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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2047/89

New Delhi this the 4th day of May, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. P. T. THIRUVENGADAM, MEMBER (A)

Bhim Singh S/O Late Chunno Lal,
R/O 1767, Arya Basti,
Kotla Mubarakpur,
New Delhi - 110003. ... Applicant

By Advocate Shri B. S. Charya

Versus

1. The Director,
Directorate of Film Festivals,
Ministry of Information &
Broadcasting, 4th Floor,
Lok Nayak Bhawan,
Khan Market,
New Delhi - 110003.
2. Union of India,
Ministry of Information &
Broadcasting, Govt. of India,
Shastri Bhawan,
New Delhi
(through its Secretary)
3. National Film Development
Corporation Limited,
Discovery of India Building,
5th/6th Floor, Nehru Centre,
Dr. Annie Besant Road,
Worli, Bombay - 400018
(through its Managing Director)

... Respondents

By Advocate Shri M. M. Sudan

O R D E R (ORAL)

Shri Justice V. S. Malimath -

This case is by Shri Bhim Singh Arya who started his career in the Directorate of Film Festivals in the Ministry of Information & Broadcasting as a temporary Messenger to which post he was appointed on 11.5.1981 pending framing of regular recruitment rules. The Film Festival Directorate (for short FFD) which was

part of the Ministry of Information & Broadcasting was transferred to the National Film Development Corporation Limited (for short NFDC) w.e.f. 1.7.1981 by order dated 26.6.1981. Paragraph 3 of the said order says that "The NFDC will take over staff of the FFD except in cases where the Government may decide otherwise. They will be given the option either to revert to their parent cadres or to serve in the NFDC on deputation as on foreign service terms in accordance with the general Rules and orders issued by the Government in this behalf from time to time." Two interpretations are possible of paragraph 3. Shri Charya, learned counsel for the petitioner, wants us to understand this paragraph as conveying that all the Government employees in FFD consequent upon the transfer of the Unit to NFDC were sent on deputation to NFDC. That undoubtedly is a possible interpretation. Another interpretation possible is that it is only those whom the Government is not willing to allow to become employees of NFDC would be sent on deputation to NFDC and those who are willing to accept service in NFDC would become employees of the NFDC severing their rights and interests in Government service. This interpretation is also possible having regard to the factual position that none of the employees in FFD were given deputation allowance w.e.f. 1.7.1981, the date of transfer of the FFD to the NFDC. We should bear in mind that NFDC is a Company registered under the Registration of Companies Act and is an entity different from the Government of India as such. Even if there is considerable Government control on the NFDC, the legal status of the NFDC as an independent

Corporation ought to be borne in mind. Unfortunately, the course of events that have taken place leaves us with an impression in our mind that the Government has not borne this clear distinction in its conduct and activities. This has contributed to some extent to confusion in understanding the situation. The petitioner started functioning under the NFDC after transfer of FFD from the Ministry to the Corporation. When he was working in the NFDC he was appointed as Gestetner Operator by order dated 1.7.1983. Later he was promoted by the NFDC by order dated 27.5.1985 as a Lower Division Clerk (LDC). On satisfactory completion of his probationary period, he was confirmed by order dated 11.8.1987 by the Corporation as IDC. Thus, w.e.f. 11.8.1987 the petitioner became a confirmed permanent employee of the Corporation. There was again a change in the mind of the Government which resulted in certain steps being taken for re-transfer of the FFD to Ministry of Information & Broadcasting. The decision in this behalf is contained in the order dated 30.6.1988 produced in this case as Annexure P-11. So far as the employees are concerned, they are dealt with in paragraph 2 of the said order which reads :-

*2. 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 & Broadcasting without payment of deputation allowance on the following terms and conditions upto 31.1.1989 or till the regular process of selection is over, whichever is earlier :-....."

Paragraph of the said order which is also relevant may also be extracted as follows :-

3. The existing employees of the Directorate of Film Festivals will be given an opportunity 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 Selection Committees constituted for this purpose by the Government in order to ascertain their suitability for various posts. Only those existing employees of Film Festivals Directorate 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."

