

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.380/1993
T.A.No.

DATE OF DECISION: 20.08.93

Shri Lalit Vikram, _____ Applicant ~~xx~~

Versus

Director General, Doordarshan &
anr. _____ Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

S.K.D
(S.K.DHAON)
VICE-CHAIRMAN(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 380/1993

Date of decision: 20.08.1993

Shri Lalit Vikram

...Petitioner

Versus

Director General, Doordarshan & Anr. . Respondents

For the Petitioner .. Shri A.K. Behera, Counsel

For the Respondents .. Shri M.L. Verma, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

Between the years 1988 and 1992, the petitioner was employed as Casual Floor Assistant in the Doordarshan. His grievance is that the Doordarshan is not considering his case for regularisation of services in accordance with the scheme prepared by it in pursuance of the directions given by this Tribunal.

2. The Doordarshan had adopted a policy of recruiting Casual Artists for short terms ranging from 15 days in a month to 10 days in a month and even for a shorter duration. It acted whimsically in offering the appointment and fixing its tenure. This practice continued for years. Faced with that situation, some

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Casual Artists came to this Tribunal by means of O.A. Nos. 894/1990, 2322/1990 and 1775/1990. In the said O.As. the following were cited as respondents:

" 1. Union of India through the Director General, Doordarshan, Mandi House, New Delhi

2. The Director, Doordarshan, Delhi Kendra, Parliament Street, New Delhi."

3. This Tribunal by a common judgment dated 8.2.1991 decided the aforementioned Original Applications. Keeping in view the plight of the Casual Artists and various decisions given by the Supreme Court from time to time, the Tribunal issued certain directions in para 14 of its judgment. The directions were:-

" (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.

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(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.

(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."

4. The Tribunal directed the respondents before it to prepare a scheme in accordance with the aforementioned directions and get the same approved from the Tribunal.

5. We may focus on direction No.(iii). It is emphasised therein that relaxation in upper-age limit is a must. The extent of relaxation is not limited. Service rendered for 120 days' in the aggregate shall be treated as one year's service. Credit has to be given for the purpose of regularisation for the actual number of days' service rendered by the Casual Artist. By necessary implication, the idea of 120 days' service in one year for giving the benefit of the duration of the service rendered for the purpose of regularisation

is excluded.

6. The Allahabad Bench of this Tribunal in OA No.174/1989 and connected O.As. by a common judgment on 5.7.1991 disposed of the said O.As. It also directed the Doordarshan ^{to frame a scheme in accordance with the} afresaid directions given by this Tribunal in O.A. No. 894/1990 and connected O.As.

7. In the fore-front, the plea raised by the respondents is that the petitioner's case cannot be considered for regularisation of his services as he is over-age and he cannot get any relaxation in the matter of age in accordance with the scheme as approved by this Tribunal by its judgment dated 8.2.1991 in OA No.894/1990 and connected O.As. Reliance is placed on para 6 of the approved scheme which runs as under:-

"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 for age relaxation".

Admittedly, the petitioner had put in 120 days of service in the aggregate in one year during two years only. Therefore, according to the respondents, he could get relaxation of only 2 years in the upper age limit. The learned counsel for the respondents contends that the petitioner cannot get any benefit of the service rendered by him for less than 120 days in a year. The petitioner admits that, if this interpretation is accepted, he would be certainly over-age and, therefore, not eligible for being considered for regularisation in terms of the scheme.

8. Admittedly, by a notification dated 13.10.1987 rules framed under the proviso to Article 309 of the Constitution by the President were promulgated and were in force when the Principal Bench and the Allahabad Bench of this Tribunal rendered judgements in OA No.894/90 & connected OAs and OA No.174/89 & connected OAs respectively and / are enforced even now. The said rules provide for the regulation and the method of recruitment to Group 'C' Programme(Technical) posts in various grades of Doordarshan under the Ministry of Information and Broadcasting. Rule 4 provides, inter-alia, that the method of recruitment, age-limit, qualifications and other matters relating thereto are contained in the schedule attached to the rules. A perusal of the schedule shows that the minimum age-limit prescribed is 18 years and the maximum age-limit is 25 years. A note appended at the relevant place in the schedule indicates that age-limit for Government servant is relaxable upto 35 years in accordance with the instructions and orders issued by the Central Government. Rule 7 empowers the Central Government to relax the rigour of any rule where it(the Central Government) is of the opinion that it is necessary or expedient so to do. However, the Central Government is enjoined to pass any order in writing and after recording its reasons therefor. It is also provided in the rules that the said power can be exercised with respect to any class or category of persons. Thus, under the rules, a person can be recruited in service in spite of the maximum age-limit as prescribed provided he either fulfills the requirement of the aforementioned note or a power exercised by

the Central Government under Rule 7.

