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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.671 of 2013
Cuttack this the 20th day of December, 2013

Sri Prasant Kumar Priharaj...Applicant

-VERSUS-

Union of India & Ors...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? No
2. Whether it be referred to CAT, PB, New Delhi or not? No


 (R.C.MISRA)
 MEMBER(A)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.671 of 2011
Cuttack this the 20th day of December, 2013

**CORAM
HON'BLE SHRI R.C.MISRA, MEMBERA)**

Sri Prasant Kumar Praharaj
Aged about 49 years
S/o.late Upendra Narayan Praharaj
Presently residing at-Prasanti
PO-Gadakana Talasahi
Near Durga Manda
Mancheswar Railway Colony
Bhubaneswar-17
Dist-Khurda

...Applicant

By the Advocate(s)-M/s.B.Dash
C.Mohanta
M.Satapathy

-VERSUS-

Union of India represented through

1. The Scretary to Government of in the Ministry of Information & Broadcasting
Shastri Bhawan
New Delhi
2. The Director general
Door Darsan
Copernicus Marg
Mandi House
New Delhi-1
3. The Dy.Director General(P)
Door Darsan Kendra
At-Sainik SchoolPO/PS-Bhubaneswar-5
Dist-Khurda

...Respondents

By the Advocate(s)-Mr.S.Barik

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ORDERHON'BLE SHRI R.C.MISRA, MEMBER(A)

Applicant in the present Original Application has approached the Tribunal with a prayer for direction to be issued to Respondents, viz., the authorities of the Ministry of Information & Broadcasting, Government of India, Door Darsan to implement the order passed by this Tribunal confirmed by the Hon'ble Supreme Court of India in its entirety and also to give engagement to the applicant and then regularize his service as against the post of one Production Assistant.

2. The brief facts of this case are that the applicant was working as a casual Production Assistant in Door Darsan Kendra, Cuttack and subsequently at Bhubaneswar. But he was not given any further casual assignment whereas other similarly placed candidates were given the benefit of the same assignment. The Respondents for the purpose of regularization of the case asked the applicant to produce his papers on more than one occasions, but thereafter remained silent as a result of which the applicant could not get any further assignment. In the meantime another similarly situated candidate approached this Tribunal in O.A.No.507 of 2001 and as per the orders of this Court was taken back to work under the Door Darsan Kendra. In the said circumstances, the applicant made a representation before Respondent No.3, i.e., Deputy Director General, Door Darsan Kendra, Bhubaneswar with a prayer to extend the same benefit as was directed to be extended to the applicant of O.A.No.507 of 2001. Since his representation was not considered he has now approached this Tribunal.

3. To elaborate the facts further, it has been submitted by the applicant in this O.A. that he was engaged as a Casual Production Assistant in the year 1985 and was given the casual booking from 16.4.1985 to 31.5.1986. However, after

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December, 1986, he was not given any further assignment. It has been submitted that many other similarly situated persons including the applicant in this O.A. made representations to the authorities to allow them to continue on casual appointment till their services are regularized. In view of these grievances that were h was ventilated, the Respondents formulated a scheme on 9.6.1992 and 17.3.1994. As per the provisions of the scheme, these candidates were put into two categories, viz., eligible casual category and ineligible casual category. The name of the applicant was kept in the 2nd list of ineligible casual employees, but was never taken to the list of eligible casual employees. The applicant has filed the list of eligible casual category candidates and also ineligible Production Assistants as per the scheme vide Annexure-A/1 and A/2. In the list of ineligible Production Assistant, the name of the applicant figures at Sl.No.21. Some of the aggrieved candidates had filed O.A.Nos.441, 562 and 362 of 1992 before this Tribunal. After hearing those O.A.s, this Tribunal observed that there should be a seniority list containing the names of the casual workers Kendra-wise who would be entitled for regularization. However, the Tribunal did not distinguish between the eligible and ineligible casual candidates. Thereafter, the D.G., All India Radio and Doordarsan notified to all concerned that all casual workers will be given casual booking strictly on rotation basis impartially by giving equal days of booking as prescribed by the Government to everybody available in the list prepared as per the Tribunal's order dated 16.11.1993. Thereafter some other casual employees of Door Darsan Kendra approached this Tribunal in O.A.No.384 of 1998 challenging their disengagement from the Door Darsan. After considering this O.A., the Tribunal vide order dated 6.1.2000 observed that like their counterparts elsewhere the applicant and other casual Lighting Assistants who may be

