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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 384 OF 1998
Cuttack, this the 6th day of January 2000

Goutam Ballav Mohanty and othersApplicants

Vrs.

Secretary, Ministry of Information & Broadcasting
and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No,

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
6/1.2000.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

-
1. Goutam Ballav Mohanty, aged about 28 years, son of Janaki Ballav Mohanty, resident of Sheikh Bazar, PO-Tulsipur, District-Cuttack.
 2. Khirendra Nath Bisoi, aged about 34 years, son of late Lokanath Bisoi, At-Subhadrapur, Post-Uttampur, District-Cuttack-11.
 3. Asish Kumar Mishra, aged about 27 years, son of Kishore Chandra Mishra, LIG 276, Nayapalli, Brit Colony, Bhubaneswar-12.
 4. Dillip Kumar Sethy, aged about 27 years, son of Mahala Chandra Sethy, resident of village Bhogoda, PO-Maniktara, District-Ganjam.
 5. Nimai Charan Senapati, aged about 27 years, son of Prafulla Kumar Senapati, resident of Plot No.7, Brahmeswar Bag, Tankapani Road, Bhubaneswar-2, District-Khurda.
 6. Ranjan Kumar Panigrahi, aged about 27 years, c/o Sachendra Prasad Sahoo, Raja Bagicha, Cuttack.
 7. Prasanta Kumar Behera, aged about 30 years, son of late Laxman Behera, resident of village Madhusudanpur, At/PO-Jagatsinghpur.
 8. Biswanath Chand, aged about 26 years, son of Krupasindhu Chand, At/PO-Ghantalo, Via-Asureswar, District-Cuttack.
 9. Amitav Sahu, aged about 23 years, son of Balaram Sahu, Kathagada Sahi, Chaudhury Bazar, Cuttack-1.
 10. Chinmay Mohapatra, aged about 27 years, son of Sourishyam Mohapatra, At/PO-Tirtol, District-Jagatsinghpur.
 11. Abdul Ghani, aged about 24 years, C/o S.K.Sukur, Dewan Bazar, Cuttack-1.
 12. Amiya Sahoo, aged about 28 years, son of Batakrushna Sahoo, At/PO-Tirtol, District-Jagatsinghpur-37
- Applicants.

Advocates for applicants - M/s K.C.Kanun-
go & S.Behera

Vrs.

1. Secretary, Ministry of Information & Broadcasting,
Shastri Bhawan, New Delhi-1.

2. Director General, Doordarshan, Copernicus Marg, Mandi House, New Delhi-1.
3. Director, Doordarshan Kendra, PO-Sainik School, Bhubaneswar-5, District-Khurda, Orissa
..... Respondents
Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the twelve petitioners have prayed for a direction to the respondents to engage them as Casual Lighting Assistants in the same manner as was done earlier. The second prayer is for a direction to consider regularisation of services of the petitioners in the post of Lighting Assistant by relaxing their scheme dated 9.6.1992 as also age limit of the petitioners.

2. The petitioners' case is that they were engaged as Lighting Assistants in Doordarshan Kendra, Bhubaneswar, in different years till 8.3.1998. The bio data of all the applicants including their date of joining is in tabular chart at Annexure-1. They were engaged as Casual Lighting Assistants on assignment basis for a maximum period of 10 days in a month and were initially receiving Rs.120/- which was later on increased to Rs.190/-. Besides they were getting fixed DA at the rate of Rs.45/-. It is stated that at the time of their engagement respondent no.3 verified the documents, testimonials in support of their educational qualification of each of the applicants. Without any reason on 8.3.1998 all the applicants were disengaged from casual engagement. It is stated that the Cuttack

