

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.43/96

FRIDAY, THIS THE 16TH DAY OF JANUARY, 1998.

C O R A M:

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

K. Kuttappan
Puthuval Puthen Veedu
TC 43/759, Kallumoodu
Trivandrum.

..Applicant

By Advocate Mrs. Sumathi Dandapani

Vs.

1. The Director of Doordarshan
Trivandrum-5.

2. The Director General of Doordarshan
Mandi House, New Delhi-1.

3. Union of India represented by Secretary,
Ministry of Information & Broadcasting,
New Delhi-11.

..Respondents

By Advocate Mr. George Joseph, ACGSC

The application having been heard on 7.1.98 the Tribunal
on 16.1.98 delivered the following:

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicant in this case had earlier been engaged
for various spells as Floor Assistant in the Doordarshan
Kendra, Thiruvananthapuram under the control of the first
respondent. He made a representation dated 11.3.94 which is
seen at A3, requesting for appointment as Floor Assistant
(Artist) in the Doordarshan Kendra, Thiruvananthapuram on a
regular basis. He has stated in that representation that he
had worked as a casual Floor Assistant from September, 1988
to March, 1990 and that totally he had worked for 176 days.

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He has further mentioned in the same representation that in the calender year 1989 he had worked for 120 days. He feels aggrieved that in spite of that representation, the official respondents have ignored his rightful claim and has not appointed him on a regular basis as a Floor Assistant (Artist). He has sought the reliefs of a declaration that he is eligible for regularization and of his appointment accordingly.

2. Earlier, he had filed an O.A. before this Bench bearing No. 1734/92. The Tribunal in its judgment rendered on 17.2.94 disposed of that O.A. with the direction for him to file a detailed representation for getting the benefits of the scheme of regularisation which had already been prepared by the respondent Department i.e., the Ministry of Information and Broadcasting, in compliance ^{As per} with the direction given by the Principal Bench of the Tribunal in O.A. 984/90. In that O.A. the Principal Bench had issued detailed directions in their order dated 4.2.92 for certain amendments to the draft scheme for regularisation of Floor Assistants and Artists who had worked as casual workers in the respondent Department. Accordingly, the respondent Department prepared a scheme dated 10.6.92 and liberalised it further in 1994.

3. According to the applicant, the respondent Department has not so far disposed of the representation at A3 even though he is entitled to regularisation in terms of the direction of the Principal Bench cited above.

4. He has further drawn our attention to another decision given by this Bench in O.A. 1123/92 in respect of certain applicants in that O.A. who were similarly placed as the applicant in the present O.A. In that order dated 10.3.93 at

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A4 in O.A. 1123/92, the Tribunal considered whether the Note below the clause No.12 of the Recruitment Rules 1988, relevant for the appointment of Group-C posts, would be applicable in the case of the applicants therein. Though under that main clause, the age limit prescribed for the Floor Assistants is 25 years, under the Note below the clause, the Government is empowered to grant relaxation for the Government servants upto theage of 35 years. The Tribunal decided that the applicants in that O.A., similarly situated as the applicant here, were entitled to the benefit of the provisions of that Note.

5. The applicant in this case has relied on the above order of the Tribunal and has claimed that the same benefit of relaxation of age upto 35 years should be extended to him.

6. The respondents have filed a reply statement opposing the reliefs sought by the applicant. Thereafter, the applicant has filed a rejoinder in which the applicants has sought to contradict the statement made in the reply that the prescribed age limit relevant for the post of Floor Assistant was 25 years in terms of the Recruitment Rules when the applicant was first engaged as a casual Floor Assistant. In the rejoinder, the applicant has stated that the applicant was engaged ^{on} 24th September, 1988, when the prescribed age limit was not 25 years, but 30 years, and since he was ~~only 22~~ ^{20 & 1/2} 28 years ^{1/2} when he was initially engaged in 1988 and since in the calender year 1989 he completed 120 days of casual work, he should have been regularised.

7. The respondent Department has also filed an additional reply statement bringing to our notice that before the applicant was initially engaged in 1988, i.e. in September, 1988, on a casual basis as a Floor Assistant, the relevant

Recruitment Rules, prescribing the age limit at 25 years, and not 30 years as contended by the applicant, had already come into force, i.e. on 16.7.1988.

8. We have considered the pleadings in the case carefully and heard the arguments of the learned counsel appearing for the parties before us.

9. The basis of the reliefs sought by the applicant is admittedly the scheme for regularisation of persons who had been engaged earlier on casual basis as Floor Assistants (Artists) in various Doordarshan Kendras in the country, prepared by the respondent Department in compliance with the directions of the Principal Bench of the CAT mentioned above. A copy of that scheme had been made available to us in O.A. 456/96. This scheme is dated 9.6.92. It was liberalised further in 1994.

