

Central Administrative Tribunal Lucknow Bench Lucknow.
O.A. NO. 219/2006

This, the 25th day of July 2008.

Hon'ble Mr. A. K. Gaur, Member(J)
Hon'ble Dr. A. K. Mishra, Member (A)

Anil Kumar Tewari aged about 44 years S/o Late Ram Kumar Tewari R/o
Tiwarpurwa Bakshi-Ka-Talab, P.O Kotwa District Lucknow.

Applicant.

By Advocate Sri A. Moin.

Versus

1. Union of India through Secretary, Department of Information & Broadcasting Government of India, New Delhi.
2. Prasar Bharti Broadcasting Corporation of India, New Delhi through Chief Executive Officer.
3. Director General, Prasar Bharti Broadcasting Corporation of India Doordarshan Bhawan, Mandi House, New Delhi.
4. Director, Prasar Bharti Broadcasting Corporation of India Door Darshan Kendra, Ashok Marg, Lucknow.

Respondents.

By Advocate Miss Poonam Sinha.

Order (Oral)

By Hon'ble Mr. A. K. Gaur, Member (J)

Through this O.A., the applicant has prayed for quashing the impugned order dated 4.4.2006 (Annexure A-1) and also prayed for issuing a direction to the respondents to regularize the services of the applicant taking into consideration the fact that in an identical and similar circumstances a number of persons have already been regularized. Although, the case in hand has a chequered history in as much as that this is the 5th O.A. filed by the applicant before this Tribunal. O.A. No. 422/96 was filed against the show cause notice issued by the respondents as to why the services of the applicant may not be dispensed with. This Tribunal directed the respondents to dispose of the representation/reply filed by the applicant to the aforesaid show cause notice and pass appropriate orders within specified period of time. The applicant again filed O.A. 9/97 seeking the benefit of judgment rendered in O.A. No. 682/94 Seema Kazmi vs. Union of India and others and O.A. 500/95 Smt. Anjali Dixit

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vs. Union of India and Others. Vide order dated 29.8.2003, the competent authority in strict compliance of the order and direction dated 16.7.2003 rendered in O.A. 9/97 rejected the claim of the applicant on the ground that the applicant was overage by 5 months and as such, he was found ineligible for regularization. The order passed by the competent authority dated 29.8.2003, was further challenged before this Tribunal by way of filing O.A. No. 381/2004, whereby this Tribunal had quashed and set aside the order dated 29.8.2003 and directed the respondents to consider the case of the applicant for relaxation as Production Assistant in the light of treatment meted out to the similarly circumstanced employee. This Tribunal, further directed that in the event, applicant is regularized, he would be entitled to all consequential benefits as per law. Since, once again, after consideration of the applicant's case for further regularization as Production Assistant in the light of treatment meted out to the 5 similarly situated persons namely Jai Karan Singh Chauhan, Sri Krishna Verma, Deepak Rao, Vijay Kumar Sharma and Smt. Achla Saxena, the matter has been reexamined and the competent authority again maintained its earlier stand that the applicant was over age by 3 years 3 months as on date of his initial engagement as Casual Production Assistant as per the relevant recruitment rules as on the date, even after, giving all relaxation overage as admissible under the liberalized scheme, the applicant was ~~find~~ ineligible and hence he was not considered for regularization. The applicant cannot be treated as similar, circumstanced vis-à-vis, the 5 persons referred above. The competent authority after considering all aspects, has not found it possible to grant further age relaxation to make him eligible for regularization. The main grievance of the applicant is that not only the aforesaid 5 persons but 34 more other artists who were overage at the time of their initial engagement in the Door Darshan and whose cases were not covered under the scheme dated 9.6.92 and 10.6.92 were also given regular appointment after issuing of the revised scheme of regularization dated 17.3.94. All these 4 persons have been granted relaxation in age to the extent their over age on 9.6.1992 i.e. cut off date provided in the scheme dated 9.6.92 and 10.6.92. According to the

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applicant, the date of birth of Sri A. K. Tripathi is 16.11.1953 and when he was engaged at the end of a year 1987, he was aged about 34 years i.e. 9 years older than the upper age limit than prescribed under the then rules and he was 39 years of age on 9.6.1992, when the scheme of regularization was introduced. Sri A. K. Tripathi was 41 years of age in the year 1994, when he was offered regular appointment in accordance with the scheme dated 17.3.1994 as indicated in the office memorandum dated 16.12.94. The further grievance of the applicant is that the aforesaid 5 persons were given regular appointment by relaxing upper age limit to the extent these persons were over age on cut off date i.e. 9.6.1992 as otherwise, these persons were not found eligible even after giving relaxation of age as provided in the order dated 9.6.92.

