

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 430/2012

Wednesday, this the 19th day of August, 2015

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mrs.P. Gopinath, Administrative Member

B.Sreekumar
 Floor Assistant
 Doordarshan Kendra
 Kudappanakunnu
 Thiruvananthapuram – 43
 Pin – 695 043

..... **Applicant**

(By Advocate – Mr.V Ajith Narayanan)

V e r s u s

1. Union of India
 Represented by its Secretary
 Ministry of Information and Broadcasting
 New Delhi, Pin – 110 001
2. The Chief Executive Officer
 Prasar Bharathi Broad Casting Corporation of India
 Mandi House
 New Delhi, Pin – 110 001
3. The Director (Administration)
 Prasar Bharathi
 Directorate General of Doordarshan
 Doordarshan Bhavan
 New Delhi, Pin – 110 001
4. Deputy Director General
 Prasar Bharathi
 Broad Casting Corporation of India
 Doordarshan Kendra
 Thiruvananthapuram, Pin – 695 043
5. Director General
 Directorate General of Doordarshan
 Doordarshan Bhavan, New Delhi – 110 001

..... **Respondents**

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(By Advocate – Mr.N.N.Sugunapalan,Sr. with Mr.S.Sujin for R 1to 5))

This Original Application having been heard on 7.7.2015, the Tribunal on 11.8.15, delivered the following:

O R D E R

Hon'ble Mr.U.Sarathchandran, Judicial Member

Applicant is working as Floor Assistant under respondent no.4. He was engaged in casual service as Floor Assistant in the Doordarshan Kendra, Thiruvananthapuram from 24.4.1985. Applicant made a request for regularisation of his service as Floor Assistant in the regular vacancies. Respondents did not consider the same and therefore, he along with other similarly situated persons moved this Tribunal with O.A No.535/1992. This Tribunal vide Annexure A-3 order directed the respondents to consider their case of regularisation in accordance with the scheme as directed in the order of Principal Bench of this Tribunal in O.A 894/1990 and connected cases, in accordance with their seniority as casual Floor Assistants. As no action was taken by the respondent authorities, applicant approached this Tribunal again with O.A No.739/93, wherein vide Annexure A-4 order this Tribunal directed the respondents to regularise the services of the applicant like that of the private respondent nos.4 to 6 who are similarly situated persons ordered to be regularised as Floor Assistants by another decision of this Tribunal (OA 1123/1992), which was taken up by the respondents in appeal before the Apex Court. Therefore, in Annexure A-4 order it was ordered by this Tribunal that if the Supreme Court modifies the aforesaid decision, the consequences of Annexure A-4 order will also be modified to that extend and in that manner. The Apex Court in the aforesaid case [*Director Doordarsan Kendra v. S.Kuttan Pillai and others (1998) 8 SCC 736*] ordered the respondents therein to be regularised in accordance with the scheme notified by the respondents vide Office Memorandums dated 17.3.1994 and 5.7.1994 which are marked as Annexures



A-6 and A-7 respectively. Thereafter, regularisation of the applicant was considered by the respondents and found that the applicant is eligible for age relaxation. He was directed to be regularised in service vide Annexure A-8 communication. Accordingly, applicant was appointed as Floor Assistant with effect from 16.10.1995 vide Annexure A-9 order. In the meantime, applicant had moved this Tribunal with a Contempt Petition for implementation of Annexure A-4 order. Accordingly, a fresh Annexure A-1 order was passed as a fresh order. Thereafter, applicant continued in the services of respondents as Floor Assistant. His probation was declared with effect from 16.10.1996 vide Annexure A-12. He was included in Annexure A-13 and Annexure A-14 gradation lists also. While so, applicant received the impugned communication Annexure A-15 dated 20.4.2012 to show cause as to why his services should not be terminated by canceling the order of appointment dated 27.10.1995. Applicant had sent a reply marked as Annexure A-17 to respondent no.4. Applicant has approached this Tribunal again seeking the relief as under:-

"I. To direct the respondents not to terminate the applicant from service and not to deny any service benefits to him.

