

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMABI.

ORIGINAL APPLICATION NOs. 803/2000, 177/2001,
220/2001, 297/2001,
299/2001, 339/2001
and 374/2001

TRIBUNAL'S ORDER

DATED: 15.6.2001

Those cases in which interim relief has been granted namely Serial No. 12 to 17 and 50 and any other cases where interim relief has been granted shall be posted to 19.6.2001.

Interim relief granted shall continue till then.

Original signed order kept in OA 803/2000.

Sd/-
(B.N.Bahadur)
Member(A)

Sd/-
(B.Dikshit)
Vice Chairman

NS

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.220/2001

Dated this, Tuesday, the 19th Day of June, 2001.

Shri Bankim Kapadia Applicant

(Applicant by Shri G.S.Walila, Advocate)

Versus

VOI & Ors. ... Respondents

(Respondents by Shri M.I.Sethna, Adv. with Shri V.G. Rege, Adv.)

CORAM

HON'BLE SHRI JUSTICE ASHOK C. AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.

done 9-

(Smt. Shanta Shastry)
Member (A)

*sj**

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.220/2001

Date of Decision: 19.6.2001

CORAM: HON'BLE SHRI JUSTICE ASHOK C. AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER (A)

Bankim Kapadia
Working as Chief Producer
Films Division,
Ministry of Information
and Broadcasting
24, Dr. Gopalrao Deshmukh Marg
Mumbai 400 026.

residingt at
H/40, 14th floor
Hyderabad Estate
Napeansea Road
Mumbai 400 036.

..... Applicant

(Applicant by Shri G.S.Walia, Advocate)

vs.

- 1) Union of India, through
Secretary Ministry of
Information and Broadcasting,
Shastri Bhavan,
New Delhi 110 001.
- 2) The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi 110 011. Respondents

(Respondents by Shri M.I. Sethna, Advocate with Shri
V.G.Rege, Advocate)

O R D E R (ORAL)

[Per: Smt. Shanta Shastry, Member (A)]:

The Applicant in this O.A. has challenged the letter dated 25.1.2001 as well as the letter dated 9.3.2001. The Applicant was appointed as Jt. Chief Producer vide orders dated 11.6.1996, w.e.f. 29.2.1996 on adhoc basis. He was given the current charge of ^{the} _A post of Chief Producer in addition to his duties on 4.3.1997. He was regularised as Jt. Chief Producer

w.e.f. 29.2.1996 vide order dated 30.6.1998. Thereafter a selection was held for filling up the post of Chief Producer when it fell vacant on 1.3.1997. At the time the selection was held the Applicant had not completed the requisite qualifying service. He was short by a few months service in the feeder cadre of the Jt. Chief Producer all the same the Applicant applied for the post. The Applicant was selected and appointment was offered to him on 26.6.1998. The Appointment was offered to him in the pre-revised scale of Rs.5900-6700/- on contract basis for a period of 3 years on the terms and conditions mentioned in the agreement form enclosed along with it. He was asked to indicate his acceptance within a period of 15 days from the date of issue of the letter. The Applicant opposed the offer of appointment on contract basis stating that he was a Govt. servant and there cannot be a contract between the serving Govt. Servant and the Govt. He referred to the Recruitment Rules for the post of Chief Producer according to which whenever a departmental candidate is selected through direct recruitment he is to be deemed to have been promoted. However, this was not agreed to. He, therefore, took up the appointment without prejudice to his right of being a serving Govt. Servant. In this connection some correspondence was exchanged between the Films Division and the Govt. as well as the UPSC. The UPSC vide their letter dated 3.11.1999 clarified that the Applicant had been recommended through direct recruitment so appointment can be done only on contract basis for a period of 3 years, as per the existing recruitment rules of the said post. Therefore, the Ministry of Information and

Broadcasting was correct in offering the post of Chief Producer in Films Division to the Applicant on contract basis for a period of 3 years and appointing him accordingly vide Notification dated 4.8.1998. The Applicant continued in the post of Chief Producer while he was still holding the post of Jt. Chief Producer. After completion of the required 3 years of service, in the Grade of Jt. Chief Producer the applicant approached the Respondents to regularise him in the post of Chief Producer as he now had acquired the requisite eligibility of minimum 3 years of service in the post of Jt. Chief Producer. However his request for the same was rejected and he was informed that his appointment as Chief Producer being on contract basis it ended with the expiry of the contract and therefore, he would have to appear afresh for the selection to the post of Chief Producer.

2. The Respondents thereafter proposed to notify the recruitment for the post of Chief Producer, Films Division, vide letter dated 9.3.2001 and request was sent to UPSC. Aggrieved by this the applicant approached the Tribunal and also sought Interim Relief to stay the proposed Notification for selection. The Tribunal granted the stay by restraining the Respondents from takingt any action for filling up the post of Chief Producer by way of transfer on deputation or by direct recruitment.

