

Central Administrative Tribunal,
Lucknow Bench, N Lucknow.

O.A. No. 303/91

WITH

O.A. No. 616/94

Lucknow, this the 29th day of ^{May} March, 2001.

Hon'ble Shri D.C. Verma, Member (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

OA 303/91

1. Mani Kant Tewari, aged about 28 years
S/O Sh. Dutta Tewari, R/O 340/16-A,
Timaruganj (Naubasta), Lucknow.
2. Md. Nadeem Siddiqui, aged about 25 years
S/O Mohd. Naseem, R/O Muslim Majlis Office
(Sultan Manjil), Tikiya Peer Zaleel
Qaiserbagh, Lucknow.
3. Charu Chandra Joshi, aged about 24 years
S/O Sri. Jagdish Chandra Joshi, R/O A-1333/1
Indira Nagar, Opp. Block Office, House No. 4
Om Marg, Kurmanchal Nagar, Lucknow.
4. Radha Krishna Ram, aged about 22 years,
S/O Sri Ram Dhyan Ram, R/O 19/1284 Sector 19,
Indira Nagar, Lucknow.
5. Avdesh Kumar Misra, S/O Late Shri Shatya Narain
aged about 23 years, R/O Village Kasmaura,
Post Kakori, Distt. Lucknow.
6. Sri Abdul Bari, aged about 38 years,
S/O Late Sri Abdul Aziz, R/O 327/93,
Qabdari Mohalla Chowk, Lucknow.
7. Sri Asharfi Lal, S/O Late Sri Mitthu Lal
aged about 37 years, R/O 12, Joplin Road,
Back Gali of Pickup Colony, Lucknow.
8. Lal Singh aged about 31 years, S/O Sh. Ram Singh,
R/O 25, Avadh Puri, Swordhya Marg, Lucknow.
9. Ram Singh aged about 26 years,
S/O Dampal Singh, R/O 43/10, Faizabad Road,
Lucknow.

...Applicants.

(By Advocate: Sri P.k. Srivastava)

Versus

1. Union of India through Secretary to the
G.O.I., M/O Information & Broadcasting,
Shastri Bhavan, New Delhi.
2. Doordarshan through its Director General,
Mandi House, New Delhi.
3. Doordarshan Kendra through its Director,
24, Ashok Marg, Lucknow.

...Respondents.

(By Advocate: Mrs. K.K. Kapoor through Sh. Sanjay Tiwari)

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OA 616/94

1. Mani Kant Tewari aged about 31 years son of Sri S.D. Tewari R/O 340/16-A, Trimaniganj, Lucknow.
2. Abdul Bari son of Late Sri Abdul Aziz R/O 327/93 Chabdari Mohalla Chowk, Lucknow.
3. Charu Chandra Joshi aged about 27 years, son of Sri J.C. Joshi, R/O 1333/1 Indira Nagar, Lucknow.
4. Avdesh Kumar Mishra, S/O Late Sri Satya Narain aged about 26 years R/O Village Kushmaura Post Kakori, Distt. Lucknow.
5. Asherfi Lal son of Late Sri Methoo Lal R/O 12 Japlin Road, Lucknow.
6. Ram Singh son of Dan Pal Singh R/O A-1333/1 Indira Nagar, Lucknow.

(By Advocate: Shri A.P. Shukla)

...Applicants.

Versus

1. Union of India through Secretary to the G.O.I., M/O Information & Broadcasting.
2. Doordarshan through its Director General Mandi House, New Delhi.
3. Deputy Director of Admn., Doordarshan Mandi House, New Delhi.
4. Doordarshan Kendra through its Director 24, Ashok Marg, Lucknow.

....Respondents.

(By Advocate: ~~Shri~~ K.K. Kapoor through Sh. Sanjay Tiwari)

(O R D E R)

By Hon'ble Shri S.A.T. Rizvi, M (A)

Some of the applicants in these OAs are common and the issues raised are similar. The respondents in both the cases are the same. The learned counsel have agreed that, in the circumstances, both these OAs should be disposed of by a common order. We proceed to do this by this order.

