

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 7.10.2003

OA No.540/2001

Veena Shukla w/o Shri Pradeep Shukla, aged around 46 years, r/o 84/327, Pratap Nagar, Sanganer, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. The Prasar Bharti (Bhartiya Prasar Nigam) through its Director General, Doordarshan Bhawan, Copernicus Marg, Mandi House, New Delhi.
3. Prasar Bharti (Bhartiya Prasar Nigam) Doordarshan Kendra, Jhalana Doongari, Jaipur through its Director.

.. Respondents

Mr. Amit Mathur, counsel for the applicant

Mr. T.P.Sharma, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

The applicant has filed this OA with the prayer that an appropriate order or direction be issued to the respondents to regularise the services of the applicant on the post of Make-up Assistant.

2. The case of the applicant is that pursuant to the interview held on 15.12.87 for the post of Make-up Assistant, name of the applicant was empanelled for the

u

: 2 :

said post. Accordingly, the applicant was appointed as casual artist at Doordarshan Kendra (DDE), Jaipur on 1.2.1988. The applicant continued to work as Make-up Assistant from 1.12.88 to 31.1.98 as per terms and conditions prescribed by the respondents.

2.1 It is further stated that in pursuance of the directions of Hon'ble Apex Court and Central Administrative Tribunal (CAT), Principal Bench at New Delhi in OA No.563/86 decided on 14.2.92, the Govt. of India framed a scheme for regularisation of casual artist in Doordarshan. This scheme was conveyed through letter No.2(3)/86-S.I dated 9.6.92. By yet another memorandum dated 17.3.94 clarification with regard to original scheme dated 9.6.92 were issued with calculations of working days. Both these schemes are placed on record as Ann.A2 and A3.

2.3 It is also alleged that vide letter dated 8.9.94, the applicant was informed that her case is under consideration in the post of Make-up Assistant and she was called upon to furnish required documents which according to the applicant she has submitted within the stipulated time. Further case of the applicant is that she was given regular booking as per terms and conditions of appointment upto 31.1.98 and thereafter without any reason she was not given any booking. The applicant challenged the action of the respondents by raising an industrial dispute whereupon the matter was referred to the Industrial Tribunal. The Central Government Industrial Tribunal (CGIT), Jaipur vide its award dated 17.11.2000 held the applicant entitled to 50% of the wages from 31.1.98 as was being given to one Chandra Vanjani. Further, in pursuance of the aforesaid award the eligibility of the applicant was re-examined and

el

she was found to be eligible for regularisation. Consequent upon the decision of the CGIT, Jaipur name of the applicant has been included in the seniority list of casual Make-up Assistant in DDK, Jaipur. This list has been prepared on the basis of initial engagement of the casual artist as per regularisation scheme dated 9.6.92. Thus, the grievance of the applicant that she is not being given regular booking as per terms and conditions of appoint after 31.1.98 and further that her name has not been included in the eligibility list for the purpose of regularisation, does not arise now. The only grievance of the applicant which has been ventilated in this application is that the applicant is working as casual artist for more than 12 years, her case for regularisation, though under consideration before the respondents, but no regular appointment has been given by the respondents till date and as such action of not regularising her services, is arbitrary. It is further alleged that there are vacancies at difference places and as such the applicant can be regularised as Make-up Assistant against these posts.

3. The respondents have filed reply. By way of preliminary objection, it is stated that on 23.11.97 Prasar Bharati was established as body corporate under Sub-section (1) of Section 3 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990. The Government of India, Ministry of Information and Broadcasting by its letter dated 3.11.2001 clarified that the posts belonging to various cadres of All India Radio and Doordarshan on which the employees and the officers are born are at the disposal of the Prasar Bharti

consequent to formation of Prasar Bharti it would continue to operate the very same posts belonging to various cadres of All India Radio and Doordarshan. It has also been stated in that letter that the employees who are working in Prasar Bharti have been recruited for doing the jobs assigned to these posts and which are now under the control of Prasar Bharti. Hence, the posts on which the various employees and the officers of Prasar Bharti are working are no longer Civil Posts/Services under the Union. Consequently, in the absence of any notification issued by the Central Government in exercise of the powers conferred upon it under sub-section (2) and (3) of Section 14 of the Administrative Tribunals Act, the provisions of Section 14 of the said Act are not applicable to the posts of Prasar Bharti.

