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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, CAMP AT PANAJI.

Original Application No. 1310/93

Kum. Sandhya G. Rane & Ors. Applicants.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Shri M.S. Deshpande, Vice-Chairman,
Hon'ble Shri M.R. Kolhatkar, Member (A).

Appearances :-

Applicants by Shri M.S. Sonak.
Respondents by Shri G.R. Sharma.

Oral Judgment:-

{Per Shri M.S. Deshpande, Vice-Chairman} Dt. 16.6.1994.

The present four applicants were the applicants in Original Application Nos. 238 & 752/91 which were decided by this Tribunal on 8.1.1992. The directions which were issued on the same lines as were issued by the Principal Bench directed a scheme to be framed for regularisation of Doordarshan Artists/^{employed} in the Doordarshan Kendra in Goa. The material directions were:

- i) Casual Artists who have been engaged for an aggregate period of 120 days, may be treated as eligible for regularisation. The broken period in between engagement and disengagement, are to be ignored for this purpose.
- ii) The respondents shall prepare a panel of Casual Artists who had been engaged on contract basis, depending on the length of service. The names of those who have not been regularised so far, specially from 1980 onwards, though they may not be in service now, are to be included in the panel. Persons borne on the panel, are to be considered for regularisation in the available vacancies.
- iii) For the purpose of regularisation, the upper age limit has to be relaxed to the extent of service rendered by the Casual Artists. One hundred and twenty days service in the aggregate shall be treated as the service rendered in one year for this purpose.
- iv) Till all the Casual Artists who have been engaged by the respondents have been regularised, the respondents may not resort to fresh recruitment of such Artists through Employment Exchange or otherwise.

v) Till the Casual Artists are regularised, the wages to be paid to them should be in accordance with the scale of pay of the post held by a regular employee in an identical post. The amount of actual payment would be restricted to the actual number of days worked during a month."

The Tribunal further directed that :

"the appointments and benefits will be given in accordance with the scheme so framed which obviously will be framed in accordance with the law including recruitment rules as has been indicated earlier. Whenever work is available the applicants will be allowed to do the work including those who are interested in doing the work for whom it has been said that they have abandoned the service."

A scheme came to be framed accordingly and it was to be applied to all those Casual Artists who were employed on casual basis on 31.12.1991 including those who were on the rolls of the Doordarshan, though they may not be in service now will be eligible for consideration. Those who are engaged on casual basis after 31.12.1991 will not be eligible for consideration. The present applicants were on the rolls as Casual Artists on 31.12.1991 and they would therefore come within the scheme.

2. A Contempt Petition was filed by the present applicants, which came to be decided by this Tribunal on 6.8.1993. The question which arose for consideration then was whether the applicants who had not passed Matriculation with Konkani as a subject, whether the contempt had been committed by the Respondents because they insisted upon the applicants having passed Matriculation with Konkani as a subject. While rejecting the C.P. it was observed that if the appointment was denied to the applicants as they had not passed matriculation with Konkani as a subject, respondents cannot be said to be guilty of wilful dis-obedience of the orders passed by this Tribunal. While dismissing

the Contempt Petition it was made clear that that ^{the} order will not prejudice the applicants if they wish to file an Original Application on the basis of the requirements which have been set out by the Respondents for filling up the posts. That was how the present application came to be filed. Out of the four applicants, the first applicant Kum. Sandhya G. Rane has been considered by the respondents and her grievance does not survive. It is the grievance of only applicants No.2 to 4 which calls for consideration. The applicant No.2 had put in 283 days of service, applicant No.3 had put 253 days and the applicant No.4 had put in 240 days of service. The advertisement which was issued by the Respondents prescribed age limit as between 18 to 25 years as on 15.2.1994 for all categories of posts including four posts of Production Assistants and the essential qualifications were noted as :

- i) Degree from a Recognised University. OR Degree/Diploma in direction in TV/Film/Stage from a recognised institute.
- ii) Should have passed Matriculation with Konkani as one of the subject or as a medium of instruction.
- iii) Knowledge of the culture and literature of Goa State.
- iv) Adequate knowledge of the discipline.

