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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NO. 699
TR.A.NO.

1988

DATE OF DECISION

26-4-94

SHRI T.V. KUNHI KRISHNAN

Applicant(s)

Versus

MINISTRY OF INFORMATION AND BROADCASTING

Respondent(s)

1. Whether it be referred to the Reporter or not ? ✓
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? X

MR Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

MR Deshpande

(M.S.DESHPANDE)
VICE CHAIRMAN

(2)
CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION No. 699/88 with MP 756/93 and MP 897/93.

Shri T.V. Kunhi Krishnan ... Applicant

Vs.

Ministry of Information and Broadcasting ... Respondents.
and another.

CORAM : Hon'ble Vice Chairman M.S. Deshpande
Hon'ble Member(A) M.R. Kolhatkar.

Appearances :

Shri K.R. Pillay, counsel
for the applicant.

Shri A.I. Bhatkar for Shri M.I. Sethna,
counsel for the respondents.

Date of hearing : 06.04.94

Date of Judgment : 26.4.94

JUDGMENT :

(Per : Hon'ble Shri M.R. Kolhatkar, Member(A))

1. The Applicant was appointed as Skilled Worker-Cum Film Checker on daily wage basis in the National Film Archives of India, Pune under Ministry of Information and Broadcasting w.e.f. 13.04.76, vide Annexure A. He was appointed as a Film Checker on adhoc basis in the time scale Rs. 210 - 270 until further orders w.e.f. 15.02.77 vide Annexure B. It is not disputed that this is a Group 'D' post. For some time, he was on deputation and on repatriation, worked on daily wage basis but was again appointed as Film Checker on adhoc basis from 01.11.80.(Annexure F). He applied for the post of Lower Division Clerk, a Group 'C' post, vide application dated 06.12.80 vide Annexure G and was appointed as Lower Division Clerk on a temporary adhoc basis in the pay-scale Rs. 260 - 400 w.e.f. 05.03.81 vide Annexure H. It is contended by the Applicant that his appointment as Lower Division Clerk was against 10% quota for Group 'D' employees for promotion to Group 'C' in as much as age relaxation was allowed in his case (30 Years as against 25), which is permissible only for Group 'D' employees. According to Applicant, he had passed Departmental Typing Test in 1984 but he was asked to appear for a Typing Test by the memo dated 06.03.86(Annexure I) and on his failure to do

so he was reverted to the post of Film Checker w.e.f. 31.03.86 vide Annexure J. This memo was struck down by this Tribunal in O.A. 105/86 decided on 12.10.87 on the ground that his reversion on the sole ground that he had not passed the Typing Test in the face of noting dated 17.10.84 to the effect that the Applicant had passed the Typing Test was bad. He was appointed as Lower Division Clerk on adhoc basis w.e.f. 25.02.88 vide Annexure P II. The order stated that the appointment was for 8 months and his further continuance would be subject to his qualifying himself in the prescribed Staff Selection Commission examination. Applicant represented for regularization without qualification in the Staff Selection Commission examination but the representation was rejected vide Annexure S IV. The Applicant was asked to convey his willingness to appear for Departmental Examination but he declined vide Annexure SIII. The impugned order dated 25.08.88 is the order extending his temporary appointment for one more month or till vacancy is filled by a regular candidate whichever is earlier. The Tribunal by its order in the present O.A. dated 20.09.88 granted interim relief directing respondents not to revert the Applicant to Group 'D' post and not to terminate his service without specific order of the Tribunal.

2. The relief claimed by the Applicant is to quash the order dated 25.08.88 and to direct respondent to regularize the Applicant as Lower Division Clerk without insisting on his appearance for any further Departmental examination as was done in the cases of Sarvashri G. Radhakrishna and S.K. Sharma and also to treat his adhoc appointment as Film Checker from 13.04.76 to 05.03.81 as continuous and regular for all purposes. The contention of the Applicant is that he was even asked to appear for medical examination in connection with his appointment as Lower Division Clerk vide letter to medical authorities at Annexure 'T' and his termination is out of an ulterior motive viz. his being office bearer of Staff Association in which capacity he ventilated the grievances of the Staff and the suspicion of the Director of the Institute that the criticism of the institute in local newspapers was inspired by him.

3. The respondents have resisted the reliefs claimed by the Applicant. They have filed copy of recruitment rules called "National Film Archives of India (Group 'C' Administrative Posts) Recruitment Rules" 1987 dated 30.04.87 vide Exhibit No. II according to which the essential qualification is Matriculation plus minimum Typing speed of 30 words per minute in English and 25 per words in Hindi, 10% posts are reserved for promotion. The Group 'D' employees with 5 years' service, possessing essential qualifications are eligible to be considered for promotion. It is stated that the selection will be made on the basis of Departmental Examination.

