

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

**Original Application No.446/2014
with MA No.243/2015
This the 8th day of September, 2021.**

**Reserved on : 11.02.2021
Pronounced on : 08 .09.2021**

**Coram :Hon'ble Shri JayeshV.Bhairavia, Member (J)
Hon'bleDr.A.K.Dubey, Member (A)**

Smt. Magi
Wife of Shri Hasmukh Desai Age : 50 years
Residing at : 201/A, Mallinath Park
P.T.College Road, Chandranagar, Paldi
Ahmedabad 380 007. ... Applicant

(By Advocate : Shri M.S.Trivedi)

Versus

1. The Director General
O/o. D.G.Doordarshan
Prasar Bharti Corporation of India
Corpernicus Marg, Mandi House
New Delhi 110 001.
2. The Director
O/o. Director, Doordarshan Kendra
ThaltejTekra
Ahmedabad 380 054. ... Respondents

By Advocate Ms R R Patel

ORDER

Per :Hon'bleShri J.V. Bhairavia, Member (J)

1. In the present O.A., being aggrieved by rejection of the request/representation of the applicant for counting the past contractual services rendered by her for calculating the service/pensionary benefits vide impugned order dated 18.09.2014 (Ann. A/1) passed by the respondent No.1, the applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“(A) The Hon’ble Tribunal be pleased to allow this petition.

“(B) The Hon’ble Tribunal further be pleased to quash and set aside the order No.19/21/2014.S.II/1017-1018 dated 18.09.2014 issued by the respondent No.1.

“(C) The Hon’ble Tribunal further be pleased to direct the respondents to give/grant all benefits including pay, salary and allowances to the applicant as per decision of CAT-ADI in OA No.32/1987 and give all consequential benefits including counting of past service i.e. prior to regularization for pensionary – qualifying service.

“(D) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.”

2. Considering the law laid down by the Hon’ble Supreme Court in **Collector Land Acquisition v. Mst. Katiji [1987 (2) SCC 107]** and **explanation offered seeking condonation of delay in MA No.243/2015** caused in filling the present OA, the said MA is hereby allowed.
3. By way of present OA, the applicant prays two-fold prayers. First prayer relates to counting of her contractual casual service rendered prior to her regularization as LDC for grant of pensionary benefits and other allied service benefits such as MACP, etc. Secondly the applicant also sought relief for direction to grant benefit of pay, salary and allowance with consequential benefit as per decision of CAT, Ahmedabad Bench in OA 32/1987 decided on 30.08.1990.
 - 3.1 The facts in the background are that the applicant was engaged as a General Assistant on contract-casual basis in the year 1985 and thereafter, the same was extended from time to time by the respondents, however, with break of few days. On the premise that though the applicant along with similarly placed casual workers were discharging the same duties as were being performed by regular employees holding the same and/or similar posts, the applicants were being paid only daily wages, the applicant herein along with other six employees filed OA

No.32/1987 before this Tribunal. The said OA was partly allowed vide order dated 30.08.1990 with a direction to the respondents therein to pay the applicants therein the same salary and allowances that were being paid to the other regular General Assistant/Clerks from October, 1990 with arrears. The applicants were held not entitled to receive arrears payable beyond 21.1.1986.

3.1.1 In the meanwhile, pursuant to the decision of Principal Bench of the Central Administrative Tribunal, Delhi to regularize casual employees of DDK/AIR by way of framing of scheme. Accordingly, the services of the applicant came to be regularized as LDC with effect from 31.3.1995 pursuant to the Scheme of Regularization of Casual Staff Artists of Doordarshan of 1992/1994 (hereinafter referred to as 'the Scheme of 1992/1994' for the sake of convenience). The applicant was given regular scale of LDC from the date of her regularization on the said post.

3.2 Thereafter, the applicant again approached the Tribunal by way of filing another seeking consideration of her past services. The said OA came to be dismissed. Aggrieved by the said order, the applicant filed Writ Petition being Special Civil Application No. 9564 of 2013 before the Hon'ble High Court of Gujarat. Initially the said SCA came to be dismissed for non-prosecution. Even the Misc. Civil Application filed to restore the Special Civil Application No. 9564 of 2013 stood dismissed upon dismissal of Civil Application No. 1044 of 2014 which was filed for condonation of delay in preferring the restoration application. However, upon a request made by learned advocate for the petitioner, the Hon'ble High Court was pleased to permit the applicant to submit representation and respondents were directed to consider the said representation in light of the law laid down by the co-ordinate

Bench of this Tribunal in a similar matter, without being influenced by the fact that Original Application of the petitioner and Special Civil Application is not entertained by this court.