9. It should be presumed that the learned members of this Tribunal while disposing of OA No.894/90 & connected OAs and OA No.174/89 & connected OAs were aware of the contents of the aforementioned rules framed under the proviso to Article 309 of the Constitution and, therefore, issued direction No.(iii) aforequoted designedly with a view to relaxing the rigour of the rules in relation to the age-limit fixed therein.

10. The scheme came up for approval before a two-member Bench of this Tribunal in OA No.563/86 and connected OAs decided on 14.2.92. In para 6 of the judgement of this Tribunal dated 14.2.92, it is recited:

"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 OA 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 OA Nos.174/89, 175/89, 176/89, 177/89, 97/90, 54/90 and 42/90."

It may be noted, at this stage, that the aforequoted contention was advanced by the respondents in OA No. 563/86. Substantially, the same set of respondents is cited as the respondents in the present OA.

11. Para 18 of the judgement in OA 563/86, says:

"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)."

Apparently, in the passage, as quoted immediately

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above, a reference is being made to para 6 of the scheme. It is thus clear that this Tribunal, while approving the scheme, had in its mind direction No.(iii) given in OA No.894/90 & connected OAs and not the contents of para 6 of the scheme.

12. There is an apparent conflict between the contents of direction No.(iii) and the contents of para 6 of the scheme. There appears to be an impasse. The same has to be resolved by us. For doing so, we have to discern the intention of the framer of the scheme. Therefore, the background in which the scheme had been prepared is relevant. The judgements given by this Tribunal, while disposing of OA No.894/90 and connected OAs(Principal Bench) and OA No.174/89 & connected OAs(Lucknow Bench), in which the respondents were substantially the same as in the present OA, have attained finality. Respondents were, therefore, bound by the directions contained in the aforesaid judgements. The framers of the scheme could not either consciously or wilfully disobey the directions. This could be done only if they intended to act contumaciously or act without jurisdiction. No rational or reasonable person could have adopted either of the two courses. It has, therefore, to be inferred that they intended to abide by direction No.(iii).

13. The insertion of paragraph 6 in the scheme being in the teeth of direction No.(iii) was without jurisdiction. The contents of the said para 6 were, therefore, void. The same, in so far as they were in conflict with direction No.(iii), were non-est.

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14. We have already indicated that this Tribunal while approving the scheme recorded a finding that para 6 of the same was in conformity with direction No.(iii). It may be remembered that the respondents clearly contended before the Tribunal that the entire scheme was in consonance with the directions given earlier . Therefore, the respondents are to be blamed for the omission, if any, in the order of the Tribunal in relation to the approval of para 6 of the scheme. The respondents cannot be permitted to take advantage of their own fault. In these circumstances, and in the interest of justice, we direct that it shall be deemed that the contents of para 6 of the scheme had not come into existence at all and the contents of direction No.(iii) were in existence all along.

15. In the backdrop of the contents of direction No.(iii), it should be presumed that the intention of the framer of the scheme was to provide succour to the Casual Artists who were virtually at the mercy of the respondents for the past many years. The purpose of the scheme was that a fair chance should be given to all Casual Artists who rendered service in the Doordarshan on or before the cut-off date viz, 31.12.91 for being considered for regularisation ~~of~~ ^{was} of their services. Surely, the framer of the scheme could not intend that what /being given by the right hand was /taken away by the left hand. If para 6 of the scheme is given effect to, the benefit of the scheme will not be available to a bulk of Casual Artists as they would be over-age. Such a consequence would run counter to the intendemnt of the scheme.

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16. Some times, the clear intention of the legislature is eclipsed by the unskilfulness of the draftsmen. Use of certain words by them in a statute renders the language employed therein ineffective. That is why courts strongly lean against reducing a statute to a futility. Therefore, it is open to the courts, in such cases, to reject the surplus words to make the statute effective and workable.

