

ORIGINAL APPLICATION NO.257 OF 1999
Cuttack this the 31st day of July/2000

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-VERSUS-

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Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN. 2000

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.257 OF 1999
Cuttack this the 31st day of July/2000

CORAM:

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

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Manasa Ranjan Mohapatra,
S/o. Krushna Chandra Mohapatra
M/s. Dakshin Gangotri
PO: Arunoday Market,
Town/Dist : Cuttack

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Applicant

By the Advocates

M/s.J.K.Das
S.K.Das

-VERSUS-

1. Union of India represented through
Director General
Prasara Bharati, Broad Casting
Corporation of India, Doordarshan Kendra
Mandi House, New Delhi
2. Director, Prasara Bharati
Broadcasting Corporation of India
Doordarshan Kendra, Bhubaneswar
At/PO: Bhubaneswar, Dist: Khurda
3. Smt.Manini Das, Casual Production Assistant
C/o. Senior Administrative Officer
Doordarshan Kendra, Bhubaneswar
At/PO: Bhubaneswar, Dist: Khurda
4. Sudhansu Sekhar Padhi, Casual Production
Assistant,
C/o. Senior Administrative Officer
Doordarshan Kendra, Bhubaneswar
At/PO: Bhubaneswar, Dist: Khurda

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Respondents

By the Advocates

Mr.A.K.Bose,
Sr.Standing Counsel
(Central)
(Res. 1 and 2)

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O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, Manasa Ranjan who Mohapatra was engaged on casual basis as Production Assistant in Doordarshan Kendra, Bhubaneswar on 16.4.1985 files this Application on 28.5.1999 with the following prayers :

- A) Direct the Respondent No.1 and 2 to immediately take up the case of the applicant for regularisation protecting his seniority on the basis of initial appointment
- B) To direct the Respondent No.1 and 2 not to give any precedence to the persons not in casual employment for long years, over person(s) like the applicant working presently with long and continuous years of casual service
- C) To direct that the applicant should be given precedence in the matter of regularisation over the Respondent No.3 and 4 who are juniors to the applicant on the basis of their subsequent joining
- D) To grant any other or further relief which would be deemed just and proper to afford complete relief to the applicant

His case is that like other casual employees engaged by that Kendra, he was also given contractual appointment periodically from month to month. As the Doordarshan authority did not take steps to regularise the services of such casual employees, some of them filed Original Application Nos.362/92, 562/92 and 441/92 before this Bench claiming regularisation. The then Division Bench of this Tribunal through common judgment dated 16.11.1993, referring to the decision dated 14.2.1992 of the Principal Bench on this issue disposed of the applications by directing that seniority of all the casual workers - kendrawise be prepared and give them appointments in their turn according seniority. A guideline has also been issued with illustration as to how seniority is to be considered. The Department challenged this judgment before the Apex Court, but the Apex Court, ultimately dismissed the S.L.P.

At this stage it can be mentioned that on the basis of the aforesaid decision of the Principal Bench, the Department prepared a scheme dated 9.6.1992 (Annexure-R/1) along with guidelines issued in Office Memorandum dated 19.6.1992 in the matter of regularisation. Thereafter a revised scheme dated 17.3.1994 was also prepared. As per this scheme only those casual artists who are employed on or before 31.12.1991 and who had been engaged for an aggregate period of 120 days in a year (Calendar Year) would be eligible for regularisation. It was specifically mentioned that those who were engaged on casual basis after 31.12.1991 would not be eligible for consideration. Those who are to be regularised should possess requisite educational qualification and/or experience stipulated in the Recruitment Rules or under the administrative instructions, in the absence of recruitment rules, existing for the post at the time of initial engagement. The upper-age-limit would be relaxed to the extent of services conferred by the casual artists at the time of regularisation. A minimum of 120 days of service in aggregate in one year shall be treated as one year service rendered for this purpose and the service rendered less than 120 days in a year will not qualify for age relaxation. In the revised scheme dated 17.3.1994, a guideline has been issued for calculation of number of days. In Para-3 it has been mentioned that this calculation would be made on the basis of actual wages given to the casual employees in a month, divided by the minimum wages prevalent in the State during the relevant time of working. It has been further clarified that crucial date for the purpose of calculation of age is as on 9.6.1992.

