

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

CP NO. 220/93

in

OA NO. 977/86

New Delhi this the 4th day of January, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri S.R. Adige, Member(A).

Shashi Raj Saran
S/o Shri S.S. Bhatnagar,
R/o 33, New Gandhi Nagar,
Ghaziabad (UP)

.. Petitioner.

in

(Surrender Singh Negi's case)

By Advocate Shri F.C. Saxena.

Versus

1. Shri S. Krishnan, DG,
The Directorate General,
Doordarshan, Mandi House,
New Delhi.

2. Shri R.K. Bhargawa,
Secretary,
Ministry of Information & Broadcasting,
New Delhi.

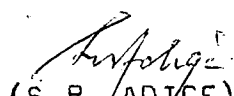
.. Respondents.

By Advocate Shri M.L. Verma, Counsel.

O R D E R

Shri Justice V.S. Malimath.

As the scheme has been prepared and action has been taken in accordance with the scheme, there is no scope for taking action under the Contempt of Courts Act. If the petitioner has any grievance either in regard to the factual position that he is entitled to be regularised in accordance with the scheme or that action is being taken to regularise persons in contravention of the scheme, it is open to the petitioner to agitate his rights in appropriate proceedings. Without prejudice to his rights, this CCP is dismissed. Notice is, therefore, discharged. No costs.


(S.R. ADIGE)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

'SRD'
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for reporting

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

(8) (33)

D.A.No.563/86, 977/86
and O.A.No.2514/89
and O.A. No. 896/86

Date of Decision: 14/2/92

Registration(O.A.)No.563 of 1986

Anil Kumar Mathur and others ... Applicants.
Vs.

The Director General Doordarshan,
Mandi House, New Delhi & Another ... Respondents.

Connected with
Registration (O.A.)No.977 of 1986

Surender Singh Negi & Others ... Applicants.
Vs.

The Directorate General Doordarshan,
Mandi House, New Delhi and another... Respondents.

Connected with
Registration (O.A.)No.2514 of 1989

Vijay Kumar ... Applicant
Vs.
Union of India & another ... Respondents.

Connected with
Registration (O.A.)No.896 of 1986

S.K.Thakur ... Applicant
Vs.

Union of India & Another ... Respondents.

COUNSEL

Shri Rakesh Tikku with
Shri R. Venkataramani. ...For the applicants in
above cases.

Shri M.L.Verma ...For the respondents in
above cases.

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN
THE HON'BLE MR. J.P.GUPTA, MEMBER (A).

JUDGEMENT

(Delivered by Hon'ble Mr.I.P.Gupta, Member(A) :

9. The applicants in the first three OAs are engaged as casual workers in the office of Directorate General, Doordarshan, Mandi House, New Delhi. They have been working as Floor Assistant, Production Assistant, Lighting Assistant, Make-up Assistant, General Assistant etc. They generally perform their duties behind the camera. The applicants allege that the requirements of their service are of enduring nature.

2. The applicants further allege that instead of giving them regular employment, the respondents had been engaging them on casual basis. They requested for the following relief

(i) The respondents be directed to treat the applicants as if they have been working on regular basis on their respective posts from the dates on which they are in service with the respondents and allow consequential benefits;

(ii) To direct the respondents to consider the applicants for absorbing them on regular basis by waiving the conditions of age, which are now beyond the upper age limit prescribed and grant them the same benefits as are being given to other regular employees.

(iii) In the event, the respondents are not able to absorb the applicants and other casual labourers on regular basis for whatever reasons, then applicants and other casual employees should be granted wages/ salaries etc and consequential benefits in the same manner in which other regular employees working on the said post are being given.