2. First, the facts in brief. The nine applicants in OA 303/91 have been working as Helpers in the office of the respondents from 1989 onward excepting two applicants who have

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been working as such from 1975 onward and 1985 onward respectively. Their claim is that while posted as Helper, they have been working actually as Lighting Assistants (for short LAs) all these years, and on this account, deserve to be paid the salary and allowances applicable to the post of LAs. The principle involved is equal pay for equal work. They have filed representations on 28.12.1990 and thereafter on 8.2.1991. In the aforesaid representation dated 28.12.1990 the applicants have sought a discussion on the aforesaid subject in dispute in the meeting which was then going to take place. In the latter, they have raised the same issue by pleading that, though working as Helpers, the duties performed by them are identical to that of LAs. The applicants have relied on an office order dated 5.10.89 (Annexure A-3) which goes to show that in a certain meeting of the officers of the respondents' set up, a decision was taken to deploy helpers to work as substitutes in place of LAs not available for duty on account of leave etc. They have also placed on record copies of various office orders which would go to show that the camera teams deployed for various purposes from time to time always had a LA ^{alternatively,} or a helper as part of the team. A team which consisted of a LA did not have a helper and vice versa. This, according to the applicants, shows that helpers were, in fact, discharging the duties and responsibilities of LAs. In all these office orders, the applicants wherever they figure, ^{have} ~~they~~, however, been shown as helpers.

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Thus, there is ~~nothing~~ ^{2 any of 2} on record to show that ² the applicants/ helpers were ever formally asked to do the work of a LA.

3. All the ~~six~~ applicants in the OA 616/94 seek their appointments as LAs on the basis of their past experience. Though appointed as helpers, they have been discharging the duties and responsibilities of the LAs in the manner contended in OA 303/91. The applicants in this OA have also sought a direction to the respondents not to give effect to the fax message dated 10.10.1994 placed on record as Annexure A-1. The said fax message provides for regularisation of eligible casual artists shown in column 4 of the message against posts ~~and~~ ^{2 - red 2} transfer from other Kendras as shown in column 3 of the message. This would show that according to the fax message in question, casual LAs were required to be regularised as LAs against the posts of Film/Video Editors transferred from Jullandhar. The number of posts involved in the aforesaid fax message is five. In the interim relief column of the OA, the applicants have indirectly sought ^{2, indirectly, 2} their own appointment as LAs in the vacancies created by the aforesaid fax message. In this very OA, the applicants have also sought the relief of payments of arrears of salary arising on account of their working as LAs in the circumstances already mentioned. These applicants have also filed a representation dated ~~11~~ 13/15.10.1994 in which they have referred to the earlier OA 303/91 and have requested for their own appointment as LAs in the aforesaid five posts of LAs ^{2, as stated, indirectly, 2} created by the fax message in question.

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4. A careful perusal of the pleadings contained in both the OAs would go to show that the applicants who have been working against the posts of helpers want to be promoted as LAs on the strength of the experience acquired by him. They also want payment of salary and allowances due to LAs in respect of the period ^{2 claim to} they have been ~~working~~ as LAs even ~~though~~ though posted as helpers. The applicants in both the OAs have produced copies of a few orders showing their deployment in camera teams on various occasions. In the background of the papers placed by the applicants on record, it is not difficult to see that the applicants have indeed performed ² ~~the~~ duties ^{more or less} as LAs as part of the camera teams. They have stated that the office orders placed by them on record are illustrating ^{-ve} and that as a matter of fact they have been discharging the duties of LAs all along and the facts in this regard can be verified from the record maintained by the respondents.

5. One of the important issues to be decided is whether in the circumstances ² ~~outlined~~ outlined above, it is possible to invoke the principles of equal pay for equal work and on that basis to pay the arrears of salary and allowances to the applicants in the manner claimed by them. This issue was considered by a coordinate Bench of this Tribunal in OA-770/93. The said OA was decided by the Ernakulam Bench of the Tribunal on 22.9.94. The applicants in that OA were also helpers working

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in the Doordarshan Kendra, *Thiruvanthapuram*. The Ernakulam Bench had, in that case, occasioned to refer to the duty charts prescribed for helpers and LAs and had concluded that there was considerable difference in the duties performed by these functionaries. The Ernakulam Bench had also, in the same case, referred to the recruitment rules (enclosed with the reply filed on behalf of the respondents against the application for interim relief) relating *✓ respectively ✓* to the helpers and the LAs. That Bench had also referred to several decisions of the Hon'ble Supreme ~~Supreme~~ Court on the question of equal pay for equal work. Ultimately the claim for payment of salary and allowances on par with LAs by following the ^{was} ~~the~~ principle of equal pay for equal work/negatived by the Ernakulam Bench by observing as follows:

