

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.1123/99

dt. 2.2.2000

Between

K. Poojary

: Applicant

and

1. Union of India, rep. by
its Secretary
Min. of Information & Broadcasting
New Delhi

2. The Director General
Doordarshan, Mandi House
New Delhi

3. The Director
Doordarshan Kendra
Hyderabad

: Respondents

Counsel for the applicant

: J. Sudhir, Advocate

Counsel for the respondents

: B. Narasimha Sharma
Sr. CGSC

Coram

Hon. Mr. B.S. Jai Parameshwar, Member (Judl)



OA.1123/99

dt.

Order

Order (per Hon. Mr. B.S. Jai Parameshwar, M(J)

Heard Mr. J. Sudhir, learned counsel for the applicant and Mr. B. Narasimha Sharma, learned counsel for the respondents.

1. The undisputed facts are as follows :

- a) The applicant was initially appointed as Film/Video Editor in the scale of pay of Rs.425-750 on 21-8-1972 in the respondents department.
- b) By proceedings dated 30-9-1985 vide No.605/12/B4-TV (Annex.I) the respondent No.1 created temporary posts of Edit Supervisor in the scale of pay of Rs.625-1200 (pre revised). The posts were sanctioned up to 28-2-1986. The applicant was promoted as Edit Supervisor by office order No.83/86-51 dated 8-7-1986. The said promotion was on adhoc basis. The applicant joined the post of Edit Supervisor with effect from 15-7-1986 (Annex.II).
- c) The post of Edit Supervisor which was sanctioned up to 28-2-1986 were continued beyond that date.
- d) It may be stated that the respondents had not formulated the recruitment rules for filling up these posts and the adhoc promotion of the applicant was extended from time to time. He was given ~~max~~ emoluments attached to that post sanctioning necessary increments and crossing of efficiency bar in the scale of pay attached to the post of Edit Supervisor.
- e) The Recruitment rules for filling up the post of Edit Supervisor was notified on 29-9-1995 and circulated

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on 29-3-1996. A copy of the Recruitment rules is at Annex.R-1. The posts of Edit Supervisor as indicated in the Recruitment rules are 14.

f) The DPC met for the first time on 9-7-1998 to consider the eligible candidates in the cadre of Film/ Video Editors for promotion to the post of Edit Supervisor. The DPC considered and recommended the case of the applicant and others.

g) By office order No.10/98-81 (F.No.20(3)/1/96-S-1 dated 3-12-1998 the applicant and others were promoted as Edit Supervisors. The applicant was promoted and transferred to Doordarshan Kendra (DDK), Delhi. A copy of the order dated 3-12-1998 is at Annex.XII.

h) The applicant submitted a representation dated 17-12-1998 to the Respondent No.2 requesting to retain him at Hyderabad on the ground of ill health of his son and other domestic problems. A copy of the representation is at Annex.XIII. Again the applicant submitted another representation dated 21-5-1999 reiterating his retention at Hyderabad. A copy of the representation dated 21-5-1999 is at Annex.XXII.

i) As certain officials who were promoted vide order dated 3-12-1998 had not reported to the duties at the destination, the Dy. Director (Admn.) vide his order No.20(3)/1/96-S-I dated 27-5-99 directed them to join their duties or on their failure the respondents would presume that the said officials were not interested in their promotion. A copy of the order dated 27-5-99 is at Annex.XXIII. The applicant is one of such officials who had not carried out transfer order dated 3-12-1998.

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j) The applicant again submitted another representation dated 7-7-1999 requesting the respondent authorities to take a decision of his earlier representations dated 17-12-98 and 21-5-1999. A copy of the representation dated 7-7-99 is at Annexure A.XXIV.

k) On 7-7-1999 the Dy. Director (Admn.) informed the applicant that his representation has been carefully considered by the competent authority but it is not found administratively possible to agree to his request due to the exigencies of service. He was directed to relinquish charge to proceed to join Ddordarshan Kendra, Delhi, on or before 15-7-1999 positively. A copy of the order dated 7-7-1999 is at Annex. A.XXV page.56.

l) The applicant submitted another representation dated 14-7-1999. A copy of the same is at Annexure A.XXVI.

m) However, the respondent authorities relieved the applicant from the post on 30-7-1999 as per order No.TVA/8(2)/99-Admn. dated 20-7-1999. A copy of the order is at Annex.A.XXVI.