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Bench of the Tribunal in OA Nos. 441/92, 562/92 and 362/92 has held that there should be a panel containing the names of eligible and ineligible casual workers who would be entitled for regularisation. The crucial date for declaring eligible and ineligible casual workers for the purpose of regularisation flows from the scheme circulated by the office of respondent no.1 in letter dated 17.3.1994 and later on in fuller detail in O.M. dated 5.7.1994. All the applicants except applicant no.10 were engaged after the crucial date 9.6.1992. The Tribunal in their order dated 16.11.1993 in the three cases referred to earlier and order dated 26.3.1994 in OA No. 8/94 relied on a decision of the Principal Bench and also did not distinguish between eligible and ineligible casual workers. The order dated 16.11.1993 of the Tribunal in the three O.As. referred to earlier is at Annexure-4. It is stated that respondent no.2 had notified to all concerned in his order dated 11.8.1997 that all casual workers would be given booking strictly on rotation basis impartially by giving equal days of booking as prescribed by Government to everybody available in the list prepared as per the Tribunal's order dated 16.11.1993. The applicants have stated that accordingly they were being engaged till they were disengaged on 8.3.1998 even though there is workload for them. It is stated that in letter dated 17.4.1998 at Annexure-5 Director General, All India Radio and Doordarshan, Delhi, was moved for re-engagement of Casual Lighting Assistants. Another letter was sent on 4.12.1997 for the same purpose which is at Annexure-5A. The

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applicants have stated that the Tribunal in their order dated 16.11.1993 had indicated how to prepare the list of casual worker those who have completed 120 days and those who have not. In the face of this order of the Tribunal and the circular dated 11.8.1997 at Annexure-3, disengagement of the applicants is mala fide and misconceived. It is stated that the applicants have been engaged as Casual Lighting Assistants for years and they have become agebarred for other employment. Being aggrieved by the disengagement they submitted a representation dated 15.4.1998 at Annexure-7 but without any result. That is why they have come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have stated that all Casual Artists are engaged by virtue of a contract entered into between Doordarshan and the person concerned. Such contract is for a specific purpose for and for specified period and therefore question of any date of joining as given at Annexure-1 to the OA is irrelevant. According to the respondents the applicants were engaged as Lighting Assistants on assignment basis for a maximum period of 10 days in a month only when there was need for their engagement. They were paid fees at the rate prescribed by Director General, Doordarshan, from time to time. The respondents have stated that the applicants had never been engaged as regular Lighting Assistants. Their engagement had all along been on contract basis depending upon the requirement of work. It is stated that Prasar Bharati Board have decided to abolish the post of Lighting Assistant as there is no functional requirement for these posts in Doordarshan and such contract could be terminated legally in accordance

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with Clause 10 of the contract. The respondents have stated that in the absence of the posts question of preparing any panel for eligible and ineligible Lighting Assistants for the purpose of regularisation does not arise. It is also stated that services of the applicants cannot be regularised because they have never been appointed following the Recruitment Rules at any point of time. It is also stated that no such direction for regularisation of Lighting Assistants including the applicants has been made by the Tribunal at any point of time. It is further stated that it is the prerogative of Director General, Doordarshan, to decide about requirement or lack of it of any post notwithstanding the requests made by Kendras. Lastly, it is stated that in the absence of workload and in the absence of sanctioned posts the applicants cannot be employed and also cannot be regularised. On the above grounds, the respondents have opposed the prayers of the applicants.

4. The applicants in their rejoinder have stated that a large number of casual workers like Floor Assistant, Make-up Man, Lighting Assistant, etc., have been regularised by virtue of the scheme drawn up by the respondents in pursuance of the decisions of the Courts. Such persons who have been regularised had originally joined the Department through assignment and after completion of stipulated days they have been considered for regularisation. The applicants are later entrants and have worked in the organisation through assignment for period of three to six years and therefore they have developed legitimate expectation of regularisation of