3.3 Thereafter, the applicant filed representation dated 11.4.2014. As the said representation was not decided, again the applicant approached this Tribunal by filling O.A. No. 280 of 2014. The said OA came to be disposed of on 16.6.2014 directing the respondents to decide the pending representation dated 11.4.2014 within two months.

3.4 In due compliance of the order of this Tribunal passed in OA No. 280 of 2014, the order dated 18.9.2021 impugned in the present OA came to be passed rejecting the prayer of the applicant for giving her the benefit of casual services rendered by her from 1984 till 31.3.1995 for calculating the pensionary/service benefits. Therefore, the applicant has filed present O.A.

4. In support of the reliefs prayed for, learned advocate for the applicant Shri M.S.Trivedi mainly contended that the impugned order dated 18.09.2014 is passed without application of mind. It is stated that the claim of applicant is required to be considered in light of order passed in case of similarly situated employee by C.A.T Mumbai Bench in OA 103 of 2010 decided on 30.1.2013 in the case of Ulhas D. Arekar V/s. Union of India. It is contended that the provisions of FR 20 has been completely ignored while deciding the claim of the applicant. It is submitted that the applicant was regularized pursuant to the Scheme of Regularization of Casual Staff Artists of Doordarshan of 1992/1994. Further, it is contended that though this Tribunal in OA No.32/1987 directed the respondents to grant all benefits including pay salary to the applicant, the respondents did not consider the same while passing the impugned order. It is lastly contended that in case

of Casual Artists, 50% period prior to regularization is required to be taken into consideration for pensionary benefits.

- 5** Defending the action of the respondents while passing the order impugned in the present OA, learned standing counsel Ms. R.R.Patel, for the respondents contended that as per the Scheme introduced by the respondents known as Scheme of Doordarshan for Regularization of Staff Artists, 1992/1994 for regularization of casual service of the staff artists, the casual service of the applicant came to be regularized in the post of LDC with effect from 31.3.1995. At the time of regularization, the applicant did not raise any grievance regarding counting of her past services and had accepted the regularization w.e.f. 31.03.1995. It is the specific case pleaded and argued that as per the OM dated 09.06.1992 and 07.03.1994 (Annexure R/1 & R/2) i.e. the scheme of Doordarsahan for regularization of staff artist, does not provide for consideration of past casual service of the artist for any service/pensionary benefit post regularisation.

5.1 It is contended that since the applicant was recruited against the regular vacancy with effect from 1.4.1995. The engagement on casual basis prior to this date was not against any regular vacancy and therefore the claim put forth is not sustainable.

5.2 So far as the case pressed into service by the applicant decided by CAT, Bombay Bench in the case of Ulhas D Arekar v/s Union of India & Ors., it is contended that the facts of the said case is not applicable to the facts of the present case, therefore the applicant cannot derive any benefit out of it. In respect of the ground raised by the applicant about applicability of Rule 10 of FR, it is contended that as per DoP&T letter dated 03.09.2009 it was clarified that “there is no provision in the FRs for fixation of pay in case of a contractual appointment and such individuals on their subsequent appointment to a government post are treated as fresh entrants.”

6. Rejoinder has been filed by the applicant re-iterating her case and grounds for challenge and refuted the reply filed by the respondents.
7. Heard learned advocates for the respective parties and perused the pleadings and material available on record of the present OA minutely.
8. At the outset, to have the correct scenario in the background of dispute, it may be mentioned that the applicant alongwith others who were working as General Assistants/Clerks on daily wage contractual service, approached this Tribunal in OA 32/1987 seeking relief of getting the same pay on par with regular employees. This Tribunal, vide its order dated 30.08.1990 held that the applicants are entitled to remuneration on par with regular employees and directed the respondents to grant the equal salary and allowances that are paid to the regular General Assistants/Clerks from October 1990 and the arrears of salary for the period 21.01.1986 to September 1990 with an observation that applicants are not entitled to any arrears beyond 21.01.1986 (i.e. from one year before the filing of the said OA). It can be seen that this Tribunal only directed to pay equal pay for equal work w.e.f. October 1990 and if any arrears payable to the applicant, it was further ordered that such payment be paid for limited period i.e. 21.01.1986 to September 1990, and held that applicants were not entitled to any arrears beyond 21.01.1986. Accordingly, the applicant was paid equivalent salary as that of regular employee. At the same time the respondent continued to engage the applicant as casual artist that too on contractual basis for limited period.