2. The respondents have committed serious discrimination while considering the case of the applicant for regularization. It is further alleged by the applicant that on 7.8.95, Doordarshan Programme (Technical/Group C Posts) Recruitment Rules 1987 have been amended and maximum age has been extended up to 30 years. According to the applicant, he would become eligible i.e. within upper age limit on introduction of amended rule and therefore any alleged illegality in computing age stands cured. It may also be observed that applicant filed O.A. 554/96, the same was permitted to be withdrawn with liberty to file fresh O.A. as per order passed by the Tribunal was filed on 23.12.96. The Tribunal did not interfere in the matter of issue or show cause notice and the respondents passed an order dated 27.11.96 terminating the services of the applicant. A copy of which has been annexed A-12B. This Tribunal without going into the merits of the matter, again disposed of the case of the applicant by directing the respondents to consider fresh representation of the applicant taking into account the directions given in the case of Seema Kazmi and Anjali Dixit. The said representation was again rejected vide order dated 29.8.2003 by which, the claim of the applicant was rejected on the ground that he was over age by 1 year and 5 months and even after giving relaxation of one year, the applicant was still found to be overage by 5 months. In order to

vindicate his grievance of serious discrimination vis- a- vis 5 other persons and the applicant, a detailed chart has been given in paragraph 36 of the O.A. From perusal thereof it is apparent that the applicant being similarly circumstanced can also be given the relaxation of 5 months, as has been extended to those persons similarly circumstanced but his case was not at all considered by the respondents. The respondents have adopted a discriminatory attitude against the applicant and the impugned action of the respondents is patently bad in the eye of law being arbitrary illegal and without jurisdiction.

3. The respondents filed their counter reply denying the claim of the applicant. It is submitted on behalf of the respondents that in compliance of the order dated 27.5.93, the respondents considered the case for age relaxation provided in the scheme of regularization dated 9.8.92. It is further submitted that each case is considered on own merits, hence applicant cannot compare his case with other persons. In each case, requisite relaxation of age was given as per provision of regularization scheme dated 9.6.92 and O.M. dated 17.3.1994. According to the respondents, the appointment order was wrongly issued to the applicant. Therefore, question of assessment of performance during the probation period does not arise. The appointment of the applicant has not been made according to the rules. The maximum age limit in the category of Production Assistant was brought down from 32 to 25 years by amending the rules in 1987. The rules are applicable in the case of direct recruitment and it cannot be mixed in lingual with the provision contained in the regularization scheme dated 9.6.92 and O.M. dated 17.3.94. According to the respondents, the age relaxation granted to the person mentioned by the applicant in various paragraphs in the O.A. was in accordance with the provisions contained in the scheme dated 9.6.92 and office memorandum dated 17.3.94.

4. The applicant has filed O.A. No. 554/96 on the same set of facts, grounds and claiming the same relief. As the Tribunal has already rejected the

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prayer of interim relief , the applicant subsequently withdrew the original application with liberty to file fresh O.A. vide order dated 23.12.96. The applicant again approached this Tribunal by challenging the order dated 2.2.96 by filing O.A. No. 422/96 which was disposed of at the admission stage with a direction to the respondents to decide the representation . According to the respondents , the applicant is in the habit of filing one O.A. after the other for the same cause of action and for the same subject matter. He has filed O.A. No. 381/2004 before the Tribunal in which order dated 8.9.2005 has been passed (annexure A-16) to the O.A. The applicant has filed rejoinder reply denying the facts contained in the C.A. and submitted that the Principal Bench of the Tribunal vide order dated 27.5.93 directed the respondents to consider the case for empanelment and regularization of Sri Krishna Verma and 4 others by giving age relaxation as stipulated under the recruitment rules. In compliance of aforesaid order dated 27. 5.93, the respondents considered the case for age relaxation over and above age relaxation provided for in the scheme for regularization dated 9.6.92 and memorandum dated 17.3.94. According to the applicant, such relaxation has been granted to the similarly situated 5 persons and this aspect of the matter has duly been considered by this Tribunal while deciding the O.A. NO. 381/2004 decided on 8.9.2005 and that is why a direction was given by the Tribunal on 8.9.2005 (Annexure 16 to O.A.)

