IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 462/91 199
~~T.A. No.~~

DATE OF DECISION 11.1.93

LOKENDRA SHARMA & OTHERS Petitioner(s)

S/Shri N.K.Mishra, Dinesh Agarwal, S.K.Singh, Pankanj Bhandari, Manish Bhandari, R.K.Pareek & S.P. Sharma Advocate for the Petitioner (s)

Versus

Union of India & Ors Respondents

S/Shri U.D. Sharma/R.N. Mathur Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice DINKAR LAL MEHTA, VICE-CHAIRMAN

The Hon'ble Mr. B.B. MAHAJAN, ADMINISTRATIVE MEMBER

PER HON'BLE MR. JUSTICE DINKAR LAL MEHTRA, VICE-CHAIRMAN:

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? N
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? N

(B.B. MAHAJAN)
Administrative Member

(D.L. MEHTA)
Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

Date of Decision: 11.1.93

1.O.A. No. 462/91

LOKENDRA SHARMA : Applicant

Mr. S.K. Jain : Counsel for the applicant.

2.O.A. 453/92

SANJEEV KUMAR SHARMA : Applicant.

Mr. Rajendra Soni/ Mr. Mukesh Agarwal : Counsel for the applicant.

VERSUS

UNION OF INDIA & ORS : Respondents.

Mr. U.D. Sharma : Counsel for the respondents.

3.O.A. No. 738/89

AVADESH BHATNAGAR : Applicant

4.O.A. No. 922/89

GAJPAL SINGH ATRI : Applicant

5.O.A. No. 826/89

NARENDRA SINGH SHEKHAWAT : Applicant

6.O.A. No 665/89

VIJAY KUMAR SHARMA : Applicant

7.O.A. No. 666/89

OM PARKASH SHARMA : Applicant

8.O.A. No. 567/89

SHAMBHU DAYAL : Applicant

9.O.A. No. 668/89

RAMJI LAL : Applicant

10.O.A. No. 569/89

RAM SWAROOP : Applicant

11.O.A. No. 34/92

Km. JAYANTI AHUJA : Applicant

12.O.A. No. 30/90

GAJRAJ SINGH : Applicant

Mr. N.K. Mishra : Counsel for the applicants 3-12.

13.O.A. No. 672/89

JAGDISH NARIAN MEENA : Applicant

Mr. Dinesh Agarwal : Counsel for the applicant.

14.O.A. No. 641/89

SHAKIL-UR-REHMAN : Applicant

Mr. S.K. Singh/ Mr. Pankanj Bhandari : Counsel for the applicant.

15.O.A. No. 663/89

DOORDARSHAN CASUAL STAFF ASSOCIATION : Applicant

S/Shri S.K. Singh, Pankanj Bhandari, Manish Bhandari : Counsel for the applicant

16.O.A. No. 93/92

TARA CHAND GOTHWAL : Applicant

Mr. R.K. Pare : Counsel for the applicant.

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17. O.A. No. 391/89

OM PARKASH : Applicant

Mr. S.P. Sharma : Counsel for the applicant.

VERSUS

UNION OF INDIA & ORS : Respondents.

Mr. U.D. Sharma / Mr. R.N. Mathur : Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. B.B. Mahajan, Administrative Member.

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

In O.A. No. 462/91, Lokendra Sharma Vs. Union of India and O.A. No. 453/92, Sanjeev Kumar Sharma Vs. Union of India, the applicants submitted that they had passed in the written examination for the posts of Floor Assistant/Production Assistant in the Doordarshan Kendra, Jaipur and had also appeared in the interview for the posts in August/September, 1989 but thereafter they had not been appointed to the post. Some unsuccessful candidates filed the O.As. Nos. 738/89 to 742/89 in which they had prayed that they should be allowed to continue on the post of Floor Assistants etc. The stay order was issued by the Tribunal that appointments shall be subject to the final outcome of these O.As. The respondents have thereafter kept further proceedings for appointments in abeyance. The applicants in these O.As have sought directions to respondents to appoint them on the basis of the result of that selection. In the remaining 15 O.As, the applicants have prayed for their regularisation on the posts on which they were working on contract basis. Thus, we are having two sets of O.As - in the one set of O.As, the cases of the applicants - Lokendra Sharma and Sanjeev Kumar Sharma fall and in the second set the remaining 15 O.As.