With regard to the first requirement about age limit, it is apparent that the applicants No.2, 3 and 4 were born on 27.3.1968, 1.6.1966 and 4.10.1965 respectively. If we go by the directions of the Tribunal and the scheme framed, it is obvious that the age limit shall stand relaxed to the extent of service rendered by the Casual Artists at the time of regularisation, ^{as} a minimum of 120 days service in the aggregate, one year, shall be treated as one year's service rendered for this

purpose. If this text is applied the applicants No.2 and 3 would be eligible by relaxing the requirement of age as permitted by the directions of the Tribunal and under the scheme. With regard to applicant No.4 he was 28 years of age and even by giving him two years relaxation he would not be eligible as he was over aged on 15.2.1994. In respect of the applicant No.4 Shri Sonak, learned counsel for the applicants urged that the applicant No.4 would have been qualified had the directions of the Tribunal which were issued on 8.1.1992 to frame the scheme within four months had been adhered to by the Respondents. They sought extension by six months and the applicant No.4 was therefore, deprived of the relaxation on account of circumstances beyond his control. It may be noted that under the scheme itself ~~the~~ Clause 1 of the scheme envisages that the scheme would be applicable to all those Casual Artists who may be employed on casual basis on 31.12.1994 ^{and} ~~even~~ on that day the applicant No.4 would have been ineligible because he was over aged. The relaxation under the orders passed by the Tribunal and under the provisions of the scheme would be available only to the extent it was permitted and relaxation cannot be stretched on equitable consideration. We are satisfied that the applicants No.2 and 3 would have been eligible ^{upon the conditions of age} which has been noted in the advertisement, while applicant No.4 would have been ineligible on the ground of his being over aged.

3. Shri G.R.Sharma, learned counsel for the Respondents referred us to the O.M. dt.1.9.1992 under

which certain clarifications were issued to facilitate regularisation. Clause 17 was about the cut-off date for determining the age limit prescribed in the relevant rules and the clarification was that since the scheme for regularisation of casual artists has been issued on 9.6.1992, it comes into force from the same date. Hence the cut-off date for determining age limit for considering regularisation against the available vacancies shall also be 9.6.1992. We have not been able to see how this clarification or administrative instructions, ^{as -} described by the learned counsel can lend assistance to the Respondents. ^{It} He does not speak of the relaxation and any administrative instructions which would be contrary to the directions of the Tribunal and the scheme framed would not avail the respondents in any way. A reference was also made to the decision of the Madras Bench of the Tribunal in OA Nos.989/92 and Others in T.Swaminathan & Ors. V/s. The Union of India & Ors. decided on 1.11.1993. After referring to the relevant provisions made in the order of the Tribunal and the scheme, all that was observed therein at para 20 was that merely because the applicants do not come within the age limit even after relaxation, it could not be urged that there should be a total relaxation. The Judgment does not say that the relaxation was impermissible. In fact, it says that the applicants therein could not claim eligibility even after relaxation and this decision therefore would not help the respondents.

4. The next question which arises for consideration is whether the present applicants answer the essential

qualifications which were mentioned in the advertisement and particularly item 2 of clause 1 which says that they should have passed matriculation with Konkani as one of the subjects or as medium of instruction. This eligibility also shall have to be determined on the basis of the date mentioned in the advertisement i.e. 15.2.1994. The applicants Nos.2 and 4 had offered Konkani as a subject for the matriculation examination and have produced their mark lists at pages 26 to 29 of the application. The examination was held in October, 1993 and the applicants cleared Konkani as subject for matriculation in December, 1993. On the date of advertisement therefore, the applicants must be deemed to have possessed necessary qualifications i.e. matriculation with Konkani as one of the subjects.

5. Reliance was placed on behalf of the Respondents on Clause 5 of the scheme for regularisation which reads that the casual artists who are to be regularised should possess the requisite educational qualification and/or experience as stipulated in the Recruitment Rules or other administrative instructions (in the absence of Recruitment Rules) existing for the post when the casual worker was initially engaged.

It is apparent that the first and second parts of clause 5 have to be read ^{- disjunctively -} because of the term "or" and the applicants ^{qualification} ~~entitlement~~ which comes within the first part would determine their entitlements. We do not ~~have~~ to go to the second part and any administrative instructions which run counter to the directions of the Tribunal and ^{the} ~~a~~ scheme framed would not deprive the applicants of their eligibility under the scheme.