II. To direct the respondents to cancel all the steps initiated by them to terminate the applicant from service and permit him to continue in service with all service benefits.

III. To direct the respondents to withdraw Annexure A-15 show cause notice all actions pursuant to the same for the termination of the applicant and permit the applicant to continue in service with all service benefits."

2. Respondents filed a reply statement. They contend as follows: applicant was regularised as Floor Assistant in accordance with the directions in the order of this Tribunal in Annexure A-4, which in turn was granting relief to him on the lines of the party respondents mentioned in Annexure A-4 order. The aforesaid party respondents in Annexure A-4 order had obtained order from this Tribunal for regularisation in accordance with the existing scheme of regularising the

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casual Floor Assistants. The aforesaid order was challenged by the Department before the Apex Court. The Apex Court held that the matter of regularisation including the matter of age relaxation has to be considered only in accordance with the scheme formulated by the respondents vide O.M dated 9.6.1992 and modified by O.M dated 17.3.1994 and 5.7.1994 and further held that the respondent employees cannot be granted relaxation in age *dehors* the provisions in the scheme notified vide O.M dated 9.6.1992 and modified vide Office as above. In the light of the aforesaid order, respondents examined the case of regularisation of the applicant and it was found that he was ineligible for being appointed as Floor Assistant as he was over-age by one month and 29 days. This had occurred due to an over-sight by the dealing hand. Departmental steps are being taken against the dealing hand for the avoidable error that had occurred in noting the correct age of the applicant at the time of preparing notes for his regularisation. Referring to the decision of the Supreme Court in *Secretary, State of Karnataka v. Uma Devi and others* (2006) 4 SCC 1, the respondents contend that the applicant's appointment was irregular and not in conformity with the scheme in vogue. Hence, respondents pray for dismissing the Original Application.

3 A rejoinder was filed by the applicant. An additional reply also was filed by the respondents. A second additional rejoinder too was filed by the respondents.

4 We have heard Shri.Ajith Narayanan, learned counsel for applicant. We have also heard Mr.N.N.Sugunapalan,Sr. Advocate and Mr.S Sujin, learned counsel for respondent nos.1 to 5. Perused the records.

5 The dispute in this Original Application is centered around Annexure A-15 show-cause notice issued to the applicant relating to the proposed termination of his service and cancellation of his appointment as Floor Assistant vide order

dated 27.10.1995 (Annexure A-9). Respondents were prompted to take this action against the applicant when they examined the regularisation of the applicant in the light of the Apex Court's decision.

6 As noted above, applicant was served with the order of regularisation in the light of Annexure A-4 order of this Tribunal in O.A No.739/93 filed by him. The short order in Annexure A-4 is extracted below:-

"CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.739/93
Monday this the 28th day of March, 1994

CORAM:

HON'LE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

B.Sreekumar

Amballur Veedu

Konchiravila, Manacaud P.O

Thiruvananthapuram – 9 Applicant

(By Advocate M/s.K.P.Dandapani & K.Jaju Babu)

vs.

1. Union of India

represented by Secretary, Ministry of Information and Broadcasting, New Delhi

2. The Director General
Doordarshan Kendra, New Delhi

3. The Director, Doordarshan Kendra,
New Delhi

4. S.Kuttan Pillai
Vadakkevila, Puthenveedu
Madanthacodu, Nellumukku P.O
Kozhimathikadu (via), Kollam District

5. G.Sreekumar, Reghu Sadan

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Kelumangalam, Thakazhi, Alappuzha District

6. K.P.Mehnakumaran Nair
Kizhakkimkara Puthen Veedu
Peyad P.O
Thiruvananthapuram

(By Advocate Mr.C.N.Radhakrishnan, ACGSC(1 to 3)

Mr.P.Santhalingam (R 4 to 6)

ORDER

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN:

Applicant who describes himself as a "Floor Assistant" in the 'Doordarshan Kendra' seeks a direction to regularise his services as a Floor Assistant. Services of Respondents 4 to 6 were ordered to be regularised as Floor Assistants by Annexure A-7 judgment by a Bench of this Tribunal and presumably that is the inspiration for the applicant.