4. We have heard Sri A. Moin learned counsel for the applicant and Miss Poonam Sinha, learned counsel for the respondents.
5. Learned counsel for the applicant has placed reliance on the decision rendered by Hon'ble Supreme Court published in 2008 (1) "UPLBEC 466 U.P. State Electricity Board versus Pooran Chandra Pandey and Others" and submitted that the applicant's case alone should not be discriminated against vis-à-vis the 5 persons referred in the judgment, since they are identically and similarly situated persons , the services of the applicant should have been regularized. In support of his argument, learned counsel has placed reliance

on paragraph 17, 18, 19 of the judgment of U.P. State Electricity (Supra). On the other hand, learned counsel for the respondents submitted that regularization cannot be a mode of recruitment. No appointment can be made in violation of statutory rules and no direction can be issued for framing a scheme of regularization in support of regularization. In support of this contention, 2006 (4) Scale 197 State of Karnataka Versus Uma Devi has been referred to by the respondents. In the instant case, the regularization has been sought for in pursuance of Article 14 of the Constitution. The Hon'ble Supreme Court, has clearly observed in paragraph 16 of the Judgment given in U.P. State Electricity Board (Supra) that Uma Devi's (Supra) cannot be applied mechanically as if it were a Euclid's formula without seeing the facts of a particular case. In the present case, the applicant only wish that he should not be discriminated.

6. On a careful analysis of the case, we come to the conclusion that the Government must act in a reasonable and non arbitrary manner otherwise, Article 14 of the Constitution would be violated. We find that the case of the applicant and 5 other persons whose names have already been indicated in this judgment is wholly identical and similar and once the benefit of regularization has been extended to all those persons, there is no point in denying the same benefit to the applicant. It will surely not be reasonable if the applicant's claim for regularization is denied hence, a part from discrimination Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness, if the applicant is denied the benefit of regularization. On perusal of order dated 4.4.2006, it is clear that the respondents are maintaining their same stereo type reply in all the orders passed in pursuance of the direction of this Tribunal and every time, the reply of the respondents is that the applicant was found ineligible on the ground of over age and the applicant cannot be treated as similar circumscribed vis a vis 5 persons referred to above. We also observe that once the issue has been dealt with by the respondents and reasoned and speaking order has been passed, a fresh lease of limitation is available to the applicant and once the O.A. is dismissed as

withdrawn with liberty to the applicant to file fresh O.A., the same would not be barred by the principle of resjudicata. On careful analysis of the case, we are satisfied that the applicant has been arbitrarily discriminated in the matter of age relaxation. It is seen from the record that Similarly situated 5 persons, who had been over aged on the cut off date despite consideration under the scheme were accorded relaxation of one year, they were further granted relaxation of their working for 120 days in a year by giving further relaxation, and they have been regularized. The respondents have arbitrarily meted out the differential treatment to the applicant and this action of the respondents would be antithesis to the equality enshrined under Article 14 of the Constitution of India. The learned counsel for the respondents vehemently, argued that the O.A. filed by the applicant is liable to be dismissed on the ground of resjudicata, delay and latches. On careful consideration of the contentions advanced by the respondents counsel, we are satisfied that the objections raised by the respondents are misconceived and are overruled. This O.A. has been filed within one year from the date of the order passed by this Tribunal. We also find from record and the pleadings of the parties that the respondents have utterly failed to deny the specific plea of the applicant with regard to the grant of age relaxation twice to the similarly circumstanced 5 persons and the discrimination mete out to the applicant. The plea raised in various paragraph of the O.A. in this regard has not been specifically rebutted by the respondents in their reply. It is settled principle of law that once a specific plea has not been controverted or denied evasively by the respondents, it is deemed to be admitted. In our considered view, the equality enshrined under Article 14 of the constitution has been violated by denying age relaxation to the applicant. The O.A. is accordingly allowed, the impugned order dated 4.4.2006 (Annexure A-1) is quashed and set aside. We hereby direct the respondents to regularize the services of the applicant under rules for granting similar benefits as has been extended to the similarly situated 5 persons. This exercise shall be done within a period of 3 months from the date of receipt of copy of this order. It is

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however made clear that the applicant will not be entitled to claim any back wages for the period in which he has not worked. No costs.

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Member(A)

Anjan
Member(J)

v.