

(08)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 818/91

Transfer Application No:

DATE OF DECISION 13.1.1995

Mukund Govind Yevlekar. Petitioner

Shri V.V.Joshi. Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri V.S.Masurkar. Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri P.P.Srivastava, Member(A).

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 ish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No


(M.S.DESHPANDE)
VICE-CHAIRMAN

NS/

(09)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

DA.NO. 818/91

Shri Mukund Govind Yevlekar ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM : Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri V.V.Joshi
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 12.1.1995

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant seeks a direction to appoint him to the post of Sound Recordist on regular basis with retrospective effect from 8.5.1974 in the pay scale of Rs.550-900 with all other perquisites such as pay, seniority, etc. as admissible under the rules and alternatively to pay to him the pay due and payable by fixing his pay in the revised pay scale with effect from 8.5.1974 together with arrears in pursuance of the judgement of the Supreme Court in Writ Petition No. 240/89. At the stage of hearing, however, the learned counsel for the applicant stated that he was not pressing for seniority to be fixed in this petition.

2. The applicant claims to have worked from 8.5.1974 to 31.12.1974 as Sound Recordist on contract basis for the Pune based unit of Doordarshan and from 1.1.1975 to 15.3.1979 he worked in the Office of

Respondent No. 2, Director, Doordarshan Kendra, Worli as Sound Recordist on contract basis. It is urged that the Respondents advertised the post of Sound Recordist as late as in November 1974 and again in January 1975 and chose to make haphazard appointment of the applicant on ad-hoc basis w.e.f. 8.5.1974. The applicant continued without any break to work as Sound Recordist until he was offered that post on 2.12.1978 in pursuance of the advertisement in September 1976 and came to be interviewed for the post on 29.4.1977 in the scale Rs.425-750. The appointment was made from 16.3.1979 though the applicant was entitled to such an appointment on regular basis w.e.f. 8.5.1974 in terms of the judgement of the Supreme Court in Narendra Chadha & Ors. vs. Union of India, A.I.R. 1986 SC 638. Since this was not done by the respondents, the applicant has approached this Tribunal for the aforesaid relief.

3. The respondents contended that the applicant was never appointed on regular basis. His appointment was made only for short spells with breaks on various occasions and there was no continuity of service as such. Reliance was placed on the documents which the applicant has filed in respect of contract of appointment as Annexures to the Rejoinder. It was also urged that the applicant was given the entire benefits as directed by the Supreme Court in V.K.Mehta & Ors. vs. Union of India & Anr. 1938 III SVLR (L) 86 and in Doordarshan Cameramen's Welfare Association (Regd) vs. Union of India, Writ Petition (Civil) No. 240 of 1989 decided on 12.4.1990 and the applicant was not entitled to any larger benefit than this.



4. There is no dispute about the position that the services of the applicant had been utilised by the Respondents as Sound Recordist from 8.5.1974. The applicant has filed several orders which were issued to him as annexures with a Rejoinder dt. 31.8.1992 and Shri Masurkar, the learned counsel for the Respondents pointed out that he would go by these annexures for pointing out that the appointment of the applicant was never continuous or for any significant spells, but merely a short time job work done from time to time. Annexure A-11(1) which was issued in favour of the applicant was in respect of Drama Variety and Features Contract, the title being Tour to Pune and back to work as Sound Recordist for the date of Broadcast 3.6.1975 to 9.6.1975. The time of Broadcast/Telecast was mentioned as "as and when required" and the duration was to be of 7 days. The next spell was from 11.6.1975 to 14.6.1975 for 4 days and that was also in respect of Tour to Pune and back to work as Sound Recordist. The titles were the same in respect of the other annexures which have been filed and they were all in respect of tours to Pune. In no case did the term exceed more than 15 days at a time, that most of the engagements were for the period of 3 to 8 days and the breaks were for considerable periods and it is difficult to say that the breaks were given only in order to get over certain technical difficulties. The last engagement was for the period from 1.3.1979 to 15.3.1979.

5. The applicant was appointed from 2.12.1978 on a probation of 2 years after the offer was made for filling the post on regular basis and he was continued by the order dt. 9.7.1981 (Annexure A-4) until further orders after the termination of the probationary period as per the terms and conditions of the contract and instructions issued by the Directorate in this regard from time to time.

