

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1222/88.
T.A. No.

199

DATE OF DECISION 14.3.1991.

<u>Sh. Harish Gangwani</u>	Petitioner
<u>Sh. T.C. Agarwal</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India and Another</u>	Respondents.
<u>Sh. A.K. Behra</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. KAMLESHWAR NATH, VICE CHAIRMAN.

The Hon'ble Mr. M.M. MATHUR, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE MR KAMLESHWAR NATH
 VICE CHAIRMAN)

JUDGEMENT

This is an Application under Section 19 of the Administrative Tribunals Act, 1985 for quashing order dated 1.6.1988 (Annexure A/11) by which the Applicant's services on the post of Film Editing were terminated.

2. An advertisement Annexure A/6 was issued for appointment against 4 posts of Film Editors consisting of 3 for General Categories and 1 for S.T. category. The Applicant is one of the several persons who applied for the post. A Selection Committee met which held the test and prepared a panel. By letter Annexure A/8 dated 3.7.1987, an offer was given to the

Applicant for appointment as Staff Artist Position of Film/Video Editor in consequence of the selection on conditions specified in the letter. One of the conditions was that he would sign a bond to serve the Department for at least 3 years after completion of the training period and in case he resigned during the training period or period of the bond he would have to pay Rs. 6000/- to the Government as stipulated in the bond. Annexure A/9 is the letter dated 29.12.1987 whereby Applicant was appointed as Film/Video Editor (Staff Artist) position at Doordarshan Kendra, Jalandhar in the fee scale of Rs. 1400-40-1600-50-2300-EB-60-2600 on three years contract with effect from 14.9.1987. He was required to be on probation for a period of two years from that date.

3. The Department, however, seems to have realised sometime later that the Applicant did not possess essential qualifications of Diploma in Film Editing as well as experience requisite for the post. It was held, therefore, that the Applicant's appointment by Annexure A/9 was irregular. Consequently, by the impugned order Annexure A/11 dated 1.6.1988 his appointment was ordered to be discontinued with immediate effect.

4. Apart from various points raised in this Application, it is urged that the impugned termination order contravenes the principles of natural justice as the Applicant was not given an opportunity to show cause and is penal in nature. It is pointed out that the advertisement Annexure A/6 while laying down specified qualifications including Degree/Diploma in Film Editing from a recognised Institution also mentioned that in case adequate number of

qualified candidates were not becoming available for the post of Film Editer, qualification and experience were relaxable. A reference is made to Rule 10 of the Recruitment Rules, 1979 for the post of Staff Artists in Doordarshan Kendra which indicates that before an actual appointment is made, recommendations of Selection Committee/D.P.C. have to be considered for acceptance by the Appointing Authority and that the Appointing Authority should satisfy itself that the selection had been made properly in accordance with the prescribed procedures and Rules and if the Appointing Authority does not accept the recommendations of the Selection Committee/D.P.C. it should record reasons and obtain orders of the Director General or the higher competent authority. The rule also mentions that after acceptance of the recommendations of the Selection Committee/D.P.C. by the Appointing Authority, appointments/promotions must be made strictly in order of merit assigned by the Selection Committee subject to certain exceptions which are not applicable to the present case. It is, therefore, urged that even if the Applicant did not possess the essential qualification of Diploma in Film Editing, it should be presumed that the said qualification was relaxed before the Applicant was appointed.

5. The case of the Respondents is that although the advertisement did contemplate possible relaxation of qualifications and experience, the relaxation could be given only when adequate number of qualified candidates were not becoming available. It is stated that 7 qualified persons were available against 4 vacancies and, therefore, consideration of unqualified candidates like the Applicant

violated the instructions of the Department of Personnel and, therefore, the appointment was irregular. It is urged that what is irregular can certainly be rectified by the executive authority without an opportunity to show cause.

6. It is stated in the Rejoinder that only 3 diploma holders were available of which 2 were appointed at Jalandhar and one at Rajkot excluding one reserved candidate.

7. We have heard the learned counsel for both the parties at considerable length and we do not like to go into other controversies of the case and confine our attention on the question of violation of principles of natural justice by not giving an opportunity to the Applicant to show cause against the proposed cancellation of his appointment.

8. The material facts are that not only the advertisement provided for relaxation in the matter of qualification and experience in case adequate number of qualified candidates were not available but also the Selection Committee while recommending Applicant's name by placing it on the panel had specifically mentioned, vide para 6(vii) and (x) of the Counter, that the Applicant did not possess the requisite Diploma and, thus, was not qualified for recruitment. Inspite of this position, the Appointing Authority took the decision of making the appointment. The appointment, it is relevant, was not a mere paper transaction. In the appointment order dated 29.12.1987 (Annexure A/9). It was actually followed by the Applicant by furnishing requisite bond for 3 years

contract in consequence of which the Applicant got into position and was actually holding the post when the Department realized the administrative error and chose to rectify ^{it} by Annexure A/11, dated 1.6.1988. The appointment order itself specifies a period of 3 years contract commencing from 14.9.1987 as well as two years period of probation.

9. We are of the opinion that there is a clear distinction between an illegal appointment and irregular appointment. Where an appointment is made without powers or without jurisdiction or in clear violation of law, it would be illegal; but where an appointment though erroneous can still be validated or ratified it would be at worst, irregular and not illegal. The Applicant's appointment in Annexure A/11 was stated/to have been considered as "irregular". Since there was provision in the advertisement that the qualification could be relaxed it would be ultimately for the competent authority to decide whether or not in a particular case relaxation may be granted and if the competent authority is so inclined, nothing prevents the relaxation to be given. The fact that relaxation is subject to non availability of qualified candidates, is not against the concept of the so-called candidates being found ^{un}suitable or to be of inferior merit. That would depend upon the position given to the Applicant on the panel, if the panel is prepared in accordance with merit. We do not intend to elaborate any further on this question because we are of the opinion that this case should be disposed of on this point with liberty to the Applicant to show cause and decided the matter afresh. We should refer to the case of D.R. Sharma Vs. Union of India & others ATR 1989(2) CAT 142 relied upon by the learned counsel for

the Respondents where it is stated that bona fide mistakes may be corrected without an opportunity to show cause; but that was not a case where an appointment had become effective and the incumbent / in position, the appointment could be cancelled. That was a case where the name of the candidate was still on panel and it was removed from the panel. So long an appointment is not given, the name on the panel is an administrative situation which is capable of being reconsidered by the competent authority in the light of the applicable law. The case, therefore, in our opinion is distinguishable.

10. For reasons stated above, this Application is allowed and the impugned order of termination of the Applicant's employment contained in Annexure A/11, dated 1.6.1988 is quashed. The Applicant shall be reinstated in terms of the order of appointment contained in Annexure A/9, dated 29.12.1987 and the period of contract contained in that order shall be calculated by ignoring the period which has elapsed between 1.6.1988 and today. It shall be open to the Respondents to give an opportunity to the Applicant to show cause on the question of proposed termination of his services and deal with the matter in accordance with law. No order as to costs.


(M.M. MATHUR) 14/3/91
ADMINISTRATIVE MEMBER


14.3.91
(KAMLESHWAR NATH)
VICE CHAIRMAN