2. Learned Standing Counsel for respondent 1 to 3 submitted that Annexure A-7 judgment is under appeal and that subject to the decision in the appeal, there could be no objection to the relief being granted to applicant on the basis of Annexure A-7. At the same time he expressed the apprehension that others may come before this Tribunal citing Annexure A-7. The second of the two objections does not seem to be well-founded because, such claims, as counsel for Respondents 1 to 3 apprehends, will be barred by limitation at this point of time.

3. Following the submissions made by Standing Counsel for Respondents 1 to 3 and following the precedent of Annexure A-7 by which we were bound, we direct that services of applicant also be regularised like that of respondents 4 to 6. Necessary action will be taken in the matter within three months from today. If the Supreme Court modifies Annexure A-7 judgment, the consequences of this order will also be modified to that extent and in that manner.

4. With these directions, we allow the application. No costs.

Dated the 28th March, 1994. "

7 As noted in Annexure A-4 order of this Tribunal, the official respondents had taken up the case of respondent nos.4 to 6 in O.A 739/93 before the Apex Court [Director Doordarsan Kendra v. S.Kuttan Pillai and others (1998) 8 SCC 736]. The order passed by the Supreme Court of India in the above case reads as follows:



"1. Shri.Ashok Kumar Srivastava, the learned counsel for the petitioner, states that he does not wish to press the special leave petition against Respondent 3 (G.Sreekumar). The special leave petition as against Respondent 3 is, therefore, dismissed.

2. Delay condoned

3. Leave granted.

4. This appeal is directed against the judgment of the Central Administrative Tribunal, Ernakulam Bench, (hereinafter referred to as "the Tribunal") dated 10.3.1993 passed in O.A No.1123 of 1992 filed by the respondents. The respondents are engaged on casual basis as Floor Assistants in the Doordarshan Kendra at Trivandrum. They were first engaged on 16.8.1998. They are seeking regularisation on the post of Floor Assistant.

5. Two questions were raised before the Tribunal:

- (i) whether the respondents are entitled to such regularisation; and
- (ii) whether they fulfil the requirement about age qualification as prescribed under the relevant recruitment rules.

At the relevant time, the maximum age prescribed under the relevant recruitment rules was 25 years.

6. By order dated 8.2.1991 passed in O.A No.894 of 1990 the Tribunal had directed the Union of India to formulate and implement a scheme of regularisation of Casual Artistes who had done 120 days of casual service. In accordance with the said direction given by the Tribunal, the Central Government framed a scheme for regularisation which was approved by the Tribunal by its order dated 14.2.1992 passed in O.A No.563 of 1986. The said scheme has been notified vide office memorandum dated 9.6.1992. Under para 6 of the scheme, the upper age limit would be relaxed to the extent of service rendered by the Casual artistes at the time of regularisation and a minimum of 120 days' service in the aggregate in one year should be treated as one year's service rendered for the purpose. By office memorandum dated 10.6.1992, general guidelines have been issued to facilitate the implementation of the scheme. In clause (ii) of the said guidelines, it is stated that for determining the number of years for which age concession is to be given, engagement for a total period of 120 days in one calendar year will be taken as one year. The said scheme has been revised by OM dated 17.3.1994 and OM dated 5.7.1994.

7. In the impugned judgment, the Tribunal has referred to Note I below clause 12 of the recruitment rules wherein provision has been made for relaxation in age up to 35 years for government servants. The Tribunal has directed that the respondents are entitled to the benefit of relaxation of age in view of the said provision so as to enable them to be considered for regularisation. In our opinion, the said direction given by the Tribunal cannot be upheld. The matter of regularisation 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 9.6.1992 as modified by OMs dated 17.3.1994 and 5.7.1994 and they cannot be granted relaxation in age dehors the said provisions. The appeal is accordingly allowed and the impugned judgment of the Tribunal is set aside and it is directed that the matter of regularisation of the respondents will be considered by the appellants in accordance

with the scheme as notified vide OM dated 9.6.1992 as modified by OM dated 17.3.1994 and OM dated 5.7.1994. Such consideration shall be done within a period of two months. No orders as to costs. "