3. The first three OAs cited above were considered by the Principal Bench of the Central Administrative Tribunal and the extracts of orders dated 5.10.90 issued thereon are reproduced below:

"This being the legal position, we are of the opinion that the daily rated casual employees of Doordarshan Kendras are entitled to protection in regard to their wages and service

(10) (3)

conditions etc. They are also entitled to protection of pay and regularisation as far as possible. However, the number of sanctioned posts, numbers of posts already filled, number of posts vacant and number of persons booked as casual employees (called as 'casual artists' by respondent No.1) has to be ascertained and respondent No.1 be given a chance to formulate the policy for the protection of the daily rated casual employees. Despite our attempt, factual position was not revealed. It is only after the arguments were concluded that a letter dated 13.8.1990 (now placed on the file of O.A.No.563 of 1986) was submitted which is hardly of any avail and in any case does not contain complete information. Therefore, we consider that a direction be issued to the respondents, i.e. Union of India and the Directorate General, Doordarshan to submit a scheme for regularisation of as many casual workers as possible in regular cadre and as also to devise a ^{Policy} policy for future recruitment of casual labour and their absorption. We accordingly direct as follows:-

"We have heard the learned counsel for the parties. On the question of protection of pay and absorption of the daily rated casual employees on regular basis on posts of Floor Assistant, Production Assistant, General Assistant, Lighting Assistant, Carpenter, Painter, Camera-man, Make-up man etc.etc., we are of the view that the principles enunciated by the Supreme Court in the above-quoted judgements are applicable to these cases also. We, therefore, direct the Union Government as well as its subordinate office, i.e. the Director General, Doordarshan, respondents No.1, to frame a rational scheme (a) for regularisation of the daily rated casual workers (described as casual artists) in regular cadres; and (b) terms and conditions for engagement of daily rated casual employees in future and their absorption in due course. We further direct that no recruitment

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on the aforesaid posts shall take place till such a scheme is submitted or accepted by the Court as far as possible unless the recruitment is confined only to daily rated casual workers (called casual artists by the Doordarshan Kendras) as engaged in the past. These cases shall stand adjourned by three months. Meanwhile, the respondents shall frame a scheme as directed above and submit to us for acceptance. These cases need not be treated as part-heard."

(The Judgements quoted were: Randir Singh Vs. UOI(1982(1)SCC 618) D.S. Nakara and others Vs. UOI (1983(1) SCC 305)); Dhirendra Chamoli and another Vs. State of U.P.(1986(1) SCC 637)); Surinder Singh and another Vs. Engineer-in-Chief, C.P.W.D. and others(1986(1) SCC 639); Daily Rated Casual Labour employed under P&T Department through Phartiya Dak Tar Mazdoor Manch Vs. UOI and ors.(AIR 1987 SC 2342); The Dharwad Distt.P.W.D. Literate Daily Wages Employees Association and ors. Vs. State of Karnataka and ors (AIR 1990 SC 883).

4. Accordingly the office of Directorate General XX Doordarshan has submitted a draft scheme dated 29.11.1998. The draft scheme reads as follows:

- " 1. This scheme would be applicable to those Casual Artists who were on the rolls of Doordarshan from 1.1.80 onwards though they may not be in service now. Those who are engaged on casual basis after 31.12.90 will not be eligible for consideration.
2. Only those Casual Artists who had been engaged for an aggregate period of 120 days each in atleast two calender years from 1.1.80 onwards will be eligible for regularisation. The broken period in between the engagement and disengagement will be ignored for this purpose.
3. Separate eligibility panels will be prepared for each category of posts, kendra-wise, depending upon the length of service of Casual Artists. They will be considered for regularisation in the order of their seniority against the available vacancies in that particula Kendra. The seniority will be determined from the date of their initial engagement by the Kendra.
4. The persons who are in the eligibility panel of one kendra will have no right for claiming regularisation in another kendra as these are generally Group 'C' posts and selection is made Kendra-wise.
5. The Casual Artists who are to be regularised should possess the requisite educational qualification and/or experience as stipulated in the ~~extant~~ recruitment rules for that post. The regularisation under the ~~XXXXXX~~ scheme will be

extant
rule

12 (39)

done in accordance with the recruitment rules and other administrative instructions relating to that post.

