

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. No. 612 OF 2002**

Tuesday, this the 23rd day of August, 2005.

**CORAM :**

HON'BLE Mr. K. V. SACHIDANANDAN, JUDICIAL MEMBER  
HON'BLE Mr. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. S. Kuttan Pillai  
Vadakkevila Puthen Veedu  
Madanthacode, Kuzhimathicadu P.O  
Kottarakara
2. K. P. Mohanakumaran Nair  
Kizhakkinkara Puthen Veedu  
Kurussumuttam, Kundamon Bhagom  
Peyad P.O., Thiruvananthapuram : **Applicants**

(By Advocate Mr. T.C.Govindaswamy )

**Versus**

1. Union of India represented by its  
Secretary, Ministry of Information & Broadcasting  
New Delhi.
2. The Chief Executive Officer  
Prasar Bharathi Broad Casting Corporation of India  
Mandi House, New Delhi
3. The Director  
Prasar Bharathi Broad Casting Corporation of India  
Doordarshan Kendra  
Thiruvananthapuram
4. The Director (Administration) Prasar Bharathi  
Directorate General of Doordarshan  
Doordarshan Bhawan  
New Delhi : **Respondents**

(By Advocate Mr. P.J.Philip, ACGSC (R1)  
Mr.N.N.Sugunapalan, R 2-4) )

The application having been heard on 14.07.2005, the Tribunal on  
23.08.2005 delivered the following :

ORDER

**HON'BLE Mr. K.V. SACHIDANANDAN, JUDICIAL MEMBER**

The two applicants in this O.A were engaged as Casual Floor Assistants in the Doordarshan Kendra, Trivandrum for the period from 01.09.1988 to March, 1990. They were paid wages at the rate of Rs. 70/- per day to work as Artist on assignment (Casual Floor Assistant) throughout the period from 1988 to 1990. Though they were eligible to be considered for regular appointment as Floor Assistant they were not considered for the post. Applicants alongwith one Mr.G.Sreekumar filed OA 522/89 before this Tribunal which was disposed of by directing the respondents therein to allow the applicants to participate in the written test and interview. Applicants secured the required marks and appeared for the interview. But they were not selected for regular appointment and therefore they again filed OA 53/91 challenging the said selection. This Court while disposing of the said OA directed the respondents to extend the applicants also, the benefit of Principal Bench order dated 08.02.1991 in O.A.No. 894/90. Thereafter five persons were appointed as Floor Assistants on adhoc basis and again aggrieved, they have filed OA 1123/92 before this Tribunal. This Tribunal allowed the OA declaring that the applicants were entitled to be regularised as per Annexure A-2 therein and directing the respondents to include the name of the applicants for regularisation (Annexure A5). Respondents have filed SLP(C) 14678/93 challenging the said order which was disposed of on 14.03.1996 (Annexure A-6). " SLP against Shri G.Sreekumar was not pressed and hence the SLP against him was dismissed. " While so, one Mr.B. Sreekumar was appointed on a temporary capacity as Floor Assistant as per orders dated 28.03.1994 in O.A No. 793/93 subject to the outcome of the SLP. (Annexure A-7). The Tribunal directed that the services of Mr.B. Sreekumar be regularised as that of Mr G. Sreekumar in this O.A. B. Sreekumar was appointed as per Annexure – A 7 order This was ordered on the precise that the applicant and G. Sreekumar were already regularised as Floor Assistant. It was reported before Hon'ble Supreme Court that G. Sreekumar was not appointed as Floor Assistant and the SLP against him was dismissed as not pressed. G.Sreekumar filed C.C.78/97 before this Tribunal and he was appointed in relaxation of rules. Applicants having been subjected to hostile discrimination filed OA 1099/97 before this Tribunal to regularise his services as Floor Assistant. The O.A was finally heard and disposed of vide Annexure A-17 order dated 16.12.1999. Thereafter the applicants were served with O.M dated 18.02.2000 and 17.03.1997 respectively wherein it was shown that the applicants had worked for 120 days or more in the



year 1989 only. Their case was further considered vide OM dated 17.03.1994 and they were found to be over aged at the time of their initial engagement. Even after giving them age relaxation of one year for the year 1980 during which they had worked for more than 120 days, they were found to be over aged by two years and 5 months. Both the applicants have been found to be ineligible for regularisation as per (Annexure A-18 & A-19). Aggrieved by the said decision on the part of the respondents, the applicants have filed this Original Application seeking the following reliefs:

- a) Call for the records leading to the issue of Annexure A 18 and quash the same.
- b) Declare that the applicants are identically placed like Shri B. Sreekumar appointed as Floor Assistant as per Annexure A 7 order dated 27.10.1995 and Shri G. Sreekumar against whom SLP was not pressed before the Hon'ble Supreme Court and that the applicants are entitled to equal treatment by regularising their initial appointment as was done in Annexure A 7.
- c) Direct the respondents to regularise and appoint the applicants as Floor Assistants with effect from the respective dates of their entitlements with full consequential benefits including arrears of pay and allowances.
- d) Award costs of and incidental to this Application.
- e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The respondents have filed a detailed reply statement contenting that the applicants were engaged as Casual Floor Assistants during 1988-90 purely on short term contract as per requirement of the Kendra for not more than 10 days in a month as and when required. While filling up few regular vacancies during 1989, the applicants had also applied and found that they were over aged as per the then Recruitment Rules and their applications were rejected. The age limit for Floor Assistant is 18-25. They were allowed to appear in the written test and interview as per orders of this Tribunal. As per directions they were considered alongwith other applicants on merits but were found to be ineligible. This was done in tune with the Principal Bench's judgment wherein the respondents were directed to extend the benefit of the order dated 08.02.1991. It also directed to include the name of the applicants. The matter was taken up before Supreme Court in SLP wherein the aforesaid order was set aside directing that the matter of regularisation will be considered in accordance with the Scheme dated 09.06.1992, 17.03.1994 and 05.07.1994. The SLP filed against one G. Sreekumar who was a co-applicant, was



dismissed because the wrong information given to the Government Counsel It is submitted that in view of the dismissal of SLP , the Tribunal's order will have to be implemented to avoid the contempt in so far as G. Sreekumar is concerned. The relaxation of rule was evoked as a special case, in the case of G. Sreekumar and that such relaxation shall not be taken as a precedent for future cases/references. It will have severe repercussions for the department. As per Scheme, a candidate is eligible for age relaxation of one year if he completes 120 days of casual assignment in a calendar year on or before 09.06.1992 (the crucial date) which was granted to such candidates. None of the applicants had worked for more than 120 days to make them eligible for regularisation. As per the Liberalised Regularisation Scheme dated 17.03.1004 and 05.07.1994 age relaxation of one year each for having worked 120 days in a Calendar year were granted to the applicants. Nevertheless, they found fit for the selection.

3. The respondents have filed an additional reply statement reiterating the contentions made in the initial reply statement and further submitting that both the applicants were over aged on the date of their engagements .

4. The applicant have filed a rejoinder contending that Annexure A-18 has been passed on a misconception of true facts of Annexure A-19 office memorandum. The scheme for regularisation of casual artists has come into force on 09.06.1992 and the crucial date for the purpose of calculation of age is 09.06.1992. The date of birth of 1<sup>st</sup> applicant is 26.06.1962 and not 25.07.1962. It is true that date of birth of 2<sup>nd</sup> applicant is 15.05.1960 The criteria adopted by the respondents in calculating their age is strange and absurd as the applicants were not over aged.

5. Shri T.C. Govindaswamy learned counsel appeared for the applicants and Shri N.N. Sugunapalan, Sr.Advocate appeared for R 2 to 4 and Mr.P.J.Philip appeared for R 1. We have given due consideration to the arguments advanced by them.

6. The learned counsel for applicants took us through various judgments mentioned in the OA and argued that the impugned orders rejecting the claim of the applicants are not in conformity with the directions given in OA 1099/97. and the order denying regularisation to the applicants on the ground that they were over aged, was passed without application of mind.



7. Shri N.N.Sugunapalan, Sr.Advocate appearing for the respondents submitted that the orders were passed by the respondents in compliance of Annexure A-6 and A-17 judgments and the respondents were only implementing the directions of the Court orders. The judgments were bindings the applicants since it was interse and further the applicant cannot content that the rejection of the applicant's case is faulted.

8. We have given due consideration to the arguments advanced by the learned counsel. It is borne out from the materials placed on record that this issue is subjected to various court proceedings and finally it came to be decided by Annexure A-17 order of this Tribunal in OA 1099/97 dated 16.12.1999, in which every efforts have been taken by this Tribunal to cover all issues including the observation made by the Hon'ble Supreme Court in SLP 14678/93. According to the said judgment matter of regularisation of the applicant would be considered by the Department in accordance with the Scheme as notified vide O.M dated 09.06.1992 followed by modification through O.Ms dated 17.03.1994 and 05.07.1994. The grievance of the applicant in the said O.A was that the respondents did not consider the applicants as directed by the Hon'ble Supreme Court. After having an elaborate discussion this Court observed in the order of the O.A as follows :-

" In the result the OA is disposed of as follows:

We declare that the case of the applicants for regularisation at their services had not been considered in terms of O.Ms dated 09.06.1992, 17.03.1994 and 05.07.1994 at Annexure A-V, A-VI and A-VII.