2. Brief facts of the first set of cases is that the respondents issued a notification in 1987 for various posts in Doordarshan Kendra, Jaipur, including Floor Assistants, Production Assistants etc. Written examinations for the same were held and the applicants passed the written examination. Thereafter, the interviews were held in August/September, 89. Applicant- Lokendra

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Sharma has stated that respondents prepared the list of successful candidates in which, according to him, his name stands at serial no. 1. The Government was considering about regularisation, as such, the panel was sent for the approval of the Ministry. Applicant's case is that the persons whose cases are being considered for regularisation are not at all eligible for the same as they were working on contingency basis or contractual basis for some period in every month but in no case exceeding 100 to 120 days in a year. At the instance of those such persons, the litigation has started which resulted in the passing of the stay order that any appointment made on any of the posts will be subject to the decision of those applications. The respondents have kept in abeyance the appointments and are awaiting the orders of the Court. On behalf of the respondents it was submitted that examinations were held, interviews were also held, the panel list has not been declared and no one has a right to get an appointment.

3. The other set of applications relates to the regularisation in which it has been stated that they are working since 1987/1988 and they have worked for a pretty long time and, as such, they should be regularised. Similar matters were pending at the Central Administrative Tribunal, New Delhi in the case of Anil Kumar Mathur Vs. Director General, Doordarshan (OA No. 563/86). Directions have been given by the Principal Bench in that O.A. on 14.2.92 that the scheme prepared by the Government for the regularisation of candidates should keep certain additional aspects in view which have been referred in para 7 of the Judgment. The scheme for regularisation has thereafter been issued by the Government and the copy of the same has also been submitted before this Bench. Production Assistants, Floor Assistants etc. were appointed on contractual basis generally for 8 to 10 days in a month. However, the appointment was regular in character to this extent that most of them used to get the appointment every month and in some

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cases, the persons had completed 120 days in a year. It was submitted by this set of persons who are seeking regularisation that the scheme has been prepared by the Government and approved by the Principal Bench without taking note of the local conditions of other Doordarshan Kendras which were established at a later stage. In the midst of arguments, directions were given that if any one wants to challenge the scheme prepared by the Government then he should file separate O.A. or take any action according to law and in these cases the matter cannot be considered about the correctness of the scheme. They were also at liberty to appeal to the Supreme Court if they have a cause against the scheme prepared under the directions of the New Delhi Bench of the Tribunal by the Government.

4. Before us only the question for consideration is whether the persons who have applied, appeared in examination, passed the written test, appeared in interview and thereafter selected and empanelled (although the panel has not been published) have a better right of appointment than the persons claiming regularisation. Mr. S.K. Jain, appeared on behalf of the applicant, Lokendra Sharma, has cited before us the case - Baij Nath Vs. State of Rajasthan & Ors (reported in 1989(1) RLR 183) decided by the Division Bench of the Rajasthan High Court in which it has been held that the selected candidates have a preferential right of appointment over the non-selected teachers and issued the directions that if the appointment to the duly selected petitioners have not been given the appointment will be forthwith given.

5. In the case of State of Rajasthan Vs. Rajendra Kumar Rawat & Others, reported in 1989 Supp. (2) SCC 268, in para 8, their Lorships have held:

> "In the event of their being vacancies in the sanctioned posts the same would be available to be filled up under Rule 30. It has to be taken note of here that seven of the Legal Assistants were recruited in 1982 under Rule 30 and have been continuing with the periodic approval of the Public Service Commission. The rule nowhere contemplates regularisation of such recruitment. Under Rule 30 the appointments are bound to terminate in the event provided in the proviso of the rule.

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> Therefore, their continuance was not correct. The State Government shall take immediate steps to fill up the vacancies as required under the rules by sending the requisition to the Public Service Commission. On the basis of the determination of the exact number of vacancies, the State Government will have also to require the Public Service Commission to recruit for the remaining vacancies. Until such recruitment is made, the seven Legal Assistants who have been continuing from 1982 and are not parties to the proceedings may continue. For the remaining vacancies (after the reserve list is exhausted) the State Government is directed to appoint out of the persons who were already in service and whose services have been terminated following the rule indicated by the High Court, namely, those who have put in the maximum period of service shall be preferred. The State Government shall send the requisition to the Public Service Commission without delay and we direct the Public Service Commission to give priority to make the selection as early as possible. The judgment of the High Court is modified. The State Government shall make temporary appointment as directed above within four weeks."

