the various posts mentioned therein. The name of the applicant does not figure in the said list (vide Annexure P-4, pages 26 to 28 of the paper book).

13. On 31.5.1989, the Directorate of Film Festivals, Ministry of Information and Broadcasting passed the following order whereby 4 employees of the NFDC who were not found suitable for absorption in Government service were treated as surplus to the requirement of the Govt. and repatriated to NFDC:-

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ORDER

Consequent upon not being found suitable for absorption into Govt. service by the Screening Committee duly constituted in terms of Para 3 of the Min. of Information and Broadcasting's letter No.301/18/87-F(F)/F(PSU) dated 30.6.1988, the services of the following Group 'C' employees who have rendered surplus to the requirement of the Govt. are repatriated to National Film Development Corporation, Discovery of India Building, Nehru Centre, Worli, Bombay-18

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with effect from afternoon of 31st May, 1989 for further orders:-

1. Smt. Chhanda Seal, Steno.
2. Shri Bhim Singh, L.D.C.
3. Shri Kamesh Kumar, LDC (under suspension)
4. Sh. Mohan Lal, Despatch Rider (under suspension)".

(vide Annexure P-1, page 20 of the paper book)

14. It is the aforesaid order dated 31.5.1989, which has been called in question in the present application.

15. We have carefully gone through the records of the case and have heard the rival contentions. The factual position which emerges from the above discussion is quite clear. Prior to 1.7.1981, the Directorate of Film Festivals formed part and parcel of the Ministry of I&B. From 1.7.1981 to 30.6.1988 the work pertaining to the Directorate of Film Festivals came under the control of NFDC. Again from 1.7.1988 to the present date, it has become an attached office of the Ministry of I&B.

16. The applicant began his career as a daily wages messenger when the Directorate of Film Festivals formed ^a part of the Ministry of I&B. He was not, however, appointed on any regular post in the Ministry of I&B and continued to be a daily wages messenger when work relating to the Directorate of Film Festivals was transferred to NFDC and continued to be with the NFDC from 1.7.1981 to 30.6.1988. It was during the period when the Directorate of Film Festivals was one of the constituent units of the

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NFDC that the applicant was appointed as Daftry and thereafter as LDC by the NFDC. At the time, when the Directorate of Film Festivals became part of the Ministry of I&B with effect from 1.7.1988, the status of the applicant continued to be that of an employee of NFDC. As the Screening Committee did not find the applicant suitable for absorption in the Government service, he has been rendered surplus to the requirement of the Govt. and has been repatriated to the NFDC. In our opinion, as the applicant was not appointed to any regular post in the Directorate of Film Festivals before it became a constituent unit of NFDC in July, 1981, he has no legal right to contend that he cannot be repatriated to the NFDC where he had been appointed as Daftry and thereafter promoted as LDC by the NFDC. We also do not see any illegality or impropriety in the Office Memorandum issued by the Directorate of Film Festivals, Ministry of Information and Broadcasting on 6.4.1989 whereby the employees were asked to exercise their option to be absorbed in Government service subject to being found suitable for the same by the Screening Committee, failing which, they would stand reverted back to NFDC. In fact and in law, the applicant who has not been found suitable for absorption into Government service by the Screening Committee has no right to continue in the Directorate

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of Film Festivals, which has become a Government Department with effect from 1.7.1988 and his repatriation to NFDC cannot be called in question on legal or constitutional grounds.

17. As already pointed out, the applicant was placed under suspension on 31.1.1989 by the Directorate of Film Festivals when that Directorate had already become a part of the Ministry of I&B.

18. On 20.2.1989, the Directorate of Film Festivals, Ministry of I&B issued a Memorandum proposing to hold an enquiry against the applicant under Rule 14 of the CCS(CCA) Rules, 1965. The Articles of Charge against him are as under:-

"Statement of articles of charge framed against Shri Kamesh Kumar, L.D.C., Dte. of Film Festivals, New Delhi.

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Article I

That the said Shri Kamesh Kumar, while officiating as LDC in the Directorate of Film Festivals, New Delhi has entered into or contracted a marriage with a person having a spouse living.

That the said Shri Kamesh Kumar by his above act contravened the provisions of the Rule 21 (1) of the Central Civil Services (Conduct) Rules, 1964.

Article II

That the said Shri Kamesh Kumar has fabricated a document by furnishing a false affidavit dated 2.12.85 before the S.D.M. Tis Hazari, Delhi on 3.12.85 for using it to his advantage for entering into second marriage.

That the said Shri Kamesh Kumar by his above act has acted in a manner unbecoming of a Govt. servant thereby contravened the provisions of Rule 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.