"2... It is seen that basically there is considerable difference in the duties expected to be performed by Lighting Assistant and Helper. That apart, learned counsel for applicants submits that the qualification for Lighting Assistant is a minimum of Matriculation whereas this minimum qualification is not required for Helper. The principle of equal pay for equal work has been clarified in several decisions of the Supreme Court and as it now stands, various considerations such as mode of recruitment, qualifications, experience, responsibilities and many other criteria are to be gone into ~~to~~ to find out whether two posts have to be equated for purpose of pay. In this case, even the basic minimum qualification being different, we will not be able to accept the submission of the learned counsel for applicants that the applicants are entitled to pay of the Lighting Assistants on the basis of equal pay for equal work"

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6. The respondents have clearly and categorically denied that the applicants/helpers ^{✓ ever ✓} were engaged in discharging the duties and responsibilities of LAs. According to them, ~~their~~ duties and responsibilities are materially different from each other & as can be seen on a perusal of the Doordarshan manual. A scheme for regularisation of casual artists was no doubt framed by the respondents in the wake of the directions ~~is~~ issued by this Tribunal in the case of Anil Kumar Mathur & Ors. Vs. U.O.I. & Ors. The said scheme is, however, meant for regularisation of casual artists only and cannot be applied to regular Govt. servants like the applicants. The LAs working in Doordarshan are, on the other hand, being regularised in accordance with the scheme of regularisation prepared by the respondents in pursuance of the directions of the Hon'ble Supreme Court and this Tribunal in OA-563/86. In the aforesaid fax message, 5 posts of Film/Video Editor were shifted from Jullandhar to enable regularisation of casual LAs in accordance with the abovementioned scheme. The applicants who are helpers cannot have claim for regularisation against



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the aforesaid posts which are meant for the casual LAs. The applicants are not casual LAs. They (helpers) can no doubt be considered for further promotion in accordance with the relevant rules. According to the respondents, the helpers/applicants can be considered against the promotion ~~ex~~ quota earmarked in the grade of Technician and Clerk Gr. II for which posts, they (helpers) constitute [✓] feeder cadre. Thus, according to the respondents, adequate avenues of promotion are available to the applicants/helpers and they need not and cannot be considered for being regularised, and thus indirectly promoted, to the rank of LAs contrary to the provisions made in the recruitment rules applicable to LAs.

7. The applicants have, during the course of hearing, produced copies of letters ^{both} dated 23.1.2000 by which Charu Chander Joshi one of the applicants in these OAs and Sh. Raj Kishore stated to be an applicant in some other OA, have been considered and offered appointment as LAs by way of regularisation. We have taken the aforesaid two letters on record and perused the same. These letters do not disclose that Sh. Charu Chander Joshi and Sh. Raj Kishore have been working as helpers in the respondents' set

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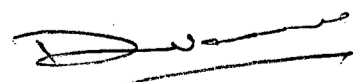
up. Thus, it cannot be asserted that those working regularly against the posts of helpers have been appointed as LAs by way of regularisation. The same letter also provides that their appointments as LAs have been made in accordance with the Central Civil Service (Temporary Service) Rules, 1965 and accordingly, their services can be terminated on one months' notice. They will also be on probation for a period of two years. According to us, ~~the~~ regular employees, like the applicants, cannot be placed in the position of a temporary Govt. servant governed by the provisions of the CCS (Temporary & Service) Rules, 1965. They (helpers) ^{✓ cannot} join the new post as [✓] fresh candidates/direct recruits. Further, they cannot also be placed on probation unless they are promoted to a higher rank. In the aforesaid letters, there is no mention of retention of lien by the appointees. In the circumstances, we find that the applicants cannot make any capital out of the aforesaid two letters. The same will not assist the applicants in any manner.

8. In the background of the above discussions, both the OAs are dismissed [✓] ~~as~~ found to be devoid of any merit. No costs.



(S.A.T. Rizvi)
Member (A)

/sunil/



(D.C. Verma)
Member (J)

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