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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OAs 721, 722 & 876/92.

Dt. of Order: 28-7-93.

1. Syed Iftekhhar Pasha (applicant in DA 721/92)
2. K.L.S. Prasad (applicant in DA 722/92)
3. K. Gangaram (applicant in DA 876/92)

...Applicant(s)

Vs.

1. The Director General, Doordarshan,
(representing Union of India),
New Delhi - 110 001.
2. The Director, Doordarshan Kendra,
Ramanthapur, Hyderabad- 500 013.

...Respondents

Counsel for the Applicant : Shri C. Suryanarayana
(in all the 3 cases)

Counsel for the Respondents: Shri N.V. Ramana, Addl. CGSC

CURAM:

THE HON'BLE JUSTICE SHRI V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI P.T. THIRUVENGADAM : MEMBER (A)

(Order of the Divn. Bench passed by Hon'ble Justice
Shri V.N. Rao, Vice Chairman).

The applicant in DA 721/92 was ^{born} appointed on 12-1-55

in Doordarshan Kendra at Hyderabad. The applicant in DA 722/92 was born on 5-3-59 and his first engagement as Casual Artist in Doordarshan Kendra was on 15-10-82. The applicant in DA 876/92 was born on 5-6-55 and he was engaged on 11-4-85 as casual artist for the first time in the said Kendra.

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From 1974 to 1975 various Doordarshan Kendras in India engaged outsiders on short time contract on training basis as Casual Artists. Such casual Artists who were engaged prior to 31-3-80 were regularised in accordance with the Memo No.1(2)/85/S1 dt.13-5-85. When the services of such Casual Artists who joined later were not regularised and when direct recruitment was resorted to for filling up the posts of Artists such as Lower Assistants, Production Assistants etc., a Writ Petition was filed in the Supreme Court praying for a direction to the respondents to treat the applicants there in as if they have been working on regular basis in their respective posts from the dates on which they were in service with the respective Doordarshan Kendras or to direct the Respondents in those Writ Petitions to consider them for absorption on regular basis by waiving the conditions of service and for payments of wages/salaries and consequential benefits in the same manner in which other regular employees absorbed. By the order dt.24-7-86, the Writ Petition was permitted to be withdrawn by observing that it was open to the petitioners thereinto approach the Central Administrative Tribunal. The Writ Petitions were filed in the Principal Bench of the Central Administrative Tribunal. By an interim order dt.8-8-86, the respondents were directed to continue the employment of the appli-

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The Principal Bench ^{disposed} ~~disposed of~~ the OAs 565/86 and batch by an order dt.14-2-92 by suggesting modifications to some of the terms of the draft scheme produced on 29-11-91. ~~On the basis of the above order, the Principal Bench directed~~ the Respondents therein to recast and finalise the scheme in view of the observations therein. Accordingly the Respondents finalised the scheme on 9-6-92.

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The paras 1, 2 and 6 in scheme dt.9-6-92 are relevant for consideration of this OAs and they are as under :-

- i. 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.

.. ..
been engaged for an aggregate period of 120 days in a year (Calendar 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 O-sheets.

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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's service rendered for this purpose. The service rendered for less than 120 days in a year will not qualify for age relaxation.

(35)

The scheme is silent in regard to the date from which the regularisation has to be made or the date by which the age limit has to be satisfied. The age limit up to 1987 was 30 years in regard to category of Artist. It was clarified by the concerned authorities that maximum age should be satisfied as on 9.6.92, the date on which the scheme was finalised and the regularisation should also be made with effect from that date. ~~the~~ Weightage is provided as per para-6 of the scheme dt.

There is some controversy between the applicants and the respondents in regard to the fact as to whether all or any of these applicants worked for 120 days in any of the calendar years. But the learned counsel for the applicant conceded that all these applicants are over-aged even if weightage is given for the years for which the applicant/applicants worked for 120 days in the calendar years as urged by the respective applicants and even if the period in various disciplines as casual artists is clubbed. Hence we do not feel it about the number of days for which each of the applicant worked in the relevant calendar years.

