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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.166/95

Date of order: 7-5-1997

Ishwar Singh

: Applicant

Vs.

1. Union of India through the Secretary to the Govt. of India, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi.
2. The Director General, Doordarshan, Mandi House, New Delhi
3. The Director, Doordarshan Kendra, Jhalana Doongri, Jaipur

...Respondents.

Mr. Neeraj Bhat : Counsel for the applicant

Mr. S.S. Hasan : Counsel for respondents.

CORAM:

Hon'ble Mr. O.P. Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member.

PER HON'BLE MR. O.P. SHAFMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Ishwar Singh, has prayed that the order dated 13.12.1994 (Annex.A1) by which the applicant has been reverted to his original post of Tailor from that of Property Assistant and the order dated 16.3.95 (Annex.A2) by which his appeal against his reversion as aforesaid, has been rejected may be quashed. He has further prayed that the respondents may be directed that since the applicant has worked on the post of Property Assistant for the last more than 7 years, on ad hoc basis and ~~is qualified~~ to hold this post, they should treat him as a regular holder of the post from the date of his ad hoc promotion, namely 6/7.11.1987. He has also prayed for all the consequential benefits of seniority, etc.

2. The applicant's case is that he is ~~the~~ Scheduled Caste candidate and was initially appointed on the post of Tailor in Doordarshan Kendra, Jaipur in May 1975. Vide order dated 13.12.84 issued by the Director, Doordarshan Kendra, New Delhi,

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the applicant was asked to assist the Ward Robe/Property Section in addition to his duties as Tailor (Annex.A3). By order dated 6/7.11.87, the applicant was promoted on ad hoc basis on the post of Property Assistant in scale Rs.1400-2600 (Annex.A4) having regard to his educational qualifications and experience on the post. He worked on this post for about 7 years. Since a regularly selected person for holding the post of Property Assistant was not available during this period, the applicant submitted a representation to respondent No.3, the Director, Doordarshan Kendra, Jaipur, that his ad hoc promotion be regularised. The applicant's case was recommended to respondent No.2, the Director General, Doordarshan, New Delhi, but there was no response from him. The applicant filed O.A No.129/94, before this Bench of the Tribunal, which was decided on 21.3.94 by which the Tribunal disposed of the O.A at the stage of admission with the direction to respondent No.3 to take a decision on the representation submitted by the applicant on merits. The respondents did not take a decision in accordance with the directions of the Tribunal within the time prescribed by the Tribunal and the applicant made another application on 12.9.94 to respondent No.3. Instead of regularising the applicant's ad hoc appointment on the post of Property Assistant, respondent No.3 passed order dated 13.12.94 (Annex.A1) by which the applicant was reverted to the post of Tailor. This has been done with a view to ~~take~~ <sup>taking</sup> revenge against the applicant with malafide intention. The applicant challenged his reversion before this Bench of the Tribunal by filing O.A No.615/94. The Tribunal, vide order dated 16.12.94, dismissed the application as premature and directed the applicant to prefer an appeal before the concerned authority and the appellate authority was directed to take a decision on the applicant's appeal within a specified period. Accordingly, the

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applicant submitted an appeal on 28.12.94 (Annex.A6). The appeal was decided vide order dated 16.3.95 (Annex.A1). The appeal was rejected.

3. The applicant's case is that the posts of Property Assistant are permanent and sanctioned posts and the applicant possesses the requisite qualifications and experience and he has completed 7 years' service on this post. Therefore, denial of regularisation of his services on the said post is illegal. The order dated 6/7.11.87 by which he was promoted as Property Assistant on ad hoc basis states that he will be reverted to his original post as and when a regular Property Assistant is posted. However, no regularly selected Property Assistant has been posted and still the applicant has been reverted. There was no condition in the order of appointment that the post of Property Assistant would be filled-up by appointing a Clerk Gr.I as stated in the order Annex.A1. The respondents have taken action to revert the applicant because he had approached the Tribunal for redressal of his grievances. The work for the post of Property Assistant is still available. Any appointment on ad hoc basis for over 2 years means that the appointment is no longer ad hoc in character and the applicant is entitled to regular appointment on the post. The applicant's appeal against his reversion was not objectively considered. Other persons in similar circumstances have been given the benefit of regularization. He has, therefore, assailed the orders passed by the respondents reverting him to the post of Tailor and rejecting his appeal against such reversion as being wholly unjustified.