6. If we turn to the prayers, the applicants have not specifically asked for a direction to consider their eligibility in pursuance of the advertisement which was issued on 22.1.1994, obviously because the present application was filed prior to the advertisement and that relief could not have been ^{sought} made. However, Shri Sonak, the learned counsel for the applicants stated very fairly before us that what is in substance asked for is not straight-away quashing of the orders of termination which were passed on 16.6.1993 or reinstatement irrespective of the eligibility of the applicants, but mere consideration at the time of selection because of their answering the eligibility. He urges that this part of the prayer would be covered by clause 'C' by which a direction to regularise the applicants in the services has been sought. We find that the relief in the present application in view of the advertisement issued later has to be moulded for doing complete justice.

9. By the interim order passed on 24.12.1993 it was directed that if the posts of Production Assistants are not filled up as on that day they should not be filled up till the next date and this interim order was continued. The posts of Production Assistant have not so far been filled up. The ^{case of} applicant No.1 does not call for consideration in view of her selection in the selection process. We are not granting any reliefs in respect of applicant No.4 who was undoubtedly over aged. Since we find that the applicant Nos.2 and 3 are eligible we direct the respondents to consider them in the selection process which has been initiated

and decide their case on merits. This process be completed within three months from the date of communication of the order to the respondents. The interim injunction granted on 24.12.1993 shall continue till the selection process is finalised after considering the applicants No.2 and 3. Dasti.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

M.S.Deshpande

(M.S.DESHPANDE)
VICE-CHAIRMAN

B.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY,
CAMP AT PANAJI.

Contempt Petition No.137/95
in
Original Application No.1310/93.

Kum.Sandhya G.Rane & Ors. ... Applicants.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

Appearances:-

Applicants by Shri M.S.Sonak.
Respondents by Shri E.P.Badri Narayanan.

Tribunal's Order :

[Per Shri B.S.Hegde, Member(J)] Dated: 18.10.1995.

Heard Shri M.S.Sonak, counsel for the applicants
and Shri E.P.Badri Narayanan, counsel for the respondents
on Contempt Petition No.137/95 in O.A. No.1310/93.

2. The learned counsel for the applicants drew our
attention to the order passed by this Tribunal in O.A.
No.1310/93 which was disposed of on 16.6.1994 directing the
respondents that if the posts of Production Assistants are
not filled up as on that day they should not be filled up
till the next date and this interim order was continued.
The Respondents state that the posts of Production
Assistants have not so far been filled up. The case of
the present petitioner was not called for consideration
in view of the selection process pursuant to the
advertisement made for the appointment of three Production
Assistants on 22.1.1994. So far as the Applicants No.2 and
3 are concerned, the Respondents were directed to consider
them in the selection process which was to be initiated
within three months from the date of communication of this
order.


3. The respondents have filed their affidavit
stating that pursuant to the directions of this


...2.

Tribunal they have considered the applicants No.2 and 3 and have drawn a final list dt. 23.9.1995 which may be published in the notice board if it is not published. According to them, the final list against which the SC vacancy is shown against one Sh.Vinesh V.Arlenkar and the unreserved vacancy by Sh.Rajendra Phadte, Kum. Deepa Suresh Pai and Kum.Sandhya G.Rane being at Sl.Nos.1, 2 and 3 respectively. The contention of the learned counsel for the respondents is that pursuant to the abolition of the posts vide their order dt. 28.2.1995 they could not appoint the applicant. It is true that the Court ~~is~~ has directed the respondents to consider the applicants for selection and not for appointment.

4. In view of the circumstances of the respondents in which they are situated they could not appoint the applicant and accordingly they have written to the headquarters by their letter dt. 27.6.1995 for revival of the ^{four} posts which is under consideration by the respondent department. We therefore, direct the respondents that as and when the posts are created they shall appoint the present applicant, as well as the other persons who are on the panel. The respondents are further directed to consider the decision of the creation of posts within a period of three months from the date of receipt of this order. The Contempt Petition is accordingly disposed of.

Dasti.


(P.P.SRIVASTAVA)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J).

B.