

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 264 OF 2010

Thursday this the 13th day of October, 2011

CORAM:

**HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

P. Thankavel Samy
Film/Video Editor
Doordarsan Kendra
Kudappanakunnu
Thiruvananthapuram.

- Applicant

(By Advocate Mr. P. Santhosh Kumar)

Versus

1. Union of India represented by the Secretary
Ministry of Information and Broadcasting
New Delhi.
2. Prasar Bharathi (Broadcasting Corporation)
New Delhi represented by
The Chief Executive Officer
2nd Floor, P.T.I Building
Parliament Street, New Delhi – 1
3. The Director General
Doordarshan, Mandi House
Doordarshan Bhavan
Copernicus Marg
New Delhi – 110 001.
4. The Director
Doordarsan Kendra
Thiruvananthapuram.

- Respondents

(By Advocate Mr. Millu Dandapani, ACGSC for R-1)
(By Advocate Mr. N.N. Sugunapalan Senior with Mr. S. Sujin for R3&4)

The application having been heard on 29.09.2011, the Tribunal
on 13.10.2011 delivered the following:

ORDER**HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

The applicant has filed this Original Application with a prayer to direct the respondents to regularize his service as Film/Video Editor with effect from 01.05.2005 with all consequential benefits.

2. The applicant was appointed as Film Projectionist on 29.09.1988 at Door Darshan Kendra, (DDK for short) Chennai. When the posts of Projectionist were declared as surplus, the Government of India decided to absorb them in the post of Film/Video Editor against available vacancies (Annexure A-1). The applicant was directed to provide assistance in previewing and editing work in video editing (Annexure A-1 & A-2). The 3rd respondent vide Annexure A-3 dated 30.03.2005 ordered his absorption along with four other Film Projectionists in the grade of Film/Video Editor. As he did not get the offer of appointment from 4th respondent, he submitted Annexure A-4, A-5 and A-6 representations. Finally, vide Annexure A-7, the applicant was offered the letter of appointment dated 04.04.2007. The applicant avers that he should have been appointed as Film/Video Editor with effect from 01.05.2005 as ordered in Annexure A-3 and the delay has caused irreparable injury and monetary loss to him. Hence he affirms that he is entitled for regularization with effect from 01.05.2005 with salary and other benefits.

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3. The respondents controverted the contention of the applicant and filed reply statement. They submitted that the applicant and other surplus Film Projectionists were deployed to provide assistance in previewing and editing work in video editing only as an interim internal arrangement so as to utilize their services to the extent possible as the posts held by them as Film Projectionists were rendered surplus. They added that Film Projectionists who were treated as surplus did not have the prescribed qualifications for the post of Film/Video editor. They conceded that the offer of appointment was to be made to the applicant as on 01.05.2005 in the vacancy which arose at DDK, Trivandrum but for the fact that two O.As were filed before this Tribunal against which two Writ Petitions were pending before the Hon'ble High Court of Kerala. One Shri K. Parameswara Prasad and Shri P. Sivakumar Film/Video Editors at DDK filed O.A 444/2003 and O.A 221/2004 against their transfer to DDK, Silchar and DDK, Raipur respectively. In view of this fact the 2nd respondent vide Annexure R-2 instructed the 4th respondent to keep the appointment of the applicant in abeyance till Court cases are disposed of. It was also directed to adjust one Shri. P.M.S. Pillai against the vacancy of Film/Video Editor which arose from 01.05.2005. According to the respondents, since Shri P.M.S. Pillai Film/Video Editor reported for duty as per the transfer order, they accommodated him against the available vacant post of Cameraman having the same pay scale as that of Film/Video Editor. Later on as per Annexure R-2, Shri P.M.S Pillai was accommodated in the post of Film / Video Editor against the vacancy caused by the retirement of Shri Murukan on



01.05.2005. The respondent submitted that the service of the applicant was not terminated even though the post he held as Film Projectionist was abolished. Therefore, the respondents submitted that his service can count only from the date of his appointment as Film/Video Editor and not from a retrospective date as there was no vacant post to absorb him at that point of time.

4. The applicant filed rejoinder and he averred that the pendency of O.A 221/2004 and W.P @ 4249/2005 in that O.A had nothing to do with the appointment of the applicant as Shri Sivakumar, Film Editor was transferred along with his post to DDK, Raipur. He pointed out as was done in the case of Shri P.M.S. Pillai, who was accommodated against the vacant post of Cameraman Grade -III from 01.06.2003 to 30.04.2005 he could have been absorbed in the post of Cameraman Grade-III which fell vacant from 01.05.2005. He obtained some information through RTI Act (Annexure A-11) to show that in some Kendras, Film Projectionists have been absorbed in the post of Cameraman Grade-III which carry the same scale of pay, as Video Editor. Therefore, injustice has been done to him in making him wait for two more years for absorption against the substantive vacancy of Film/Video Editor.