From the perusal of the Judgment, it is clear that their Lordships were of the view that the rule nowhere contemplates regularisation of such recruitment. Therefore, the continuance of the non-selected persons is not correct and the State was directed that the selected persons should be appointed. However, further directions were given that till the appointments are made the Legal Assistants may be allowed to continue looking to the fact that they are continuing on the post from 1982.

6. Mr. Jain also cited the case of Pritam Singh Vs. State of Punjab & Others, reported in 1987(Supp.) SCC 637. Their Lordships directed that the termination of services of the appellant when regular had became available is not open to challenge. Mr. Jain has also cited the case of T.Chandran Pillai & Others Vs. State of Kerala, reported in 1987(Supp.) SCC 612. Hon'ble Supreme Court directed until a selected candidate is able to join the post to which he is selected the adhoc employee who is now working in any post shall continue in that post. Direction were further given that the age limit relaxation be given to the candidates who have been discharged on account of appointment of the regular selected candidates. In the case of K. Suresh Kumar Vs. State of Kerala, reported in 1988(2) SLR 773, the Hon'ble Supreme Court declined to interfere against the termination orders of temporary employees on the

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ground that regular selected candidates are now available. In the case of State of Haryana & Others Vs. Piara Singh & Others reported in JT 1992 (5) SC 179, Hon'ble Supreme Court has laid the guidelines in the matter of regularisation. Their Lordships held that the normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee. Thus, the case of regularisation stands on inferior footing that the cases of the regularly selected persons. In the case of Surendra Kumar Gyani Vs. State of Rajasthan & Anr., reported in JT 1992(5) SC 293, the Hon'ble Supreme Court upheld the Judgment of the Rajasthan High Court and held that the regularly selected persons have a preferential right to be continued in service over the persons who claim regularisation. State of Rajasthan was thereafter directed to consider the cases of the employees sympathetically as far as practicable for the purpose of regularisation. Thus, in both the cases, cited by the applicant, Hon'ble Supreme Court has given the preferential treatment to the regularly selected persons selected through the due process of Commissions/Selection Boards or otherwise.

7. On behalf of the persons representing those who are claiming regularisation, the case of All Manipur Regular Posts Vacancies Substitute Teachers' Association Vs. State of Manipur, reported in 1991 Supp. (2) SCC 643 was cited. There were more than one thousand substituted teachers who were recruited in 1981-82 onwards. They were allowed to appear before the DPC and out of them 23 persons were selected. The question was

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whether the direct recruitment should be allowed to continue particularly when the question of regularisation of the substituted teachers is under consideration. As an interim order, the Hon'ble Supreme Court directed that regularisation matter may be considered before making direct recruitment and some directions were given by the Hon'ble Supreme Court in the matter of regularisation of teachers who have put in 5 years of service.

8. On behalf of the respondents, Mr. R.N. Mathur submitted the case of Dr. A.K. Jain and Others Vs. Union of India, reported in 1987 (Supp) SCC 497. The Hon'ble Supreme Court directed that the services of the persons who were appointed on adhoc basis upto October, 84 be regularised and also further directed for the relaxation of the age. Mr. Mathur also cited before us the case of L. Robert D'Souza Vs. The Executive Engineer, Sourthern Railway and Another. This is a case of retrenchment under the Industrial Disputes Act and is not of much relevance as far as the question of regularisation is concerned. The learned counsel for the second set of persons has also cited the case of Daily Rated Casual Labour employed under P&T Department Vs. Union of India, reported in AIR 1987 SC 2342. Their Lordships have interpreted that the denial to casual labour of minimum pay in the pay scales of regularly employed workmen amounts to exploitation of labour. The contention of the respondents of the second set of persons is that the fact that they were appointed for 9 to 10 days in a month itself was an exploitation and it continued for years together particularly for a period of 4 to 5 years. The case of I.J. Divakar & Others Vs. Government of Andhra Pradesh & Ors, reported in 1982(3) SLR 475 was also cited. In this case, Hon'ble Supreme Court held that the State Government has the power under Article 162 to regularise the services of the temporary employees. Their Lordships rejected the plea against the regularisation of these temporary employees but further directed the Public Service Commission to finalise the list of selection on the basis of

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the viva-voce tests conducted and marks assigned and forward the same to the Government within two months. They further directed that those who are selected must be first appointed before any outsider is hereafter appointed.