4. According to the respondents, 10% promotion quota means ~~one~~ Group 'D' employees can be promoted after direct recruitment of 9 Lower Division Clerks. The sanctioned number of Lower Division Clerks in the office is only 8 but all the same, his case was considered against 10% quota. But the applicant refused to appear for the Departmental Test. So far as the two cases cited by Applicant are concerned, it is contended that there is no discrimination, Shri Radhakrishnan was appointed as Group 'D' employee on 15.02.77 and was given Departmental Examination on 01.07.79. He was appointed as adhoc Lower Division Clerk w.e.f. 01.04.80 and the adhoc appointment was regularized in August 1980 through Departmental Promotion Committee held on 26.08.80. As for Shri Sharma, he was a direct recruit through Employment Exchange and after he was declared successful by Staff Selection Commission, he was regularized with retrospective effect. Regarding Medical Examination it is stated that medical examination is an incident of any appointment whether adhoc or regular.

5. The Applicant filed two MP's 756/93 and 897/93. In the former MP filed on 21.09.93, he stated that recruitment rules of 1987 do not apply to him. The case of Smt. P.S. Ramamurthy Iyer is cited in which the employee was regularized though overaged and without passing any Departmental Test. In the latter MP filed on 16.11.93 Applicant asked for production of certain documents.

6. Regarding the case of Smt. P.S. Ramamurthy, the Respondents contend that she was a direct recruit Lower Division Clerk and in her case, Ministry relaxed the age limit, Respondents have filed copy of recruitment rules dated 21.09.78 which even if made applicable to the Applicant, do

not absolve the Applicant from appearing for the Departmental Test. As for Shri Radhakrishna, he had passed Departmental Examination on 01.07.79. According to the Respondents Department has no objection to apply the same rules as were applied in the case of Shri Radhakrishna. In reply to MP 817/93, Respondents have filed minutes of Departmental Promotion Committee dated 25-26-08-1980 leading to selection of Radhakrishna as regular Lower Division Clerk and minutes of Departmental Promotion Committee dated 27-28-02-81 leading to selection of Applicant as adhoc Lower Division Clerk.

7. It is clear that the rules dated 21.09.78 envisage limited Departmental Competitive Examination for selection for Group 'D' to Group 'C'. The rules dated 30.04.87 refer to Departmental Examination and not to limited Departmental Examination. The Applicant has quoted the case of Shri Radhakrishna, On the facts given by the Respondents, since he was appointed to Group 'D' on 15.02.77, he had not completed 5 years of regular service in Group 'D' as on 25-26 August 1980, when the Departmental Promotion Committee decided to approve his appointment in the post of Lower Division Clerk. The minutes do not state that he has cleared Departmental Examination. The Respondents have only stated that he cleared the same on 01.07.79. However, how could a Group 'D' employee clear the Departmental Examination after 2 years when under the rules, the Departmental Examination must be held after 5 years' regular service in Group 'D'. The appointment of the Radhakrishna is clearly irregular and not in accordance with recruitment rules. However, Applicant has not made Shri Radhakrishna a party. We cannot therefore grant him any relief as against Shri Radhakrishna.

8. The Applicant's contention that he has been discriminated against however, appears to have some force. The Department relaxed the age limit in the case of Smt. P. Ramamurthy. The Department, disregarded the provisions of rules in the case of promotion of Shri Radhakrishna from Group 'D' to Group 'C' Radhakrishna was appointed to Group 'D' on 15.02.77. The Applicant was initially appointed to Group 'D' post on 13.04.76 though admittedly he has worked on spells of Daily Wages. This Tribunal earlier found that the Director's action in not accepting the fact of his having passed the Typing Test was bad in law. The contention of the Applicant

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that he is a victim of hostile discrimination vis-a-vis other employees appears to have some foundation in fact. At the same time the refusal of Applicant to submit to Departmental Examination is also not proper.


9 We, therefore, dispose of the Application and also the two MP's by passing the following order


ORDER

i) The Application is partly allowed.

ii) In terms of recruitment rules, the Applicant is at liberty to submit to a limited Departmental Examination by writing to the Department within one month of the communication of the order. On receipt of such a letter, the Respondents are directed to arrange such an examination in terms of Rules dated 21.09.1978 specially for the applicant within one month. If the Applicant fails to clear the examination, Department is at liberty to revert the Applicant to Group 'D' Post. If, however, Applicant clears the examination his ^{regular} appointment as Lower Division Clerk should relate back to the date of his clearing the Typing Test viz. 17.10.84 and he should get all consequential benefits like his being considered for the higher promotion as Upper Division Clerk on the basis of his deemed seniority. For this purpose review Departmental Promotion Committee should be held if necessary. The Applicant is not held entitled to any arrears of ~~pay~~ in case of his further promotion but should get all benefits of notional promotion in terms of fixation of pay.

No order as to costs.


(M.R. Kolhatkar)
Member (A)


(M.S. Deshpande)
Vice Chairman