

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.Nos.690, 707, 722 & 773 of 1992

Date of order: 28 -6-1993.

Between

O.A. 690/92

1. R.N.Hegde
2. A.Padmanabha Rao

... Applicants

And

1. The Director, Doordarshan Kendra,
Hyderabad.
2. The Director General,
Doordarshan, Mandi House, New Delhi. ... Respondents

O.A.No.707/92

B.Ramesh Babu

... Applicant

And

1. The Director, Doordarshan Kendra, Hyd'bad
2. The Director General, Doordarshan, New Delhi
3. Union of India rep. by its Secretary,
Min. of Information & Broadcasting, New Delhi.
... Respondents

O.A. 772/92

K.Rajaiah

... Applicant

And

1. The Director, Doordarshan Kendra, Hyd'bad
2. The Director General, Doordarshan, N.Delhi.
3. Union of India, rep. by its Secretary,
Min. of Information & Broadcasting,
New Delhi
... Respondents

O.A. 773/92

1. I.Venkateswara Rao
2. K.Ramana

... Applicants

And

1. The Director, Doordarshan Kendra, Hyd'bad.
2. The Director General, Doordarshan, N.Delhi.
3. Union of India, rep. by its Secretary,
Min. of I&B, New Delhi
... Respondents

APPEARANCE

For the applicants in all the OAs: Sri V.Ajay Kumar, Advocate
For the Respondents in all the OAs: Sri N.V.Ramana, Addl.CGSC

CORAM:

The Hon'ble Shri Justice V.Neeladri Rao, Vice-Chairman
The Hon'ble Shri P.T.Thiruvengadam, Member (Admn.)

contd...2.

OA Nos.690, 707, 772 & 773/92

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JUDGEMENT

(of the Bench delivered by Shri Justice V.Neeladri Rao,
Vice-Chairman)

As same issues a r i s e for consideration in all these O.As., they can be conveniently disposed of by a common judgment.

2. While the applicant in O.A. 772/92 is working as Casual Floor Assistant in the Doordarshan Kendra, Hyderabad, the applicants in the other three O.As. are working as Casual Production Assistants in the said Kendra. These O.As. are filed praying for a direction to the Respondents to regularise their services in their respective categories by duly giving them seniority with all consequential benefits. From 1974-75 t h e various Doordarshan Kendras in India were engaging outsiders on short term contract on assignment basis as Casual Artists. The necessary instructions in regard to such engagement were issued as per Memo.49/9/76-TV(S)/SI dated 2-8-1977. Further instructions in regard to the same were issued in Memo.No.1(2)/85-SI, dated 13-5-1985. The services of such casual artists who worked for 200 days in any financial year of 365 days in three consecutive financial years during the years 1974 to 1980, upto 31st March, 1980 were regularised. When the services of said casual artists who joined later were not regularised and when direct recruitment was resorted to for filling up the posts of artists, such as Floor Assistants, Film Projectionists, Film Editors, Production Assistants, Property Assistants, General Assistants, Sound Recordists, Lighting Assistants,

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Graphic Assistants, Carpenters, Painters, Cameramen, Make-up men, Scenic Designers, Tailors, etc., a writ petition was filed in the Supreme Court praying for a direction to the respondents to treat the applicants therein as if they have been working on regular basis on their respective posts from the dates on which they were in service with the respondents ~~and~~ ^{or} to ~~further~~ direct the respondents to consider them for absorbing them on regular basis by waiving the condition of age and for payment of wages/salaries and consequential benefits in the same manner in which other regular employees working on the said posts were being given, if they cannot be absorbed. By order dated 24-7-86, the writ petition was permitted to be withdrawn by observing that it was open to the petitioners to approach the Central Administrative Tribunal. Then O.A.Nos.565/86, 977/86, 896/88 and 2514/89 were filed in the Principal Bench of C.A.T. By interim order dated 8-8-86, the respondents were directed to continue the employment of the applicants therein. It was further observed therein that the applicants were also free to apply, if so advised, to the posts for which an advertisement was already issued by the respondents.