6. The upper age limit would be relaxed to the extent of service rendered by the Casual Artists at the time of regularisation. A minimum of 120 days' service in the aggregate, in one year, shall be treated as one year's service rendered for this purpose. The service rendered for less than 120 days' in a year will not qualify (will not qualify) for age relaxation.

7. The regularisation of Casual Artists would be from a prospective date and the Casual Artists on the eligibility panel who fail to qualify for regularisation in accordance with the recruitment rules and instructions issued thereunder for the post, shall be removed from the panel.

8. If a Casual Artist on a eligibility panel commits a misconduct and the same is proved after giving a reasonable opportunity, his name would be removed from the eligibility panel and he would not be eligible for regularisation.

9. Till, all the Casual Artists in a particular category are eligible for regularisation at a Kendra are regularised no fresh recruitment would be resorted to by Kendra concerned. This restriction would not be applicable to a Kendra or category of staff artist where no eligibility panel of casual artist in a particular category of Staff Artist exists. In other words, if a Kendra has a panel of eligible Casual Artists in the categories of say Floor Assistants and Production Assistants only, the above restriction on fresh recruitment would be applicable in respect of those two categories only and not to other categories of Staff Artists in that Kendra. Similarly this restriction on fresh recruitment would not be applicable in respect of those Kendras which have no panel of eligible Casual Artists.

5. The arguments of the learned counsels for the applicants and the respondents were heard extensively. The counsels for the

applicants considered the scheme incomplete and sketchy and express reservations on various paragraphs which are discussed below:-

The learned counsel for the respondents said that the scheme was submitted according to the directions of the Tribunal and further examination by the Tribunal in detail was neither called for nor legally appropriate. He cited the case of Tamilnadu Education Department Ministerial and General Subordinate Services Association Vs. State of Tamilnadu and Others (AIR 1980 (SC) 379). It was held therein that :-

Aware of our jurisdictional limitations, we do not agree that the Court can analyse such minutiae to fault policy. What is impor

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is to know whether malafides vitiates or irrational and extraneous factor fouls. The learned counsel further quoted the case of Col A.S. Sangwon Vs. UOI & Ors. (AIR 1981 (SC) 1545) where it was held that policy once formulated is not good for ever. It is perfectly within the competence of UOI to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and imperatives of national considerations.

6. The learned counsel for the respondents further contended that the scheme has been drawn up on the lines directed by the Principal Bench of Central Administrative Tribunal in O.A.Nos. 894/90, 2322/90 and 1775/90 decided on 8.2.91 and reiterated in the order dated 5.7.91 of Circuit Bench, Lucknow, C.A.T. Allahabad in O.A.Nos. 174/89, 175/89, 176/89, 177/89, 97/90, 54/90 and 42/9

7. In the aforesaid orders, it was directed that the scheme should keep the following aspects in view:-

- (i) Casual Artists who have been engaged for an aggregate period of 120 days, may be treated as eligible for regularisation. The broken periods in between engagement and disengagement, are to be ignored for this purpose.
- (ii) The respondents shall prepare a panel of Casual Artists who had been engaged on contract basis, depending on the length of service. The names of those who have not been regularised so far, specially from 1980 onwards, though they may not be in service now, are to be included in the panel. Persons borne on the panel are to be considered for regularisation in the available vacancies.
- (iii) For the purpose of regularisation, the upper age limit has to be relaxed to the extent of service rendered by the casual artists, 120 days' service in the aggregate shall be treated as the service rendered in one year for this purpose.
- (iv) Till all the Casual Artists who have been engaged by the respondents have been regularised the respondents may not resort to fresh recruitment of such Artists through Employment Exchange or otherwise.

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(v) Till the Casual Artists are regularised, the wages to be paid to them should be in accordance with the scale of pay of the post held by a regular employee in an identical post. The amount of actual payment would be restricted to the actual number of days worked during a month.

108. Through we do not intend to substitute our scheme for that of the respondents, we still feel in due deference to the observations of the Bench in the order cited earlier that the comments of the learned counsel for the applicants as also of the respondents should be briefly discussed, as the order dated 5.10.90 in OA. 563/86 etc. clearly mentioned that the respondents should frame a scheme as directed and submit to us for acceptance.