8 It is pertinent to note that the order of this Tribunal in O.A 894/1990 granting of relaxation of age to the applicants therein at the time of regularisation was not approved by the Apex Court. The Apex Court held that the direction by this Tribunal granting relaxation in age cannot be upheld and that the age relaxation of the aforesaid casual floor assistants had to be considered only in accordance with the provisions contained in the scheme as modified. A copy of the aforesaid scheme as modified till 5.7.1994 has been marked by the applicant as Annexure nos. A-5, A-6 and A-7 respectively.

9 As per the directions contained in the aforesaid order by the Supreme Court of India, it appears that the respondents undertook a re-look into the order of regularisation of the applicant also. It has to be observed that the applicant obtained order of regularisation as per Annexure A-4 order of this Tribunal. A reading of Annexure A-4 order of this Tribunal further shows that this Tribunal allowed the O.A filed by the applicant by way of parity vis-a-vis the party respondents in that O.A. The aforementioned order of the Apex Court was in fact in the appeal filed by the department against the order of this Tribunal in O.A 1123/1992 where the aforesaid party respondents were ordered to be considered for regularisation in accordance with the scheme for regularisation of casual artists.

10 : On verification of the case of the applicant, it was detected by the official respondents that a mistake had occurred to the dealing hand while reckoning the age of the applicant at the time of processing the papers for regularisation. Respondents have produced the file notings relating to the regularisation of the applicant where it was shown that the applicant's age as on 9.6.1992 was 30 years and hence he is eligible for regularisation. After the aforesaid decision of



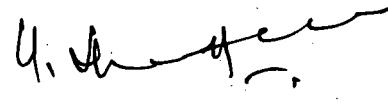
the Supreme Court of India, the respondents found out that this was an error which is not disputed by the applicant either. According to respondents as on 9.6.1992 the applicant had, after relaxation of the upper age limit, exceeded in his age by one month and 29 days.

11 It has to be noted that the Apex Court did not agree to the direction given by this Tribunal in O.A 1123/1992 regarding the directions issued in that case that they are entitled to the benefit of relaxation in age up to 35 years. The Apex Court held that such relaxation should be made in accordance with the scheme. The aforesaid decision of the Apex Court is binding on the applicant vide the conditionality attached to Annexure-A/4

12 Applicant's counsel made arguments from different angles justifying applicant's regularisation vide Annexure A-9 order including the argument that he has the required length of service for regularisation as per the scheme. It was also contended that since the applicant joined as a casual Artist in 1985 he has rendered a long service for nearly 17 years in Doordarshan Kendra. However, in view of the binding nature of the Apex Court's decision regarding the relaxation of age limit, the applicant cannot be said to have obtained his regularisation vide Annexure A-9 order in accordance with the provisions of this scheme. It is not disputed by the applicant that he is over aged as on 9.6.1992, his age exceeding 30 years by one month and 29 days. As punctilious obedience of the afore-quoted order of the Apex Court is mandatory on all concerned, we are not inclined to grant any concession to the applicant regarding his age in the matter of his regularisation vide Annexure A-9 order and in the order of appointment which followed. Learned counsel for applicant strenuously argued for a sympathetic view of the matter, considering the length of service he had put in. However, in view of the binding nature of the decision of Apex Court, we are not inclined to grant any leniency in this matter. We hold that the applicant's

regularisation as Floor Assistant vide Annexure A-10 as his appointment was *per se* illegal in the light of the afore-quoted order of the Hon'ble Supreme Court of India. In the result, we find no merit in this Original Application. The Original Application is dismissed. The interim order granted by this Tribunal at the time of admission hearing on 31.5.2012 is hereby vacated. It is made clear that the salary and other financial benefits enjoyed by the applicant so far shall not be recoverable. No costs.


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(U. SARATHCHANDRAN)
JUDICIAL MEMBER

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