10. The provisions of that scheme on the point of relaxation of age limit are found in para 6 of liberalised version of that scheme (Annexure R1-B (page 7)). It may be useful to extract that provision and reproduce it below for the purpose of appreciating what in fact is required to be done under the scheme in respect of relaxation of age for the category of employees called Floor Assistants or Artists employed earlier on casual basis. We quote accordingly:

"The upper age limit would be relaxed to the extent of service rendered by the casual Artists at the time of regularisation. A minimum of 120 days service in the aggregate, in one year, shall be treated as one year's service rendered for this purpose. The service rendered for less than 120 days in a year will not qualify for age relaxation."

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11. It is evident from the above provision that the applicant will be eligible for relaxation of age by one year for having worked for a minimum of 120 days in the calender year 1989. However, the respondent Department has brought to our notice the fact that when the applicant was engaged on a casual basis, he had already crossed the age limit of 25 years, which is the prescribed age limit under the Recruitment Rules of 1988.

12. The applicant has also relied on the rule laid down by this Bench of the Tribunal in O.A. 1123/92 dated 10.3.93, which admittedly was done after the commencement of the regularisation scheme. The Tribunal there considered the applicability of the 'Note' below clause No. 12 of the same Recruitment Rules, which is to the effect that the Central Government may issue orders granting age relaxation for Government servants upto 35 years. The Tribunal had held there that under the provisions of that Note, the applicants therein, who are admittedly similarly situated as the applicant in the present Original Application, should be granted age relaxation upto 35 years. However, the respondent Department has brought to our notice the order of the Hon'ble Supreme Court of India in Civil Appeal arising out of the S.L.P.No. 14678 of 1993. In that case, the Hon'ble Supreme Court has specifically struck down the order passed by this Bench in the above O.A. No. 1123/92 dated 10.3.1993 and held that the relaxation of age for persons similarly situated as the applicant in the present O.A., can be considered only in accordance with the provisions



contained in the regularisation scheme prepared by the respondent Department dated 9.6.92 and was further modified in 1994. The Apex Court has specifically ruled that the directions given by this Tribunal to the effect that the casual Artists should be granted the benefit of the provisions of Note below clause 12 of the Recruitment Rules relaxing the age limit upto 35 years, cannot be upheld.

13. Thus, it is clear that the only age relaxation that can be permitted in the case of the applicant and other similarly placed casual Artists will be the relaxation permitted under the scheme. We have quoted above those enabling provisions under the scheme.

14. The respondent Department has also brought to our notice the fact that in response to the representation made by the applicant for declaration of regularisation of his service dated 11.3.94, which is at A3, the respondent Department indeed gave him a reply dated 13.4.94, seen at Annexure R1. The respondent Department has specifically stated there that since the applicant does not satisfy the eligibility conditions for regularisation as per the regularisation scheme formulated on an all India basis, and that in compliance with the judgment of this Bench of the Tribunal in O.A. 1734/92, where the Tribunal had given a direction to the effect that if such a representation was made to the respondent, the first respondent would consider the representation and dispose of the same in accordance with law and the scheme for regularisation, that representation at A3 was rejected.

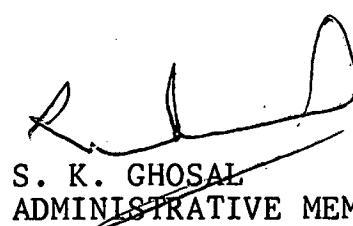
15. It has not been denied by the applicant that when he was initially engaged as a casual Artist in the Department, he had crossed the age of 25 years. Under these circumstances

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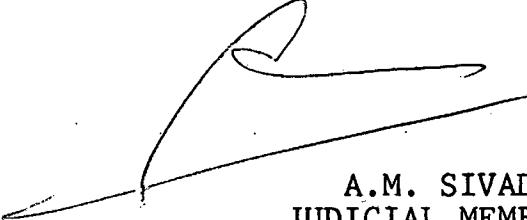
and considering the relevant provisions of the regularisation scheme relating to the relaxation of age and the judgment of the Apex Court, mentioned above, we are unable to agree with the learned counsel for the applicant that even though the Recruitment Rules, which had been brought into effect before the applicant was initially engaged as a casual Artist, prescribe age limit of 25 years, the applicant can still be regularised. In the facts and circumstances of the case such a claim of the applicant cannot be treated by us as valid and legal.

16. In the result, the application is dismissed. There shall be no order as to costs.

Dated the 16th January, 1998.



S. K. GHOSAL
ADMINISTRATIVE MEMBER



A. M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES

1. Annexure A3: Representation submitted by the applicant before the 1st respondent on 11.3.94.
2. Annexure A4: Judgement in OA 1123/92 dt. 10.3.93 on the file of this Tribunal.