9. At the outset, it may be pointed out that the order dated 5.10.90 quoted above had given the direction to the respondents to frame a rational scheme :-

- (a) For regularisation of daily rated casual workers (described as casual artists in regular cadres);
- (b) Terms and conditions for engagement of daily rated casual employees in future and their absorption in due course.

10. The scheme drawn up by the respondents does not cover item (b) above. This should be incorporated. It has already been held by the Principal Bench on 8.2.91 in OA. No. 894/90 etc. and the order dated 5.7.91 of the Lucknow Circuit Bench in OA. No. 174/89 etc. that till the casual artists are regularised, the wages to be paid to them should be in accordance with the scale of pay of the post held by a regular employee in an identical post. The amount of actual payment would be restricted to the actual number of days worked during a month.

11. We would here further like to elaborate that payment in accordance with the scale of pay would imply payment at the minimum of pay in the pay scales of regularly employed workers in the corresponding cadres but without any increments. In this connection, the case of daily rated casual labour employee under P&T through Bhartiya Dak Tar Mazdoor Union (AIR 1987 (SC) 2342) would also refer.

12. Now we shall discuss the scheme para-wise. Regarding Para-1, the learned counsel for the applicant mentioned that there was no basis for fixation of date 31.12.90 as cut off date. Further the entry date of 1.1.80 was objected to. The limit should be outer



date i.e. atleast 31.12.91 or the date this scheme is finalised.

The learned counsel for the respondents pointed out that they have already regularised similar persons upto 1980 and therefore this scheme was made applicable from 1.1.80. The outer date

31.12.90 was fixed since the order for framing a scheme was passed on 5.10.90. While we see the rationale of the dates 1.1.80 and 31.12.90, mentioned in para - 1 of the scheme, we would like to

observe that, as ^{mentioned} ~~observed~~ in case OA. 894/90 etc. decided on

8.2.1991, the formula in 79-80 regularised casual workers in available vacancies upto 1980. One cannot thus be certain that all pre-1980 recruits have been regularised. Further since the

scheme is being finalised only now, it would be proper to take

31.12.91 as the outer date for purposes of eligibility for consideration. Of course eligibility for regularisation will be governed by conditions that follow in subsequent para. We are,

therefore, of the opinion that para 1 should be modified in following terms :-

All those casual artists who were employed on casual basis on 31.12.1991 including those who were on the rolls of the Doordarshan, though they may not be in Service now will be eligible for consideration.

13. As regards para 2 of the scheme, the learned counsels for the applicants contended that by a similar judgement delivered by Principal Bench of the Tribunal in OA. No. 894/90 etc. and by the Lucknow Bench in OA No. 174/89 etc (quoted earlier) direction was given for ^{Considering} absorption/regularisation ^{of those engaged in} for an aggregate period of 120 ^{year} days (in a year). It was further contended ^{by the Counsels} that 120 days should be taken on the basis of actual working days in the muster roll and attendance slip (was referred to as Q-sheets) and not on the basis of the so called Talk contract issued by the respondents. It was submitted that although the applicants were made to work for longer period but on the letters issued by the respondents the period of days was not shown correctly. The learned counsel for the respondents argued that in 1979-80

Scheme the formula adopted was completion of 365 days in three consecutive financial years or 240 days in a financial year, which was later liberalised to 200 days in a financial year or 365 days in three consecutive financial years.

14. In view of the direction given in the judgements in OA No. 894/90 etc (Principal Bench) and OA No. 174/89 etc (Lucknow Bench) we are of the view that para 2 should be modified in following terms :-

Only those Casual artists who had been engaged for an aggregate period of 120 days in a year (it is for respondents to fix the year as calendar year or financial year) will be eligible for regularisation. The broken period in between the engagement and disengagement will be ignored for the purpose. The number of days is to be computed on the basis of actual working days in the muster rolls or attendance sheets or Q-Sheets.

