

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/01258/2016****Dated** *Thursday*, the *27th* day of August, 2020**PRESENT****Hon'ble Mr. T.Jacob , Member(A)**

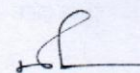
H.Robinson,
No. 4/180, Annai Sathya Salai,
MGR Nagar, Near SRB Tools,
Kottivakkam, Chennai - 600041.
....Applicant

(By Advocate M/s N.S.Nandakumar)

Vs

1. The Union of India represented by
Secretary Ministry of Information & Broadcasting,
Sastri Bhavan, New Delhi - 110 001.
2. The Director General, Doordarshan,
Representing Prasar Bharathi (Broadcasting Corporation of India),
Mandi House, New Delhi - 110 001.
3. The Director,
Prasar Bharati (Broadcasting Corporation of India),
Doordarshan Kendra, Swami Sivananda Salai,
Chepauk, Chennai - 600 005.
...Respondents

(By Advocate Mr K.Kannan)

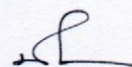


ORDER**(Pronounced by Hon'ble Mr. T. Jacob, Member (A))**

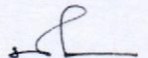
The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"To call for the records in the impugned order dated 09.04.2016 on the file of the 2nd respondent in F. No. 28/32/214-S-III A-813 rejecting the request of the applicant for regularisation as it is only prospective and set-aside the same and consequently direct the 2nd and 3rd respondents to regularise the service of the applicant from the date of his first appointment on 06.05.1977 as per their own calculation as a period of service eligible for regularisation on 10.05.1979 onwards with monetary and service benefits and pay the arrears of salary for the qualified eligible service from 1977 with promotional benefits and pay revision and pensionary benefits and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case and thus render justice ."

2. The brief facts of the case according to the applicant are that he was appointed on 06.05.1977 to work as General Assistant in the Central Booking Unit in the office of the 3rd respondent for 12 days. The respondents 1 & 2 approved the scheme for regularisation of Casuals working in all Doordarshan Kendras vide order dated 09.06.1992 and prescribing certain guidelines for implementing the scheme. Vide order dated 17.03.1994, proceedings were issued for calculating/arriving presumptive days

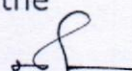


for regularisation on the basis of daily payments made for the Casual Assistants. The name of the applicant along with others were forwarded to the second respondent for considering regularisation, but he could not be considered as he was over-aged. His request was accordingly rejected by the third respondent vide order dated 05.05.2004. Hence, the applicant along with others filed OA.1193/2004 seeking a direction to the respondents to regularise their services in tune with the scheme or adopting the scheme of All India Radio (AIR) in respect of Doordarshan for the posts Assistant and General Assistant wherein this Tribunal by order dated 04.08.2005 dismissed the OA on the ground that the scheme framed by the All India Radio cannot be made applicable to them as their services cannot be compared with that of the services of the AIR, which is a different organisation. Aggrieved by the said order, the applicant and others filed W.P.36505/2005 before the Hon'ble High Court of Madras and during pendency of the said Writ Petition, the respondents issued order of appointment to the applicant, M. Robinson to the Post of L.D.C and based on the above the WP was disposed of by order dated 01.02.2016. Thereafter, on 10.01.2006, the second respondent issued OM increasing 19 days for assignment for those who are otherwise eligible for



regularisation and revised the fee for Casual Assignment vide order dated 25.08.2006. But the third respondent instead of giving 19 days assignment gave only 10 days assignment. By order dated 22.08.2013, the third respondent issued order of appointment to the applicant in temporary capacity as LDC. The applicant submitted several representations to the second respondent for the service benefits, arrears of salary etc.,. Without any order of regularisation, the third respondent issued superannuation order dated 31.10.2014 to the applicant and vide order dated 23.02.2015, the second respondent issued impugned order rejecting the service and monetary benefits. Thereafter, the applicant obtained information under the RTI Act with regard to the working days details and confirmed that he worked for more than 120 days for the period from April 1977 to December 1991 which is required for regularisation in 1977. But the second respondent issued impugned order dated 09.04.2016 rejecting the request of the applicant for regularisation of his services from the date of his appointment in 1977 with consequential salary and pensionary benefits. Hence, the applicant has filed this OA seeking the above reliefs, inter alia, on the following grounds:-

- i. The impugned order dated 09.04.2016 of the 2nd respondent is illegal and arbitrary in view of the



confirmed recorded fact that the applicant has completed the aggregate period of service of more than 120 days which is before the cut off date of 31.01.1991 prescribed in the scheme of regularisation 1992-1994 as per the records now furnished on 09.04.2015.