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Article III

That the said Shri Kamesh Kumar, while working as LDC in the Dte. of Film Festivals during April, 1988 to June, 1988 has not furnished the requisite information asked by office from him vide office memo.No.38/1/88-FFD dated 13.4.1988 and subsequent reminders dated 19.4.1988 and 27.6.1988.

That the said Shri Kamesh Kumar by his above act has exhibited in-subordination and thereby contravened the provisions of Rule 3(1)(iii) of C.C.S.(Conduct) Rules 1964 for not complying the instructions issued by the office".

(vide Annexure-IV to the reply of the respondents to MP 694/90, page 202 of the paper book)

19. By ^{letter} dated 17.3.1989, the applicant, ^{informed} the Directorate of Film Festivals, Ministry of I&B to the effect that the allegations contained in the Memorandum dated 20.2.1989 are denied. He sought for extention of time to submit his representation. On 15.5.1989, he again wrote to the Directorate of Film Festivals denying the allegations made in the charge-sheet. This was without prejudice to his contention that the provisions of the CCS(Conduct) Rules, 1964 cannot be applied in his case because he was taken in service with NFDC with effect from 2.5.1983 which has been a Department of the Directorate of Film Festivals(vide pages 129 to 130 of the paper book).

20. The applicant was repatriated to NFDC with effect from 1.6.1989. On 8.6.1989, the NFDC issued an order stating that while on deputation with the Ministry of I&B, the applicant was suspended, pending departmental enquiry against him. The order further states that as

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he has been repatriated to NFDC with effect from 1.6.1989, his Headquarters on suspension is transferred from Delhi to Head Office at Bombay for the purpose of completing further process of disciplinary action pending against him (vide Annexure R-8 to the sub rejoinder on behalf of the respondents, page 135 of the paper book).

21. On 9.6.1989, the Directorate of Film Festivals, Government of India, forwarded to NFDC the personal file including the file pertaining to the disciplinary case in respect of the applicant for further necessary action (vide Annexure R-7 to sub rejoinder-affidavit filed on behalf of the respondents, page 133 of the paper book).

22. The learned counsel of the applicant contended that if the stand of the respondents is that the applicant is an employee of the NFDC and not of the Government, he could not have been placed under suspension by invoking the power under Rule 10(1) of the CCS(CCA) Rules. We do not wish to express any opinion one way or the other about the legality or otherwise of the impugned order of suspension dated 31.1.1989 as the applicant has been repatriated to NFDC and the Directorate of Film Festivals has forwarded the relevant file relating to the disciplinary case of the applicant to NFDC. In case the applicant is aggrieved by the order of suspension or the disciplinary proceedings which are continuing against

him, he will have to challenge the same in separate proceedings before the appropriate forum.

23. Even though the applicant has been repatriated to NFDC with effect from 1.6.1989, by virtue of the stay order passed by this Tribunal on 27.6.1989, he continued to ^{work in as} ~~the~~ the Directorate of Film Festivals, Government of India. The stay order passed by the Tribunal was, however, vacated on 10.11.1989. In the interest of justice and equity, we direct that the Directorate of Film Festivals should pay to the applicant the subsistence allowance during the period from 31.1.1989 to 10.11.1989. The subsistence allowance for the period thereafter, will have to be given by NFDC to which office the applicant has been repatriated with effect from 1.6.1989.

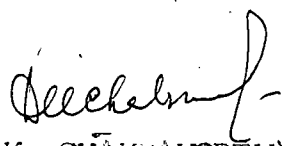
24. The learned counsel of the applicant stated that the Directorate of Film Festivals is located at 4th Floor, Lok Nayak Bhawan, Khan Market, New Delhi, where the applicant has worked throughout his career from 27.11.1980, the date of his initial appointment as daily wages Messenger. We have already observed that NFDC is ^{or} ~~the~~ having a regional office at Delhi. It is for the NFDC to consider whether or not the applicant may be accommodated at their regional office in Delhi.


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NFDC being a Government of India enterprise is not amenable to the jurisdiction of this Tribunal in the absence of a notification issued under Section 14(2) of the Administrative Tribunals Act, 1985. Though NFDC has been impleaded as respondent No.3 in the present proceedings before us, they did not enter appearance or file a counter-affidavit.

25. In the conspectus of the facts and circumstances of the case, we see no merit in the present application and the same is dismissed. All the MPs mentioned above also have been disposed of accordingly.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A) 10/9/90.


10/9/90
(P.K. KARTHA)
VICE CHAIRMAN (J)