The learned counsel for the applicants Shri C.Suryanarayana raised ^a number of contentions to urge that these applicants are overaged, they are also ~~eligible for regularisation. One of the contentions is~~

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that as per Department of Personnel & Training O.M.No. 49014/2/86-Estt(C) dt.7.6.88 provided for giving one paid weekly off after six days of continuous work, and paid weekly off had to be taken into consideration for reckoning 240 days as contemplated under section 25 (B) 2(a) (ii) of Industrial Disputes Act as held by the Supreme Court in 1985 SCC (L&S) 940, (Workmen of American Express International Banking Corpn. Vs. Management of American Express International Corporation) and if paid weekly off is given to the applicants then they would be eligible for calendar years, towards weightage as envisaged in para-6 of the scheme dt. 9.6.92. But we do not accede to this. The regulation for casual workers in the Doordarshan Kendra is provided as the per the scheme dt. 9.6.92. This will prevail over the general rules. Hence the OM dt.7.6.88 is not applicable in regard to the regularisation of casual artists in Doordarshan.

But Sir Suryanarayana urged that while OM dt.7.6.88 Department of Personnel, it is not shown for the respondents that the scheme dt.9.6.92 was approved by the respondents. The OM dt. 7.6.88 relied upon in this context reads as under:

"If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training."

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The said scheme dt.9.6.92 does not contain a term to the effect that "casual Worker may be given relaxation in the upper age limit, only if at the time of initial/recruitment as a Casual Worker he has not crossed the upper age limit for the relevant post (vide clause (x) in OM dt.7.6.88) and thus there is a departure from OM dt.7.6.88 and hence the para-6 in scheme dt.9.6.92 has to be applied without reference to limitations mentioned therein. Even the relevant portion of clause (x) of OM dt. 7.6.88 which was valid on for the applicants is merely to the effect that the question of relaxation of upper age limit arises if the concerned employee had not crossed the upper age limit for the relevant post by the date of initial appointment. Even the scheme dt.9.6.92 does not state that relaxation in the upper age limit had to be given even when the casual artist was over aged by the date of first engagement. Thus there is no departure from the relevant portion of Clause (x) in O.M. dt.7.6.88. Further in O.M. No.2(3)/86-SI dt.9.6.92, ~~(xxxxxx scheme dt.9.6.92)~~ to which the scheme dt.9.6.92 attached states that the said scheme of regularisation was approved by the Government. Hence there was not approved by Department of Personnel.

It was next urged for the applicants that as the applicants were working during period ranging from seven to ten years and when they were not over aged at the time of initial appointment, it is just and proper to give relaxation

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Copy to:-

1. The Director General, Deardarshan, (representing Union of India), New Delhi-001.
2. The Director, Deardarshan Kendra, Ramanthapur, Hyd-13.
3. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd. 3
4. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

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7/11/83

in regard to the age even in regard to these applicants. But it cannot be stated on the basis of the above judgement of Ernakulam Bench of the Central Administrative Tribunal that a principle was laid down to the effect that in all cases it is open to the Tribunal/Court to give relaxation of the upper age limit for the purpose of regularisation. It depends upon the facts in each case.

Hence these O.As have to be dismissed. But the learned counsel for the applicant submits that it may be held as a bar for representation to be made by the applicants to the concerned authorities for relaxation of the order of dismissal of these OAs does not deprive them for making a representation to the concerned authorities

All these OAs are dismissed. No costs.

(P.T.THIRUVENGADAM)
MEMBER (A)

(V.NEELADRI RAO)
VICE-CHAIRMAN

Dated: 28th July, 1993.
Dictated in Open Court.

Dr. Registrar

avl/ad

Con H. ... 8/-

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

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

AND

Dated: 28/7/1993

ORDER/JUDGMENT:

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

in

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered

No order as to costs.

pvm