It is thus clear that the engagement of the applicant at the initial stages before he was placed on probation was merely for doing job work on daily basis and had no semblance of permanent appointment. The learned counsel for the applicant, however, urged that he was entitled to have the benefit of the decision of the Supreme Court in Writ Petition No.1239/79 Y.K.Mehta & Ors. V/s. Union of India & Anr. (1988 III SLR (L) 86), wherein it was held that:

"having regard to the service conditions of Staff Artists of Doordarshan and in view of the decision in Union of India V/s. M.A.Choudhary the Staff Artists of Doordarshan including the petitioners are Government servants."

The second decision on which reliance was placed was Doordarshan Cameramen's Welfare Association (Regd) V/s. Union of India & Anr. (Writ Petition (Civil) No.20/1989) (Annexure A-3) after making a reference to an earlier decision of the Supreme Court it was observed that:

"The Sound Recordists, who are the petitioners in Writ Petition (C) No.974 of 1978, shall be given the pay scale of the Recordist/Sound Recordist in the Films Division i.e. Rs.550-900 w.e.f. 1.1.1978."

After considering the contentions therein it was further observed as follows:

"This Court has ordered that the Sound Recordists in Doordarshan shall be given the pay scale of Rs.550-900 with effect from 1.8.1978. The Cameramen Grade II shall be allowed the pay scale of Rs.650-960 with effect from 1.8.1979. The Lighting Assistant/Lightmen are held entitled to the pay scale of Rs.425-700 with effect from 1.12.1983. It was also directed that they shall be given the 'substituted scales of pay and consequential benefits with the arrears being the difference in the pay scales.' In view of that conclusion reached and direction issued to the Respondent cannot now ask us to reconsider the same question."

The Court then added:

"Before parting with the case, we must say a word more. We have been referred to a chart showing the disparity in salary paid to some of the Artists in Doordarshan as per the order of this Court in contract with their counterparts in Films Division. We do not want to express any

opinion for want of relevant material. We however, add that there shall not be any difference in the pay drawn while giving benefit of the respective pay scales to persons having the same length of service as their counterparts in Films Division. To do otherwise, would be discriminatory. The Respondent shall work out the formula by placing the petitioners in the proper grade in the pay scale allowed to them."

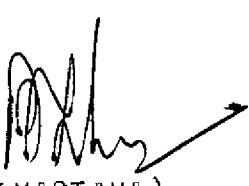
According to the petitioners they were entitled to be treated in the same manner as the corresponding Artists in the Films Division. We asked the learned counsel for the applicant to point out whether he has shown the comparison between him and a similarly placed Artists in the Films Division, in the pleadings. He could not point out to any such pleading\$ or the comparative position because there was no pleading\$ to that effect. We are faced with the same difficulty as was expressed by their Lordships of the Supreme Court in the above passage. In the absence of the relevant material we cannot therefore, accept the submission that the applicant had been treated differently from the Artists similarly placed in the Films Division.

6. The learned counsel for the Respondents pointed out that the applicant had been paid after he was placed on probation the wages according to the pay scales which fell to be given to the applicant in view of the directions of the Supreme Court. The learned counsel for the applicant urged that the benefit should have been given to him from 8.5.1974. We have already pointed out that the appointment of the applicant was not continuous, it was only casual job work which would not satisfy the requirement of a casual artists as were before the Supreme Court. In para 2 of the decision in Y.K.Metha & Ors. V/s. Union of India & Anr. it has been mentioned that the Staff Artists were originally appointed on renewable contracts for 3-4 years' duration, but that practice has since undergone a change and they are now appointed up to the age of 55-60 years on a time-scale.

They are, however, employed on contract basis till the age of 55-60 years, that is, the contract runs till the age of retirement as in regular Government service. Based on this, the Supreme Court made the directions which we have pointed out above. The applicant does not come anywhere near the category of persons who were before the Supreme Court in that case and whatever was observed by the Supreme Court with regard to the persons who had opted long term employment ~~cannot be said~~ to be equal to the applicant in any manner, even the terms and conditions under which the applicant came to be employed.

7. The learned counsel for the applicant however urged that he should be given the benefit in terms of the Supreme Court Judgment from 1.1.1978 onwards to 15.3.1979 when he ~~came~~ to be appointed on probation. It is difficult to accept this submission also, because ~~pursuant~~ to the directions of the Supreme Court the scale became effective from 1.1.1978 and the difference in wages was to be paid from 1.1.1978 only to these categories which came within the purview of the Supreme Court decision. The applicant did not answer the eligibility for the period preceding his appointment on probation from 2.12.1978. Whatever was due to him from 2.12.1978 on the basis of the directions of the Supreme Court has admittedly been paid to the applicant and we are satisfied that the applicant cannot ask for anything more.

8. In view of this, we see no merit in the application, it is dismissed. No order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE-CHAIRMAN