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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 322/89

Date of Decision : 25.6.92

~~Ex. No.~~

Dr. Vishwas Mehendale

Petitioner.

Mr. C. Nageshwar Rao

Advocate for the
petitioner (s)

Versus

The Secretary, Ministry of Information &
Broadcasting, N. Delhi and 2 others

Respondent.

Mr. N. Bhaskar Rao

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. P.C. Jain, Member (Admn.)

THE HON'BLE MR. C.J. Roy, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgment? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

[Signature]
HCJR
M(J)

[Signature]
HPCJ
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.322 of 1989

DATE OF JUDGMENT: 25th June, 1992.

BETWEEN:

Dr. Vishwas Mehendale

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Applicant

AND

1. The Secretary,
Govt. of India,
Ministry of Information &
Broadcasting,
New Delhi-1.

2. The Director General,
Doordarshan,
New Delhi-1.

3. The Director,
Doordarshan Kendra,
Hyderabad.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. C.Nageshwar Rao

COUNSEL FOR THE RESPONDENTS: Mr. N.Bhaskar Rao, Addl.CGSC

CORAM:

Hon'ble Shri P.C.Jain, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI P.C.JAIN, MEMBER (ADMN.)

The applicant who was working as News Correspondent, Doordarshan Kendra, Hyderabad, has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 with the following prayer:-

"In view of the facts mentioned above, the applicant herein prays that as a direction to be issued to the respondents to fix the applicants senior^{-ity} from as on the date of July 1979 treating him as a Government servant and give him the promotions and further to declare the period of deputation with the Government of Maharashtra (1981-83) as a civil servant going on deputation and consequently direct to grant the applicant all the increments, leave salary, pension contribution by fixing the pay scale as Rs.1300-50-1600 as in the year 1983 by declaring the action of the respondents in giving the pay scale to the applicant of 0 that of in the year 1981 after the applicant has come from deputation from Government of Maharashtra and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

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2. The respondents have contested the OA by filing reply. The applicant has not filed any rejoinder. We had carefully perused the material on record and also heard the learned counsel for the parties.

3. Briefly stated, the relevant facts are as below:-

By an order dated 17.8.1979, the applicant was appointed as Correspondent in the Doordarshan Kendra, Bombay with effect from 9.7.1979 in the fee scale of Rs.1100-50-1600 plus allowances as admissible to Staff Artists of Doordarshan from time to time. He was given initial contract for one year but it appears that this contract was further extended. Other terms and conditions of service were to be as per the Ministry of Information and Broadcasting letter No.1/20/76-SI, dated 28.6.1979. Vide order dated 16.4.1981, his services were placed at the disposal of the Government of Maharashtra for the post of Director, Cultural Affairs for a period of two years pursuant to his selection and request by the Government of Maharashtra. He worked on deputation with the Government of Maharashtra as Director, Cultural Affairs upto 7.8.1983. During the period of deputation as aforesaid, he was allowed pay as per the usual deputation terms. At the time when he went on deputation, he is said to have been drawing a basic pay of Rs.1150/- in the pay scale of Rs.1100-1600. When he came back on deputation, his basic pay was again fixed at Rs.1150/- in the same scale. The

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material on record shows that while he went on deputation, his contract as Staff Artist with Doordarshan Kendra was kept in abeyance in accordance with the relevant rules/ instructions on the subject.

4. The Government of India in the Ministry of Information and Broad-casting letter No.45011/26/80-B(A) dated 3.5.1982 conveyed its decision in regard to conversion of Staff Artists of All India Radio/Doordarshan Kendra as Government servants. A copy of this letter is placed at pages 9/10 of the material papers filed by the applicant. These orders show that five categories of Staff Artists in Doordarshan were to be treated as Artists. The learned counsel for the applicant submitted that the applicant did not belong to any of these five categories. The instructions with regard to the Staff Artists who were to be treated as Government servants stipulated that those who have not attained the age of superannuation i.e., 58 years as on 28.2.1982, were to be treated as Government servants subject to the conditions prescribed therein. The conditions were:-

- 1) the Staff Artists will be required to exercise an option in writing within a period of two months indicating their willingness or other-wise to be treated as Government Servants and the option once exercised was to be final; and

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ii) such of the Staff Artists who opted to be treated as Government servants will be screened by duly constituted Screening Committees which will take into account their qualifications, experience, record of service and ascertain whether they are fit to be treated as Government servants. The Screening Committee is also required to assess the suitability of the optees for the purpose of fitting them into corresponding scales of the regular civil establishment.

