

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 658/89  
~~T.A. No.~~  
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DATE OF DECISION 7.12.90

S.K. Virmani Petitioner  
T.C. Aggarwal Advocate for the Petitioner(s)  
 Versus  
Union of India and another Respondent  
M.L. Verma Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman

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? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

### ORDER

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 29th March, 1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Cameraman in the Films Division of the Government of India has prayed that he should be regularised against the post of Cameraman with effect from 11.3.83 from the date he is holding the post without interruption with all consequential benefits.

2. The application while he was working as Assistant Cameraman was promoted to officiate as Cameraman in accordance with the order dated 11.3.83 (Annexure-2) purely on an adhoc basis. He has been working as Cameraman without interruption

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since then. His grievance is that instead of being regularised as a Cameraman the respondents have regularised him as Assistant Cameraman even though he had not held the post for a single day. His contention is that he is fully eligible for regular appointment to the post of Cameraman and the vacancies exist in that grade. He has referred to a number of rulings of the Hon'ble Supreme Court in support of his claim that having worked as Cameraman for a number of years he is entitled to be regularised against that post.

3. The respondents have indicated that the applicant was appointed as Assistant Cameraman with effect from 16.9.78. The next promotion is that of News Reel Officer and Cameraman. The post of Cameraman is filled up 50 percent by Direct Recruitment and 50 percent by promotion of Assistant News Reel Officer with three years of service and of Assistant Cameraman with 5 years of service. As the applicant did not complete the prescribed period of qualifying service of 5 years as Assistant Cameraman he was not eligible to be appointed as Cameraman. He was appointed as Assistant News Reel Officer with effect from 21.10.85 and as Cameraman on adhoc basis with effect from 8.2.83. He accepted these orders is now estopped from challenging them. A panel <sup>was prepared on 7.2.85</sup> for filling up the vacancies of Cameraman ~~was prepared on 7.2.85~~ <sup>red</sup> which occur <sup>red</sup> between 29.10.80

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and 13.12. 82.. Since he had not completed five years of service when these vacancies occurred<sup>n</sup>, the D.P.C. did not consider him but recommended the names of other eligible officers for appointment against those vacancies. When some more vacancies occurred<sup>n</sup> in the direct recruitment quota the applicant was continued against one of those vacancies purely on adhoc basis. When he became eligible for appointment as Assistant News Reel Officer, he was considered for the panel by the DPC which met on 15.5.85 and selected and appointed against one of the vacancies of Assistant News Reel Officer with effect from 21.10.85 on a regular basis, even though he was allowed to continue as Camerman on an adhoc basis by the order dated 6.1.86. The applicant accepted these orders and cannot now challenge the same. He continued as Camerman against direct recruitment vacancy as the vacancy could not be filled up by direct recruitment due to ban imposed on 3.1.84. At the time of his appointment as Cameraman on adhoc basis even though he was not the seniormost in the All India Seniority List<sup>n</sup>, he was locally available. <sup>n</sup> he was appointed on ad hoc basis on <sup>n</sup> He was not eligible for appointment to the post in the direct recruitment quota. Under the direction of the Ministry of Information and Broadcasting and in accordance with the Deptt. of Personnel and Training O.M. of.30.3.88 all adhoc appointments had to be

terminated if possible by making regular appointment. The applicant also has applied for the post against direct recruitment.

4. In the rejoinder the applicant has urged that since he has been holding the post of Cameraman on adhoc basis for more than 6 years it cannot be taken to an adhoc appointment. He has challenged that there was no vacancy in the promotion quota after 1982. He has also challenged the assessment made for the post of Cameraman by the DPC.

5. We have heard the learned counsel for both the parties and gone through the documents carefully. The initial appointment of the applicant to the post of Cameraman with effect from 8.2.83 vide Annexure.A.2 was made against a direct recruitment <sup>Vacancy</sup> ~~quota~~ and when he had not completed five years of service as Assistant Cameraman, such service de hors the rules cannot count for seniority. In C.Radhakrishna Reddy and others Vs. State of A.P. and others, 1990(1) SLR SC 136 the Supreme Court has held that officiation in excess of promotion quota does not count for seniority. The applicant admittedly was not seniormost amongst the Assistant Cameraman but was promoted on an adhoc basis as a local arrangement. In Delhi Water Supply and Sewage Disposal Committee and others Vs. R.K.Kashyap and others,

ATR 1989(1) SC 314 the Hon'ble Supreme Court held that while making the adhoc appointments if claims of seniors were not taken into account, service rendered in such appointment cannot count for seniority. Such adhoc appointment has been excluded for the purpose of seniority by the latest ruling of the Constitution Bench of the Hon'ble Supreme Court in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra and others, JT 1990(2) SC 264. In the circumstances such adhoc service irrespective of its length cannot count for seniority vis-a-vis regular recruits.

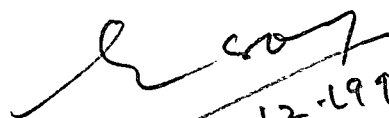
6. As regards the regularisation, the DPC which met in 1985 did not consider him eligible for promotion as Cameraman on a regular basis. In spite of that, his adhoc officiation as Cameraman was allowed to be continued. Unless there is a vacancy in the promotion quota or unless he is selected by the Public Service Commission or in accordance with rules against a vacancy in the promotion quota, the question of his regularisation as Cameraman de hors the Recruitment Rules does not arise. The applicant have not indicated any rules by which an adhoc appointee appointed in violation of the Recruitment Rules eligibility conditions and claims of his seniors can be regularised merely because he had been continued in adhoc service for a number of years. If in a case like this he is regularised or deemed to have

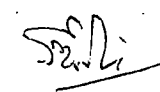
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been regularised from the date of his initial appointment de hors Recruitment Rules, eligibility conditions and superior claims of his seniors, it will give him a right of seniority setting at naught the spirit of the aforesaid rulings.

7. In the circumstances, we see no force in the application and dismiss the same without any order as to costs.

  
7.12.90  
(G. Sreedharan Nair)  
Vice Chairman

  
7.11.90  
(S. P. Mukerji)  
Vice Chairman

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