5. The respondents filed reply to the rejoinder. They submitted that only when a Film/Video Editor was transferred from DDK, Ranchi and his reliever approached Central Administrative Tribunal, that Kendra accommodated the

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incumbent against the post of Cameraman Grade III and he is still continuing in the same post in the absence of any vacant post of Film/Video Editor. They submitted that the next vacancy in the Film/Video Editor post arose in DDK, Trivandrum only when Shri P.M.S Pillai was promoted and transferred to DDK, Mumbai. They added that it is left to the 2nd respondent to take decisions to accommodate surplus Film Projectionist against the post of Cameraman Grade-III. According to Annexure R-1, they were to be absorbed in the vacant post of Film/Video Editor only.

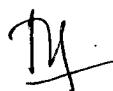
6. Heard the counsels for the parties and perused the documents.

7. The office memo of Prasar Bharati at Annexure R-1 shows that it was decided to adjust surplus Film Projectionists and Film Processors against the existing vacancies of Film/Video Editors in the ratio of 2:1 and to absorb the remaining incumbents in future vacancies. There were 34 Film Projectionists and 10 Film Processors to be absorbed against 24 vacant posts of Film/Video Editors. The respondents produced the list of 24 Film Projectionists who were absorbed in the first instance vide Annexure R-1(4). This list shows that three incumbents holding the post of Film Projectionist / Film Processors at DDK, Chennai were absorbed as Film/Video Editors in DDK Ranchi, Dibrugarh and Gorakhpur. They were all senior to the applicant. Shri M.C. Surendra Kumar placed at Sl. No. 142 in the draft seniority list produced by the applicant at Annexure A-12 is the last person to be absorbed as Film/Video Editor at DDK, Trivandrum, before the applicant,

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at Sl. No. 143 in the seniority list. Shri M.C. Surendra Kumar holds a Cinema Operators license and might have been a Film Processor earlier. His date of birth is 05.12.1958 and his date of absorption is 11.07.2005. The applicant, a matriculate with date of birth as 24.05.1959 had to wait for approximately two years for his absorption as Video Editor. The post of Film/Video Editor carries a higher pay scale of Rs. 5000-150-8000 while the Film Projectionists and Processors were in the scale of pay of Rs. 4000-100-6000. So, technically it is a promotion but Para VI of Annexure R-1 precludes financial up-gradation under ACP of DOP&T for the Film Projectionists/Film Processors, who are treated as surplus. So, availability of a substantive vacancy in the post of Video Editor is essential for permanent absorption as Video Editor. When there was undue delay in receiving an offer of appointment from the 4th respondent and when he came to know about O.A 444/2003 filed by Shri K. Parameswara Prasad against his transfer to DDK, Silchar and the absorption of Shri M.C Surendra Kumar as Film Editor in DDK, Trivandrum in 2005, the legal recourse available to him was to get himself impleaded in O.A 444/2003 and WP(C) No. 30715/2004 as his rights were affected by the pendency of the O.A as well as the W.P ©. The applicant has approached this Tribunal only in 2010 i.e. 3 years after his absorption as Video Editor in 2007.

8. The Hon'ble Supreme Court of India has made the following observation about delayed filing of O.A in Civil Appeal No. 7956/2011 (CC 3709/2011) In its judgment dated 07.03.2011, it was stated regarding

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Section 21 of Central Administrative Tribunal's Act on limitation that :

"A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

9. In the light of the observation of the Apex Court supra the cause of action is deemed to have arisen in 2003, when the O.A 443/2003 was allowed on 15.07.2004. The applicant should have been alerted, when he found that the vacancy to arise in 2005, might be utilised to adjust Shri P.M.S Pillai, who was the reliever of Shri K. Parameswara Prasad, the applicant in O.A 443/2003. He passed up one more opportunity in 2005, when his colleague Shri Sivakumar was absorbed as Film Editor in July 2005 in DDK , Trivandrum. The Apex Court has observed that the Tribunal has to take into account the delay in taking timely action to approach the judicial forum by the petitioners. In this particular case, had the applicant approached this Tribunal atleast in 2005, the Tribunal could have directed the respondents to consider his absorption against the post of Video Editor or Cameraman Grade – III an analogous post with same scale of pay as Video Editor. There was a precedent of such absorption of Film Projectionist in the post of Cameraman Grade-III (Annexure A-2). It is clearly pointed out in Annexure A-1 that the service of surplus Film Projectionist will be utilized to provide



assistance in Previewing and Editing Work in the Video Editing. They will not be entitled to any additional remuneration and such deployment will not entail them any right to hold the post. Since, the applicant did not hold the post of Film/Video Editor prior to his regular appointment as Video Editor on 23.03.2007, his regularization from 01.05.2005 cannot be considered as there was no vacant post in any of the DDK. In view of the forgoing, the applicant has failed in make out a case in his favour. The O.A. is therefore dismissed on merit as well as delay. No costs.

(Dated, the 13th October, 2011)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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