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their service extending the coverage of the Scheme or otherwise by the respondents. It is further stated that there is functional requirement for the post of Lighting assistant. Telecast coverage of any programme heavily relies on the lighting arrangement in Studio and outside for outdoor shootings. This brings clarity, sharpness and quality of the picture. The Casual Lightings Assistants are still on rolls in other Kendras like Lucknow, Imphal, Delhi, etc. and therefore it is illogical to say that there is no requirement of Lighting Assistants in Doordarshan Kendra. It is also stated that while the respondents have stated that posts of Lighting Assistant have been abolished in paragraph 18 of the counter, they have contradicted themselves by saying that question of abolition of posts is being reconsidered. It is stated that it is no doubt a prerogative of the departmental authorities to decide upon requirement or otherwise of the posts of Lighting Assistant. But this prerogative is also subject to reasonableness and in every act of the State a public element should be reflected, which is absent in the present case. It is further stated that the applicants' names find place in an approved list prepared by the then Head of Office of Doordarshan Kendra, Bhubaneswar and on that basis they should be given casual engagement. It is also stated that the decision of the Prasar Bharati Board to abolish the posts of Lighting Assistant has not been enclosed. On the above grounds, they have reiterated their prayers in the rejoinder.

5. The applicants have filed a Misc. Case No. 287 of 1999 enclosing an order dated 23.2.1999 of

Prasar Bharati Headquarters. It is only necessary to take note of this order. In this order which is at Annexure-8 it has been mentioned that the matter of engaging Lighting Assistants has been reconsidered by the Prasar Bharati Board and it has been decided that those Lighting Assistants whose names appear in the eligibility list for regularisation be provided opportunity to get training in camera work and paid stipend equal to 10 days wages per month during the training period. Thereafter those who are found fit will have to go through the normal selection process for appointment as cameramen. Others who are not found fit as well as ineligible Casual Lighting Assistants will have to be disengaged and discontinued. It is furtherstated that the Directors, Doordarshan Kendras may give need based bookings to existing eligible Casual Lighting Assistants not exceeding 10 days in a month till action on the decision regarding providing training in camera work and their engagement and selection as Cameramen mentioned in paragraph 2 of the order is duly completed. This order has been enclosed at Annexure-8 to Ma No.287/99.

6. The applicants have filed another Misc.Case No. 385 of 1999 in which they have enclosed the letter dated 29.10.1998 of Director, Doordarshan Kendra, Lucknow, as Annexure-9. In this letter there is a decision that 14 Lighting Assistants as per the list will be offered booking for a maximum period of thirty days in a month and their cases for regularisation be processed in a period of three months.

7. The respondents have filed an additional counter in which they have stated that the above proposal of Doordarshan Kendra, Lucknow was not

accepted by Prasar Bharati Board and this has been clarified by Deputy Director(Administration), Prasar Bharati (Broadcasting Corporation of India) Doordarshan, in O.M. dated 16.8.1999 at Annexure-R/1, in which it has been mentioned that these assurances were given to agitating Casual Lighting Assistants at Doordarshan Kendra, Lucknow, but these assurances were considered by the Prasar Bharati Board and were not accepted. Thereafter in response to the proposal of Doordarshan Kendra, Lucknow, the letter dated 23.2.1999 referred to earlier and enclosed at Annexure-8 by the applicants has been issued.

8. We have heard Shri K.C.Kanungo, the learned counsel for the petitioners and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records. The learned counsel for the petitioners has filed written note of argument enclosing therewith the scheme dated 5.7.1994 along with certain clarifications issued by Doordarshan Headquarters from time to time which have also been taken note of.

9. From the pleadings of the parties and from the scheme and the circulars issued from time to time by Doordarshan Headquarters and thereafter by Prasar Bharati Board Headquarters, it is clear that eligible casual workers including eligible Casual Lighting Assistants are entitled to be regularised in accordance with the scheme. The applicants have stated that several other categories of casual workers like Make-up Men, Floor Assistants, etc., who are eligible have been regularised in this and other Kendras. The controversy in this case is with regard to regularisation of ineligible

