

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION No.507 of 2006

Dated the.....9th..... July, 2008

C O R A M:

**HON'BLE GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

1. K. Wilson,
Camaraman Gr.III,
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram-43.
2. M Sritharan,
Camaraman Gr.III,
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram-43.

.. Applicants

(By Advocate : Mr P Santhoshkumar and Ms Dhanya Santhosh.)

-Versus-

1. Union of India,
Represented by the Secretary,
Ministry of Information & Broadcasting,
Government of India, New Delhi.
2. The Director General,
(Prasar Bharati Broadcasting Corporation
of India), Doordarshan Bhavan, Coper Nicus Marg,
Mandi House, New Delhi-1.
3. The Director,
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram-43.


Respondents

(By Advocate : Mr NN Sugunapalan and Mr S Sujin)

The application having been heard on 29th May, 2008, the Tribunal delivered the following:

ORDER

(Hon'ble Dr.KS Sugathan,AM)



There are two applicants in this OA. These applicants are presently working as Cameraman Gr-III in Doordarshan Kendra, Trivandrum. The grievance of the applicants is that that they ought to have been regularized from the year 1992 as Lighting Assistants in accordance with the scheme of regularization issued by the Respondents vide OM dated 09.6.92 and 10.6.92. Instead of regularizing them as Lighting Assistant with effect from 1992 they have been regularized w.e.f. 03.9.97. It is also their contention that on the basis of their entitlement for regularization wef 1992 they ought to have been promoted as Cameraman Gr-III after 5 years of service as Lighting Assistant counting their service from 1992. On the other hand, they have been promoted as Cameraman Gr-III only in December 2005. Representations made by the applicants seeking redressal of their grievances have been rejected by the respondents by communications dated 2.5.06 (Annexure-A14 and A15). The applicants pray for quashing of Annxures-A14 and A15 and also for issuing a declaration that they are entitled for regularization wef 9.6.92 as Lighting Assistants and further promotion as Cameraman Gr-III wef 8.6.97 with all consequential benefits.


2] Respondents have contested the OA and filed reply statement. It is contended in the reply statement that a scheme was formulated by Director General, Doordarshan in pursuance to the directions of the Hon'ble Supreme Court and the Central Administrative Tribunal, Principal Bench in OA 563/86 for regularization of casual staff Artists against the available vacancies. The scheme for regularisation was issued by OM No.2(3)/86-SI dated 09.6.92. As per the said scheme, casual artists who were employed prior to 31st December, 1991 would be eligible for regularization subject to fulfillment of certain conditions. Such regularization is subject to availability of vacancies. The case of the applicants was considered by Doordarshan Kendra, Chennai after extending age relaxation of 5 years and the applicants have been found eligible for regularization. Both the applicants have been regularized as Lighting Assistants with effect from 03.09.97. Since no specific vacancies of Lighting Assistants were available they have been accommodated against the vacant posts of Cameraman Grade-III. The applicants were further promoted as Cameraman Grade-III wef 7.12.05. As per Recruitment Rules for the post of Cameraman Grade-III, 50% of the posts are to be filled up by promotion from among the Lighting Assistants with minimum of 5 years regular service and successful passing of three months conversion course conducted by Indian Institute of Mass Communications or Departmental Training Institution. The applicants were deputed for the Conversion course of Lighting Assistants conducted at Regional Staff Training Institute (Tech),

All India Radio & Doordarshan, Bhubaneswar from 15.3.04 to 14.6.2004. The applicants were regularized as Lighting Assistants against the newly created posts of Cameraman Grade-III w.e.f. 03.9.97. These posts of Cameraman Gr-III were created by the Ministry's letter dated 16.10.95. With the approval of the competent authority, the applicants were regularised as Lighting Assistants against these newly created posts of Cameraman Grade-III. According to the guidelines issued by the Ministry on 10.6.92 the respondents cannot exceed the number of available vacancies while regularizing the casual artists and, therefore, the applicants could not have been regularized prior to the sanction of two posts of Cameraman Gr-III in October 1995. The casual Artists are to be regularized in accordance with the order of seniority against the available vacancies only in the concerned Kendra. The allegation that 147 posts of Lighting Assistants were sanctioned vide Ministry's letter dated 29.7.96 is false. In the copy of the letter dated 29.7.86 produced by the applicants (A-12), the applicants have altered the designation of Engineering Assistants as Lighting Assistants at Sl. No. 5 to make it appear as if 147 posts of Lighting Assistants were sanctioned. This is a *mala fide* act. In fact, by the said order the Ministry had abolished 42 posts of Lighting Assistants all over India. If the posts of 42 Lighting Assistants are being abolished there is no question of creation of new posts by the same order itself. The applicants have, therefore, not come before this Tribunal with clean hands. A copy of the said order dated 29.7.96 is at Annexure-R.1(C)(2). It may be seen from R1(C)(2) that

the posts created at serial No.5 are that of Engineering Assistant. It is further averred that Lighting Assistants can be considered for promotion as Cameraman Gr-III only after completion of minimum 5 years of regular service and only on successful passing of conversion course. The applicants passed the conversion course during 2004, and, thereafter they have been promoted as Cameraman Gr-III.