8.1 Upon introduction of the Scheme for Regularization of Casual Artists, the services of applicant was regularized with effect from 31.03.1995 as LDC in terms of the Scheme 1992/1994 and was granted regular pay scale of LDC on availability of regular vacancy. The applicant had accepted the terms and conditions of the Scheme for regularization. It is pertinent to

mention that the said scheme does not provide any benefit of counting the past service.

- 8.2** So far as applicant's claim for counting of her past service (from 1984 till 31.3.1995) for pensionary benefits on the basis of order passed by CAT, Mumbai Bench in the case of Ulhas D Arekar v/s Union of India &Ors in OA 103/2010 dated 30.01.2013 is concerned, said request has been considered and rejected by the respondents vide the impugned order dated 18.9.2014 wherein the reasons were assigned for not applying the said decision to the facts of the case of the applicant. It is noticed that the applicant Ulhas D Arekar of the said OA had been rendering his service as a Painter on contract basis for a period of more than 18 years with an artificial break of one or two days and in very few occasions with break of 15 days or one/two months. Pursuant to the Scheme of 1992 for regularization of Casual Artists in Doordarshan, the applicant was informed in the year 1994 that his name was kept on the approved panel for regularization since there was no vacancy. His services continued in the same manner with artificial breaks till he was regularly appointed in the year 2000 on availability of regular vacancy. The applicant of the said OA retired on 30.11.2009 after completing 9 years, 4 months and 24 days of service. Since the respondents vide order dated 10.10.1994 declared him eligible to be appointed on regular basis and kept his name in panel as also he was engaged for the work from 16.10.1994 till the year 2000, in such facts and circumstances, the Bombay Bench of the Tribunal directed the respondents to count 50% of the service rendered by the applicant therein with effect from 16.10.1994 till his regular appointment w.e.f. 1.7.2000. However, in the case on hand, undisputedly on introduction of "the Scheme 1992/1994", without any delay to keep the applicant in waiting, the applicant was appointed as LDC w.e.f. 31.03.1995. She

accepted the terms and conditions of the scheme and entered into government service as fresh entrant with the regular pay scale of the post. Therefore, the case relied on by the applicant is distinguishable on facts and therefore does not come to her rescue.

8.3 The Scheme of 1992/1994 based on which the applicant was appointed as a regular government employee, does not provide consideration of casual services for counting towards service benefits/pensionary benefits. Even as per the clarification issued by DoP&T in the year 2009, such appointee is not entitled to claim any benefit out of the services rendered by him/her on contractual basis before he/she was appointed on regular basis to a government post. Further, the DoP&T vide its letter dated 03.09.2009 clarified that “*there is no provision in the FR for fixation of pay in case of contractual appointments and such individuals on their subsequent appointment to a government post are treated as fresh entrants and are not entitled to any benefit of contractual service.*” In the present case, the applicant was engaged as contractual casual worker and subsequently under the Scheme of regularization 1992/1994 was regularized as LDC w.e.f. 31.03.1995 and she has been treated as a fresh entrant in government service as regular employee. Therefore, on the strength of the Scheme, the applicant cannot seek benefits of counting of past contractual service towards pensionary benefits and other service benefits.

9 On the one hand, the applicant happily accepted the fruit of the Scheme to get the regularization in the post of LDC with effect from 31.3.1995, and in the same breath, now seeks to get the benefit which is not flowing from the said Scheme. When the Scheme itself has no provision for counting services rendered prior to regularization for calculating pensionary and other service benefits, the question of granting such relief does not arise at all. The claim of the applicant

that her case is identical to the case of Ulhas D Arekar v/s Union of India (supra), in our considered view is misplaced and not tenable as discussed hereinabove in para-8.2 above. It is apt to mention that engagement of the applicant on contractual basis was not against any sanctioned post and as noted herein above, once the regular vacancy arose, the applicant was offered regular employment as LDC w.e.f. 31.03.1995. Accordingly, the applicant's pay was fixed as regular employee.

- 10** In view of what has been discussed above, we do not find any infirmity in the impugned decision. The OA being devoid of merit, no interference is called for. The OA is accordingly dismissed. No costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

Nk/abp