3. It is the contention of the Applicant that he was a departmental candidate and having been selected by the UPSC, his appointment to the post of Chief Producer should have been deemed to have been treated as promotion. Further, there was no question of entering into any contract with the Govt. as he was a Govt. servant. Since he has completed the qualifying service,

the Respondents should have regularised him in the post of Chief Producer on the date when he qualified.

4. The Respondents however, have opposed the O.A. and held the stand that the Applicant was appointed only on contract basis, by direct recruitment and he was not eligible to be treated as having been appointed on promotion in spite of clause 2 (c) under Col.12 of the Recruitment Rules for the post of Chief Producer i.e. because the Applicant had not completed 3 years of service in the post of Jt.Chief Producer as on the date of selection. The Appointment would have been considered as promotion had he been really eligible. Since he was not eligible to appear as a departmental candidate for direct recruitment there is no question of his being considered as having been appointed on promotion and further regularising his appointment. The Respondents are therefore, justified in holding that the applicant's contract having ended he has to appear afresh for selection to the post of Chief Producer.

5. The learned Counsel for the applicant has cited a few judgements in support of his stand that if the candidate had not fulfilled the requisite qualification and was appointed he could not be reverted if he had completed requisite qualifying service during the course of his functioning in the higher post. He is relying on the judgement in the case of *Ram Swarup v.s State of Haryana and Ors 1979 SCC L&S 35*. The para 3 of the judgement is relevant, which is reproduced below:



"3. The question then arises as to what was the effect of breach of clause (1) of Rule 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of Labour Laws in any one of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised. The appellant worked as Labour-cum-Conciliation Officer from January 1, 1968 and that being a post higher than that of Labour Inspector, or Deputy Chief Inspector of Shops or Wage Inspector, the experience gained by him in the working of Labour Laws in the post of Labour-cum-Conciliation Officer must be regarded as sufficient to constitute fulfilment of the requirement of five years' experience provided in clause (1) of Rule 4. The appointment of the appellant to the post of Labour-cum-Conciliation

Officer, therefore, became regular from the date when he completed five years after taking into account the period of about ten months during which he worked as Chief Inspector of Shops. Once his appointment became regular on the expiry of this period of five years on his fulfilling the requirements for appointment as Labour-cum-Conciliation Officer and becoming eligible for that purpose, he could not be thereafter be reverted to the post of Statistical Officer. The order of reversion passed against the appellant, was, therefore, clearly illegal and it must be set aside."

The Applicant also placed reliance on the judgement of the Supreme Court in the matter of *Roshan Lal Tandon vs. UOI (1967)* SLJ Vol.V page 236. He has drawn our attention to para 7 of the judgement in which contract appointment has been discussed. It was held therein that though the origin of Govt. service is contractual there is an offer and acceptance in every case. But once appointed to his post or office the Govt. servant acquires a status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of the Govt. servant is more one of status than of contract. In the light of this the

applicant prays that he could not be made to enter into contract.

6. The learned Counsel for the Respondents averred that the applicant continued in the post of Chief Producer and has enjoyed the benefits of the post. The position cannot be altered that his appointment was on contract basis and therefore, the Applicant has no right to continue in the post of Chief Producer beyond the period of contract unless he is selected afresh for the post.

7. We have given careful consideration to the rival contentions and have also perused the judgements. In our considered view the applicant would have been eligible to apply as a departmental candidate against direct recruitment, had he fulfilled the criterion of 3 years qualifying service in the post of Jt. Chief Producer. Admittedly, he fell short of 3 years of qualifying service. Therefore, the other alternative was to treat him as an outsider and he was considered as such and was selected. His their offer of appointment on direct recruitment basis makes no reference to his being a departmental candidate. Therefore, the provision in clause 2 (i) under Col.12 of the recruitment Rules for the post of Chief Producer to the effect that departmental candidate on selection will be treated to have been selected on promotion basis cannot be made applicable in the present matter. The Applicant has argued that his appointment cannot be treated as contract appointment as there cannot be a contract between the Govt. servant and the Govt. However, the fact is that the Applicant had knowingly applied for the post and the Recruitment

Rules made it very clear that the post is to be filled by promotion/transfer on deputation (including short term contract) /direct recruitment on contract basis. He also worked in the post. Though he accepted without any prejudice to his right on being a Govt. servant still he continued in the post.

8. We have perused the agreement of contract which goes to show that the agreement is not between the Lt. Chief Producer of Films Division and the Govt. but between Shri Bankim Kapadia (applicant's name) with the Govt. i.e. in his individual capacity and not as a departmental candidate. Further, had he to be treated as having been promoted then, the agreement would not have spelt out in different clauses that some of the service conditions applicable to the Govt. Servants as per the CCS Rules would be made applicable to the Applicant in the post of Chief Producer. All these go to show that his appointment was purely on contract basis. If the Applicant thought that he could not be subjected to a contract he should not have accepted the post or should not have worked in the post. He has also carried out correspondence with the department and he has continued to work in the post even after necessary clarifications were issued for e.g. the letter dated 3.11.1999 from the UPSC. Though the Applicant was not directly informed the applicant himself surely must have been aware of the inter-departmental correspondence. In fact the learned Counsel for the Applicant did submit that even the Films Division i.e. the department where he worked had recommended his case.