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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. Against the orders passed by the Tribunal in O.A.Nos.441, 562 and 362 of 1992, an SLP was filed before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court did not find any merit and therefore, dismissed the same. After the disposal of the SLP the Government decided to accept the decision rendered in the aforesaid OAs. Accordingly, the Director General, Door Darsan, in his letter dated 13.5.1997 issued instructions to prepare seniority list in terms of the order dated 16.11.1993 for regularization of casual workers and because of the said instructions, eligible and ineligible formula adopted by the Door Darsan became inoperative. In the aforesaid letter, the Director Door Darsan directed that in future, all the bookings on assignment basis may be made strictly on rotation basis impartially by giving equal days of working to all the casual workers available in the list. In the meantime, one Goutam Ballav Mohanty and others approached this Tribunal in O.A.No.384 of 1998 challenging the inaction of the Respondents in not regularizing them in service. The Tribunal disposed of the said O.A. on 6.1.2000 with a direction that those applicants and other casual Lighting Assistants who may be there and might not have approached the Tribunal and ^{whose} *R* 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 23.02.1999. The same parties had again approached the Tribunal in O.A.No.507 of 2001 alleging inaction of the Respondents for considering their cases of regularization. This matter was disposed of by the Tribunal on 1.7.2009 with a direction to comply with the orders passed by the Tribunal in O.A.No.441, 562 and 362 of 1992. The claim of the present applicant is that since his name

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finds placed at Sl.No.21 of the seniority list of ineligible casual Production Assistants, in terms of the orders passed on 16.11.1993 and 6.1.2000, the he should have been given the benefit of circular dated 23.2.1999 for the purpose of regularization. His case was not considered by the Respondents and therefore, he made a representation before the Director General, Door Darsan on 14.7.2009. Since his representation was not considered he made another representation on 20.8.2010 to the same authority. Having not received any response even after this representation, he made a further representation to the Secretary in the Ministry of Information & Broadcasting on 18.5.2011. It is the submission of the applicant that since he was not given any engagement in the meantime, he is engaged in the research work for which he has got the distinction of having D.Litt. and he has also engaged himself in film production. However, he has submitted that the Respondents are duty bound to follow the directions of the Tribunal without making any distinction between casual hands appearing in the eligibility list and those appearing in the ineligible list. Since the applicant did not receive justice in the hands of the Respondents, he has approached this Tribunal seeking relief as referred to above.

4. Respondents by filing their counter affidavit have averred that Door Darsan being the public service broadcaster in the country has a very wide reach. In spite of the fact that they have a large number of employees on various grades and services, in order to meet the exigencies of work and to avoid the last minute breakdown of scheduled telecast, Door Darsan has been engaging technical and non-technical personnel on casual short term assignment basis. These casual personnel have been clamoring for their regularization since 80's and 90's. In order to meet their demands a scheme dated 9.6.1992 was formulated by the



Door Darsan in pursuance of the judgment of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.583 of 1986 filed by Anil Kumar Mathur vs. Union of India & Ors. The provisions of the scheme were further liberalized in the O.Ms dated 17.3.1994 and 5.7.1994. The regularization scheme of 1992 and 1994 had the following features.

- i) The Casual Artists who had completed 120 days in any calendar year prior to 31.12.1991 would be eligible to be considered for regularization subject to their fulfilling other eligibility criteria for the post in question laid down in the relevant Recruitment Rules in terms of their seniority at the particular Kendra prepared on the basis of date of initial engagement.
- ii) The Casual Artists would be entitled for relaxation in upper age limit mentioned in the Recruitment Rules to the extent of one year for each completed 120 days of engagement in a calendar year.
- iii) The Casual Artists would be regularized against the vacancies where they were engaged and worked as casuals.
- iv) Till all the casual artists in a particular category eligible for regularization at a Kendra are regularized, no fresh recruitment would be resorted to by the Kendra concerned.
- iv) The crucial date for reckoning age would be taken as on 09.06.1992.

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5. This regularization scheme of Door Darsan formulated in the year 1992 as modified in the year 1994, was considered by the Hon'ble Apex Court in Civil Appeal© No.4787 to 4794 of 1996: The Hon'ble Apex Court in their judgment modified certain directions given by the Tribunal and made the following observation.