4. The respondents in their reply have stated that the applicant was given adhoc, conditional appointment on the post

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of Property Assistant with a clear understanding that the appointment would not bestow upon him any right for regular appointment as Property Assistant and he would be reverted to his original post of Tailor as soon as a regular Property Assistant is posted. The applicant agreed to these terms and joined the post of Property Assistant. However, he started asking for regularization on the post of Property Assistant and eventually filed application 129/94 before the Tribunal praying for regularization, which was decided by the Tribunal by order dated 21.3.1994, directing the respondents to take a decision on the representation of the applicant on merits. Accordingly, the representation dated 12.9.94 made by the applicant was considered. Since the appointment of the applicant was adhoc and he was liable to be reverted on posting of a regular Property Assistant at Doordarshan Kendra, Jaipur and since the post of Property Assistant had been converted to that of Clerk Gr.I, the representation of the applicant was rejected by the Directorate in consultation with the Ministry and the applicant was reverted to his original post of Tailor w.e.f. 13.12.1994 (Ann.A1). The applicant's plea against the order of reversion was also rejected by the respondents. The applicant has filed the present OA seeking regularization on the post of Property Assistant, which has been abolished and is no more in existence. The applicant is seeking the same relief again which he had sought in the earlier OA. Therefore, the present application is not maintainable. The applicant's appointment on the post of Property Assistant was not on the basis of his merit on account of educational qualifications and experience but was an administrative, stop gap arrangement with a clear stipulation referred to earlier. The applicant was granted the pay of the post on his appointment as Property Assistant but that does not entitle him to claim regularization on the post. When the Directorate General of Doordarshan, New Delhi was

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consulted by the Directorate, Doordharshan, Jaipur regarding the representation of the applicant for appointment on the post of Property Assistant on regular basis, they had replied vide Ann.RC dated 15/21.11.1994 that the cadre of Property Assistant is a dying one and future appointments to the post <sup>are</sup> ~~is~~ to be made only as Clerk Gr.I/Store Keeper in terms of approved decision taken earlier. This communication was issued by the Directorate General, Doordharshan, New Delhi after consulting the Ministry of Information and Broadcasting and the Ministry of Law. Accordingly, the applicant was reverted to the lower post. They have denied that the action against the applicant was taken with any malafide intention. Since his appointment was on adhoc basis, the terms of his appointment could not be ignored. The post of Property Assistant has been abolished and another post of Clerk Gr.I has been created and there is no question of selection of anybody for the post of Property Assistant. Posts are abolished or created in the interests of administration. He was continued on the post of Property Assistant as long as it was necessary. The appeal of the applicant against reversion was duly considered and it was rejected.

5. The applicant has filed a rejoinder to the reply filed by the respondents in which the averments made earlier have more or less been reiterated. It has been added in the rejoinder that the work of Property Assistant is still available and only the nomenclature of the post has been changed, which could not have been done to the prejudice of the applicant. The respondents resorted to unfair labour practice by keeping the applicant on adhoc basis on the post of Property Assistant due to which he has to approach the Tribunal. Although the condition of his appointment was that he would be reverted to his lower post when a regular Property Assistant is posted, yet

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he was reverted by abolishing the post itself. Therefore, it cannot be said that the applicant had been reverted on the basis of the terms of his appointment.

6. The applicant has also filed a Misc. Application seeking permission to place on record a document as Ann.A8 to the OA which is a communication dated 3.2.1994 from the Directorate General of Doordharshan, New Delhi regarding implementation of recommendations of a High Power Committee. As per this communication the recommendations of the High Power Committee are as under:

"1. All the existing Property Asstt. in Doordharshan will continue to be in the feeder grade for promotion to the post of Programme Executive in All India Radio/ Doordarshan as per the existing recruitment rules.

2. As soon as the existing Property Asstt. vacate their posts either on promotion or on retirement/ resignation etc. the posts thus falling vacant will be automatically converted into Clerk Grade-I/Store Keeper.

3. All posts created in future for the items of work now handled by the Property Assistant in Doordharshan may be created in the grade of Clerk Grade-I/ Store Keeper only, so that the cadre of Property Asstts. is eventually abolished. "

7. During the arguments, the learned counsel for the applicant sought to produce before us a document being a communication dated 13.9.1995 which is with reference to the contents of Ann.A8 reproduced above and the decisions recorded therein read as under:

"i. all the existing Property Assistants in Doordharshan will continue to be in the feeder grade for promotion to the post of Programme Executive in AIR/Doordarshan as per the

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existing recruitment rules.

ii. as soon as the existing Property Assistants vacate their posts either on promotion or retirement/resignation etc., the posts thus fallen vacant will be automatically converted into Sr. Store Keeper.

iii. all future posts of Property Assistant in Doordarshan may be created in the grade of Sr. Store Keeper so that in due course of time the cadre of Property Assistants is completely abolished."