Further the UPSC had clarified that applicants appointment was purely on contract basis. Still the applicant continued in the post. Therefore, he cannot now assail his appointment on contract basis and seek regularisation. Also the judgement in the case Ram Swarup (supra) is distinguishable. There the Officer was being reverted whereas in the present case the appointment was on contract basis. There cannot be regularisation after the expiry of the period of contract. The aforesaid judgement cannot help the present applicant. In our considered view the respondents' action in proposing to call for a fresh selection cannot be faulted with in the facts and circumstances of the case. We are, therefore, unable to grant any relief in this case. The O.A. is dismissed.

9. The interim stay granted earlier is vacated. Now it will be open to the department to proceed with the selection process and in the meantime the Applicant shall be permitted to continue in the post of Chief Producer till the selected candidate takes over.

Shanta S
(Smt. Shanta Shastry)
Member (A)

sj*

Ashok O. Agarwal
(Ashok O. Agarwal)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 1 MUMBAI

REVIEW APPLICATION NO. 55/2001
IN
ORIGINAL APPLICATION NO. 220/2001

THIS, THE 27th DAY OF SEPTEMBER, 2001

CORAM: SHRI JUSTICE ASHOK AGARWAL.
SMT. SHANTA SHAstry.

CHAIRMAN
MEMBER (A)

Union of India through
Secretary, Ministry of
Information and Broadcasting,
Shastri Bhavan,
New Delhi-110 001.

Review Applicant

By Advocate Shri P.M. Pradhan.

Versus.

1. Bankim Kapadia,
working as Chief Producer,
Film Division, Ministry of
Information & Broadcasting,
24, Dr. Gopalrao Deshmukh Marg,
Mumbai-400 026.
2. The Secretary,
Union Public Service Commission,
Dolpur House,
New Delhi-110 001. Respondents

O R D E R

Smt. Shanta Shastry. Member (A)

This review application is filed against the order dated 19.6.2001 in OA No.220/2001. While dismissing the OA for regularising the applicant in the post of Chief Producer, the Tribunal also directed that the applicant shall be permitted to continue in the post of Chief Producer till the selected candidate takes over.

2. The review applicants have submitted that as a legal consequence, though the applicant ceases to hold the post of Chief Producer from 30.6.2001, legally he stands ^{reported} in the post of Joint Chief Producer which was held by him prior to his appointment to the post of Chief Producer on contract basis. Since the applicant has no legal right to be regularised in the post of Chief Producer, he is not entitled to continue in the post of Chief Producer. This is an error of law apparent on the face of record and requires to be corrected by review.

3. According the review applicants i.e. the respondents in the Original Application, the aforesaid relief was granted only on the oral plea when the final order came to be known. The original applicant sought such relief on the ground not in the OA.

4. The review applicant has prayed to cancel the direction given earlier and to permit the review applicants to make appropriate arrangements in regard to the post of Chief Producer. The costs have also been prayed for.

5. The review application has been filed after the period of one month of the passing of the order. M.P. for condonation of 16 days delay has therefore, been filed along with the review application. The reasons given are due to administrative procedure and reasons.

6. This order was dictated in the open court. It was open to the review applicants to raise the point at the relevant time. According to us, there is no error apparent on the face of the record. Further, even if conclusions arrived at are taken to be wrong that by itself cannot be a ground for review. It has also been held in V. Rajaiah Vs. Union Public Service Commission reported in (1991) 18 ATC 239 (Hyd) that relief can be moulded by the Tribunal in the interest of justice (1989 (5) SLR 579). In view of this, we hold that no review is called for and accordingly the review application is rejected. MP also stands disposed of.

Shanta Shastray

(SHANTA SHAstry)
MEMBER (A)

(ASHOK AGARWAL)
CHAIRMAN

Gaja

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 1 MUMBAI

REVIEW APPLICATION NO. 55/2001
IN
ORIGINAL APPLICATION NO. 220/2001

THIS, THE 17th DAY OF SEPTEMBER, 2001

CORAM: SHRI JUSTICE ASHOK AGARWAL.
SMT. SHANTA SHAstry.

CHAIRMAN
MEMBER (A)

Union of India through
Secretary, Ministry of
Information and Broadcasting,
Shastri Bhavan,
New Delhi-110 001.

Review Applicant

By Advocate Shri P.M. Pradhan.

Versus.

1. Bankim Kapadia,
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2. The Secretary,
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O R D E R

Smt. Shanta Shastry. Member (A)

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certified True Copy
Date

Section Officer
Central Admin. Tribunal
Bombay Bench

CAT/MUM/JUDL/O.A. 220/2001/

dated

Copy to

- 1 Shri G.S. Walia, adv. for the applicant
- 2 Shri P.M. Pradhan, adv. for the respondents.

S.O.