Casual Lighting Assistants. The element of ineligibility flows from two counts. To become eligible a casual worker would be required to have put in 120 days of casual engagement in one year, and secondly he should have been casual worker engaged upto 31.12.1991 as mentioned in paragraph 1 of the scheme dated 9.6.1992 enclosed by the respondents in their counter to Misc.Case No. 287 of 1999. In the reply to the Misc.Case, filed by the respondents, in paragraphs 2 and 3 they have also mentioned that regularisation scheme is applicable in respect of Casual Artists engaged upto 31.12.1991. As regards age relaxation, in the scheme circulated in letter dated 9.6.1992 enclosed by the respondents to their counter to Misc.Case No.287 of 1999 it has been mentioned that upper age limit would be relaxed to the extent of 120 days of service in the aggregate in one year shall be treated as one year service rendered for the purpose of age relaxation. In O.M. dated 5.7.1994 it has been mentioned that the crucial date for the purpose of calculation of age is the same as in the scheme dated 9.6.1992 and for the purpose of age relaxation the number of days of engagement should be taken into account upto 9.6.1992. Any engagement beyond 9.6.1992 should not be counted for the purpose of age relaxation. Thus it is seen that ineligibility may arise on two counts for rendering less than 120 days of engagement in one year and secondly because of the date of initial engagement beyond 31.12.1991. It is also clear that as per the scheme itself no age relaxation is possible for any person who has been initially engaged on a date after 9.6.1992. In the instant case from the details of

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engagement given by the applicants themselves it is seen that all of them have been engaged after 9.6.1992. Their date of initial engagement varies between 1.7.1992 and 20.2.1995. It has been urged by the learned counsel for the petitioners that the distinction which is made between eligible and ineligible Casual Lighting assistants is not applicable to the Casual Lighting Assistants of Doordarshan Kendra, Bhubaneswar, in view of the decision dated 16.11.1993 of the Tribunal in OA Nos. 441/92, 562/92 and 362/92. Before noticing this decision it is necessary to note that from Annexure-3 it appears that against this order dated 16.11.1993 SLP was filed in the Hon'ble Supreme Court and was dismissed. In the order dated 11.8.1997 at Annexure-3 it has been mentioned that after dismissal of the SLP the Government have accepted the above order dated 16.11.1993 for implementation. Accordingly, Director General, Doordarshan, in his letter dated 13.5.1997 has issued instructions to prepare seniority list as per the order dated 16.11.1993 for regularisation of casual workers. It is also mentioned that because of this, the eligible and ineligible formula for regularisation of casual workers adopted by Directorate General, Doordarshan prior to the above judgment stands inoperative. In this letter it has been mentioned that in future all the casual bookings on assignment basis may be made strictly on rotational basis impartially by giving equal days of booking to everybody available in the list prepared as per Tribunal's decision dated 16.11.1993. This order has been issued by Director, Doordarshan Kendra, Bhubaneswar. It is submitted by the learned counsel for the petitioners that as the

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eligibility and ineligibility criteria have become inoperative, as admitted in this order dated 11.8.1997, the petitioners are all entitled to regularisation. From the above it is seen that the argument of the learned counsel for the petitioners is that the distinction between eligible and ineligible casual workers has been obliterated in the order dated 16.11.1993 which has become final, the SLP against that order having been dismissed by the Hon'ble Supreme Court and the Doordarshan having accepted this order. We have gone through this decision dated 16.11.1993 carefully. It is necessary to note that the petitioners in those cases were different type of casual workers like Carpenter, Floor Assistant, Painter, Makeup Man, Production Assistant, etc. A point was made before the Tribunal in those cases that some of the petitioners could not complete 120 days of work in a calendar year because sufficient work was not given to them. In view of this, the Tribunal ordered that amongst all the casual workers those who have completed more than 120 days in a calendar year shall take precedence over those casual workers who have not completed 120 days during a span of more than one year. In an illustration given in the order the Tribunal laid down that those who have completed 120 days in a particular year will rank above those who have completed lesser number of days. It was ordered that accordingly a seniority list should be prepared and as and when vacancy arises in future such incumbents be appointed according to their seniority as reflected in the seniority list. The Tribunal also noted that Central Administrative Tribunal, Principal Bench, have in certain Original Applications before them directed that upper age

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limit should be relaxed and this aspect should be taken into consideration. As this decision dated 16.11.1993 has become final it is clear that the respondents have to maintain a seniority list of those casual workers who have completed 120 days and those who have not. From the order at Annexure-3 it appears that such a list has been maintained according to which bookings were given to these applicants till 8.3.1998. The Tribunal in their decision also directed that persons from that list should be regularised by being appointed in the vacancies which may arise in future in accordance with their position in the seniority list. Thus, there is also a direction for regularisation of such eligible and ineligible casual workers. In the instant case, all the applicants having been engaged after 31.12.1991 are ineligible in accordance with the original scheme. As per the original scheme they are also not entitled to age relaxation. For the purpose of age relaxation it has been laid down that engagements upto 9.6.1992 have to be taken into account. The claim of the applicants for regularisation will have to be considered in the above context.

