

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

387/90

109

DATE OF DECISION 31-12-91

P.K. Mohanan & 8 others _____ Applicant (s)

Shri KL Narasimhan _____ Advocate for the Applicant (s)

Versus

Union of India and 6 ors. _____ Respondent (s)

Shri NN Suganapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Vice Chairman (A)

The Hon'ble Mr. N. Dharmadan, Member (J)

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

N. Dharmadan, M (J)

The applicants are Staff Artists (SA for short)

in Doordarshan Kendra, Trivandrum. They are seniors

in the category of Production Assistant and eligible

to be promoted as Producer Grade-II under the Recruitment

Rules. They have filed this application under Sec.19

of the Administrative Tribunals Act 1985 ~~xx~~ seeking the

following reliefs:

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"...(i) to direct the first and second respondents to promote the applicants to the post of Producer Grade-II with retrospective effect and as and when each one of them gets qualified for the same against the quota available/earmarked to them.

(ii) to call for the files leading to the appointment of respondents 3 to 7 as programme Executives examine the legality propriety as to whether they can be recruited against the vacancy available for the post of Producer Grade-II.

(iii) any other relief which this Hon. Tribunal deem fit to grant in the nature and circumstances of the case..."

2. According to the applicants, they are entitled to hold office until they attain 58 years of age on the basis of the agreements executed by them. Axe-I is a specimen copy of the contract of appointment. Qualifications and method of recruitment for the post of Producer Grade-II are prescribed in 1979 Recruitment Rules. The said Rules stipulate that 42½% of posts of SAs in Doordarshan are to be filled by promotion on the basis of seniority-cum-merit from amongst the Production Assistants with a minimum of 3 years of service in the said post. The applicants satisfy all the requirements and in the Trivandrum Kendra of Doordarshan itself there are 15 sanctioned posts of Producer Grade-II. At present there are only 7 persons in position against that posts. Among the total 15 posts, Producer Grade-II the quota

available for the direct recruitment under the rules is only 50% and remaining 50% should go to the promotees. The applicants are entitled to be promoted to the existing posts as stated above.

3. The respondents 1 and 2 in the reply filed in this case stated that the Recruitment Rules of 1979 relied down by the applicants for their promotion to the post of Producer Grade-II is not

The in force at present and it cannot be applied. All

the India Radio and Doordarshan used to employ large

number of SAs on contract, for presentation and production of programmes in addition to the

regular government employees, which provides for their continuous assured service upto the age of

58. However, they are not eligible for pension. The

question as to whether the SA system should continue

or not, was considered by the Govt. as there were

requests from various Unions for extending

pensionary benefits to them and after consideration

of the requests it was felt that they should

also be regularised in service. Consequently

the Govt. announced their decision to convert all

existing SAs into Government servants, with certain

b)

exceptions as per Axe.R(1) letter dated 3-5-82. Most of the posts held by them were also being converted into 'Civil Posts'. The incumbents of the posts of Producer Grade-II with exception to the extent of a dozen officers, have been given the benefit of conversion into Govt. servants and they are also covered by the Recruitment Rules at Axe-R(2) dated 23-10-84. The applicants in this present application though engaged as contract staff were also being considered for conversion into Govt. servants as per Axe-R1(b) under the Recruitment Rules now in force. They will also be considered for the post of Production Executive which includes Producer Grade-II after the completion of conversion process under the aforesaid Recruitment Rules which had been framed under Article 309 of the Constitution of India.

4. When the matter came up for consideration after hearing the arguments on both sides we felt some doubts. Hence we directed the learned counsel for the respondents to clarify certain doubts. By our order dated 2-8-91, we sought the following clarifications:

"... (a) whether the applicant No.1, for instance, has been declared to be Govt. servant in accordance with R-3 in which his name also figures;

(b) if he has been declared as a Govt. servant by R-3 of 1986, the circumstances under which a contract was entered into with him in 1989 as at Axe-A.1;

(c) What is the stand of the respondents in respect of status of persons like the applicant No.1 as in 1989 i.e. whether they are to be treated as Govt. servant or Staff artists on contractual employment;

(d) Whether there has been any earmarking of posts of Producer Grade-II for contractual staff artists who have not opted for being Govt. servants and those who have opted for being Govt. servant and declared as such. If there is no such earmarking it may be clarified whether the Recruitment Rules of 1979 applicable to contractual employees will apply to those posts or the Recruitment Rules framed under Article 309 of the Constitution..."

In addition to above, the Bench on 13-8-91 sought the following clarifications also:

"...In particular the learned counsel was also directed to clarify how some of the applicants who according to him had been declared to be Government servants from 1984/86, who have been included in the list of Staff Artist in the communication dated 23-5-88 at Ext. R-4 in which they are appointed as Staff Artist on three years contract and it was stated that they are likely to be converted as regular Govt. servants in due course. The learned counsel states that the statement will be filed within two weeks...."