The clear assertion in this paragraph is that those who are serving in the unit called the Directorate of Film Festivals in the NFDC were regarded and treated as members in service of the Corporation. It is on that basis that the order was passed to the effect that they will be treated as transferred on ad hoc deputation to the Government in the Ministry of Information & Broadcasting without payment of any deputation allowance upto 31.1.1989. Before that date the cases of such of the employees of the FFD Unit of the NFDC who wanted to be absorbed in service with the Government would be screened for their suitability and such of them who are found suitable and subject to the requirements of the Government service would be absorbed and the remaining persons on temporary deputation would revert back as employees of the NFDC. The entire order proceeds on the basis that the erstwhile employees of the FFD who had gone to the NFDC w.e.f. 1.7.1981 were regular employees of the NFDC and were not on

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deputation. This understanding of the situation which flows from the order dated 30.6.1988 is consistent with the alternate interpretation of paragraph 3 of the order of 26.6.1981 which we have extracted above. Otherwise it is difficult to understand the situation where persons who belong to the Ministry of Information & Broadcasting and had gone on deputation to the NFDC to again go back to Government service in the Ministry of Information & Broadcasting by the process of deputation from the Corporation to Government service. The question of screening would also not have arisen if those who belong to Government service and had gone on deputation were required to revert back to their parent department. The question of screening in such cases would not arise. Such situation would arise if at the inception itself the employees of the FFD Unit of the Government had become regular employees of the Corporation in the year 1981 or on the basis that though they had initially gone on deputation, if they had subsequently become permanent employees of the Corporation. ^{In the later case,} they could be taken on deputation in the Government service and their cases for absorption in Government service by the process of screening would be examined. In the light of the alternate interpretation it is possible to say that the petitioner and others similarly situate whom the Government did not decide to retain became employees of the Corporation in the year 1981 consequent upon the transfer of the Unit to the Corporation. If that is so, the action taken by the authorities treating the existing employees

as transferred on temporary deputation to the Ministry without payment of deputation allowance as on 31.1.1989 is understandable. If they were the employees of the Corporation and if the Government were to consider their absorption, it is well within their right to absorb such persons who are willing to join Government service whom they on screening find fit and suitable limiting the number of such employees to the extent of their own requirement.

2. We have already said that having regard to the interpretation of paragraph 3 of the order dated 30.6.1988 the entire conduct of the administration and the corporation cannot be faulted. Assuming the alternate interpretation is not the right one and the petitioner really went on deputation to the Corporation, we have to examine as to whether the petitioner could be subjected to screening test when he is required to repatriate to his parent department, namely, Ministry of Information & Broadcasting. If the petitioner still had the status of a deputationist in the Corporation, the learned counsel for the petitioner is right in maintaining that the question of subjecting him to screening does not arise. A government servant who is on deputation has a legal right to come back to his parent department without being subjected to any further screening. We shall for this purpose proceed on the basis that the petitioner went on deputation as a Messenger whose appointment was purely on temporary basis pending framing of recruitment rules. His services could under the relevant rules be terminated by the simple notice of one month.

But when the petitioner went to the Corporation on deputation as a Messenger in the year, 1981, he came to be appointed by the Corporation as Gestetner Operator on 1.7.1983. He was promoted as IDC on 27.5.1985 by the Corporation. Thereafter he was on probation and after completion of the probationary period the Corporation authorities confirmed him as IDC in the service of the Corporation by order dated 11.8.1987. By this process the petitioner became a confirmed employee of the Corporation. If the petitioner was a deputationist with the Corporation he could not have been confirmed as IDC in the office of the Corporation. The petitioner would have still continued as a Government servant even if some ad hoc promotions were given in the Corporation. It was open to the petitioner to give up his right for the Government service as a deputationist and to accept permanent employment in the Corporation. From the conduct of the petitioner it is obvious that he made a choice to renounce his rights in the Government service and to opt in favour of a regular service as IDC with the Corporation. We must bear in mind that the petitioner had not acquired any substantial right to serve in the Government. His appointment as Messenger with the Government was purely temporary and was liable to be terminated with one month's notice. The conduct of the Corporation in appointing the petitioner as IDC and confirming him in that post after completion of his probationary period and the acceptance of that position by the petitioner, justifies the inference that the petitioner surrendered whatever rights he had in the Government

