

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 461/99

Monday this the 13th day of August, 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.G.Baiju
TC-2/1518
Goureesapattom
Pattom Palace P.O.
Trivandrum - 695 004.

Applicant.

[By advocate Mr.Sasidharan Chempazhanthiyil]

Versus

1. The Director
Doordarshan Kendra
Trivandrum.
2. The Director General
(Broadcasting Corporation of India)
Doordarshan Kendra, New Delhi.
3. Union of India represented by
Its Secretary
Ministry of Information &
Broadcasting, Shastri Bhavan
New Delhi-110 001
4. Honeymol Kuriakose
Make-Up Assistant
Doordarshan Kendra, Trivandrum. Respondents.

[By advocate Ms.Rajeswari.A., ACGSC]

The application having been heard on 13th August, 2001,
the Tribunal on the same day delivered the following:

O R D E R

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

Applicant seeks the following reliefs:

- i) Call for the records and quash A-9 in as much as it granted a transfer to the 4th respondent as Make-Up Assistant in the vacancy that arose on 3.3.99 at Doordarshan Kendra, Trivandrum.
- ii. Declare that the applicant is entitled to be regularized as a Make-Up Assistant and direct the respondents 1 & 2 to regularize him with effect from 3.3.99 with all consequential benefits including back wages.



iii. Direct the 2nd respondent to consider the regularization of the applicant as a Make-Up Assistant with effect from the date of regularization of Casual Make-Up Assistants with lesser service than the applicant in other Kendras under the 2nd respondent and grant him all consequential benefits.

iv. Direct the 1st respondent to engage the applicant continuously till regularization if work is available and in preference to those with lesser casual service in Doordarshan Kendra, Trivandrum.

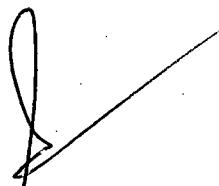
v. Direct the 1st respondent to consider the regularization of the applicant in a post reserved for handicapped persons under Section 33 of 'The Persons with Disabilities (Equal Opportunities etc.) Act, 1995', in the category of Make-Up Assistant or Programme Assistant or Artists or other similar categories.

vi. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

vii. Award the cost of these proceedings.

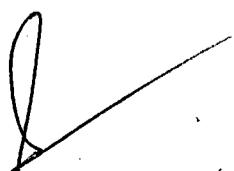
2. Applicant is a Make-Up Assistant working under the 1st respondent on daily wage basis. Casual artists under the respondents are entitled to be regularized against existing posts provided they work for a period of 120 days in a year. He is entitled to be regularized as Make-Up Assistant in the light of A-2. He submitted several representations to the first respondent. As per A-6 he was informed that as and when a vacancy arises he will be considered. One B.V.Rao, Make-Up Assistant working under the first respondent requested for a transfer to North Eastern Region. His request was granted, presumably as there was no waiting list of casual Make-Up Assistant at North Eastern Region.

3. In the reply statement filed by the official respondents, the contentions raised are that for Prasar Bharati employees for service in North-East India and Kashmir regions, there is a transfer policy formulated. The tenure in these regions is two years. B.V.Rao, Make-Up Assistant, Trivandrum



Kendra submitted his willingness to be posted to North Eastern Region. He was accordingly posted at Itanagar. Meanwhile, 4th respondent, Make-Up Assistant, Doordarshan Kendra, Itanagar was transferred to Southern Region on compassionate grounds. She was posted to Trivandrum Kendra on mutual basis. No clear vacancy has arisen at Trivandrum Kendra either by retirement, resignation or by creation of additional posts. In the instant case, transfers are effected on mutual representation and no post has fallen vacant to consider regularization of eligible casual artists. Regularization of the applicant will be considered as and when vacancy arises. Since 4th respondent has been transferred to Doordarshan Kendra, Trivandrum, the question of vacancy in the grade of Make-Up Assistant does not arise at Trivandrum.

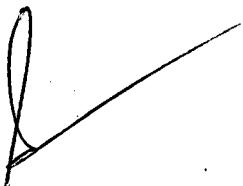
4. Learned counsel appearing for the applicant drew our attention to A-6 and submitted that the official respondents had given an assurance to give him regularization at Trivandrum Kendra as and when a vacancy in the said grade arises. What is stated in A-6 is that "As and when a vacancy in the said grade is available, your case for regularization will be considered." So what the respondents have stated is that when a vacancy arises, the applicant's case will be considered. What the applicant is now saying is that a vacancy has arisen due to the transfer of B.V.Rao and, therefore, he should have been regularized and posted at Trivandrum Kendra. But the same time it is the admitted case of the applicant that the 4th respondent was transferred and posted in place of B.V.Rao. Official respondents have specifically stated that the 4th

A handwritten signature in black ink, consisting of a stylized 'J' shape on the left and a diagonal line extending from it towards the right.

respondent was working as a Make-Up Assistant at Itanagar and as she had requested for a transfer to southern region on compassionate ground she was posted in place of B.V.Rao who was transferred to Itanagar. So it is clear that the 4th respondent is a regular Make-Up Assistant under the official respondents. What the applicant is seeking is that ignoring a regular Make-Up Assistant, a casual Make-Up Assistant should be posted at Trivandrum due to the transfer of B.V.Rao. What is the legal basis is not either stated in the OA or submitted across the bar.