3. The Director, Doordarshan Kendra, Hyderabad, issued Note dated 26-5-1989 whereby the engagement of the casual staff artists was restricted to only those who were recruited after 1988. Aggrieved by the said note, the applicants in OA Nos.690 and 773 of 1992 herein

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and some others filed O.A.No.431/89 and the applicant in O.A.No.707/92 filed O.A.No.425/89 in this Bench questioning the legality of the Note dated 26-5-89 referred supra. But this Bench had not passed any interim orders directing the respondents to engage the applicants therein, all of whom were recruited prior to 1988, pending disposal of the O.As. But it is stated for the applicants that when interim orders were issued by the Principal Bench in some matters and also on the basis of some settlement with the Union, the Doordarshan Kendra at Hyderabad also started engaging the casual staff artists who were recruited prior to 1988, from Oct./Nov.1990. When O.As. 565/86, 977/86, 896/88 and another O.A. on the file of the Principal Bench had come up for consideration on 5-10-90, the Principal Bench directed the respondents to come up with their scheme for absorbing the casual staff artists and for wages/salaries to be paid for those who could not be absorbed. The A draft scheme was produced before the Principal Bench on 29-11-1991. But in the meanwhile, OAs 894/90, 1775/90 and 2322/90 had come up for consideration before the Principal Bench and they were disposed of by order dated 8-2-1991 wherein various directions were given in regard to the scheme to be framed. One of the directions given therein is in regard to relaxation of upper age limit and it reads as under:

"(iii) For the purpose of regularisation, the upper age limit has to be relaxed to the extent of service rendered by the casual artists, 120 days' service in the aggregate shall be treated as service rendered in one year for this purpose."

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4. O.As. 425/89 and 431/89 on the file of this Bench were disposed of on 7-6-91 with similar directions.

5. The Principal Bench disposed of OA 565/86 and batch by order dated 14-2-92 by modifying some of the terms of the draft scheme produced on 29-11-91. While disposing the above OAs the Principal Bench directed the respondents to recast and finalise the scheme in view of the observations therein, within a period of three months of receipt of copy of that order. The respondents finalised the scheme on 9-6-1992.

6. Terms 1, 2 and 6 of the said scheme which are relevant for consideration of these OAs read as under:

"1. This scheme would be applicable 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.

2. Only those casual artists who had been engaged for an aggregate period of 120 days in a year (Calender year) will be eligible for regularisation. The broken period in between the engagement and disengagement will be ignored for the purpose. The number of days is to be computed on the basis of actual working days in the muster rolls or attendance sheets or Q-sheets.

3. The upper age limit would be relaxed to the extent of service rendered by the Casual Artists at the time of regularisation. A minimum of 120 days service in the aggregate, in one year, shall be treated as one year service rendered for this purpose. The service rendered for less than 120 days in a year will not qualify for age relaxation."

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The said scheme is silent in regard to the date on which the upper age limit should be satisfied. It was clarified by the Directorate of Doordarshan that "since the scheme for relaxation of casual artists has been issued on 9-6-92, it comes into force from the same date. Hence, the cut off date for determining the age limit for considering relaxation against the available vacancies shall also be 9-6-92." The upper age limit for these posts prior to 1988 was 30 years and later it was reduced to 25 years. As it is a case of regularisation of the casual artists who joined after 31-3-80, it is stated for the respondents that the upper age limit is taken as 30 years for implementation of the scheme dt. 9-6-92.

7. It is manifest from Term-6 of the scheme dated 9-6-92 that while giving relaxation of upper age limit the calender years in which the artiss worked for not less than 120 days alone were taken into consideration. But all these applicants ~~were~~ held as over-aged by 9-6-92 as they could not get the benefit of relaxation for 1989, 1990 and 1992. These applicants could not work for 120 days either in 1989 or 1990 as they were not engaged on the basis of the Note dated 26-5-89 of the Director, Doordarshan Kendra, Hyderabad and thus, when they could not work for the requisite period during those years for no fault of theirs, it is just and proper to order relaxation, urged the learned counsel for the applicants. The unreported judgment dated 4-12-1992 in Writ Appeal No.477/92 on the file of the A.P. High Court*

*Smt. P. Rama Devi Vs. The Govt. of A.P. rep. by the Secretary, Dept. of Education & Ors.

