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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Regn.No.OA 602 of 1993

New Delhi this the 22nd day of March, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

Shri Raj Kishan Nigam
R/o 1262, Pahari Imali,
Jama Masjid, Matia Mahal,
Delhi-110006.

...Applicant

By Advocate Mrs. Meera Chhibber

Versus

1. Director General,
Doordarshan,
Mandi House,
New Delhi.
2. Central Production Centre,
through its Director,
Asiad Village, Siri Fort,
New Delhi.
3. Jaipur Doordarshan Kendra,
through its Station Director,
T.V. Studio Complex,
Near Baiji Ki Kothi,
Jahalama Doongri,
Jaipur.

...Respondents

By Advocate Shri J.C. Madan, proxy counsel for Shri
P.H. Ramchandani, Sr. Counsel

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, who has worked as a Casual Makeup Assistant in the Doordarshan for quite some time has come up to this Tribunal with the principal prayer that his services may be regularised in accordance with the scheme prepared by the Doordarshan in pursuance of the directions of this Tribunal and later on confirmed by this Tribunal.

2. For getting the benefit of the said scheme, a casual artist should have rendered 120 days of service in one particular year to the Doordarshan. The respondents have come out with a categorical case that the applicant failed to render 120 days of service in one particular year. The applicant insisted that at least in the year 1986, he had completed 120 days of service with the respondents. The respondents' case
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is that, in fact, the applicant has rendered only 119 days of service during the year 1986. Thus, there is a shortfall of only one day. Learned counsel for the applicant urged at the Bar that even though the applicant had worked for 10 days in the month of April, 1986, the respondents were deliberately showing in their record that he has worked for 9 days.

3. On 01.03.1994, we directed the respondents to ensure the production of the records which may go to show the actual number of days during which the applicant rendered service in the month of April, 1986. The entire record has been placed for ^{our} perusal. Even the cheque book showing the payments made to the applicant in the month of April, 1986 has been produced. We have given full opportunity to the learned counsel for the applicant to peruse the record. She has been fair enough to state at the Bar that the record does reveal that the applicant had rendered 9 days service in the month of April, 1986. The applicant is, therefore, not entitled to be regularised in service in accordance with the scheme.

4. It is next urged that, in any view of the matter, the applicant having rendered some service to the respondents, he should be considered for fresh appointment, if some vacancy remains after exhausting the terms of the scheme. Learned counsel for the respondents countered this submission by asserting that in earlier litigation between the parties, this Tribunal had held that the applicant did not conform to the minimum educational requirement. We have seen the judgment given by this Tribunal earlier and we find that this Tribunal categorically held that the Madhyamic Examination which the applicant admittedly passed is equivalent to the High School Examination. It follows that the applicant fulfils the requirement of minimum academic attainment. Learned counsel for

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the respondents has next urged that the applicant, in fact, does not possess the other requisite qualifications. We are not inclined to enter into this controversy at this stage. We direct the respondents that if and when they consider the case of the applicant for giving him a fresh engagement, they shall examine the question of eligibility of the applicant except the condition that he has not passed the Matriculate Examination.

5. Learned counsel for the applicant urged that now the applicant has become overage and, therefore, in the ordinary course, he cannot be considered even for a fresh employment. She has urged that in the circumstances of this case, we may direct the respondents to relax the rigour of age bar. She relies upon a decision of the Supreme Court in the case of State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union 1986 and Others, (1994) 1 Supreme Court Cases 126. This was a decision given by the Supreme Court under peculiar facts of the case. An advertisement was issued in the year 1985 inviting applications for the post of Assistants falling vacant upto the year 1985-86. The number of vacancies as then existing were announced on August 25, 1987, the examination held in November, 1987 and the result published only in July, 1990. Immediately thereafter, out of successful candidates, 309 candidates were given appointments and the rest, empanelled and made to wait for release of further vacancies. Since the vacancies available uptill December 31, 1988 were not disclosed or communicated to the Board, no further appointments could be made. The empanelled candidates approached the Patna High Court, which directed them to be appointed in the vacancies available on the date of publication of the result as well as the vacancies arising upto 1991. The matter was taken up to the Supreme Court at the instance of the State. It was

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held by the Supreme Court that the directions given by the High Court for appointment of the empanelled candidates according to their position in the merit list against the vacancies till 1991 was not proper and cannot be sustained. Since no examination has been held since 1987, persons who became eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court would prejudicially affect them for no fault of theirs. At the same time, the callousness of the State in holding the examination in 1987 for the vacancies advertised in 1985 and declaring the result almost three years later in 1990 has caused great hardship to the successful candidates.

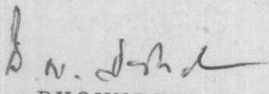
6. Keeping in view the fact, situation and the circumstances of the case and having been informed by the State that there are a large number of vacancies which are required to be filled up, the Supreme Court thought it proper to modify the judgment of the High Court dated October 11, 1991 by setting aside that part of the judgment which directed the filling up of the vacancies of 1989, 1990 and 1991 from out of the list of the candidates who had appeared in the examination held in 1987. The rest of the judgment was upheld. Further, with a view to do justice between the parties and balance the equities, the State was directed to issue an advertisement inviting applications for the posts of Assistants vacant and likely to fall vacant till December 31, 1993. It also directed that the age bar shall be relaxed in favour of candidates of the 1987 examination who had secured 40% or above marks in that examination to enable them to appear in the fresh examination, if they so choose. This case is not apposite at all with the case of the


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applicant. Moreover, it appears that the Supreme Court relaxed the age bar in exercise of the power under Article 142 of the Constitution. In the present case, there is a Rule framed under Article 309 fixing an age limit and also providing for relaxation in an appropriate case under certain circumstances.

7. Learned counsel for the applicant has stated that there is no one qualified to be considered for regularisation from amongst the Mekeup Assistants and, therefore, the respondents have issued an advertisement in February, 1994. If that be so, as already indicated, the applicant has a right to compete along with others, provided he is eligible.

8. With these observations, this application is disposed of finally.


(B.N. DHOUNDIYAI)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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