3.1 The respondents have also placed reliance upon the decision of the CAT-Allahabad Bench as well as Lucknow Bench rendered in OA No.1192/96 decided on 10.11.2000 (Ann.R2) and in OA No.340/98 decided on 7.7.2000 (Ann.A1) respectively.

3.2 On merits, it has been contended that pursuant to the scheme framed for regularisation of casual artists in Doordarsh, the department had prepared two lists i.e. one of eligible artists and the other of ineligible casual artists in each category. After the orders of the CGIT, the eligibility of the applicant was rechecked by the respondent NO.2 vide Ann.IV of the OA. The applicant was initially found ineligible. The benefit of the engagement for 120 days in the initial year is granted to over age casual artist also. Therefore, on this basis, the applicant has been found to be eligible for regularisation and has been placed in the seniority list of eligible

casual Make-up Assistants awaiting regularisation. Accordingly she would be considered for regularisation on her turn and on occurrence of regular vacancy in the grade subject to her fulfilling all eligibility conditions in terms of recruitment rules and provisions of regularisation scheme.

4. The applicant has filed rejoinder thereby reiterating that there are two studios in Jaipur for which four posts of Make-up Assistant are available. At present only one person Shri F.K.Nigam is working on the post of Make-up Assistant who was transferred from Delhi to Jaipur. Vacancies are also available at Barali, Rahtak and Shimla Studio. The applicant can be posted at any studio where the vacancy is available.

5. The respondents have filed additional reply thereby denying the allegations levelled by the applicant in the rejoinder. It has been categorically stated that there is only one post of Make-up Assistant sanctioned for DDE. Jaipur which is filled up. Therefore, presently there is no post of Make-up Assistant is vacant. Thus, the case of the applicant cannot be consideration for regularisation at this stage. No junior to the applicant in the panel has been regularised. It is further stated that appointment has to be made kendra-wise.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

6.1 On the point of jurisdiction, the learned counsel for the applicant has brought to our attention the decision of the Full Bench of this Tribunal in Shushil

122

Kumar Tiwari and ors. vs. Union of India and ors. (1997-2001) A.T.F.B.J. 30, where the question of regularisation of service of the applicants who were engaged as casual artists (Floor Assistants, Producer Assistants, Lighting Assistants, Make up Assistants etc.) in the Doordarshan and All India Radio and appointed prior to formulation of the scheme dated 9.6.92 were under consideration. The following two questions were referred for consideration to the Full Bench on the contradictory judgments render by the Bangalore Bench as well as Lucknow Bench:-

ba "i) Whether after the notification dated 23.11.97 issued under section 3(1) of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990, this Tribunal has no jurisdiction to entertain the O.As. claiming regularisation under O.M. dated 9.6.92 on the subject of scheme for regularisation of casual artist 25 in Doordarshan as modified by O.M. dated 17.3.94.

ii) Whether this Tribunal has no jurisdiction to grant relief of regularisation under the Scheme of regularisation of casual artists in Doordarshan issued vide O.M. dated 9.6.92 and modified by O.M. dt. 17.3.94 after issue of notification dated 23.11.97 under Act of 1990."

After noticing the various provisions of Prasar Bharti (Broadcasting Corporation of India) Act, 1990 and more particularly section 11, the Full Bench held that prior to formulation of Prasar Bharti these employees were employee of All India Radio and Doordarshan and these were posted under the administrative control of the Central Government and the applicant therein had not been

u

transferred by the Central Government to Prasar Bharti within the meaning of Section 11 of the Act of 1990. As such they continued to be employee of the Central Government on deputation with Prasar Bharti and as such this tribunal has jurisdiction to entertain the claim. The Full Bench answered the reference in negative and held that this Tribunal has jurisdiction to deal with such matters. In view of the decision of the Full Bench to which we are bound to follow, we are of the view that this Tribunal has jurisdiction to decide the matter and objection raised by the respondents are not maintainable.