2. The applicant has filed this OA for the following reliefs :

To call for the proceedings contained in Impugned orders No.20(3)/1/96-S-I, dated 3-12-1998; No.20(3)/1/96-S-I, dated 27-5-1999, and No.20/5/99-S-I, dated 7-7-1999 issued by the Respondent No.2 herein and consequential proceedings contained in No.TVM/8(2)/99-Admn. dated 20-7-99 issued by the Respondent No.3 herein and set them aside as illegal, arbitrary, irrational, discriminatory, illogical, unconstitutional, without jurisdiction, opposed to the Principles of Natural Justice and violative of Articles 14,16 and 21 of the Constitution of India and consequently direct the

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Respondents herein to retain and continue the Applicant herein as Edit Supervisor in Doordarshan Kendra, Hyderabad, with all consequential benefits and attendant benefits including arrears of salary, seniority and promotion etc.

3. In para 6, the applicant has described the grounds for the reliefs claimed above.

4. The respondents have filed their reply contending that the applicant was promoted to the post of Edit Supervisor on regular basis by order dated 3-12-1998 and he was posted to DDK, Delhi, and that his request for retention ~~at~~ at Hyderabad has been considered and found not agreeable due to administrative exigencies. They submit that the applicant has been working as Film/Video Editor ~~as~~ per Recruitment rules, ~~and that~~ the Film/Video editors with 8 years regular service is eligible for promotion to the post of Edit Supervisor by way of selection by DPC. The applicant was continued on adhoc basis in the post of Edit Supervisor from 1986. This was so as the Recruitment rules for filling up the posts of Edit Supervisor were not formulated. The Recruitment rules for the post of Edit Supervisor was notified on 29-9-1995 and the DPC met on 9-7-1998 and considered the case of the applicant and others for promotion to the post of Edit Supervisor on regular basis and on the basis of the recommendation of the DPC, the impugned order dated 3-12-1998 was issued. That the applicant was not given regular promotion in the year 1986. Hence, it cannot be stated that the applicant was promoted to the post of Edit Supervisor in the year 1986. His promotion to the post of Edit Supervisor in the year 1986 was purely on adhoc basis for want of the Recruitment rules. They have not acted in

arbitrary manner to accommodate Sri GK Murthy. They submit that the decision to retain Sri GK Murthy at DDK, Hyderabad, was an administrative decision. That the interim order prayed by the applicant has been negatived by this Tribunal and there is no arbitrary or discriminatory decision in transferring him to Delhi. Hence, there are no merits in the OA and the OA is liable to be dismissed.

5. During the course of arguments the learned counsel for the applicant submitted that the applicant was working in the post of Edit Supervisor since 15-7-1986. That the respondents described his promotion to the said post as adhoc basis. That by the impugned order dated 3-12-1998 the respondents promoted the applicant to the same post which he was holding right from July, 1986. That the impugned order dated 3-12-1998 is irregular, arbitrary, and illegal. That the applicant cannot be held responsible for not framing the Recruitment rules for the post of Edit Supervisor. That by the impugned order the respondents wiped off his 12 years adhoc service in the post of Edit Supervisor. That infact he had become eligible for promotion to the post of Film/Video Executive (next promotional post from the post of Edit Supervisor). That he has been left with four years of service. That he cannot aspire any promotion to the post of Film/Video Executive. That therefore, the order dated 3-12-1998 is not sustainable in law. That the respondent authorities should have regularised his earlier adhoc service in the post of Edit Supervisor. That seniority is the main grievance of the applicant. That his transfer to DDK, Delhi, is only a secondary one, and that therefore the case of the applicant denying him the benefit of 12 years of adhoc service has to be considered.



6. As regards his transfer to DDK, Delhi, the learned counsel for the applicant submitted that the transfer was made only with an intention to accommodate GK Murthy. That Sri G.K. Murthy is far junior to him. That the respondent authorities issued promotion order to GK Murthy a few days after 3-12-1998 and posted him vice his post. That right from the date of his promotion he had been representing to the authorities to retain him at Hyderabad. That he had explained his inconvenience and domestic problems to carry out his transfer to Delhi. That the respondent authorities just by describing as "administrative exigencies" have denied him retention at Hyderabad. That their own act clearly demonstrate that his transfer was only to accommodate Sri GK Murthy. That in the application he has made pointed grievance to his denial or depriving of his 12 years' adhoc service earlier to 3-12-1998.