Balaji

(16)

and the judgment of Ernakulam Bench of C.A.T. reported in 1991(2) SLJ 159* are cited, to us. It is open to the court/Tribunal to grant relaxation in regard to the age if it is just and necessary in the circumstances of the case. It was also contended that if only the completed calender years as on the dates of the filing of OAs 425/89 and 431/89 are taken into consideration, the applicants/satisfy the condition in regard to the minimum period of 120 days of service in each calender year upto 31-12-88 have to be given relaxation for regularisation, then ~~appkkxxmxx~~ have to be regularised. But by merely extending the said benefit for those who joined service after 31-12-1988 and before 31-12-1991, the staff artists who joined prior to 31-12-1988/who satisfy other all the/terms of the scheme dated 9-6-92 cannot be deprived of the said benefit.

8. When more casual artists were available the work was distributed amongst them by assigning work for not more than 10 days in a calender month, from 1985. Of course, in the disciplines where number of casual artists were not available, the work was assigned for more than 10 days in a month. But as in the former case, an artist could not have worked for more than 120 days in a calender year. the Principal Bench by order dated 8-2-91 in OA894/90 and batch, gave a direction that for relaxing the upper age limit, each of the years in which the staff artists ~~work~~ worked for atleast 120 days, had to be taken into consideration and the

*V.K.Damodran Vs. The Defence Pension Disbursing Officer, Kottayam and 2 others.

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year in which they worked for less than 120 days had to be ignored. The said directions suggests that the facts on record incorporating had to be taken into consideration in introducing a term in the scheme which should be reasonable. Then a question arises as to whether a condition has to be incorporated in the scheme to the effect that one should have worked for 120 days even in a calender year in which the staff of artists were not assigned work due to administrative restrictions. The said point had not fallen for consideration before the Principal Bench either when O.A. 894/90 and batch or OA 565/86 and batch were considered. It is submitted for the applicants herein that as the applicants therein had got the benefit of interim orders they were assigned work in all the months in the calender years 1989 and 1990 also and hence it has not become necessary for them to submit to the Principal Bench when O.A. 565/86 and batch was considered that a relaxation has to be given for 1989 and 1990 also in which the staff artists, who were recruited prior to 1988 and who were not assigned work in pursuance of the Note dated 26-5-89 and did not work for 120 days in each of those two calender years.

9. It is evident from the scheme dated 9-6-92 that the services of those staff artists who joined service from 1981 onwards have to be regularised if they worked for 120 days in a calender year and if they are within the upper age limit and if they satisfy the educational qualification, etc. But as the process

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of regularisation was taken about more than a decade and as some of those who joined service in the earlier years must have crossed the upper age limit by the date of consideration for regularisation, it was felt that it was necessary for relaxation in regard to the upper age limit. When it was found that casual staff artists ~~were~~ available were more in number and when it was intended to have more and more casual staff artists to tap talent, instructions were issued for limiting 10 days assignment in a calender month. Hence the work for 120 days in a year was held as sufficient for relaxation in regard to the upper age limit. Then, it would be just and reasonable to reduce the number of days for a calender year 1989 when the ^{not} staff artists were/assigned work after 26-5-1989 in pursuance of the Note of even date.

10. The power of the Tribunal to give relaxation in regard to age when the circumstances warrant, cannot be doubted. In the case which has fallen for consideration before the A.P. High Court in Writ Appeal No. 477/92, two of the lecturers who were engaged temporarily claimed regularisation for the only post that was available. Ultimately, the High Court held that the concerned authority was justified in calling for applications for the said vacant post in accordance with the recruitment rules. Then a question had arisen as to whether the two lecturers who were appointed temporarily can be permitted to appear for the said post. It was noticed that by the date of the advertisement to be given the two reached the upper age limit. Then the Bench which delivereded the said judgement observed that "it was just and proper to consider the upper age limit of those two lecturers as on ~~the~~ 30-1-84 in view of

the facts mentioned therein. As the delay in calling for the applicants for the post therein was due to pendency of representations/appeals filed by the two lecturers and as it will not be proper to deprive them the opportunity of being considered for the said post, it was felt that relaxation had to be given in regard to the age. The Ernakulam Bench of the C.A.T. gave a direction in regard to relaxation of age in favour of part-time employee who worked for about 10 years, for consideration for group-D post. Hence, if the circumstances warrant, the court/tribunal is giving a direction in regard to relaxation of the age.