6.2 The decisions of Lucknow and Allahabad^{ba} Benches of the Tribunal relied upon by the respondents are not applicable in the facts and circumstances of this case. The issue before the Lucknow Bench in OA No.340/98 was regarding transfer order issued by the Prasar Bharti. In that decision it was held that though the applicant is on deputation with the Prasar Bharti, but the Prasar Bharti is competent to pass transfer order of employees who are on deputation with the Prasar Bharti and as such the said order cannot be challenged before the Tribunal so long as notification under Section 14(2) of the AT Act is not issued by the Central Government. Similarly, the issue before the Allahabad Bench in OA No.1192/96 was regarding leave account pertaining to the period when the applicant was posted as Security Guard at Doordarshan Relay Kendra, Deoriya. After enforcement of the Prasar Bharti Corporation, it became a question of jurisdiction. It was in that context the Allahabad Bench held that the Prasar Bharti Corporation has not so far been notified to be brought under jurisdiction of the Central Administrative Tribunal to decide the service disputes of the

10/

Corporation. Therefore, the OA is not maintainable before this Tribunal.

6.3 On merits, the applicant has not made out any case for the purpose of regularisation of her service as Make-up Assistant. Eligibility of the applicant has already been accepted by the respondents and her name has been included by the Doordarshan Kendra in the seniority list of eligible casual Make-up Assistants at DDK, Jaipur. The services of the applicant could not be regularised as according to the respondents at present there is no vacancy of Make-up Assistant in Doordarshan Kendra, Jaipur. The respondents have categorically stated that the case of the applicant would be considered for regularisation on her turn as per availability of regular vacancy at the Doordarshan Kendra subject to her fulfilling all the eligibility conditions in terms of recruitment rules and provisions of regularisation scheme. The grievance of the applicant in this OA is that the applicant is working as casual artist for more than 12 years and there are vacancy of Make-up Assistant available at Jaipur and several vacancies are available at different Kendras, as such the case of the applicant for regularisation for the said post ought to have been considered. In case no post of Make-up Assistant is available at Jaipur Kendra in that eventuality her case should be considered against vacant posts of Make-up Assistant available in other Kendras. This contention of the applicant cannot be accepted which is contrary to the scheme of regularisation of casual artist in Doordarshan dated 9.6.92 formulated pursuant to the direction of the Supreme Court and the Principal Bench of the CAT in the case of Anil Kumar Mathur vs. Union of India and ors. At this stage it would be useful to quote para 3 & 4 of the said scheme which reads as under:-

el

.....3. Separate eligibility panels will be prepared for each category of posts, Kendre-wise, depending upon the length of service of Casual/artists. They will be considered for regularisation in the order of their seniority against the available vacancies in that particular kendre. The seniority will be determined from the date of their initial engagement by the kendre.

4. The person who are in the eligibility panel of one kendra will have no right for claiming regularisation in enother kendra as these are generally Group 'C' posts and selection is made kendra-wise."

Thus from the portion quoted above, it is clear that the eligibility panel has to be prepared for each category of posts kendra-wise and the persons eligible will be considered for regularisation in order of their seniority against the available vacancies in that particular kendra. It has been specifically stated in para 4 of the scheme that the persons who are in the eligibility panel of one kendra has no right for regularisation in another kendra. In view of this specific provision contained in the scheme, the applicant has no claim that her services should be regularised against the vacancy available in other kendras. It is not the case of the applicant that as per eligibility list prepared by the Department, some junior persons to the applicant have been regularised or the respondents are resorting to direct recruitment thereby forfeiting the claim of the applicant for regularisation. In the absence of any such pleadings and in view of the fact that the respondents have

b

: 10 :

specifically pleaded that there is only one post of Make-up Assistant at Jaipur Kendra which is already filled and no vacancy is available against which the services of the applicant can be regularised, no relief can be granted to the applicant.

6.4 Needless to add that the respondents should consider the case of the applicant for regularisation on her turn as per availability of vacancy at Jaipur kendra subject to her fulfilling the eligibility condition in terms of recruitment rules and provisions of regularisation scheme.

7. With these observations, the present OA is disposed of with no order as to costs.


(A.K. BHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)