"By the impugned judgment the Tribunal has given direction for regularization of the Respondents by giving the relaxation in the upper age limit by treating the

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minimum period of 40 days per calendar year 1989 and no period for calendar year 1990 for such of the casual staff artists who were recruited prior to 1988 and were not assigned work in the calendar years 1988 and 1989 in pursuance of the note dated May 26, 1989. The said direction of the Tribunal is not in consonance with the Scheme as notified vide OM dated June 09, 1992 and it cannot be upheld. The matter of regularization of the respondents, including the question whether they should be given relaxation in the matter of age, has to be considered only in accordance with the provisions contained in the Scheme as notified vide OM dated June, 09, 1992.

It appears that during the pendency of these appeals in this Court, the Scheme has been modified by OM dated March, 17, 1994 and OM dated July 05, 1994. The matter of regularization of the respondents has to be considered in the light of the Scheme as modified by OM dated March, 17, 1994 and OM dated July, 05, 1994.

The appeals are accordingly allowed, the impugned judgments of the Tribunals are set aside and it is directed that the matter of regularization of the respondents will be considered by the appellants in accordance with the scheme as notified vide OM dated June, 09, 1992 as modified vide OM dated March, 17, 1994 and OM dated July, 05, 1994. Such consideration shall be done within a period of two months".

6. The nature, scope and interpretation of the scheme as modified in the year 1994 came up for consideration before the Hon'ble Supreme Court in Director, Doordarshan Kendra vs. S.Kutan Pillai & Ors. Reported in (1998) 8 SCC 736. In the said case, the Hon'ble Supreme Court held that the matter of regularization including the matter of age relaxation has to be considered only in accordance with the scheme formulated in OM dated 9.6.1992 and modified by OMs dated 17.3.1994 and 5.7.1994.

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7. In the counter affidavit the Respondents have examined the eligibility of the applicant in terms of the regularization scheme dated 9.6.1992, which got subsequently modified vide OM dated 17.3.1994 and 5.7.1994. They have further mentioned that as per the information, the applicant is not eligible for regularization as he has not completed 120 days of casual assignment in any calendar year upto 31.12.1991. It is to be noted here that the Respondents have examined the eligibility of one Virjesh Kumar whereas the name of the present applicant is Prasant Kumar Praharaj. However, this is a glaring mistake in the counter affidavit. It is not understood how the Respondents have examined the eligibility of one Birjesh Kumar whereas the name of the present applicant is Prasant Kumar Praharaj. This sort of casual approach is highly deplorable. In some further paragraph of the counter affidavit, the Respondents have given the information about the engagement of the applicant in Door Darsan Kendra. This cannot be considered in view of the glaring mistake that they have committed in the counter affidavit. In the counter affidavit, it has been finally submitted that the applicant is not entitled to get any relief as prayed for in this O.A., because, he has not completed 120 days in any calendar year as per the provisions of the regularization scheme dated 9.6.1992 and 17.3.1994, and therefore, he is not entitled to any relief that has been granted in various judgments of the Hon'ble Supreme Court.

8. In the rejoinder filed by the applicant it has been submitted that although the name of the applicant has been figured in the ineligible list, his case deserves to be considered for regularization, since the Tribunal has said that the process of regularization should not be confined to a single list and candidates from both the lists should be regularized chronologically. Further, similarly placed Shri

G.B.Mohanty and K.N.Bisoi in O.A.No.384/98 and O.A.No.507/2001 have got the relief from this Tribunal in similar circumstances. It has been also pleaded by the applicant that he has completed more than 120 days in a calendar year since he has rendered service uninterruptedly from 16.4.1985 to 31.5.1986.

9. By filing the written note of argument, the learned counsel for the applicant has reiterated the arguments.

10. In the written note of submission filed by the learned Addl.Central Govt. Standing Counsel it has been submitted that the regularization scheme of Door Darsan, 1992 and 1994 had provided inter alia that Casual Artists who had completed 120 days in any calendar year prior to 31.12.1991 would be eligible for consideration for regularization. The present applicant was initially booked on 16.4.1985 and worked as Production Assistant for 38 days in the year 1985 and 30 days in the year 1986. Since he has not already completed 120 days in any calendar year his name was kept in the ineligible list. The Tribunal in order dated 16.11.1993 had directed that those casual workers 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 a year. Since the applicant has not completed 120 days in a calendar year, his regularization cannot be made as per the scheme and various judgments of the Hon'ble Supreme Court.