10. The law is well settled that a person can be regularised only against a post and in accordance with the Recruitment Rules. The respondents have stated that the applicants have been engaged as Casual Lighting Assistants not through any process of selection. It is also stated that the posts of Lighting Assistant have been abolished and therefore in the absence of posts the applicants cannot be regularised. Prasar Bharati Board in their Office Memorandum dated 23.2.1999 have directed that eligible Casual Lighting Assistants should be given

training in camera work and paid stipend equal to 10 days wages per month during the training period. Thereafter, those who are found fit will have to go through the normal selection process for appointment as cameramen. This circular of Prasar Bharati Board applies only to eligible Lighting Assistants. But in the case of Doordarshan Kendra, Bhubaneswar, by virtue of the order dated 16.11.1993 the distinction between eligible and ineligible Casual Lighting Assistants has been obliterated. It is also to be noted that Doordarshan Kendra came in different parts of the country at different times and one uniform cut off date is bound to act harshly in respect of persons awaiting regularisation in the Kendras which have come up later. In view of this, we hold that like their counterparts elsewhere these applicants and other Casual Lighting Assistants who may be there and might not have approached the Tribunal and whose names are there in the seniority list drawn up in accordance with the order dated 16.11.1993 should get the benefit of the circular dated 23.2.1999. They should be given training in camera work and paid stipend equivalent to 10 days' wages. This circular dated 23.2.1999 does not mention about the period of training. But whatever is the period of training for eligible Casual Lighting Assistants the same would be the period of training for these Casual Lighting Assistants. After that they will be entitled to be considered for the post of Cameraman. As the posts of Lighting Assistant are not there they cannot be absorbed as Lighting Assistants. In case in the process of selection they are found unfit, then naturally such persons cannot be selected for the post of Cameraman. For such selection they will have to wait till

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the posts of Cameraman are available. The prayer for regularisation is accordingly disposed of.

11. The second prayer of the applicants is for their engagement as Casual Lighting Assistants for ten days in a month on the ground that there is need for their engagement. The respondents, on the other hand, have clearly stated that there is no functional requirement of Lighting Assistants. Therefore, it is not possible to give a direction to the respondents to engage the applicants as Casual Lighting Assistants. Moreover, a casual worker by its very nature discharges duties which are casual and intermittent in nature and it is for the departmental authorities to decide when and for how long there is need for casual engagement of Lighting Assistants. The respondents having averred that there is no such need, it is not possible to give direction to the respondents to engage them as Casual Lighting Assistants. It is, however, made clear that in accordance with the circular dated 23.2.1999 if the training of all these ineligible Casual Lighting assistants takes time, then till the training is over and if some of them have to wait for getting training in camera work, then during the period of waiting for their turn to get training in camera work, they should be given engagement as Casual Lighting Assistants for a period not exceeding ten days in a month.

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12. In support of his contentions the learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of Air India Statutory Corporation, etc. v. Union of India and others, AIR 1997 SC 645. This decision deals with Contract Labour (Regulation & Abolition) Act, 1970 and

the decision by itself is not applicable to the facts and circumstances of this case. We have taken note of the great emphasis laid by their Lordships of the Hon'ble Supreme Court in the judgment in this case on the concept of social justice and on providing adequate means of livelihood for all citizens.

13. In the result, the Original Application is disposed of in terms of the observations and direction as above but without any order as to costs.

6.1.2000
(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)

6.1.2000
VICE-CHAIRMAN