

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXX No.

38/90

189

DATE OF DECISION 20.3.1991

P.Venugopal & 2 others _____ Applicant (s)

Mr.P.R.Balachandran _____ Advocate for the Applicant (s)

Versus

The Union of India, _____ Respondent (s)
represented by the Secretary,
Ministry of Information & Broadcasting,
New Delhi and 3 others.

Mr.N.N.Sugunapalan,SCGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice-Chairman

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

The three applicants who have been working as Floor Assistants in the Doordarshan Kendra, Trivandrum, have in this application dated 12th January 1990 prayed that they should be declared to be entitled to be duly considered for employment as Floor Assistants in relaxation of the age limit or in the alternative the respondents restrained from dispensing with their services as Floor Assistants and directed to continue them in employment. They have also prayed that the written test and interview conducted in accordance with the notice at Annexure-A10 be declared to be illegal and invalid. The brief facts of the case are as follows.

2. The first applicant has been working in the Madras Doordarshan Kendra from March 1985 at a daily rate of Rs.35/- and was being engaged for 10 days a month till November, 1987. He applied for regular appointment as Floor Assistant in Doordarshan Kendra at Trivandrum, was interviewed and vide the order dated 7.9.88 at Annexure-A3 was offered appointment as an Artist on assignment as Casual Floor Assistant for 10 days from 1.9.88 to 10.9.88 for a fee of Rs.700/-. According to him he has been working in that capacity for 10 days a month without any break. The

second and the third applicants had been working in a similar manner at Trivandrum vide Annexures-A7 and A8 from dates even earlier than the date when the first applicant joined at Trivandrum. The 3rd respondent (Director, Doordarshan Kendra, Trivandrum) in January 1989 invited applications for filling up amongst others 3 posts of Floor Assistants. All the 3 applicants sent their applications, but the second and the third applicants were not even called for the written test. The first applicant was allowed to write the test, but he was not informed about the results. The applicants' grievance is that the upper and lower age limits which were 21 and 30 years earlier, has been lowered down to 18 and 25 years respectively with permission of age relaxation by 5 years for Scheduled Caste/Scheduled Tribe candidates and upto 35 years for the Government servants. They have also referred to Rule 7 of the Doordarshan Programme (Technical/Group C posts) Recruitment Rules, 1987 under which the Central Govt. can relax any of the provisions of those rules in respect of any class or category of persons. The applicants' apprehension is that because of the regular selection made, they will be ousted. They have argued that it is not their fault that they were engaged only for 10 days in a month since 1985 as they were always willing and ready to work for all the days in a month and they cannot be at this stage be thrown out of employment. They have also referred to the observations made by the Supreme Court in a number of cases in which the Court exhorted the Government to give security of employment and proper wages at par with regular Government servants. They have argued that Doordarshan is not a temporary establishment as to warrant casual employment for long periods and the respondents cannot by changing the upper age limits disqualify the applicants from seeking regular appointment as Floor Assistants. They have also relied upon the principle of Promissory Estoppel for seeking continued employment.

3. According to the respondents the applicants are not regular employees, but have been working as casual Artists on contract basis and for are being engaged/not more than 10 days at a stretch in a month as and when required. They have stated that as such they do not come within the jurisdiction of the Tribunal. The first applicant gave casual service

for 158 days between 1.9.88 and 20.1.90, the second applicant for 168 days between 16.5.88 and 20.1.90 and the 3rd applicant for 58 days during 1985 and 167 days between 12.8.88 and 20.1.90. The age limits of 21 to 30 years prescribed under the old Recruitment Rules of Staff Artists 1979 were modified to 18 to 25 years and accordingly a notice was issued in January, 1989 inviting applications on the basis of the new Recruitment Rules. The first applicant applied, he was called for the written test but he failed to obtain the qualifying marks and was not called for interview. The second applicant was 32 years old in May, 1988 when he was engaged for the first time. The question of relaxation of the provisions in the Recruitment Rules can arise only when there is non-availability of qualified candidates in spite of repeated efforts. The Recruitment Rules were issued in 1987 under Article 309 of the Constitution and the advertisement issued in January, 1989 in accordance with the Recruitment Rules cannot be questioned. Since the applicants were engaged for 10 days a month on specific contract for each occasion, they cannot claim regular assignment outside the purview of the Recruitment Rules. The question of any hostile discrimination and violations of Article 14,16 and 21 of the Constitution does not arise. They have asserted that Doordarshan is not an industry under the Industrial Disputes Act. In the rejoinder the applicants have stated that the pattern of employment of Floor Assistants on a casual basis throughout the country is to give work for 10 days a month between fixed dates and accordingly this mode of employment given to them regularly every month should be taken to be continuous service. They have argued that the relaxation provision of Rule 7 should be utilised for considering them also for regular appointment. The first applicant indicated that even though he had failed in the written test, it should not disentitle him from being absorbed in regular service under the new rules. Respondents 2 and 3 should not have been disqualified for being over-aged in accordance with the new rules.