In the latest judgment, the Hon'ble Supreme Court has held that daily wagers, temporary and contractual employees have no right for appointment. In this regard the decision of the State of Karnataka and vrs. Vs. Umadevi reported in 2006 AIR SCW 2020 of the Hon'ble Supreme Court has been mentioned. In the aforesaid judgment, the Hon'ble Supreme Court has clarified that unless the appointment is in terms of the relevant rules and after a proper competition

among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end after the end of the contract. If it were an engagement or appointment on daily wage or casual basis the same would come to an end when it is discontinued. It is reiterated by the learned ACGSC that the applicant, as per the scheme dated 17.3.1994 applicant was over-aged by 4 months and 14 days and had not completed 120 days in any calendar year for getting the age relaxation and hence, he was not regularized being ineligible candidate. Further, till date the regularization of the candidates from the eligible list has not been completed as per the decision of the Tribunal dated 16.11.1993. The case of the applicant will be considered only when his turn comes. Accordingly, this Tribunal has adjudicated a similar matter in O.A.No.175 of 2009 disposed of on 4.5.2011. The following of the judgment of the Tribunal has been quoted.

"We have considered the rival submission of the parties. But we are not satisfied that the decision rendered in the case of Umadevi (supra) has any application to the case of the applicant as the applicant's case is to be considered in the light of the decision of this Tribunal dated 16.11.1993 in O.A.No.562 of 1992 confirmed by the Hon'ble Apex Court in order dated 21.1.1992 in Civil Appeal Nos.6421-6423 of 2002(Arising out of SLP Nos.20224-20226 of 1994) filed by the Respondents. Hence, the Respondents are hereby directed to empanel the applicant in the seniority list in accordance with the above orders of this Tribunal as upheld by the Hon'ble Apex Court and thereafter consider her regularization according to the availability of vacancy and in her turn".

11. I have considered the rival submissions and perused the pleadings of the parties.



12. The admitted fact of the case is that in O.A.Nos.441, 562 and 362 of 1992, various types of casual workers engaged in Door Darshan had approached this Tribunal with a prayer that Doordarshan authorities should be directed to regularize their services ignoring age bar if any. This Tribunal disposed of these cases by a common order on November, 16, 1993, in which directions were given in consonance with the guidelines laid down by the Central Administrative Tribunal, Principal Bench in O.A.Nos.563/1986, 977/1986 and 2514/1989 disposed of on 14.2.1992. These directions have been mentioned in the relevant part of the order dated 16.11.1993, quoted supra. It is also admitted that these orders of the Tribunal are confirmed by the Hon'ble Apex Court in order dated 21.1.2009 in C.A.No.6421-6423 of 2002 (arising out of SLP Nos. 20224-20226 of 1994).

13. A similar matter was adjudicated by the Division Bench of this Tribunal in O.A.No.175/2009 which was disposed of on 4.5.2011. In that matter, the applicant claiming to be a casually engaged Production Assistant in DDK, sought regularization by virtue of decision of this Tribunal in O.A.No.562 of 1992, as confirmed by the Hon'ble Apex Court. The Division Bench considered the matter in the light of the orders of the Tribunal dated 16.11.1993 in O.A.No.562/1992 and directed the Respondents to empanel the applicant in the seniority list in accordance with the above orders of the Tribunal as upheld by the Hon'ble Apex Court and thereafter consider her regularization according to the availability of vacancy in her turn.

14. The learned Addl.Central Govt. Standing Counsel has submitted that till date the candidates from the eligible list ^{ve} ~~has~~ not yet been completed and as per

the decision of this Tribunal dated 16.11.1993 the case of the applicant will be considered thereafter when his turn comes.

14. Be that as it may, the Respondents admittedly are bound by the orders of the Division Bench of the Tribunal dated 4.5.2011, passed in a similar matter, in which directions have been given to the Respondents to empanel the applicant in the seniority list in accordance with the orders of the Tribunal in O.A.No.562/1992 as upheld by the Hon'ble Apex Court and thereafter consider her regularization according to the availability of vacancy in her turn.

15. It is, therefore, directed that the Respondents may consider the regularization of the applicant in his own turn, and as per availability of vacancy as per the directions of the Division Bench of this Tribunal dated 4.5.2011 in O.A.No.175/2009 passed in a matter. ^{similar} *R*

The O.A. is accordingly disposed of. No costs.


(R.C.MISRA)
MEMBER(A)

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