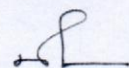
ii. The applicant submits that the direction of the 1st respondent forwarding the appeal of the applicant by proceedings dated 09.02.2016 is a result of non application of mind.

iii. To avoid the regularisation of the applicant the 3rd respondent has forwarded and or submitted misleading and false remarks from 1994 onwards.

iv. The 3rd respondent has deliberately suppressed the rates payable per day for Casual Assignment/ Booking to the applicant all along vide orders dated 25.08.2006, 31.10.2011, 16.01.2013 respectively and also restricted the Casual Assignment for 10 days inspite of approved directions by the 2nd respondent vide orders dated 10.01.2006 and 04.08.2011.

v. The officials of the 3rd respondent are liable for filing false counter affidavit and details before this Tribunal and also misleading the 2nd respondent to pass impugned orders dated 23.02.2015 and 09.04.2016 even after the visit of the legal expert and another official from the Headquarters of the 2nd respondent and verified the records during 18.05.2012 to 21.05.2012.

vi. The respondents could not rely on any previous proceedings, including orders passed by this Tribunal



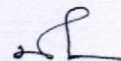
and High Court of Madras in view of the correct date for regularisation was complete in 1978 itself as per the records furnished by the 2nd respondent on 09.04.2015 and counter signed by the 3rd respondent.

vii. The respondents are estopped in law and on facts for denying for regularisation from 10.07.1977 with service and monetary benefits till superannuation on 31.10.2016 and thereafter pensionary benefit.

viii. The accrued right for regularisation of the applicant with full working hours was complete as on 1979 itself and therefore the entire service is countable as Clerk Grade- III/Lower Division Clerk from 10.05.1977 with subsequent notional promotions on par with immediate junior appointed on 10.05.1977 in the office of the 3rd respondent with pay, increments and other allowances as per periodical Pay Commission Revisions. In as much as the 3rd respondent has deliberately suppressed the regularised services of the applicant as per the scheme of regularisation approved in 1992.

ix. The 3rd respondent has deliberately failed to pay the approved rate of Casual Assignment pending regularisation as directed in the proceedings and that therefore the applicant could not be denied the arrears of salary for the entire period of service upto retirement on 31.10.2014.

x. The order of appointment and temporary appointment order dated 22.08.2013 cannot be

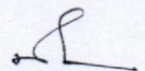


construed as regular appointment since the issue of regularisation is not finalised.

xi. The applicant submits that the 2nd respondent has not passed the regularisation order since the 3rd respondent, its official at all relevant point of time has falsely reported to the 2nd respondent that the applicant was regularised from 15.07.2013 and that therefore, they are liable for giving false statements.

xii. The applicant is governed by existing pension scheme for his accrued service from the date of 1st engagement on 10.05.1977 upto 31.10.2014 since new scheme is not applicable to the petitioner.

3. The respondents have filed a short reply statement and an additional reply statement stating that the OA is hit by constructive res-judicata in view of the fact that this Tribunal had already dealt with the issue of regularisation of his services from the date of initial appointment as General Assistant by framing a scheme and dismissed the OA.1193/2004 by order dated 04.08.2005. It is submitted that the applicant cannot seek appointment from the date of his initial engagement as the Scheme of Regularisation of 1992 with the cut off date being 31.12.1991 – does not provide scope for engagement with retrospective effect. The calculations regarding the number of days of his engagement have been from 10.05.1977 to 31.12.1991. The applicant has not put in the



minimum required number of days viz. 120 days as on 31.12.1991. Subsequently, another scheme for regularisation of 17.03.1994 was framed vide DG:Doordarshan's Orders. As per the scheme, the calculation for determining the number of days for the purpose of regularisation can be taken on the basis of the actual wages given to Casual Artists in a month, divided by the Minimum wage prevalent in the State (Tamil Nadu), during the time of booking. The Casual General Assistants including the applicant, Shri H. Robinson were engaged on assignment basis and not as mentioned in Directorate's OM dated 17.03.1994, were not found eligible.