service. With effect from 11.8.1987 the status of the petitioner was clearly of a permanent employee of the NFDC. We say so on the assumption that his status till that date was that of a deputationist from the Ministry of Information & Broadcasting. Once the petitioner became a permanent employee of the NFDC his rights were regulated as a member of service of the Corporation.

3. The conduct of the Government in taking the petitioner temporarily on deputation in the Ministry of Information and Broadcasting till 31.1.1989 fits in with the status of the petitioner being a permanent employee of the NFDC. If the Government was interested in absorbing some of the employees of the Corporation in its service and if for that purpose it held a screening test it cannot be faulted. The petitioner submitted himself for screening test and it is only when he failed to get himself selected that he had chosen to make the assertion that he has continued to be a deputationist with the NFDC and could not be reverted as a permanent employee of the Government. The petitioner by his own conduct is estopped from taking such a stand.

4. The petitioner having been subjected to screening and the Government not having selected him for absorption in Government service, an order was made on 5.6.1989 to repatriate him to the Corporation. This was obviously for the reason that he was temporarily on deputation from the Corporation in Government service. As the Government did not find

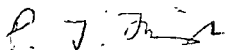
it possible to absorb him, he had to revert back to the Corporation. Annexure P-12 dated 5.6.1989 says that the petitioner has been posted to Regional Office, Madras as LDC on his repatriation. The petitioner obviously had some domestic problems which made it inconvenient for him to go to Madras and, therefore, he made a request for mutual transfer with one Shri John Mathew who was willing to go to Madras so that the petitioner could be retained at Delhi. If that small request made by Shri Mathew as well as the petitioner was accepted, possibly everyone would have been comfortable and the petitioner would not have landed himself in an uncomfortable position. Be that as it may, the conduct of the petitioner after the order was passed repatriating him to the Corporation requesting for cancellation of his posting at Madras and praying for retention at Delhi, is consistent with the position that he had become a regular employee of the Corporation. This conduct of the petitioner also further supports our inference that the petitioner had become a regular member of the Corporation's service w.e.f. 11.8.1987, when he was confirmed as LDC in the Corporation.

5. The next argument of the learned counsel for the petitioner is that the action of the authorities in subjecting the petitioner to take a suitability test in the manner in which they did and not absorbing him in the Government service is arbitrary. We have already said that the Government is well within its right before it appoints or absorbs an employee of the Corporation in subjecting him to appropriate

suitability test to find if he is adequate for being absorbed in Government service. Constitution of the Screening committee is, therefore, well within the right of the Government and cannot be regarded as arbitrary. It was then urged that no guidelines have been indicated for screening committee. It is well settled that when a screening committee is required to screen persons for a particular job, what it has got to assess is as to whether the experience and qualifications possessed by the person concerned are adequate for the job. Therefore, there are in-built guidelines in regard to these matters. Hence, it cannot be said that any arbitrary power was conferred on the screening committee.

6. Before parting, we must say that the petitioner having become a permanent employee of the NFDC, the Tribunal has no jurisdiction to entertain any grievance against the Corporation. Be that as it may, having examined the entire conspectus of the case we are left with the feeling that the petitioner has obviously faced a difficult situation having regard to his health condition. Though we have no jurisdiction over the NFDC, we feel that it would be just and proper if the petitioner is reinstated in service subject to his not claiming wages for the period for which he did not work. We hope that the Corporation will consider this aspect of the matter in a magnanimous manner.

7. With these observations, this application is dismissed. No costs.



(P. T. Thiruvengadam)
Member (A)



(V. S. Malimath)
Chairman

/as/