11. There is yet another factor as to why the relaxation has to be given in regard to the age in regard to those staff artists who joined prior to 1988 and who were not given any assignment from 26-5-89 till October/November 1990. In view of the long service on temporary basis the ~~Supreme Court~~ Principal Bench had given a direction to the respondents for framing a scheme for regularisation depending upon availability of vacancies. When as per the draft scheme the respondents suggested that those who were in service by 31-12-90 could be considered for regularisation, for the applicants it was urged before the Principal Bench that the said scheme should be extended to those who were in service by 31-12-91. It was urged before the Principal Bench at the time of consideration of OA 565/86 and batch that the outer date 31-12-90 was fixed since the order for framing the scheme was passed on 5-10-90. But the

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Principal Bench had held that as the scheme was finalised in February 1992, it would be proper to take 31-12-91 as the outer date for the purpose of eligibility for consideration. Accordingly, the outer date was fixed as 31-12-1991 in the scheme that was framed on 9-6-1992. Of course, if the outer date was fixed as 31-12-88, i.e. ~~last~~ ^{last} ~~the last date of the~~ completed calender year by the date they filed O.A.s. 425/89 and 431/89, the applicants would be eligible for ~~regularisation~~ as they were entitled for relaxation for all the calender years in which the respective applicant had worked till and ^{-fied} 1988 ~~as they satis/~~ the other conditions and as by then they were not over-aged. But can it be stated that merely for the purpose of extending the benefit of the scheme to those who joined as casual artists upto and inclusive of 1991, the senior staff artists who will be within the age if 31-12-88 is fixed as outer date of eligibility for consideration. Shall be the benefit? ~~deprived of~~ On the basis of the judgment dated 14-2-92 of the Principal Bench in OA 565/86 and batch, it cannot be stated that in extending the outer date till 31-12-91 for the purpose of eligibility for ^{such of} consideration, the intention was to deprive ~~the senior~~ staff artists of the benefit of regularisation who would have been eligible for regularisation if the cut off date is fixed as 31-12-1988. The applicants contend that the cut off date has to be fixed as 31-12-1988 for they were not assigned work in view of the Note dated 26-5-1989 and as they were not eligible

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for relaxation in regard to calender years 1989 and 1990. The respondents suggest 31-12-1990 as outer date as the order for framing the scheme was passed on 5-10-90. Hence the intention of the respondents is to provide the benefit of the scheme to all those who completed atleast one calender year by the cut off date. But as the matter has come up for consideration before the Principal Bench in February 1992, it was urged that it should be extended till 31-12-91 so as to make even those who joined by 1-1-91. Be that as it may, it is manifest that the benefit of regularisation is intended to be given to as many staff artists as possible so long as they were within the age limit by the time they were engaged as casual staff artists and if they worked atleast for 120 days in a calender year in the years in which the work was assigned and if they satisfy the other conditions. It would be unjust and improper to incorporate a condition which cannot be fulfilled. Can it be stated that it would be a reasonable offer when the conditions imposed cannot be fulfilled in view of the restrictions imposed by the respondents? Further, when the minimum period of 120 days in a year had to be complied even in regard to calender years 1989 and 1990 to avail the benefit of regularisation, ~~it~~ will/not be discriminatory if ~~xxx~~ those who were continued inspite of Note dt.26-5-89 by virtue of court orders, ~~xxx~~ get that benefit while those who had not got that benefit/even when they prayed for it, will not be eligible for regularisation?

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R.G.J.

12. The minimum period of 120 days in a calendar year was fixed ~~for~~ the assignment in a calendar month could not have been for more than 10 days where the staff artists available were more. As the non-engagement of those staff artists who were recruited prior to 1988 was subsequent to 26-5-89 and as there was no bar of assignment till then, it is proper to limit the period to 40 days (10×4) for there was no bar of assignment till the end of April 1989, i.e. for four months in 1989) in calendar year 1989 for each of those staff artists who were recruited prior to 1988 and who were not assigned work subsequent to 26-5-89 in pursuance of dated 26-5-89 the Note~~s~~ for relaxation in regard to age, as per Term-6 of Scheme dated 9-6-92.