4. Further, it is submitted that in response to DG: Doordarshan OM No.31/49/2011-S1(A) dated 22.10.2012, Shri H.Robinson, the applicant submitted an application seeking regularisation. The same was scrutinized by the Screening Committee along with the other Casual General Assistants & Others. As the applicant was found eligible for regularisation on revised calculations in terms of the Brochure of important information/instructions communicated in Directorate's above OM, his case was recommended for regularisation. The same was approved by Directorate vide OM No. 28/60/2003-SII(A)/Vol-V/370 dated 16.4.2013, subsequently his services were regularised w.e.f. 15.07.2013 vide Letter

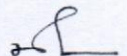


No.2(4)2012-AII/MAS (PF) – Appointment Order. The applicant was appointed as LDC w.e.f.. 15.07.2013 after introduction of the New Pension Scheme and was superannuated from service on 31.10.2014. Hence, he is not eligible for pension. Further, the Hon'ble High Court of Madras has also dismissed the claim of the applicant for regularisation. Hence, the respondents pray for dismissal of the OA.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

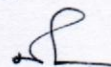
6. Admittedly, this is the fourth round of litigation before this Tribunal. The applicant and others had earlier filed OAs.187/1993, 1193/2004 & 118/2011 seeking similar reliefs and the said OAs were dismissed by this Tribunal.

7. The fact remains that the applicant was engaged as General Assistant for doing clerical nature of jobs, such as, Tamil Script Typing, Typing Programme, Maintenance of Participant's Fees and related matters. Though the work is casual in nature, he was given fourteen days work in a month upto 1983. As the General Assistants were demanding regularisation of their services, the number of days provided to the General Assistants were reduced from fourteen to six per month, which was later on increased to ten



days during August 1994. While so, the General Assistants similar to that of the applicant were regularised through a scheme of regularisation dated 02.05.1978 and 10.06.1992, the applicant was left out without regularisation. Also, the All India Radio framed a scheme to regularise the Casual Production Assistants and General Assistants. In such circumstances, the applicant made a representation to the Director General, Doordarshan, New Delhi seeking regularisation of his services. Since his request was turned down vide order dated 05.05.2004, the applicant along with others filed OA.1193/2004 and by an order dated 04.08.2005, the Tribunal dismissed the prayer of the applicants therein on the ground that the scheme framed by All India Radio (AIR) cannot be made applicable to them as the applicants' services cannot be compared with that of the services of the AIR, which is a different organisation. Being aggrieved, the applicant & Ors. filed Writ Petition before the Hon'ble High Court in WP.36505/2005 and during pendency of the said Writ Petition, the respondents issued order of appointment to the applicant alone to the post of LDC and based on the above, the WP was disposed of by order dated 01.02.2016 with the observation at para 7 as follows:-

7. However, it is seen that during the pendency of this writ petition, one M. Robinson, the 2nd petitioner

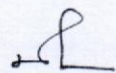


herein has been considered for regularisation and he has been issued with an order of appointment to the post of Lower Division Clerk at Doordarshan Kendra, Chennai, vide order dated 11.07.2013 on certain terms and conditions. Also,, from the Statement showing the details of casual engagement in respect of M. Robinson between April 1978 and December 1991, it is seen that the number of posts have been freshly calculated.

8. Thereafter, the Deputy Director (Admn) in the capacity of CPIO has passed order dated 09.04.2016 to the RTI query of the applicant, H. Robinson dated 27.03.2015, 20.04.2015 and 14.05.2015 regarding regularisation of his service in DDK. Chennai as General Assistant on long term contract from 10.05.1977. The relevant portion of the said order reads as follows:-

"In this regard this is to inform that your grievance has already been examined in this Directorate in consultation with DDK Chennai and it has been noted that your service period of Casual General Assistant was regularised in the post of LDC w.e.f. 15.07.2013 under the Doordarshan Staff Artists Scheme 1994. You had superannuated from the service on 31.10.2014. Therefore you are covered under the New Pension Scheme and not eligible for pension and other retirement benefits. The leave encashment and other benefits has already been released to you by Kendra.