The Staff Artists who opted to become Government servants and were found fit to be treated as such were made entitled to the same pensionary benefits as were applicable to the Government servants in the regular service but they were not to get any special benefit as available to them as Staff Artists. It is clearly provided in Para 10 of the aforesaid orders of the Ministry of Information and Broadcasting that the conditions of service as Government servants would be given effect to from 6.3.1982. Thus, Staff Artists who elected not to opt for being converted as Government servants, or were not found fit to become Government servants, ^{or} those who have attained the age of 58 years on or before 28.2.1982, were to continue on the terms and conditions of service as per their respective contracts as Staff Artists and they were not entitled to the benefits in terms of the letter dated 3.5.1982.

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5. In pursuance of the above orders of the Government, options were asked for vide memo dated 7.6.1982 issued from the office of the Directorate General, Akashvani. The option was to be exercised within two months, i.e., latest by 7.8.1982. A format for exercising option was enclosed with these instructions and one of the point on which the optee was required to give his willingness while opting to become a Government servant was that he will be treated as Government servant with effect from 6.3.1982. The applicant claims to have opted to become Government servant vide his option exercised on 22.6.1982. This is not disputed by the respondents.

6. The first grievance of the applicant is that even though he had exercised his option as early as in June 1982, orders of the Government with reference to his option were issued only on 22.6.1988 according to which he was declared as a regular temporary Government servant with effect from 6.3.1982 (FN). He made a grievance of the fact that in all other similar cases, orders of the Government had been issued in 1986. As the orders have since been issued and they have retrospective effect from the date which was the date prescribed for the purpose under the relevant Government orders as adverted to above, we do not consider it necessary to go into the aspect of delay at this stage.

7. Another grievance of the applicant is that he should ~~not~~ have been treated as a Government servant with

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effect from his initial date of appointment as Staff Artist on 9.7.1979. In support of his contention, he has relied on the Judgments of the Supreme Court in the case of Union of India Vs. M.A.Choudary (AIR 1987 SC 1526) and in the case of "Y.K.Mehta and others Vs. Union of India and another" (1988 III SVLR(L) 86) ^{or (AIR 1988 SC 1970).} These judgments show that on the submission made by the learned counsel for the respondents therein that the Staff Artists of All India Radio are holding civil posts under the Government, the Supreme Court took note of that submission, and secondly treating the Staff Artists of Doordarshan Kendra on par with the Staff Artists of All India Radio, held that they may also be treated as civil servants under the Government. These judgments nowhere declare that the Staff Artists of All India Radio/Doordarshan will be deemed to have become Government servants with effect from their initial date of appointment as Staff Artists. The learned counsel for the applicant fairly submitted that it is so. He, however, argued that the Judgment should be taken to have meant or directed that the Staff Artists of these organisation would be treated as Government servants with effect from their initial date of appointment as Staff Artists. With due respect to the learned counsel for the applicant, we are unable to agree with this contention which in fact wants us to read some thing into the Judgment which is not there. ^{for} These are other reasons not accepting this contention. The Government orders issued in this connection and which have already been adverted to above, do not show

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that these were issued in pursuance of any direction of the Supreme Court in the aforesaid two judgments. In fact, it could not be so for the simple reason that the Judgments were delivered in 1987 and 1988 while Government had issued their instructions in 1982. Further, we also asked the learned counsel for the applicant, whether any Staff Artist of All India Radio or Doordarshan has been treated as Government servant from a date prior to the date from which he has been treated as such. ~~He~~ He submitted that he did not have the exact information on the point. The learned counsel for the respondents, however, submitted that no Staff Artist of the aforesaid two organisations has been treated as Government servant from a date prior to 6.3.1982. This submission also stands corroborated by the relevant Government orders on the subject itself. We have, therefore, no hesitation in holding that the applicant is not entitled to be declared as Government servant from the initial date of his appointment as Staff Artist in 1979. In fact, he having himself opted to become a Government servant with effect from 6.3.1982, ~~he~~ is estopped from raising such a contention.

8. The learned counsel for the applicant then submitted that the applicant having been declared as a Government servant with effect from 6.3.1982, he should be given the benefits of the new status ~~in~~ regard to his pay fixation, from that date. seniority and promotion. He also contended that in view of his appointment as a Government servant with effect from On

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6.3.1982, the fact that as on that date, he was on deputation with the Government of Maharashtra and that his appointment as Staff Artist had been kept in abeyance, are not at all material and relevant. The respondents in their reply have stated that the question whether the applicant should be allowed the benefit of the status of becoming a Government servant with effect from 6.3.1982 i.e., a date on ~~xx~~ which he was on deputation and his contract as Staff Artist was ~~xxx~~ in abeyance, is under the consideration of the Government of India. No decision is shown to us to have been taken by the Government of India on this point. However, we are of the considered ~~xx~~ ^{that the} view/contention of the learned counsel for the applicant on this point has force and has to be accepted. If the applicant could have been appointed as a Government servant with effect from a date ~~xxx~~ when his contract was in abeyance and he was not working under them, there is no reason as to why he cannot be given the benefit which ^{might} otherwise accrue to him in accordance with the rules after he was treated as a Government servant. It is not possible for us, on the basis of the material available on record, to say as to what ~~xx~~ ^{should be} his pay on 6.3.1982 in the scale of Rs.1100-1600, or at what stage in the above time scale of pay his pay should be fixed after he returned from the deputation. Neither the learned counsel for the applicant nor the learned counsel for the respondents is in a position to state whether any seniority list of the category of staff to which the applicant now belongs has