13. It is submitted that either in view of the interim orders of the Principal Bench or the settlement with the Union, the various Doordarshan Kendaras started assigning work to ~~who were engaged prior to 1988~~ ~~excluding~~ the casual staff artists ~~from October/November~~ 1990 inspite of the Note dated 26-5-89. But we feel that it is not proper to fix any minimum period for calendar year 1990 for the purpose of relaxation of the age under Term-6 of the scheme dated 9-6-92. When once the staff artists realised that there would not be any scope for engagement, for this Bench refused to give any interim direction, they might have naturally been in search of some other avocation. Then when after lapse of about 15 to 16 months, the Doordarshan Kendra intended to engage them, ~~them~~ some of could not have immediately given up their other avocations. So we feel that it is not proper even to fix 10 days as ~~as~~ the minimum

period of service for calender year 1990 to have the benefit of relaxation in regard to upper age for such of the casual staff artists who were recruited prior to 1988 and who were not engaged in pursuance of Note dated 26-5-89.

14. ~~In the above case~~ The relief for the applicants that the outer date for the purpose of eligibility for consideration should be fixed as 31-12-1988 need not be considered, for the applicants would be entitled to the benefit of regularisation in view of the minimum period fixed for 1989 and non-fixation of any period for 1990 for the purpose of relaxation of age. Further, the relief of fixing outer date as 31-12-1988 cannot be claimed in an independent O.A. for it will ~~not~~ be in the nature of review of the order dated 14-2-92 in O.A. 565/86 and batch on the file of the Principal Bench.

15. The scheme dated 9-6-92 is silent about the cut off date on which the age limit has to be considered. The Directorate of Doordarshan clarified that 9-6-92 should be the cut off date ~~xxxxxxxxxxxx~~ as the scheme was finalised on that date. It was pleaded that when 31-12-91 was fixed as the outer date for the purpose of consideration for eligibility for ~~relaxation as per the~~ regularisation as per the scheme dated 9-6-92, the cut off date even for consideration of the age should be 31-12-1991. We don't want to express about the merit of the said contention for the same was not argued.

The ~~said~~ argument was not advanced probably on the ground that all the applicants herein will be within the age limit in view of our finding with regard to calender years 1989 and 1990.

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16. As per the interim orders in these O.As., ~~it~~
~~was stated that~~ the regularisation made in regard to
other casual staff artists will be subject to the result
in these OAs, ~~maxima~~. We direct the respondents to give
the applicants their respective seniority if they are
eligible for regularisation on the relaxation being given
as per the directions in these OAs for calender years
1989 and 1990 and as per the other terms of the scheme
dated 9-6-92.

17. In the result, the respondents are directed
to treat the minimum period of 40 days for calender year
1989 and no period for calender year 1990 for granting
relaxation as per Term-6 of the Scheme dated 9-6-1992
for such of the casual staff artists who were recruited
prior to 1988 and who were not assigned work in calender
years 1989 and 1990 in pursuance of the Note dated
26-5-1989. Such of those casual staff artists who have
to be regularised as per this order have to be given
their respective seniority and all consequential benefits.
The time for implementation of this order is one month
from the date of receipt of this order. The O.As. are
ordered accordingly. No costs.

CERTIFIED TO BE TRUE COPY

Date.....

Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

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Copy to:-

Raman Kumar

1. The Director Doordarshan Kendra, Hyderabad.
2. The Director General, Doordarshan, Mandi House, New Delhi.
3. Secretary, Ministry of Information & Broadcasting, Union of India, New Delhi.
4. One copy to Sri. V. Ajay Kumar, advocate, 5-9-22/14, Adarshnagar, Hyd.
5. One copy to Sri. N. V. Ramana, Addl. CGSO, CAT, Hyd.
6. One copy to Deputy Registrar (Judl.), CAT, Hyd.
7. One copy to Library, CAT, Hyd.
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9. One spare copy.

Rem/-

16th May
1993

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File (1)