

Central Administrative Tribunal
Principal Bench: New Delhi

(2)

(AB)

OA No. 2303/91

New Delhi, this the 6th day of February 1998

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member (A)

1. Shri S.C. Bhagat
s/o late Sh. Ram Kishan Bhagat
R/o 22/110, West Patel Nagar,
New Delhi.
2. Shri K.K. Bindra
s/o Shri Tara Chand Bindra,
c/o C.L. Bindra,
R2/69, Raghu Nagar, Pankha Road,
New Delhi.
3. Shri Kishore Akuiwar
s/o late Shri Ganganna,
r/o Qr.No. 63, Type I (C.P.W.D.)
Near St. Refl School,
Indore (UP).
4. Shri R.N. Mishra
s/o late Shri R.S. Mishra,
r/o D-59/255-4, Shivpura,
Varanasi (U.P.)

..... . . . Applicants

(By Advocate: Shri G.D. Gupta)

Versus

Union of India through :

1. Secretary,
Ministry of Information & Broadcasting
Shastry Bhawan, New Delhi.
2. The Director General,
Directorate of Advertising &
Visual Publicity,
Ministry of Information & Broadcasting,
P.T.I. Building, Parliament Street,
New Delhi.

... Respondents

(By Advocate: Shri V.S.R. Krishna)

O R D E R

DR. JOSE P. VERGHESE, VICE-CHAIRMAN (J) -

The four applicants in this case were promoted together to the Grade of the Exhibition Assistants by an order dated August 9, 1984 on ad hoc basis. The

respondents subsequently sought to revert the petitioners on the ground that the regular incumbents recruited under the rules will have to be appointed against the said four posts of Exhibition Assistants. The applicants had stated that while working as Projectionists, they were given ad hoc promotions on 09.08.1984 on a temporary and ad hoc basis. The Directorate of Advertising and Visual Publicity (Exhibition Assistant Recruitment) Rules, 1978 provided for recruitment to this category by promotion to the extent of 25% from Projectionists, the remaining 75%, being filled by direct recruitment. By an order dated 2.5.1985, the second respondent revised the pay scale of the Exhibition Assistants from Rs. 425-700 to Rs. 470-750 and consequent thereupon this post was reclassified as Grade B non-gazetted. The superior service of the Department is the Central Information Service. By Notification dated 28.11.1986, the Central Information Service (Amendment) Rules, 1986 were notified which carried out certain amendments the effect of which was to include the post of Exhibition Assistant in that Service. As a result of this the only method of recruitment to this post thereafter was by direct recruitment. The persons like applicant, having continued on an ad hoc basis for long namely since 1984 felt aggrieved by this decision because they were not being regularised as Exhibition Assistant in the Central Information Service in order to give way to those persons who would be now directly appointed as per the newly amended rules, 1986. It is in these circumstances this application has been filed seeking a direction to the respondents to treat the period of continuous officiation

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of the applicants in the grade of Exhibition Assistant as having been rendered on regular basis with all consequential benefits.

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It was further submitted on behalf of the applicants that the petitioners were appointed as Exhibition Assistants in the year 1984 and they are entitled to regularisation in accordance with rules, especially because the quota laid down in the Rules of 1978 has broken down and therefore the appointment of the applicants made in August, 1984 was liable to be treated as regular. The respondents have continued to treat their posts as ad hoc wrongly and when the Amended Rules came in 1986, the posts of Exhibition Assistants were to be included in the Central Information Service. But the respondents proceeded to revert the petitioners instead of regularising them. It was further submitted that at the time when the applicants were promoted as Exhibition Assistants in the year 1984 they were 20 regular vacancies of field Exhibition Officers which are higher posts than Exhibition Assistants in the department. Against the said 20 vacant posts, 20 regular Exhibition Assistants, as they were working at that time, were promoted as Field Exhibition Officers again on ad hoc basis. Out of the said 20 posts, 7 were regularised by holding DPC in the year 1989 with retrospective effect from 1982, 1983, 1984 and 1985 and against the remaining 13 vacancies of regular Field Exhibition Officers, 13 Exhibition Assistants were promoted on ad hoc basis, and were allowed to continue. The case for regularisation of the aforesaid 13 Exhibition Assistants in the post of Field Exhibition Officers is in fact pending in another OA in this Tribunal. The 20 posts

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of Exhibition Assistants which had fallen vacant in the year 1984 on promotion of regular Exhibition Assistants to the post of field Exhibition Officers aforesaid, at least 17 out of 20 posts had been filled up by promoting Projectionists on ad hoc basis in 1984. Infact one or two persons were appointed as Exhibition Assistants even directly. Though the quota for the Exhibition Assistants were 25% by way of promotion and 75% by way of direct recruitment, that quota could not be maintained since all the posts that fell vacant happened to be in the direct recruitment quota and the same could not be filled up. It was further submitted that even after 1984 not a single post of Exhibition Assistant was filled up by the method of direct recruitment and vacancies on the direct recruitment quota continued. In fact, most of the said post of Exhibition Assistant in the direct recruitment was filled up by promotion from amongst the Projectionists on ad hoc basis in the year 1984. They were latter on regularised by holding DPC in the year 1991 with effect from 1982 and 1983 to the extent vacancies fell in promotional quota. This was done on the basis of the decision of the Lucknow Bench of this Tribunal and it was stated in the said decision that from the facts and circumstances of the case it appears there were certain posts of Exhibitions Assistants existing even when the rules were amended in 1986. The Lucknow Bench observed that as long as the rules were unamended the applicants should have been given the posts if they were given ad -hoc appointment to the post they were entitled to regularisation on the said post. The petitioner on the basis of the decision of the Lucknow Bench claimed regularisation against the available 25% quota prior to the amended rules.