7. That the learned counsel in support of his contention relied upon the decision in OA.958/97 decided on 18.9.1997 (CM Bector & 36 others Vs. Union of India) on the file of the Principal Bench of this Tribunal and also relied upon the principle enunciated by the Hon. Supreme Court in the case of Rajbir Singh and Others Vs. Union of India and others reported in 1991 SC 518.

8. When the learned counsel for the applicant made submissions as regards deprivation of applicant's adhoc service and seniority etc. I entertained a doubt whether a Single Member Bench could hear and resolve these questions. Then the learned counsel for the applicant submitted that the matter may be placed before the Division Bench. At that stage the learned standing counsel for the respondents submitted that though such averments are made in the OA they are not to be

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found ~~that~~ in the representations. That no where in the representations dated 17-12-1998; 21-5-1999- 7-7-1999- and 14-7-1999 the applicant has raised any thing about his ^{or about} seniority ~~from~~ regularisation of his earlier adhoc service in the post of Edit Superviosr. That as per the principle of Administrative law it is for the respondent authorities to take a decision on these aspects and that the Tribunal cannot try to resolve ~~these aspects~~ without giving the Department an opportunity to decide. Thus there is absolutely no need to place the application before the Division Bench. That in all these representations the grievance made out by the applicant ^{is} as regards his transfer to DDK, Delhi. Hence, the application may be confined to decide whether the transfer is in the interest of administrative exigencies or not.

9. He fairly submitted that whatever they have stated in the reply is only as regards his transfer and that the department is not taking ^{as regards} any specific stand ~~the~~ the claim of the applicant for regularisation or consideration of his earlier adhoc service in the cadre of Edit Supervisor. That means to say that the respondents have not taken any contention opposing the plea of the applicant for regularisation or consideration of his adhoc service from 15-7-1986 to 3-12-98. Further the learned counsel for the respondents submitted that the respondent authorities will consider the plea of the applicant with open mind in case the applicant submits a representation bringing to the notice of the authorities the decision now relied upon.

10. I have gone through the representations submitted by the applicant. In none of these representations the applicant has raised the plea of regularisation of his earlier adhoc service. ^{All} ~~By~~ these representations relate to his grievance

to carry out his transfer to Doordarshan Kendra, Delhi.

11. I have considered views of both the learned counsels. In my humble view, the submission made by the learned Standing counsel is more appropriate. It is not proper for this Tribunal to try to resolve a point or controversy without giving an opportunity to the Department to take a decision thereon. Hence, I confine only to the grievance projected by the applicant as regards his transfer to Door Darshan Kendra, Delhi, by the impugned order dated 3-12-98. I hope the Department will take a proper decision as regards the applicants's earlier adhoc service in the post of its regularisation, strictly in accordance with the rules and decisions cited now by the learned counsel for the applicant.

12. Hence, the applicant if so advised, submit a detailed representation to the respondent authorities bringing to their notice the decision referred to above as regards his earlier adhoc service in the post of Edit Supervisor from 15-7-1986 to 3-12-1998. The applicant may submit such a representation within one month from the date of receipt of copy of this order. If such a representation is received the respondent authorities shall consider the representation as per the recruitment rules and taking note of the decisions relied upon by the applicant.

13. Hence, I refrain from expressing any opinion on the question of seniority or regularisation of the adhoc service of the applicant in the post of Edit Supervisor.

14. I confine myself to the question of applicant's transfer from DDK, Hyderabad, to DDK, Delhi by the impugned order dated 3-12-1998.

15. By the impugned order dated 3-12-1998 the applicant has been transferred from DDK, Hyderabad to DDK, Delhi.

16. The contention of the applicant is that those officials who were promoted on adhoc basis in the year 1986 and those

authorities could have very well posted Sri GK Murthy on promotion to DDK, Delhi. It is the submission of the learned counsel for the applicant that a junior who gets promotion for the first time will readily agree to join promotional post at the place posted. When that was so and that some of the colleagues who were promoted on adhoc basis to the post of Edit Supervisor in the year 1986 were retained, the same treatment could have been extended to the applicant as well.