But as it appears from the judgment of the then Division

Bench of C.A.T., Cuttack, seniority list is to be prepared even for casual employees who are eligible for regularisation as per the scheme on the basis of the Principal Bench decision and also for casual employees not eligible. There is no dispute that the Department in view of dismissal of the S.L.P. had taken a decision to implement the direction issued by the then Division Bench.

2. The Department in their counter stated that the applicant is ineligible for regularisation as he does not fulfil the conditions laid down under the scheme. Further, he was booked for six days in April, 1995 and for five days in May, 1995. As per the liberalised scheme dated 17.3.1994 his total period of working would come to 46 days only and thus make him ineligible for regularisation as per the scheme. Accordingly they pray for dismissal of this Original Application.

3. No rejoinder has been filed by the applicant.

4. Before filing of counter on 24.1.2000, the applicant on 25.10.1999 preferred Misc.Application 725/99 making some allegations against Res.2 and prayed for issue of direction on Res.2 to allot duties to the applicant from month to month during pendency of the Original Application. Respondents filed counter to this Misc.Application opposing the prayer by denying the allegations made in the Misc.Application and took the stand that allotment of duties to casual hands would arise only in exigencies of service as it is ^{not} ~~not~~ based in the best interest of the Government. This Misc.Application was heard ^{not} during regular hearing of the Original Application. Therefore, ^{not} orders ~~passed~~ in this Original Application will also dispose of the Misc.Application.

5. We have heard Shri J.K.Das, learned counsel for the

applicant and Shri A.K.Bose, learned Senior Standing Counsel for the departmental respondents. Also perused the records.

6. There is no specific averment in the Original Application that barring in the year 1985 the applicant in fact was entrusted any duty at any time, though there is averment that he has been working in the cadre of Production Assistant on casual basis since long. The averment made in the counter that in the year 1985, he was booked for 11 days, which according to liberalised scheme dated 17.3.1994 would come to 46 days of performance has not been denied by the applicant through any rejoinder. Moreover, on the date he filed this Application on 23.5.1999, his verification statement would be reveal that he was aged 37 years - which means he was hopelessly overaged for any Govt. service. As per the scheme the crucial date to be taken for eligibility of age factor is 9.6.1992 by which date applicant had not completed 120 days of casual engagement in any year to get age relaxation as mentioned in the scheme.

7. It is true that this Bench by judgment dated 16.11.1993 directed to prepare a seniority list even of the casual employees who are ineligible for regularisation. This was reiterated in common judgment dated 13.1.1994 in O.A. Nos.43/93, 257/93, 312/93 and 424/93. Doordarshan authority challenged this later decision before the Apex Court in Civil Appeals 2127 - 2130/96. The Apex Court in judgment dated 3.4.1997 (copy forms part of record in O.A.237/99 of this Bench) upheld the contention of the Department that Res.1 and 2 were age barred even if age relaxation as provided in the scheme is applied and accordingly held that this Bench was not justified in granting them age relaxation contrary to the scheme which was framed for regularisation and that they

were not eligible for appointment even after age relaxation as set out in Clause-V of the Scheme. The Apex Court's decision reveals that after the Apex Court held so, learned counsel for Res. 1 and 2 submitted before that Court that subsequent to the judgment of this Bench, an Office Memorandum dated 17.3.1994 has been issued by the Directorate General, Doordarshan giving different basis for calculating age relaxation and on the basis of this submission the Apex Court made it clear that if Res. 1 and 2 were eligible for regularisation in accordance with the Scheme and/or directions which have been issued subsequent to the judgment of the Tribunal, they would be entitled to benefit of such scheme or directions.

8 Hence like the Apex Court we also make it clear that if the applicant is eligible for regularisation in accordance with the scheme dated 17.3.1994, he would be entitled to the benefit of such scheme/directions.

9 With this direction the Original Application is disposed of leaving the parties to bear their own costs.


(SOMNATH SONI)
VICE-CHIEF MAN

31.7.2004
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//