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After notice, the respondents filed a reply and stated that as against the applicants who were holding substantive post of Projectionist on regular basis and were promoted as Exhibition Assistants on ad hoc basis prior to 1986, only 25% of the posts were to be filled up by promotion from the Projectionists having a minimum service of 5 years in the grade. This is as per Recruitment Rules existing prior to 1986. But since the the recruitment rules were amended in 1986 all posts of Exhibition Assistants were to be filled up by cent per cent direct recruitment by the Indian Information Service personnel. It was submitted by the respondents that the Projectionists therefore ceased to be eligible for promotion to the post of Exhibition Assistants after the amendment to the recruitment rules was made in 1986.

It was further submitted by the respondents that the petitioners were proposed to be reverted to their substantive post of Projectionists in the light of the amendment to Recruitment Rules. However, it was admitted that on the basis of the decision dated 19.9.91 of the Lucknow Bench of this Tribunal, the two applicants therein were regularised even though the said two applicants were holding the Exhibition Assistants post on ad hoc basis prior to the amendment to the Rules in the year 1986. The respondents have now admitted that they had issued an order on 20.11.1991 promoting two projectionists against the 25% quota of existing rules prior to 1986 and the remaining Exhibition Assistants who are working on ad hoc basis prior to the amendment of the rules in the year 1986 were reverted to their original substantive post of Projectionist.

Heard the rival contentions of the counsel for both the parties at length. In view of the decision of the Lucknow Bench of this Tribunal, it is not necessary to go into the question whether the rota-quota has broken down prior to the amended rules in the year 1986. The Lucknow Bench of this Tribunal had recorded a finding that there were vacancies existing even in the 25% promotee quota prior to the amendment of the rules in the year 1986. The Lucknow bench of this Tribunal has further recorded that so long as the rules are not amended the applicants should be given the benefit of this post by regularising them since they have been holding the said post on ad hoc basis for many years. To quote:

"From the facts it appears that certain posts of Exhibition Assistants were in existence when the rules were amended in the year 1986. Obviously, so long as the rules were not amended, the applicants should have been given the post. If they were given ad hoc appointment against the post, they are entitled to be regularised on the said post".

Thus, the Lucknow Bench had clearly held that the petitioners therein were entitled to regularisation against the available posts. It is not the case of the petitioners therein that there were only two posts available against the 25% quota. In the absence of any averment and in view of the finding recorded by the Lucknow Bench, that there were certain posts still available in the Exhibition Assistants post prior to amended rules in the year 1986, we do not hesitate to direct the respondents that the remaining posts existing in the promotee quota shall be made available to the petitioners herein and a DPC may be held to regularise the services of the petitioners in accordance with the un-amended rules. We are aware of

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the fact that the Lucknow Bench of this Tribunal had given similar direction on the basis of the decision of Hon'ble Supreme Court in the case of Y.V.Rangaiah vs. J.Sreenivasa Rao (1983) 3 SCC 284 and Ganeshwar Rao vs. State of A.P., 1988 Supp. 284. It was stated in the said case that these cases were considered by the Hon'ble Supreme court in N.T.Devin Katti and Ors. vs. Karnataka Public Service Commission and Ors. (1990) 3 SCC 157 wherein it was held, to quote:

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'a candidate on making application for a post pursuant to an advertisement does not acquire anyvested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amended of rules during the pendency of selection unless the amended rules are retrospective in nature".

Apart from the above state of affairs, it is further worth-mentioning that till the time of the amendment to the rules in 1986, the petitioners have shown that there were a large number of posts of Exhibition Assistants that happened to have lapsed and the basis of the break down of the rota-quota rules, the respondents should not have allowed these posts to disappear for want of quota and the attempt of the respondents to revert the petitioners stating that under the amended rules of 1986 the posts have to be filled up on the basis of cent percent direct recruitment is questionable. The respondents in their wisdom should have regularised the services of the petitioners against the vacancies prior to the amended rules of 1986 without letting those posts lapsed since the petitioners were holding the said posts for more than 12

years. In view of the decision of the Hon'ble Supreme Court as cited above and in view of the directions given by the Lucknow Bench of this Tribunal, we are of the opinion that the respondents should have regularised the 12 years of ad hoc service of the petitioners on the ground that the rules will not be applicable especially in view of the fact that the quota was made to disappear by amendment to rules in the year 1986. The operative part of the Lucknow Bench is reproduced herebelow:

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"Accordingly, the applicants are within their rights to claim the post of 25% quota which existed prior to the amendment of the rules in 1986. With the above observations, the application is allowed and the respondents are directed to consider the applicants for promotion to the post of Exhibition Assistants within a period of three months in the vacancies which existed prior to the amendment of the rules in the year 1986. The applicant stands disposed of finally with the above observation. Parties shall bear their own costs".

With this, the OA is allowed with the direction that the respondents shall hold a review DPC and regularise the services of the petitioners in accordance with the unamended rules prior to 1986 as it has been done in pursuance of the decision of Lucknow Bench of this Tribunal. The petitioners will be entitled to all consequential benefits from the date of regularisation and no order as to costs.



(S.P. Biswas).
Member (A)

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(Dr. Jose P. Verghese)
Vice-Chairman (J)