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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.690/93

Date of decision: 14.07.1993.

M.P.No.1625/93

Smt. Hema Mishra

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Applicant

versus

Union of India & Ors.

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Respondents

Coram:-

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

For the applicant : Sh. V.K. Rao, counsel

For the respondents : Ms. Pratima Mittal, proxy

counsel for Sh.K.C. Mittal, counsel

JUDGEMENT(ORAL)

(delivered by Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman)

The petitioner a Staff Artist is aggrieved by the order dated 6.2.1993 passed by the Government of India treating her as a government servant. Her further prayer is that the respondents be directed to treat the petitioner as Staff Artist.

Counter and rejoinder have been filed.

The learned counsel for the parties have been heard.

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On 29.11. 1991, the Govt. of India, Ministry of Information and Broadcasting issued a communication which was addressed to Director General, All India Radio and Director General, Doordarshan, New Delhi. The subject of his communication was:- "Staff Artists/Artists of All India Radio and Doordarshan." In para 2 of the communication, it is stated that all Staff Artists/Artists who were in service on 6.3.1982 or appointed as such thereafter will be deemed as Government Servants. Such Staff Artists/Artists, instead of being governed by separate conditions of service laid down in the contract and other orders issued in this regard from time to time shall be governed by normal conditions of service applicable to Civilian Central Government Employees.

In paragraph 3, it is emphasised that such Staff Artists/Artists under the 1982 scheme who may wish to opt out of the decision of the Government to deem them as Government Servants will have to give a specific option in this regard. Such Staff Artists/Artists will continue to be governed by their existing contractual terms and conditions.

On 15/27.1.1992 the Director of All India Radio issued a memorandum subject of which was: "Staff Artists/Artists of All India Radio and Doordarshan". In the said memorandum it is stated that "A copy of Ministry of Information & Broadcasting letter No.45011/29/91-B(A), dated 29.11.1991 regarding treating the Staff Artists/Artists working in the above two

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organisations as Government servant was sent to the petitioner. The petitioner was requested to study the instructions contained therein and exercise options in the annexure I as enclosed with the aforesaid letter latest by 28th June, 1992. The option once exercised shall be final".

The crucial question to be decided is whether the petitioner exercised any option. Parties are at variance on this issue. The petitioner has come with a categorical case that she has exercised the option whereas the respondents have asserted with equal force that no such option was exercised. Admittedly the petitioner has not been able to produce any documentary evidence to substantiate her allegation. In order to do complete justice between the parties, we directed the respondents to produce the relevant record. That has been done. It appears that those who wanted to exercise the option, first made an application in writing in the prescribed form on which the option had to be exercised. Such an application has been found duly entered in the register. Then we find another entry in the register that the forms were supplied to all the persons concerned. It is to be noted that even the application which the petitioner may have given is not entered in the register. The learned counsel for the petitioner states that it is not necessary to exercise the option in the prescribed form. Therefore, the petitioner had not made any application in this behalf. Be that as it may, this is only a circumstance to indicate that the petitioner had really not exercised the option at all.

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On the material placed on record, we are not satisfied that the petitioner submitted the option. We may note that the burden of proof is on the petitioner to prove whether such an option was exercised.

The learned counsel next urged that the petitioner having been appointed as a Staff Artist on certain terms under a contract, her status could not be changed unilaterally. At any rate, without observing the principle of natural justice. We have examined this submission with care. We find that the contract between the petitioner and the Government has ^{not} been changed unilaterally. The Government gave out that it will be deemed that all Staff Artists/Artists have become Government servants, if the option is not exercised. Had the petitioner exercised the option, the question of any change would not have arisen and she would have continued to be an Staff Artist under a contract.

So far as principle of natural justice is concerned we have already noted that by a specific communication dated 15/27.1.1992, the Director, All India Radio sent a specific information to apprise the petitioner and reminded her that she should exercise the above option latest by 28.6.1992. It is not possible that such a communication was not received. Thus, the respondents fully conformed with the principle of natural justice. Hence the same were adhered to, so far as the facts of this case go. The learned counsel also urged that the petitioner

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could not gain anything by being treated as a government servant. According to him the petitioner will not be desire any monetary benefits. Further more, she would be liable to vacate the government accommodation as she has already attained the age of superannuation.

It may be that the petitioner failed to exercise the option inadvertantly, the consequences of not exercising the same is that she would be treated as a government servant. We do not know what was realy operating in the mind of the petitioner when she received the communication for exercising the option. No specific finding on this can be given.

Lastly, it is urged on behalf of the petitioner that this is really a hard case as she has already attained the age of superannuation. As a government servant she would not get any pensionary benefits. On the contrary she will be compelled to vacate the government accommodation.

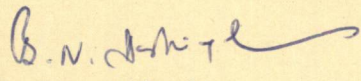
We have given a thoughtful consideration. to the matter. The learned proxy counsel for the respondents states that any direction given by the court not to treat the petitiouer as a government servant may become a precedent in some other cases. We also feel that it is a hard case. We say so because the petitioner had gained nothing by becoming a government servant. We hope that the authority concerned shall reconsider the case of the petitioner sympathically and give her an appropriate relief.

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
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With these observations, this petition is
disposed of finally. There will be no order as to costs.


(B.N. Dhoundiyal)

Member(A)


(S.K. Dhaon)

Vice-Chairman

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