Further it is intimated that under the scheme for regularisation of Casual Staff Artists, it has been clearly mentioned that the regularisation of Casual Artists would be from a prospective date and hence benefit would accrue from the date of regularisation."



9. Admittedly the applicant was engaged as Casual General Assistant w.e.f. 10.05.1977 on need basis for a maximum of 14 days. As per the Scheme of Regularisation of 1992 framed by the Director General, Doordarshan as on the cut off date of 31.12.1991, the Casual Artists who have completed 120 days in any calendar year alone will be considered for such regularisation. The details of the engagement of the applicant w.e.f.. 10.05.1977 to 31.12.1991 are as given below:-

1.	w.e.f. 10.05.1977	38 days
2.	year 1978	79 days
3.	year 1979	78 days
4.	year 1980	81 days
5.	year 1981	95 days
6.	year 1982	107 days
7.	year 1983	80 days
8.	year 1984	72 days
9.	year 1985	82 days
10.	year 1986	99 days
11.	year 1987	80 days
12.	year 1988	80 days
13.	year 1989	88 days
14.	year 1990	72 days
15.	year 1991 upto 31 st Dec	76 days

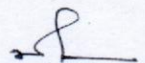
It is clear from the above that the applicant had never worked as Casual General Assistant for 120 days in a calendar year w.e.f. 10.05.1977 to 31.12.1991.

10. The regularisation has been effected on the basis of man-days and not man-hours and as per the calculation regarding the number



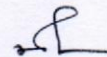
of days of his engagement from 10.05.1977 to 31.12.1991, he has not put in the minimum number of 120 days in a calendar year. The claim of the applicant has also been considered under the Scheme of Regularisation of 1994 issued by the Director General, Doordarshan on 17.03.1994, as per which, the calculation for determining the number of days for the purpose of regularisation can be taken on the basis of the actual wages given to Casual Artists in a month, divided by the minimum wage prevalent in the State of Tamil Nadu during the time of booking. Since no State Government rates were available and as per the decision taken in the meeting held at the Directorate from 20.02.1995 to 22.02.1995 it has been advised by the then DDG (A) to take the nearest category into account for arriving at the number of days deemed to have been engaged as per the scheme dated 17.03.1994. Hence, the nearest category of Typist was taken and the rate paid at that time by State Government for Typist was only Rs.40/-. The applicant was not found eligible for regularisation of his contractual service.

11. I find some merit in the contention of the respondents. The applicant has been considered both in the Scheme of Regularisation of 1992 and 1994. The services of the applicant as Casual General



Assistant were regularised on the post of LDC w.e.f.15.07.2013. He superannuated on 31.10.2014 and, hence, covered under the New Pension Scheme. The respondents have rightly rejected the claim of the applicant for grant of service benefits for the services rendered by him on contractual basis as there is no provision under FR for fixation of pay of contractual appointment. His appointment to Government service is treated as a fresh appointment. As such, I see no reason to interfere with the impugned order of rejection of the claim of the applicant dated 09.04.2016 for regularisation of his contractual service.

12. Further the petitioner was one of the parties in the WP No. 36505/2005 filed against the order of this Tribunal in OA No. 1193/2004. That case also related to a prayer seeking regularisation of casual service rendered in the DD Kendra, Chennai as General Assistant for few days every month. The Hon'ble High Court had considered the issued agitated in the WP and did not find any merit to interfere in the above decision of this Tribunal. In fact the High Court had noted that the petitioner has been given appointment as Lower Division Clerk and held that the claim of the other parties in the WP also fell on the same line as that of the petitioner. In its final order the High Court directed the respondents



therein to consider the claim for regular appointment for the other petitioners as was extended to Shri H. Robinson. As the petitioner was informed in the RTI response from the respondent under the scheme, regularisation of casual artists would be from prospective date only. The petitioner has not brought out any similarly situated case in Doordarshan office where also regular appointment was given in pursuance of the scheme under which he was appointed as LDC and where the concerned individual was given more attractive benefits than those given to the petitioner.

13. The Apex Court had repeatedly held that sympathy cannot be the basis of judicial pronouncements. Judicial pronouncements have to be based on the law and the rules in accordance with the provisions of the Constitution of India.

14. In the conspectus of the above facts and circumstances of the case and the discussions herein above, the OA is liable to be dismissed and is accordingly dismissed. No costs.