5. Reliance is placed by the learned counsel for the applicant on A-7. A-7 says that 'due to the availability of eligible casual Make-Up Assistants for regularization at DDK, Hyderabad, the transfer request of B.V.Rao, Make-Up Assistant to DDK, Hyderabad cannot be acceded to.' That does not give a vested right to the applicant to get a regular Make-Up Assistant thrown out and to have the post of make-Up Assistant at Trivandrum Kendra occupied by him.

6. Learned counsel appearing for the applicant drew our attention to A-16. A-16 is a proposal of Prasar Bharathi. The learned counsel submitted that the proposal has been approved by the Government. What A-16 says is that posting to North-East and Jammu & Kashmir regions will be restricted to two years unless the employee himself is agreeable for an extension and everybody posted to these regions shall be given the option to indicate three stations of posting in order of

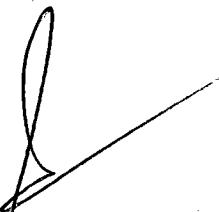
A handwritten signature in black ink, consisting of a stylized 'J' shape on the left and a diagonal line extending to the right.

priority and all efforts will be made to post him/her at one of these three stations of choice after completion of his/her tenure. This will not give any right for the applicant to get regularization and a posting at Trivandrum.

7. Here it is a case where one regular incumbent working at Trivandrum was transferred to Itanagar and another regular incumbent working at Itanagar was transferred and posted at Trivandrum Kendra. So, no vacancy has arisen at Trivandrum Kendra. That being the position based on the strength of A-6 the applicant cannot claim that he should be given regularization and a posting at Trivandrum.

8. One of the grounds raised is that the transfer of the 4th respondent is liable to be quashed as it is to deprive the applicant of his right of consideration for appointment in a post of Make-Up Assistant arising out of A-6. If this ground is accepted, the effect will be that it will deprive 4th respondent's right to get a posting at Trivandrum Kendra. The 4th respondent is a regular hand and the applicant only a casual Make-Up Assistant. There is no ground to quash the order of transfer of the 4th respondent to Trivandrum Kendra.

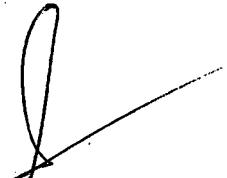
9. Another ground raised is that "non-regularisation of the applicant in any one of such posts in the absence of a vacancy under the first respondent is illegal". So the applicant is claiming that he should be regularized in the absence of a vacancy. What is basis for this is not known.



10. Another ground raised is that having kept a panel of casual Make-Up Assistant eligible for regularization the respondents should have sanctioned justified posts for regularization instead of engaging several casual Make-Up Assistants on casual basis to do the regular nature of work. It is for the administration to decide how many posts should be sanctioned and how many should be filled and whether additional posts are to be sanctioned or not. It is not for the Tribunal to direct the Administration to sanction or not to sanction, to fill or not to fill the vacancy. It is upto to the Administration.

11. During the course of the argument, learned counsel appearing for the applicant submitted that the applicant is willing to work anywhere in India if the official respondents are ready to regularize him and give him a posting. In this context it is necessary to see the reliefs sought meticulously. From the reliefs sought, applicant is claiming a posting after regularization at DD Kendra, Trivandrum only. So based on the reliefs claimed this submission cannot be accepted. At the same time it is to be noted that in the rejoinder the applicant has stated that he is willing to be posted in any of the DD Kendra under the second respondent as he has been found eligible and that he may be regularized in any one of the DD Kendra under the second respondent.

12. One other ground raised is that on the strength of 'The Persons with Disabilities (Equal Opportunities etc.) Act, 1995, applicant is entitled to regularization. That Act itself

A handwritten signature in black ink, consisting of a stylized 'J' shape on the left and a diagonal line extending to the right.

provides how the remedies provided in the said Act are to be worked out. If applicant has got any grievance based on the said Act, he should approach the authorities prescribed under that Act. He cannot straight away approach this Tribunal.

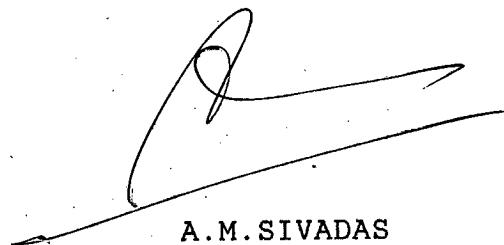
13. Thus the position is that based on the reliefs sought, the OA is only to be dismissed and we do so.

14. As the applicant has stated in the rejoinder that he is willing to be posted in any one of the DD Kendra under the 2nd respondent and he may be regularized in any one of the DD Kendras, permission is granted to the applicant to submit a representation to the 2nd respondent if so advised within a period of two weeks from today. If such a representation is received, the 2nd respondent shall consider the same and pass appropriate orders.

Dated 13th August, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A. M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A-9 True copy of the order No.24(1)/1/97-SI(A)/107 dated 11.2.99 issued by the 2nd respondent.
- A-2 True copy of the service details of the applicant signed by the Asstt. Engineer, Doordarshan Kendra, Trivandrum.
- A-6 True copy of the letter No.2(6)/97-AI/DKT dated 14.8.97 issued by the 1st respondent.
- A-7 True copy of the memo No.12(1)/95-AI/DKT(BVR)/1020 dated 28.10.95 issued by the 1st respondent.
- A-16 True copy of the circular No.14(3)98-AT/DKT dated 10.8.98 of the 1st respondent.