The 1<sup>st</sup> respondent is directed to consider their cases in terms of para 3 of O.M dated 17.03.1994 (A-VI) and Para 1(h) of the O.M dated 05.07.1994 (A-VII).

If as a result of consideration under (ii) above it is found that they had put in more than 120 days in any of the year/s, in terms of Para 4 of O.M dated 17.03.1994, refer the matter of the applicants to the second respondent for taking a proper decision in terms of Para 4 as expeditiously as possible :

The first respondent is directed to take action as in (ii) and (iii) above within one month of receipt of the copy of this order.

The second respondent shall take appropriate decision in the matter regarding the claim of the applicants for regularisation as Floor Assistants in the light of the scheme ordered vide O.M. Dated 09.06.1992 as modified by O.M dated 17.03.1994 and 05.07.1994 within a period of two months from the date of receipt of the reference from the first respondent as in (iii) and (iv) above and communicate the same to the applicants. Parties shall bear their respective costs. "



9. Now in compliance of the said order the respondents have passed Annexure A-18 impugned order denying the claim of the applicants As against the claims of one G.Sreekumar, a co-applicant in the earlier proceedings, the matter was taken up in the SLP and the said SLP was dismissed due to giving a wrong information to the Government counsel and in this circumstances, the Ministry of Law advised that relaxation in rules is to be given to G.Sreekumar as a special case with the stipulation that such relaxation shall not be taken as a precedent for future cases/references. It is also submitted that by an order of the Ernakulam Bench of the Central Administrative Tribunal the matter had attained finality and it will have to be implemented to avoid contempt. With regard to B. Sreekumar, he was appointed in 1995 and he was found eligible as per the Liberalised Regularised Scheme of 1994. In para 5 of the reply statement it is made clear that the date of birth of B. Sreekumar is 10.04.1959 and he was over aged by one month and 29 days on the crucial date even after extending necessary relaxation as per the Regularisation Scheme.

10. On going through the pleadings and material placed on record and taking into consideration the master requirements mentioned in the order of the Tribunal the respondents have worked out a criteria correctly, which was finally adopted. The date of birth of the 1<sup>st</sup> applicant is 25.07.1962 and the date of initial engagement was 11.09.1988. His age as on 09.06.1992 is 29 years and after giving age relaxation of 1 year, he is found to be over aged making them ineligible for regularisation. Similarly, the date of birth of the 2<sup>nd</sup> applicant is 15.05.1960 and his age as on 09.06.1992 is 32 years and after giving age relaxation of one year, he is also found to be over aged. Further, it is submitted that the age of the 1<sup>st</sup> applicant on the date of initial engagement, i.e 11.09.1988, was 26 years and one month. The policy/practice being followed in such cases (i.e over aged at the initial engagement itself) is that the casual artist is considered at the maximum age on 31<sup>st</sup> December of the year of engagement. Accordingly, the age of the 1<sup>st</sup> applicant was considered to be 25 years on 31.12.1988. By applying this formula, he was found to be over aged by 2 years 5 months on 09.06.1992 (crucial date for calculating age) even after giving age relaxation of one year for 1989 during which he had worked for 120 days or more. Similarly, the age of 2<sup>nd</sup> applicant was also treated as 25 years as on 31.12.1988 and he was also found to be over aged by 2 years 5 months. Hence the allegation put forth by the applicants is strongly denied. The age of the applicant on the date of engagement, i.e. 11.09.1988, was 26 years and 1 month and the



maximum age to be reckoned as per the policy adopted in the O.M. The 1<sup>st</sup> applicant was considered to be 25 years on 31.12.1988 and he was found to be over aged by 2 years 5 months on 09.06.1992 even after giving age relaxation of one year for 1989 during which he had worked for 120 days or more. Similarly, the age of 2<sup>nd</sup> applicant was also treated as 25 years as on 31.12.1988 and he was also found to be over aged by 2 years 5 months. Therefore, this calculation cannot be found fault with as per the O.Ms referred to above and the findings of the Tribunal. The directions of the Tribunal as emerged from the findings of the Hon'ble Supreme Court was to consider regularisation in accordance with the schemes dated 09.06.1992, 17.03.1994 and 05.07.1994. This exercise seems to be properly done by the respondents and the applicants cannot be allowed to reopen the same since it has become final. The case of the respondents is that B.Sreekumar was appointed in 1995 and even though he was over aged by one month 29 days on the crucial date, his case was considered in relaxation of age as per the scheme which was prevalent on 22.04.1985 as per the regularised scheme, 1994 when the age limit was 21 to 30 years. The applicants cannot be equated with that of B Sreekumar and even if age relaxation as per scheme is extended, the applicant's age cannot be considered as 25 and not 30 as has been done in B Sreekumar's case. For better appreciation Annexure R-2 dated 16.01.1998 is reproduced as under.

PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA)  
DOORDARSHAN : MANDI HOUSE

No.2/52/93-S1(Vol.II)

New Delhi dated the 16<sup>th</sup> January, 1998.

**" OFFICE MEMORANDUM "**

Sub:- CP(C) N0.78 of 1997 in O.A. No.1123/92 filed by Shri G.Sreekumar before CAT, Ernakulam.

Reference DDK Thiruvananthapuram's communication No. 73(1)/97-A1/DKT/27 dated 13.01.98 and this Directorate's Fax of even No. dated 9.01.98 (copy enclosed) on the subject mentioned above.

The Ministry of Law's advice is " In view of the dismissal of SLP, on any ground, the order of the Ernakulam Bench of CAT had attained finality and it will have to be implemented to avoid the contempt.

It is pointed out that Shri G.Sreekumar is not found eligible for regularisation, his case may be considered for relaxation of rules as a special case with the stipulation that such relaxation shall not be taken as a precedent for future cases/references.



As the SLP was dismissed, CAT's judgment " we allow the application to the extent of declaring that the applicants are entitled to be regularised in service in terms of Annexure 11 judgment dated 10.02.1992. Accordingly, we direct the respondents to include the name of the applicants for regularisation in the post of Floor Assistant in Doordarshan Kendra Trivandrum- - - - - in accordance with the availability of vacancy. We further direct the respondents to engage them as Casual Artists till regularisation, as and when engagement of Floor Assistant arises in the Doordarshan Kendra, Trivandrum in the exigencies of service, has become operative. As informed in Para 2 of Directorate's Fax of even No. dated 09.01.1998 the directions of CAT, Ernakulam will be met if name of Shri G Sreekumar is included in the panel of eligible Floor Assistants as per his seniority in terms of the Scheme of regularisation of Casual Artists.

As per Ministry of Law's advice " Relaxation in rules is to be given as a special case with the stipulation that such relaxation shall not be taken as a precedent for future cases/references."

Shri G.Rajiv and Shri G. Sreekumar may be regularised as and when vacancies arise in the Kendra.

Action may be taken URGENTLY on the above lines and compliance report submitted.

Sd/-  
GAYATRI SHARMA  
Deputy Director (Administration)"

11. While going through the entire proceedings placed before us we find that the relaxation of rules is not a subject matter to the findings of the Court orders.

12. Take it for a moment that there is no error in Annexure A-18 impugned order but considering that in the case of G. Sreekumar, a co-applicant and identically placed person, relaxation of rules was evoked by the respondents on the ground that due to a wrong information given to the government counsel the SLP filed against G. Sreekumar was 'dismissed as not pressed' and to avoid contempt, his case to be considered. Though G. Sreekumar is identically placed with that of the applicants, relaxation of rules was granted to the said G. Sreekumar only with a noting that ' relaxation shall not be taken as a precedent for future cases/references.' Considering the fact that the applicants were also agitating their grievance at the relevant point of time with that of G. Sreekumar, the case of the applicant cannot be treated as 'future case/reference' They could only be contemporary. The benefit granted to G.Sreekumar should not be denied to the applicants.



13. In the conspectus of facts and circumstances, we are of the considered view that the applicants are also entitled for identical treatment and without disturbing the finding of the earlier orders and the impugned order Annexure A-18 we direct the respondents to take up the case of the applicants with Ministry of Law for relaxation of rules as done in the case of G.Sreekumar, a co-applicant, as per Annexure R-2 and grant relief to the applicants notionally. The respondents shall refer the matter to the Ministry of Law forthwith and pass appropriate orders within a time frame of four months from the date of receipt of a copy of this order.

14. The Original Application is disposed of as above. No order as to costs.

Dated, the 23rd August, 2005.

  
**N. RAMAKRISHNAN**  
**ADMINISTRATIVE MEMBER**

  
**K.V.SACHIDANANDAN**  
**JUDICIAL MEMBER**

vs