17. In SALMON v. DUNCOMBE (1886) 11 AC 627(PC), the crucial words used in the Colonial Ordinance were these:

"Any natural born subject of Great Britain and Ireland resident within this district may exercise all and singular the rights which such natural born subject could or might exercise according to the laws and customs of England in regard to the disposal by last will or testament or property, both real and personal, situated in the district, to all intents and purposes 'as if such natural born subject resided in England'". The intention of the legislature was plain from the title and preamble that the Ordinance was passed to enable the British subjects residents in Natal, where Roman Dutch law was being administered, to make bequests according to English law. The difficulty in giving effect to this intention was created by the last nine words. The Supreme Court of Natal held that although the object of the statute was clear, the language used was entirely ineffective in that a resident in the colony could only make a bequest 'as if he resided in England', and the law of England referred him back to Roman Dutch law of Natal as the *lex situs* or *lex domicilli*. The Privy Council reversing this judgement held that as the broad intention of the legislature was not in doubt, the last nine words

could be rejected as immaterial to make the statute effective.

18. A somewhat similar view has been taken by the Apex court of our country in the case of K.P.VERGHESE vs. INCOME TAX OFFICER, ERNAKULAM (1981) 4 SCC 173). In paragraph 6 of the judgement it is observed:

" It is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction(vide Luke v. Inland Revenue Commissioner(1) 1963 AC 557)

19. The principles applicable to the construction of statutes govern construction of orders and documents.

20. We have already indicated as to what was the intention behind the scheme. Therefore, we direct that the contents of paragraph 6 of the scheme shall stand deleted and the contents of direction No.(iii) shall be substituted.

21. Learned counsel for the respondents urged that in OA 2784/1992 this Tribunal had given certain directions with regard to the relaxation of age while finally disposing of

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the aforesaid OA. The judgement of the Tribunal has been challenged in the Supreme Court by means of a Special Leave Petition and on 4.5.1993, the Supreme Court issued notice on the SLP and passed the following interim order:

" Issue notice. Interim stay pending notice."

^{the facts}
19 It appears that in the aforesaid OA /were these. A Casual Artist who was over-age at the time of her initial appointment was not considered for regularisation. This Tribunal gave a direction that a relaxation in her age should be given for the purpose of considering her case of regularisation. In paragraph 4.6 of the counter-affidavit filed on behalf of the respondents in the present OA, it is admitted that the petitioner was within the age-limit of 25 years at the time of his initial booking i.e. 11.10.88 but at the time of regularisation on 9.6.1992, he was found over-age even after granting of age relaxation for completion of 120 days as specified in the the scheme. The controversy involved in the aforementioned OA which is now before the Supreme Court is entirely different from the present controversy. Here, it is nobody's case that the petitioner was initially given an appointment when he was over-age. Here, the question is whether the petitioner should be given any relaxatioin in age at the stage when he is to be considered for regularisation in service.

22. The other plea raised by the respondents to defeat this application is that there are no vacancies in existence now. Learned counsel for the petitioner has very strenuously urged that the petitioner should not be allowed to

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suffer for no fault of his as had he been considered for regularisation in accordance with law, he would have been given a place as persons junior to him, in fact, have been regularised in service. He wants us to give a direction that a supernumerary post may be created for him(the petitioner). Having given a thoughtful consideration to the matter, we feel that it will not be expedient to give such a direction. The scheme itself takes care of a situation where a person, though entitled to be regularised in service, has not been regularised.

23. The scheme emphasises that till all the Casual Artists in a particular category eligible for regularisation are regularised, no fresh recruitment could be resorted to by the kendra concerned. We, therefore, direct the respondents to adhere strictly to the aforesaid directions.

24. We take judicial notice of the fact that the area of operation of Doordarshan has now been extended. We have no doubt that the respondents shall deal fairly with the case of the petitioner and they shall make every endeavour to regularise his services in accordance with the scheme.

25. The petitioner is being given work for 10 days in a month under the interim order of this Tribunal. Shri Verma, the learned counsel for the respondents has reiterated at the Bar that there is no work left to be given to the petitioner. If there is work, the respondents shall continue with the existing arrangement and give work to the petitioner for 10 days in a month till his case for regularisation

is disposed of finally.

26. With these directions, this application is disposed of finally but without any order as to costs.

B.N.Dhundiyal
(B.N.DHUNDIYAL)
MEMBER(A)

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S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)