

Central Administrative Tribunal
Principal Bench

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OA No. 2408/2004

New Delhi this the 13th day of April, 2006.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Chitra Chopra, Member (A)

Lalit Vikram

-Applicant

(By Advocate: Shri A.K. Behra)

-Versus-

Union of India & others

-Respondents

(By Advocate: Shri S. M. Arif)

1. To be referred to the reporter(s) or not? Yes
2. To be circulated to outlying Benches or not? Yes

S. Raju
(Shanker Raju)
Member (J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2408/2004

New Delhi, this the 13th day of April, 2006

**Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Chitra Chopra, Member (A)**

Lalit Vikram
S/o Sh. S.K. Sharma,
R/o 99/A-4, Gautam Nagar,
New Delhi – 110 049. ...Applicant

(By Advocate: Shri A.K. Behra)

-Versus-

Union of India through:

1. The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi – 110 001.
2. Director General,
Doordarshan,
Mandi House,
New Delhi – 110 002.
3. Director,
Central Production Central,
Doordarshan, Asiad Village Complex,
New Delhi – 110 049. ...Respondents

(By Advocate: Shri S. M. Arif)

ORDER

By Mr. Shanker Raju, Member (J)

By virtue of the present Original Application, the applicant has sought the following reliefs:

“(i) Call for the records of the case

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- (ii) Quash and set aside the impugned seniority list dated 28.03.2003 at Annexure A-1 to the extent it shows the name of the applicant at serial no. 402;
- (iii) Direct the respondents to fix the seniority of the applicant in accordance with the date of initial engagement by placing the applicant above Shri Kuldeep Kumar at sl. No. 207 and below Shri M.K. Thakur at sr. no. 206 of the impugned seniority list;
- (iv) Direct the respondents to give all consequential benefits to the applicants on the basis of prayer (iii) above including grant of ACP Scheme;
- (v) Direct the respondents to pay the cost of litigation of the applicants."

2. Brief factual matrix transpires that the applicant, who was initially engaged as a Casual Floor Assistant on 17.11.1988, on formation of Scheme on 9.6.2002 for regularization of Casual Artists with pre-condition of fulfilling the eligibility, in the seniority list prepared, the name of the applicant was placed at serial no. 13 on the basis of initial date of booking whereas the name of Kuldeep Kumar was shown at serial no. 17 of the aforesaid list. Being over-aged, when the applicant was not considered for regularization, the same led to filing of OA No. 380/93, which was disposed of on 28.03.1993 by repelling the contentions of the respondents and directing consideration of the applicant without a specific date for regularization. The aforesaid decision was challenged before the Apex court in the matter of ***Directorate General Doordarshan House & Anr. vs. Lalit Vikram***, 1998(8) SCC 760, where directions issued by the Tribunal were upheld. Accordingly on 19.9.1996, services of the applicant as Floor Assistant were regularized and in the seniority list issued, applicant was shown below Kuldeep Kumar, which led to filing of representation, which is yet

to be responded to. Despite that, respondents have finalized the seniority, which led to filing of the present Original Application.

3. However, in the interregnum, though this fact has not been disclosed in the OA, applicant also filed OA No. 2708/93, which was disposed of on 19.7.1999, wherein the applicant had sought all consequential benefits.

4. Taking note of the regularization of the applicant on 17.9.1996, OA was dismissed as having become infructuous. Learned counsel of the applicant by drawing attention to the order of the Tribunal, which was affirmed by the Apex Court, stated that once the eligibility of the applicant was upheld as to regularization as Staff Artist, he should have been appointed on regular basis from the date he was placed in the eligibility along with his junior i.e. Kuldeep Kumar and should have been figured in the seniority list at the appropriate place. According to the learned counsel for the applicant, grant of wrong seniority has led to denial of financial upgradation under ACP Scheme to the applicant as well.

5. Learned counsel would contend that as per the Directorate General Doordarshan Scheme promulgated on 9.6.1992 and modified in the case of ***M/s. Anil Kumar Mathur vs. Union of India & Ors*** (OA 503/88- decided on 14.2.1992), where following has been laid down:

“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 regularization in the order of their seniority against the available vacancies in that particular Kendra. The seniority will be determined from the date of their initial engagement by the Kendra.”

6. By referring to the above, it is stated that there cannot be two parameters for operating seniority as well as eligibility of the Staff Artists and once eligibility panel is prepared on the basis of seniority as per initial engagement to be reckoned for regularization, the same criteria should have been extended to determination of the seniority after regularization.

7. In the rejoinder, learned counsel has annexed an order issued by the Directorate General Doordarshan on 3.3.2005, whereby as per OA No. 1617/2001 in ***Hari Om Dubey & Ors. vs. Union of India & Ors.***, on review of the guidelines, it has been decided to grant seniority to all regularized Production Assistants as per position in the eligibility list prepared on the basis of date of initial booking and accordingly a final seniority has been drawn with grant of consequential benefits.

8. Learned counsel stated that when the seniority has not been assigned in a proper manner, non-impleadment of affected parties cannot be a defence and relied upon a decision of the Apex Court in ***V.P. Srivastava & Ors. vs. State of Madhya Pradesh & Ors.***, 1996(7) SCC 7592, to substantiate the aforesaid view.

9. Learned counsel has also relied upon a decision of Co-ordinate Bench in OA No. 2688/2002 decided on 26.08.2004 in ***Ram Kumar Jindal vs. Union of India***, where regularization has been ante-dated from the date juniors were regularized.