3] We have heard learned counsel for the applicants Mr. P Santhoshkumar and learned counsel for the respondents Mr. Sugunapalan and Mr. S. Sujin. We have also perused the documents carefully.

4] The issue for consideration in this OA is whether the applicants are entitled for regularization as Lighting Assistant wef 9.6.92 and further promotion on the basis of the said date.




5] It is not disputed by the respondents that as per the Scheme of regularization issued by the Ministry on 9.6.92 both the applicants were found eligible for regularization as Lighting Assistant. But regularization has to be done against available vacancies. Since sufficient number of vacancies were not available the applicants' names were kept in waiting list. When new vacancies in the posts of Cameraman Gr-II became available in the year 1995 it was proposed to regularise the applicants as Lighting Assistant against the newly sanctioned posts of Cameraman Gr-III. When

the proposal was approved, the applicants were regularized by order dated 3rd September, 1997.

6] On the other hand, the applicants' contention is that vacancies were always available and, therefore, they ought to have been regularized from 1992 itself. They have also highlighted the point mentioned in the Ministry's OM No. 12.5.93 (Annexure-A6) to the effect that the process of regularization should be completed by 30th June, 1993. We are unable to accept the contention of the applicants that the scheme of regularization issued by the respondents on 9.6.92 is not subject to the availability of vacancies. It is very clearly stated in the OM dated 9.6.92 that Casual Artists will be considered for regularization in accordance with the scheme in order of their seniority and against the available vacancies in that particular Kendra. It has further been clarified in para (v) of the OM dated 10.6.92 [Annexure-R.1 (b)], as follows:


"[v] The regularization of casual Artists in accordance with the scheme will be done only to the extent of existing vacancies and should not, in any case, exceed that number. After, all the vacancies have been filled up by regularization of casual Artists no fresh engagement of casual Artists should be done."



7] The reference to the completion of regularisation process in OM dated 12.5.93 (Annexure-A6) does not mean that all the Casual Artists should be regularized before that date irrespective of availability of vacancies. What is sought to be conveyed by stipulating a dead line is that the process of regularization in

respect of available vacancies must be completed before the 30th of June 1993.

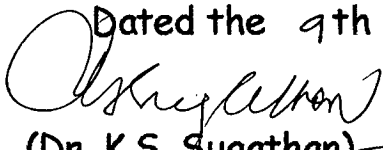
8] The applicants have referred to creation of 147 posts of Lighting Assistants vide order dated 29th July 1986. The respondents have countered the contention by stating that relevant entry at Sl. No.5 of the order dated 29.7.86 has been tampered with and instead of "Engineering Assistant" it is shown as Lighting Assistants in the copy produced by the applicants. The Respondents have produced a copy of the letter No.505/14/84-TV (A) dated 29th July, 1986 at Annexure-R/1 (C)(2). They have also produced Annexure-I to the letter dated 29.7.86. Annexure-I is a Kendra-wise break-up of the posts sanctioned. The letter dated 29.7.86 or it's Annexure-1 does not show that any new posts of Lighting Assistants were created by this letter, whereas 147 posts of Engineering Assistants were ^ecr^eated. In view of the above, this Tribunal is not inclined to rely on the copy of the order dated 29.7.86 (Annexure-A12) as produced by the applicants.

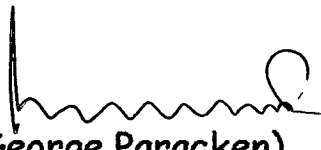
 **9]** On the issue of further promotion to the post of Cameraman Gr-III it has been clarified by the respondents that Recruitment Rules stipulate not only 5 years of regular service but also successful passing of 3 months conversion course for promotion. The applicants were sent for conversion Course from 15.3.2004 to 14.6.2004. They have cleared the conversion course and thereafter they were considered for promotion on the basis of the recommendation of DPC and were promoted as Cameraman Gr-III

w.e.f. 7.12.2005. We do not see any irregularity or illegality in the steps taken by the respondents in considering the promotion of the applicants to the post of Cameraman Gr-III.

In regard to the date of regularization as Lighting Assistants, the facts of the case indicate the need for a partial relief. It is admitted by the respondents that the applicants were promoted against the vacancies of Cameraman Gr-III, which was created vide order dated 16.10.95. However, the process of regularization was delayed for about 2 years and actual order of regularization was issued only on 3rd September, 1997. Hence, we are of the considered opinion that as the vacancies became available on 16.10.1995 the applicants ought to have been regularised from that date.

10] For the reasons stated above, the OA is partly allowed. The respondents are directed to modify the order of regularization of the applicants as Lighting Assistants to make it effective from 16.10.95, viz. the date on which the vacancies were created and give them all consequential benefits that are admissible under the Rules. This shall be done within a period of three months from the date of receipt of this order. Under the circumstances, there shall be no orders as to cost.

Dated the 9th July, 2008.

 (Dr. K.S. Sugathan)
 Administrative Member


 (George Paracken)
 Judicial Member

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