5. Accordingly, the learned counsel for the respondents 1 and 2 submitted the following clarifications through Shri A.N. Sharma, Senior Analyst, Office of the Director General, Doordarshan, New Delhi on 12-11-91 who was present before the Tribunal. It reads as follows:

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"....(1) There is no category of regular staff artist. All staff artist used to be appointed originally on a three years contract with probation of two years and on satisfactory completion of probation, they were appointed on the basis of long term contract upto 58 years of age.

(2) The 1979 Recruitment Rules were applicable to all staff artists on contract prior to 1984.

(3) With the promulgation of the Recruitment Rules of 1984, the Recruitment Rules of 1979 ceased to exist. The recruitment Rules for 1984 promulgated under Article 309 of the Constitution were applicable only to civil servants and not to staff artists.

(4) Those staff artists who had not opted to become Govt. Servants and those staff artists who were not found fit to be inducted as Govt. servants and who are not yet declared to be Govt. Servants for certain reasons, their condition of service are being governed by their terms of contract. However, under the directions of the Hon. Supreme Court reported in AIR 1990 SC 1720 for determining the condition of service and avenues of promotion of staff artists after 1984 a scheme has been drawn up by a High Powered Committee which is under active consideration of the Govt. of India.

5. No further recruitment of staff artists is being resorted to where recruitment rules, 1984 are applicable. For Production Assistants Recruitment Rules of 1988 are applicable and for Producer Grade-II now designated as Programme Executive, Recruitment Rules 1984 are applicable.

6. When an existing staff artist retires or relinquishes the charge, the vacancy thus created is automatically treated as a civil post to be governed by 1984 or 1988 Recruitment Rules, as the case may be.

7. The applicant No.1 Shri P.K. Mohanan was declared to be a Govt. Servant in 1986 but the contract at Axe-I was entered into on 19-11-89 under a mistake due to lack of communication with the Trivandrum Office. The contract at Axe-I ipso facto void and has been cancelled. Similar situation exists in case of the other applicants in this case that is G. Jayakumar, R. Syamaprasad, A. Anwar and Lathamoney. The other remaining four applicants are continuing as staff artists. Those who have been declared as Govt. servants are treated as civil servants for all purposes and the terms of their original contracts are no more applicable. The staff artists as such at present are now eligible for promotion in accordance with their terms of contracts. If they are eligible, they can apply for higher post through open market selection.

Shri Sharma added that the case of the applicants as also the other staff artists are being considered for declaring them as Govt. servants and consequential benefits and other grievances by the Govt. of India on the recommendations of the High Powered Committee.

He further added that the High Powered Committee submitted its report this year and if the recommendations are accepted by the Govt. the possibility of all the staff artists including the applicants before the Tribunal, who have not been given the status of Govt. servants would be given that status automatically. If any of the applicants are any grievance they are at liberty to move the court under the directions of the Hon. Supreme Court...."

6. In the light of the clarifications, further arguments were heard. It was brought to our notice that persons similarly placed like ~~xxxxxx~~ the applicants had already approached the Supreme Court with similar grievances. The Supreme Court considered the identical questions and disposed of the grievances with the following observations and directions:

"...The question of deeming the employees as Govt. servants from the date of the Allahabad High Court's judgment is another issue which requires examination. Connected with it would be the question of entitlement to pension. We are of the view that these are aspects which should first be initially examined by a Committee to be set up by the Govt. and after a definite view is taken it would be open to the petitioners to approach the appropriate court to redress the remaining grievances, if any. The matter is such that administrative scrutiny instead of judicial determination would be more helpful. We, therefore, refrain from expressing any final view. We reiterate that the order dated 25th April 1988 intended a draft scheme to be drawn up for consideration of the Court. The scheme as produced in the Court along with the accompanying affidavit has also been described as a draft scheme. The objections raised by the petitioners to the said scheme are available on the record. We direct that in the appropriate Ministry a High Power Committee be set up for examination of the objections with reference to the terms of the scheme and the final decision be taken by the Govt. within six months. The view expressed in the present decision be taken into account while dealing with the objections for purposes of finalising the scheme. Liberty is given to the aggrieved parties when final decision is taken by Govt. to move the court..."
(National Union of All India Radio V. Union of India, AIR 1990 SC 1720)

7. It was submitted at the Bar that as per the directions by the Supreme Court, in the above decision a High Power Committee had been constituted which has gone into the matter in detail and submitted a report which is under active consideration of the Govt. as indicated in the clarifications of Shri A.N. Sharma. It is submitted that this being an all India issue the decision of the Govt. would equally apply to all employees including the applicants.

8. Under these circumstances, it is not necessary for us to go into the matter any further and hence, we are of the view that the application can be closed. We make it clear that the applicants are free to take proper legal action in case they are not satisfied with the ultimate decision that would be taken by the Govt. of India in this matter now pending consideration before the Government.

9. Accordingly, the application is closed. There shall be no order as to costs.

Ashok Kumar
31.12.91

M(J)

Sukh
31.XII.91

VC

31-12-91