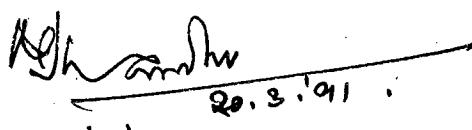
4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the first

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applicant is concerned since he has failed in the written test and was not barred by age he cannot have any claim for regular appointment as a Floor Assistant for which he has to satisfy the provisions of the Recruitment Rules. The second applicant was indicated to be 32 years of age at the time of his initial employment on a casual basis and thus he was over-aged even under the old Recruitment Rules when he was engaged for the first time. He also therefore cannot have any claim for relaxation of the Recruitment Rules for regular appointment. He was engaged for only 168 days from 16.5.88 to 20.1.90 and cannot claim regular appointment on the basis of his continuous casual employment at least for one year. The 3rd applicant was stated by the learned counsel for the applicants to be 28 years old at the time of his first appointment on 24.4.85 but he was engaged for only 58 days from 24.4.85 to 20.10.85. Thereafter there is a gap of about 3 years when he was engaged again from 12.8.88 to 20.1.90 for 167 days only. His employment for 58 days when he was within the age limit during 1985 cannot persuade us to command relaxation of age limit by virtue of his casual employment in view of the fact that there was a gap of about 3 years between 1985 and 1988. On 12.8.88 when he recommenced his casual employment on a regular monthly basis he had exceeded the upper age limit of 30 years even under the old Recruitment Rules.

5. Modification of the upper and lower age limits in the Recruitment Rules framed under Article 309 of the Constitution is the prerogative of the Government and falls within the policy of the Executive which cannot be questioned through judicial review until and unless a *prima facie* case of perversity and *mala fides* is discernible. We cannot also direct the respondents to relax the age limits of the applicants for considering them for regular appointment because the first applicant has failed in the written test and the second and the third applicants were over-aged both under the old and new Recruitment Rules when their regular monthly casual employment commenced. The learned counsel for the applicants drew our attention to the judgment of the Chandigarh Bench of the Tribunal in *Kumari Kusum v. Union of India and others*, (1989) 10 ATC 769 in which the applicant who had been appointed on an adhoc basis was allowed to appear in the Staff Selection Commission examination by relax-

ation of the upper age limit. That case can be distinguished because of the fact that the applicant therein was within the age limit when she was appointed for the first time on an adhoc basis. This is not the position in case of the second and third applicants, as discussed above. There was no exemption from appearing in the selection test either. Therefore, even the first applicant before us who failed to qualify in the written test cannot seek regular appointment. Our attention was further drawn by the learned counsel to the judgment of the Supreme Court in the Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others vs. State of Karnataka and others, AIR 1990 SC 883, in which daily rated employees were directed to be regularised. The Supreme Court in that case directed that 18,600 casual and daily rated employees who have completed 10 years of service on 31.12.1989 to be regularised with effect from 1.1.1990 on the basis of seniority-cum-suitability. The remaining casual employees with 10 years of service were to be regularised in a phased manner. The applicants before us who have been in intermittent casual employment only from 1985 cannot claim regularisation on the basis of the aforesaid judgment. In the facts and circumstances we do not see any merit in the application and dismiss the same without any order as to costs.


20.3.91
(N. Dharmadan)
Judicial Member


20.3.91
(S.P. Mukerji)
Vice Chairman