8. We allow the Misc. Application filed by the applicant seeking permission to place on record Ann.A8 to the OA. With regard to the communication dated 13.9.1995, although it is not correct on the part of the applicant to produce any document in the course of hearing without furnishing a copy thereof to the respondents beforehand, yet since the contents of this communication dated 13.9.1995 are not disputed, this communication is also made part of the record.

9. During the course of arguments, the learned counsel for the applicant cited before us a judgment delivered by this Bench of the Tribunal in OA No. 838/89 on 21st October, 1994, in the case of Asha Wadhawani Vs Union of India and Ors., wherein the Tribunal held that the applicant in that case should have been regularised in the job that she was holding in view of the pronouncements of the Hon'ble Supreme Court and also for the reason that an adhoc appointment is only meant for a short period upto 6 months at a time. The applicant in that case was appointed as a Clerk Gr.II on adhoc basis in the Doordarshan Kendra, Jaipur. He also placed before us summaries of various judgments of the Hon'ble Supreme Court and of various Benches of the Tribunal, as incorporated in the Swamy's Digest of Case Law. These judgments are as under:

i) Dhirendra Kumar Sinha and Ors. Vs. State of Bihar and Ors.

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delivered on 7.12.1992

ii) Dr. Ramesh Chandra Tyagi Vs Union of India and Ors.

delivered on 11.2.1994.

iii) B.V.Ramana Rao Vs. Union of India and Ors., delivered by Patna Bench of the Tribunal on 2.2.1994.

iv) M.Sangara Raja Vs Union of India decided by the Madras Bench of the Tribunal on 28.1.1994.

v) Arvind Bohra and Ors. Vs. Union of India and Ors. decided by the Jodhpur Bench of the Tribunal on 7.12.1993.

vi) Satish Kumar Vs. Union of India and Ors. decided by this Bench of the Tribunal on 22.11.1993.

viii) Dayaram Singh Vs. Union of India and Ors. decided by the Bombay Bench of the Tribunal on 25.11.1993.

10. He has prayed that in view of the ratio of these judgments and the facts of the present case, the applicant deserve to be regularised on the post of Property Assistant, in view of the fact that he had rendered about 7 years service on the said post and was fully qualified to hold the post, and in any case he should not be reverted from the said post because the work of Property Assistant is still available and in accordance with the terms of his appointment, he was to be replaced only by a regular Property Assistant.

11. The learned counsel for the respondents stated in his oral arguments that in accordance with the recommendations of the High Power Committee as incorporated in Ann.A8, the posts of Property Assistant were to be eventually abolished and, therefore, no fresh appointments to the said posts were being made. Since the applicant was only an adhoc appointee to the said post, he had no right to be regularised on the said post or even to continue on that post. He had only been reverted to his regular post of Tailor. The applicant had acquired no right to hold the post of Property Assistant and, therefore, was not entitled to any relief.

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12. We have heard the learned counsel for the parties and have perused the material on record including the judgments cited before us.

13. There is no dispute about the contents of the order at Ann.A4 dated 6/7.11.1987 by which the applicant was appointed to the post of Property Assistant. As per this order his appointment was purely on adhoc basis and it was clarified therein that his appointment did not bestow on him any claim for regular appointment on the post of Property Assistant. It was, of course, also clarified therein that he would be reverted to his original post as soon as a regular Property Assistant is posted at Doordarshan Kendra, Jaipur. Subsequent to the passing of this order, it appears that a High Power Committee was appointed by the Doordarshan which considered the position regarding continuance of the post of Property Assistant and the decisions taken by the said High Power Committee, which were accepted, have been reproduced at para 6 above. It was accordingly decided by the respondents not to fill up the post of Property Assistant whenever it fell vacant by appointing fresh persons to the said post. Of course, applicant did not vacate his post either on his promotion or retirement or resignation. However, the applicant was not a regular but an adhoc appointee to the said post, not having been selected in accordance with the rules. Therefore, as far as he was concerned, he had acquired no right to hold the post. Since in view of the subsequent developments, the posts of Property Assistants were not to continue in that form and were to be converted into the posts of Clerk Gr.I/Store Keeper, the action of the respondents in reverting the applicant to his lower post of Tailor cannot be legally faulted. It was a general policy decision taken by the respondents and not a decision taken only to disfavour the applicant. Therefore the applicant's contention that the action to revert the applicant was a