19. No doubt the respondents could have done that but as they say it is an administrative decision it is not fair for this Tribunal to probe further.

20. As already observed the applicant has made representations dated 17-12-1998, 21-5-1999, 7-7-1999 and 14-7-1999. The Dy. Director (Admn.) by his letter dated 7-7-1999 has rejected the claim of the applicant for retention at Hyderabad. He further stated that his transfer to DDK, Delhi, is an administrative exigency.

21. The applicant was relieved of his post by order dated 30-7-1999 with effect from 20-7-1999. A copy of which is at Annexure A-26. The applicant ~~prayed for an interim relief~~ prayed for an interim relief.

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This Tribunal by its order dated 30-7-1999 declined to grant ^{the} interim relief against order dated 30-7-1999. The applicant approached Hon. High Court of AP in WP.16987/99. The Hon. High Court of AP disposed of the WP, on 18-8-1999 by observing as under :

"This is an aspect regarding non-transfer of other similarly situated persons and the allegation is with regard to transfer only to accommodate one Mr. G. Krishna Murthy, which has to be considered in the final hearing. The fact remains that as on today the petitioner is not holding the post at Hyderabad. As such, we do not see any balance of convenience in favour of the petitioner but we do feel that it is a hard case requiring sympathetic consideration. But we are not inclined to interfere at this interlocutory stage. In the circumstances, Central Administrative Tribunal, Hyderabad Bench, is directed to hear the parties and dispose of OA.1123 of 1999 within a period of two months from the date of receipt of a copy of this order."

22. On going through the representations, the main grievance made out by the applicant is that his son is suffering from congenital Cerebral Palsy and his mother is suffering from oral cancer.

23. After the Hon. High Court disposed of the Writ petition the applicant reported for duty at DDK, Delhi, on 23-8-1999.

24. Taking these factors into account the learned counsel for the respondents attempted to make out a case that the OA does not survive for further consideration. On the contrary, the learned counsel for the applicant submitted that merely because the applicant reported for duty it cannot be stated that his inconvenience or domestic problems detailed in his representations are not there. It is submitted that the respondent authorities have not considered his ^{the impugned} grievances properly before giving reply dated 7-7-1999. He submits that the applicant is still undergoing these domestic problems. If so advise it is for them to reconsider for posting the applicant at DDK, Hyderabad.

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25. In case the applicant is facing the same inconvenience and domestic problems explained by him in the representations, the applicant may if so advised submit a detailed representation to the ^{respondent} authorities for considering to ~~repost~~ him at DDK, Hyderabad. The respondent authorities taking into considerations the observations made by the Hon. High Court decide the representations sympathetically.

26. In that view of the matter order dated 7-7-1999 passed by the Dy. Director (Admn.) (Annex.XXV pp.56) is liable to be set aside. The respondents shall have a second look to the representations of the applicant and the representation that is going to be made by the applicant by virtue of this order sympathetically.


27. Hence, the following order :

(a) The application is allowed in part. The order ~~dated~~ No. 20/5/99-S-1 dated 7-7-1999 (Annex.25 pp.56) is hereby set aside.

(b) The applicant may if so advised submit a detailed and personal representation explaining his domestic problems facing by him even after his reporting for duty at Delhi on 23-8-1999. The applicant shall submit such a representation within one month from the date of receipt of ^a copy of this order.

28. If such a representation is received or otherwise the respondents shall have a second look at the representations dated 17-12-98, 21-5-99, 7-7-99, and 14-7-99 sympathetically as observed by the Hon. High Court of Andhra Pradesh in WP.16987/99.

29. The respondents shall dispose of the representations as expeditiously as possible. No costs.


(H.S. Jai Parameshwar)
Member (Judl.)

Dt. 2 Feb. 2000

2.2.2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO:

1. HDHND
2. HRRN M (ADMN.)
3. HBSJP M (JUDL.)
4. D.R. A (DMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPOSED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN,
MEMBER (ADMN.)

THE HON'BLE MR. B. S. JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 2/2/2000

MA/RA/CP-NO.

IN- 1123/99

OA. NO.

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

2 copies