9. In the case of Shankarsan Dash Vs. Union of India, reported in 1992(1) SLJ 7, their Lordships held that the notification inviting applications merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State Government is under no legal duty to fill up [illegible] or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies are available, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.

10. The words "regular" and "regularisation" have been discussed at length by the Hon'ble Supreme Court in the case of B.N. Nagarajan & Others Vs. State of Karnataka & Others, reported in 1979(3) SLR 116. In para 5 on page 123, their Lordships have held that"the words "regular" or "regularisation" do not connote permanence. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are atrributable to the methodology followed in making the appointments. They cannot be construed so as to convey an idea of the nature of tenure of the appointments." Their Lordships have on page 124 further referred to the Judgment of Hon'ble Supreme Court in Nangundappa's case where it was held that "if the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority

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but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the affect of setting at naught the rules."

11. In the cases in hand, written examinations were held in 1988/89 and the interviews were held in September, 89 and the panel/select list was also prepared and was forwarded to the Government for approval. At Jaipur, the Doordarshan was established sometime in 1987/88 and the matter of the regularisation of the staff at Delhi and other places was considered by the Principal Bench vide Judgment dated 14.2.92 in the case of Anil Kumar Mathur Vs. Director General, Doordarshan (OA No. 563/86), Principal Bench approved the scheme. The learned counsel for the other set of applicants has referred to para 9 of the Scheme as issued by the Director General, Doordarshan on 9.6.92 after approval by the Principal Bench which provides that "till all the Casual Artists in a particular category are regularised, no fresh recruitment would be resorted to by Kendra concerned." They have argued that in accordance with this provision, the claims of the officials who were working on contract basis had to be considered for regularisation first and appointment through fresh recruitment could be made only in respect of vacancies which remain unfilled through regularisation. We are unable to agree with this contention. The restrictions in para 9 of the Scheme ibid is only that no fresh recruitment would be resorted to. In this case, the recruitment action had started much earlier and in fact, written examination and interviews had also been held and the list of successful candidates had also been prepared although the panels had not been published in view of the interim order issued by the Tribunal. It is, thus, not a case of resorting to fresh recruitment. The appointment of those who had been selected on the basis of the examination held in August/September, 89 is

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thus not hit by this provision in the Scheme. Moreover, only the question of regularisation of the employees was there before the Principal Bench and no matter was pending relating to any examination conducted in 1988 or interviews held in 1989 or of the persons selected in 1989. Thus the judgment is silent in the matter of appointment to the persons selected as the question of examination, interviews and selection was not considered qua the regularisation.

12. Applicants who have been selected in 1989 are having some vested right to consider for appointments. A hope was generated in their minds that they have been selected and now they will be appointed by the Government. By subsequent regularisation proceedings the euphoria generated by selection has proved a mirage. Further point is whether a person performing contract work for 10 days in a month or so can be said to be holding a civil post and whether the regularisation of such person if it is to be done can it be at the cost of the persons who have already been selected and who have faced the written test and viva and thereafter came in the merit list. Number of persons who were working on a contractual basis might have been selected as they have also appeared.

13. In the light of the Judgments referred to above, we are of the view that the persons who have appeared in the written examinations, viva and thereafter selected in the year 1989 have preferential right of appointments over those persons who have not undergone the process of selection, viva and who could not provetheir merit. Humane consideration is also necessary for the persons who have worked, may be for 8 days or 10 days in a month for some years, have a right to be considered for future appointments and regularisation and we are of the opinion that the cases of regularisation should also be considered and if the vacancies occur in future and if any vacancy remains after giving appointments to the selected candidates then the such persons should be regularised under the Scheme approved by the Principal Bench.

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14. We accept the first set of applications (O.As No. 462/91 and No. 453/92 and direct that the applicants in these O.As who have been selected in 1989 should be given a preferential treatment in the matter of appointment and they should be appointed immediately against the vacancies and if any vacancies remain after filling the posts from the selected persons, the persons who are to be regularised under the scheme may be regularised. If any vacancies still remain, the consideration of the others may also be done, if possible, by relaxing the age limit and making other relaxation which may be necessary in the light of the creation of the Doordarshan Centre at a late stage at Jaipur.

No orders as to costs.

(B.B. MAHAJAN)
Administrative Member

(D.L. MEHTA)
Vice-Chairman

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Section Officer (Judicial)
Central Administrative Tribunal
JAIPUR BENCH, JAIPUR

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