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mala fide one, is not sustainable. As to the question whether a person appointed on adhoc basis dehors the rules acquires any right to be regularised on the post, reference may be made to the judgment of the Hon'ble Supreme Court in Union of India Vs. Bishamber Dutta, 1997 (1) ATJ 263. In this case the respondents were appointed on adhoc and part time basis. They had asked for regularisation as Group-D employees. The Hon'ble Supreme Court held that since they had not been appointed on regular basis in accordance with the rules, they were not entitled for regularisation. Unless they were appointed on regular basis according to the rules, after consideration of the case on merits, there was no question of regularisation of their services. The persons who had sought regularisation had been appointed during the period 1990-94. Although they were part time employees, the principle enunciated by the Hon'ble Supreme Court would be squarely applicable to the present case also because the important question is whether a persons who seeks regularisation has been appointed in accordance with the rules on the basis of consideration of his case on merits. In E.Ramakrishnan and Ors. Vs. The State of Kerala and Ors., 1996 (3) SLJ 111, the Hon'ble Supreme Court held that where the prescribed mode of recruitment is through Public Service Commission, an adhoc employee, regardless of the length of his service cannot be regularised unless selected through Public Service Commission. The principle emerging from this judgment is that an employee is eligible for regularisation only if he is recruited/appointed to a post in accordance with the prescribed mode and the length of his adhoc service is immaterial for the purpose of his regularisation. In Sreedam Chandra Ghosh Vs. State of Assam and Ors., 1997 SCC (L&S) 332, the Hon'ble Supreme Court held that officiation in a higher post as a stopgap arrangement does not confer on employee a right to continue on the post. In the present case the

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applicant was not appointed to the post of Property Assistant after consideration of his claim on merits but was appointed purely on adhoc basis. Hence he was not entitled to be regularised on the said post. Further, when a policy decision had been taken by the respondents to abolish the post of Property Assistant , they were not unjustified in reverting the applicant to the lower post held by him earlier and converting the post into that of Clerk Gr.I as per the policy decision, as the applicant had acquired no right to hold the post.

14. As regards the judgments relied upon by the learned counsel for the applicant, it may be stated that Asha Wadhawani's case had been decided by this Bench of the Tribunal more or less on its facts. In view of the judgment of the Hon'ble Supreme Court cited above, no directions can be given for regularisation of the services of the applicant on the post of Property Assistant. The other judgments cited by the applicant referred to above, have also no direct applicability to the facts of the present case, as can be seen from the summaries provided by the applicant. In fact, in the judgment of Dhirendra Kumar Sinha case, the Hon'ble Supreme Court have held that no fault could be found in terminating the services of adhoc appointee.

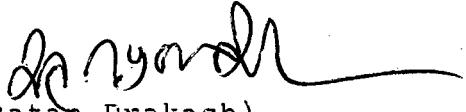
15. The applicant has also cited 2 more judgments, summaries of which has been reproduced from certain journals. One is Union of India and Ors. Vs. Dr. Arun Kumar Sharma decided by the Hon'ble Supreme Court on 21.7.1994. It is not clear why the applicant has cited this judgment because the order passed by the Tribunal earlier, setting aside the termination of the applicant, was itself set aside by the Hon'ble Supreme Court and the matter was remitted to the Tribunal for reconsideration in accordance with the directions of the Hon'ble Supreme Court. This was a case which was originally decided by the Jaipur Bench of the Tribunal. Another case cited by the applicant is

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Sant Prakas Vs. Union of India and Ors. decided by the Principal Bench of the Tribunal. This decision is of May, 1991. The Tribunal held that the applicant who had worked for over 8 years on adhoc basis should be deemed to have officiated on the post in question on regular basis and should, therefore, be considered for promotion to the higher post. We are of the view that in the light of the judgments of the Hon'ble Supreme Court referred to above, it would not be appropriate for us to give any direction of the nature given in this judgment.

16. On a careful consideration of all the facts and circumstances of the case and having regard to all the averments of the applicant and arguments of the learned counsel for the applicant during the hearing, we find no merit in this OA. It is, therefore, dismissed. No order as to costs.



(Ratan Prakash)

Judicial Member



(O.P. Sharma)

Administrative Member