10. On the other hand, learned counsel for the respondents vehemently opposed the contentions and stated that as per the Scheme of 1992 as modified in 1994, the seniority referred to on the basis of initial engagement is restricted to formation of eligibility panels for the

purpose of regularization only. In so far as seniority position is concerned; it has to be determined in the light of Govt. of India's instructions and it is stated that the applicant, who was working as Artist on casual basis before regularization, has not held any substantive post. As such, seniority cannot be determined on the basis of services rendered on casual basis and the applicant has rightly been accorded the seniority from the date of regularization on joining the post.

11. Shri Arif, learned counsel for the respondents would further contend that Kuldeep Kumar, being scheduled caste in category, his regularization cannot be compared as it forms a separate class.

12. Learned counsel stated that the relief, which is now being claimed for ante-dating regularization, has not been prayed either before the Tribunal or the Apex court or even in OA No. 2708/99 filed before the Tribunal. The applicant having not prayed the same relief, which is being claimed now, is belated, barred by limitation and constitutes constructive res-judicata.

13. Learned Counsel would further contend that the applicant was not in the service on a substantive post earlier before regularization and there is no rule etc. to substantiate the contentions raised by the applicant.

14. Shri Arif produces before us a copy of letter dated 22.3.2006 i.e. a draft seniority list where, despite taking decision in their letter dated 3.3.2005, it has been clarified that the date of entry in Government service would be the date of appointment in any grade but would not have to be construed as date of engagement on casual basis.

Accordingly, it is stated that the decision dated 3.3.2005 has been revoked.

15. We have carefully considered the rival contentions of the parties and perused the material on record.

16. The Apex Court in **Madhyamik Siksha Parishad, U.P. vs. Anil Kumar & Ors.**, 2005 (SCC)(L&S) 628, held that the person, who was engaged on casual basis before regularization, for want of sanctioned post, does not have a right to be regularized.

17. The High Court of Delhi in **C.E.O. Prasar Bharti & Ors. vs. Lakhpat Singh Rawat**, 2004(1) ATJ 413, held that grant of seniority from retrospective date in case of regularization of casual worker under the Scheme is erroneous because benefits can only be given after one is considered and regularized.

18. The Apex court in **Dhampur Suigar Mills Ltd. vs. Bhola Singh**, 2005(SCC)(L&S) 292, held that a daily wager has no right of regularization even appointed under the Scheme. Merely because he had completed requisite days, it is only on the availability of post the regularization would take effect. Moreover, a person on casual basis does not hold a post in the Government.

19. In **Sanjay K. Sinha - II & Ors. vs. State of Bihar & Ors.**, 2005 SCC(L&S) 169, the Apex Court ruled that mere fortuitous appointments do not confer benefit of seniority and date of substantive appointment is relevant because seniority is to be reckoned only with reference to the date of substantive appointment under the relevant rules.

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20. If one has regard to the ratio deci dendi of the above cases, what is discerned is that unless provided under the rules, the seniority in a grade or a cadre would be reckoned only from the date of appointment of an incumbent against a substantive post on regular basis.

21. The Tribunal in **Ram Kumar Jindal's** case (supra) clearly ruled out grant of seniority from the back date. We agree with the same.

22. As regards the letter issued by the Directorate General on 3.3.2005, though a review has been sought in the guidelines to reckon seniority on the basis of the position in the eligibility list prepared on the basis of date of initial booking of a Casual Artist, yet the seniority of Production Assistants issued on 22.3.2006, as per rules, has been reckoned from the date of appointment in the grade on substantive post without any consideration as to reference of engagement on casual basis.

23. The aforesaid has a logic as unless a person is regularized and appointed on a substantive basis against a post, the earlier service rendered on casual basis cannot be a regular service in the cadre to be counted towards seniority.

24. As regards interpretation of the Scheme of 1994, the Scheme is meant for regularization and the determination of seniority, as referred to, is restricted for the purpose of regularization only and his seniority would have to be reckoned from initial engagement to draw eligibility panels in turn to be the basis for regularization. There are no guidelines issued for drawing this initial engagement booking as the basis for operating seniority after the Staff Artist is regularized. As such, the Scheme promulgated for regularization cannot be applied for

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determining seniority of regularized Casual Artist, which includes Floor Assistants as well and such a contention would be misconceived.

25. As regards the contention of the applicant for according of regularization and ante-dating the same, which is not prayed in the OA, the same cannot be accorded. However, the Scheme provides regularization of Casual Artist appointed from a prospective date.

26. In the above view of the matter, the directions earlier issued by the Tribunal have not referred to ante-dating the regularization and in the same form have been affirmed by the Apex Court. Though the applicant has been declared eligible, yet once the directions issued have not allowed retrospective regularization having been prayed for is deemed to have been rejected as per rules of practice.

27. Two decisions cited by Mr. A.K. Behra, learned counsel for the applicant i.e. ***Pilla Sitaram Patrudu & Ors. vs. Union of India & Ors.***, 1996 (8) SCC 637 and in the matter of ***Veerendra Kumar vs. Union of India & Ors.*** (OA No. 2385/1999 decided on 1.08.2000), to contend that delay in appointment would not affect the seniority, would not apply in the present case as seniority criteria is on the basis of substantive appointment and the delay in regularization is not a cause of action in the present OA.

28. Moreover we find that since 1996 the applicant though attempted to pray for consequential benefits in OA NO. 2708/93 but having not been accorded the said benefit, it is deemed to have been rejected now at a belated stage. The contention put-forth, without praying for specific relief of ante-dating the regularization, would be belated and the effect would be taking march over others affecting their rights and for want of

impleadment of such affected parties, any adverse order passed shall be in derogation of principles of natural justice to the concerned.

29. In the result, the present Original Application is found to be bereft of any merit and the same is accordingly dismissed with no order as to costs.

Chitra Chopra
(Mrs. CHITRA CHOPRA)
Member (A)

S. Raju
(SHANKER RAJU)
Member (J)

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