15. Regarding para 3 of the scheme, there was animated discussion. The learned counsels for the applicants argued strenuously that eligibility panels should be on all-India basis and not Kendrawise. The respondents have employees working through out the country and seniority should have no nexus with the engagement by a particular Kendra. It was alleged that even some transfers from one Kendra to another have been made. The learned counsel for the respondents said that appointments to the posts in question were made Kendrawise. He referred to Recruitment Rules for G & C Programme (Technical) posts in Doordarshan, as circulated by letter of 25th Nov 1988, The Rules show that recruitment to posts like Lighting Asstt, Painter, Carpenter, Floor Asstt, Production Asstt, Make-up Asstt etc are made by Selection Committees headed by the Director of the concerned Kendra. Even confirmations are made by Departmental Promotion Committee Kendrawise. In view of this we do not wish to suggest any modification.

16. Regarding para 4 again, we would express no opinion, as this is a corollary to para 3.

17. Regarding para 5, the learned counsels for the applicants stressed that recruitments made even though on casual basis prior to framing of any new recruitment rules as regards academic qualification and age factor should not affect the casual employees for purposes of regularisation. Even if it were so, the respondents should use their power to relax. We agree that if any educational qualification or age limit was prescribed either by the then existing recruitment rules or by notifications and if the casual worker fulfilled those criteria at the time of initial intake, a higher educational qualification prescribed later should be considered for relaxation. In this view of the matter we are of the opinion that para 5 should be modified as follows :-

The Casual Artists who are to be regularised should possess the requisite educational qualification and/or experience as stipulated in the recruitment rules or other administrative instructions (in the absence of recruitment rules) existing for the post ^{when} ~~before~~ the casual worker ^{was} ~~who~~ engaged. _{in} _{at}

18. Regarding para 6, we find that this is in order and is in conformity with the direction given in OA No. 894/90 etc (Principal Bench) and OA No. 174/89 etc (Lucknow Bench).

19. As regards para 7, the learned counsels for the applicants contended that regularisation should be done from the date from which the casual workers have been working with the respondents. The delay is not their fault. We may in this connection refer to the case of Dharwad PWD Employees Association VS State of Karnataka 1990(2)SCC 396 where it was observed that 'from amongst

the casual and daily rate employees who have completed ten years of service by Dec 31, 1989, 18600 shall be regularised w.e.f. 1.1.90'. Therefore we see no irregularity or illegality in para 7 of the draft scheme where regularisation is proposed to be done prospectively.

20. Regarding para 8, the learned counsels for the applicants contended that once having accepted the right to be regularised, the applicants should be subject to due process of law and opportunity of being heard. We observe in this connection that Rule 3(1)(c) of the CCS(CGA) Rules are clear in that it specifies that the Rules shall not apply to casual workers. Para 8 mentions that removal from eligibility panel can be done on account of misconduct proved after giving a reasonable opportunity. We would add that reasonable opportunity should include an opportunity of being heard.

21. Regarding para 9, no comments were expressed and we have no modifications to suggest.

22. In the conspectus of the aforesaid analyses and in the above view of the matter we would direct the respondents to recast and the scheme ^{finalise} ~~finalise~~ within a period of 3 months of the date of receipt of a copy of this order on the lines of observations made from para 9 onwards. The regularisation of eligible casual workers in available vacancies should be done within 3 months thereafter, i.e. within 6 months in total from the date of receipt of a copy of the order.

23. With the direction in the preceding paragraph, the first three OAs and MP 52/92 filed by Shri AK Shukla, learned counsel are disposed of. ~~xxxxxx~~ The fourth OA viz 896 of 86 (SK Thakur VS UOI Anr) is also disposed of, since it was ordered



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on 4.12.91 that the case would be covered by the judgement in the first three OAS.

There is no order as to costs.

(L.P. GUPTA)

MEMBER (A)

14/2/92

(RAM PAL SINGH)

VICE-CHAIRMAN (J)



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Dt.....

24/2/92

Section Officer
Central Administrative Tribunal
Principal Branch, New Delhi