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been issued after the Staff Artists were declared as Government servants. No such seniority list, even if such a list was issued, has been placed before us. We are, therefore, not in a position to make any observations about the exact seniority of the applicant in the relevant seniority list, and consequently with reference to his seniority, right to be considered for promotion for higher post from time to time. Suffice it to say that the applicant having been treated as a Government servant with effect from 6.3.1982, he has to be treated on par with the other Government servants in the matters of pay, seniority, and promotion subject to the provisions of the relevant rules/instructions.

9. In the light of the foregoing discussions, the OA is disposed of with the following directions:-

i) The applicant having been appointed as a temporary Government servant after termination of his contract as Staff Artist with effect from 6.3.1982 vide notification dated 22.6.1988, the abeyance of his contract as Staff Artist will be valid only from 21.4.1981, i.e., the date on which he went on deputation till 5.3.1982.

ii) The applicant shall be entitled to fixation of his pay on return from deputation in the scale of
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Rs.1100-1600 with reference to the fact that with effect from 6.3.1982 he ceased to be a Staff Artist on contract but became a Government servant, and if his service on deputation with effect from 6.3.1982 would otherwise count for the purpose of increments in the scale of Rs.1100-1600 under the relevant rules, it shall be so counted for fixing his pay ~~EEEE~~ on return from ~~EE~~ deputation. If his pay so refixed is more than Rs.1150/- per month in the scale of Rs.1100-1600, he shall be entitled to the arrears of pay and allowances admissible thereon.

iii) The seniority of the applicant in the relevant grade shall be determined with reference to his appointment as ~~EE~~ Government servant with effect from 6.3.1982. If on account of such fixation of seniority, he becomes eligible for consideration for promotion to a higher post, on a date ~~E~~ after he returned from the deputation, and if a junior had been promoted to such a higher post, a review DPC shall be convened to consider the case of the applicant also. If the applicant is found fit for promotion, he shall be awarded that promotion from the date his immediate junior in the seniority list was so promoted ^{he} and shall also be entitled to consequential monetary benefits as also the benefits of seniority in the promotional post.

iv) The above directions shall be complied with within a period of six months from the date of a copy of the Judgment is received by the respondents.

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10. On the facts and in the circumstances of the case, we direct the parties to own their costs.

(Dictated in the open Court).

hstoy
(C.J.ROY)
Member(Judl.)

Cec
(P.C.JAIN)
Member (Admn.)

Dated: 25th June, 1992.

A 816/752
Deputy Registrar(J)

To

1. The Secretary, Govt. of India,
Min. of Information & Broadcasting, New Delhi-1.
2. The Director General, Doordarshan, New Delhi-1.
3. The Director, Doordarshan Kendra, Hyderabad.
4. One copy to Mr.C.Nageswar Rao, Advocate,
3-5-942, Himayatnagar, Hyderabad
5. One copy to Mr.N Bhaskar Rao, Addl. CGSC. CAT.Hyd.
6. One copy to Hon'ble Mr.C.J.Roy, Member(J)CAT.Hyd.
7. One vsr copy to Deputy Registrar(J)CAT.Hyd.
8. One copy spare.

9) copy to all Reporters as per standard list of CAT Hyd
pvm.

17/7/92
18/7/92

16/7/92
12
14/7/92
TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH.
THE HON'BLE MR.

AND

P.C. Jain.

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 25-6-1992

~~ORDER~~ / JUDGMENT

R.A./C.A./M.A. No.

in

O.A. No. 322/89

T.A. No.

(W.P. No.)

Admitted and inter
issued

Allowed

Disposed of with

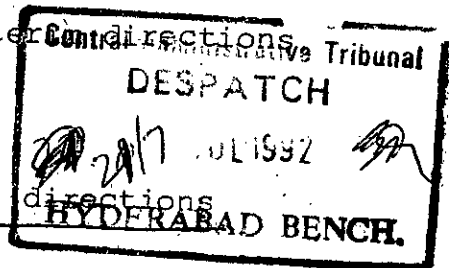
Dismissed

Dismissed as withdrawn

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.



pvm.

16/7/92
Sent to departh with
-20- Twenty