

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.**

O.A. Nos. 34/2003 & 35/2003

Date of decision: 26.9.03

Rajendra Prasad Saxena, S/o Shri Pamsewak Saxena, aged 34 years r/o Plot No. 2 Rajhans Colony Scheme No. 3 Bhramपुरi Road Jaipur (terminated as LDC Doordarshan Kendra, Jaipur)

: Applicant in O.A. NO. 34/2003.

Sarla Manglani, D/o Shri Atma Pam Manglani aged 37 years, r/o 82, Vasundra Colony, Tonk Road, Jaipur (terminated as LDC Doordarshan Kendra, Jaipur.)

: Applicant in O.A. No. 35/2003.

Versus

1. Union of India through Secretary, Information and Broadcasting Shastri Bhawan, New Delhi.
2. The Director General, Prasar Bharti, Doordarshan Bhawan, Copernicus Marg, New Delhi.
3. The Director, Prasar Bharti, Doordarshan Kendra, Jhalalna Institutional Area, Jaipur.

: Respondents in both the OAs

Mr. Ajay Rastogi with Mr. Saugath Roy: Counsel for the applicants.

Mr. Tej Prakash Sharma: Counsel for the respondents.

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

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ORDER

Per Mr. Justice G.L.Gupta:

Identical controversy is involved in the above mentioned two OAs and therefore they have been heard together and are being disposed of by this common order.

2. The challenge in the O.As is to the order dated 27.01.2003, whereby the applicants were reverted as casual General Assistant by terminating their services as LDC with effect from the date of the issue of the order.

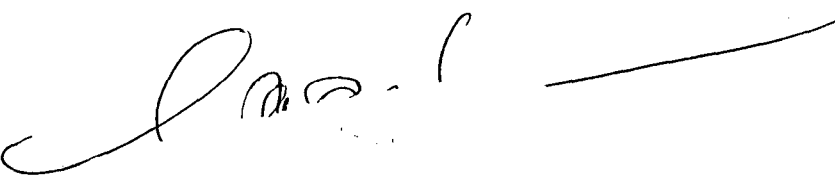
3. The relevant facts are these. Applicant Rajendra Prasad Saxena, was invited to work in the News Section vide order dated 10.04.90 for the period from 02.04.90 to 11.04.90, on a consideration of Rs. 500/- Similarly, applicant Sarla Manglani was invited to do type work from 21.06.90 to 30.06.90 vide order dated 29.06.90, in the office of the Doordarshan Kendra on a consideration of Rs. 500/-. Both the applicants continued to work till 1995. It is stated that the applicants worked as Casual General Assistants till 1995. However, the designation is not stated in the orders Annex. A.1, inviting the applicants to do work. Be that as it may, it is admitted position that they were casual employees.

3.1 Some of the casual employees booked by the Doordarshan Kendra New Delhi, had approached the Principal Bench of the Central Administrative Tribunal, New Delhi for regularisation of their services. After hearing the parties, the Principal Bench directed the authorities to formulate a policy for regularisation of casual employees worked upto 31.12.91. It is stated that

this order of the Principal Bench came to be challenged before the Supreme Court, which upheld the order of the Principal Bench, New Delhi. The regularisation Scheme known as 'Scheme of 1992' was circulated vide order dated 09.06.92. The Scheme provided that all casual employees who had completed 120 working days in a year, were eligible for age relaxation and were also eligible for consideration for regularisation.

3.2 The respondents, thereafter collected the information in prescribed proforma from all the casual workers and after considering the facts, issued the order dated 25.05.95 in respect of Sarla Manglani and the order dated 01.03.95 in respect of Rajendra Prasad Saxena, regularising their services on the post of LDC. In the orders it was stated that the candidates were required to pass the type test. It is stated that the applicants complied with the requirements of the order and thereafter vide order dated 21.06.96, the rider of probation and annual increments made in the appointment orders of 1995, was removed. The applicants were confirmed as LDCs vide orders dated 14.09.98.

3.3. However, it is averred, vide order dated 17.01.2002, a show cause notice was given to the applicants, stating that their appointment was found to be irregular and hence their services would be terminated and they could submit their explanation against the proposed action. The applicants thereafter, submitted their explanation. The respondents vide impugned order dated 27.01.2003 terminated the services of the applicants from the post of LDC and reverted them as casual General Assistants.



3.4. The grounds stated in the applications are that the applicants had not concealed any fact when they were regularised or that they were not lacking in respect of eligibility conditions, and as their services were found to be satisfactory, there was no occasion to issue show cause notice to them, which was in the nature of post decisional hearing and that the termination order dated 27.01.2003 is an example of non application of mind. It is also averred that the order dated 27.01.2003 gives a fragrance of favouritism to someone at the cost of the applicants. It is also stated no seniority list was ever published by the respondents and that the applicants could not be reverted on the basis of the judgement of the CAT in the case of Lallu Ram Sharma, in which the applicants were not the party. It is further stated that the case of Lallu Ram Sharma stood on a different footing and was covered by the relaxation order. It is also the case for the applicants that there were many vacant posts available as on 30.01.2003 and Lallu Ram Sharma and others could be accommodated on those posts.

4. In the counter, the respondents have come out with the case that the applicants were initially engaged on casual basis and further engagement was given to them subject to the availability of work from time to time. It is stated that Sarla Mangalani was not booked after 10.11.94 and Rajendra Prasad Saxena was not booked after 20.02.95.

4.1 It is stated that the Scheme circulated vide communication dated 09.06.92 was modified vide order dated 17.03.1994 wherein the method of computing the number of days was stated. It is averred that the number of days for the purpose of regularisation is required to be computed on the basis of actual wages given to the casual staff artists in a month, divided by the minimum wages prevalent in the State during the relevant time of booking. As an example, it is stated, if a casual staff artist has been paid ^{on aggregate} sum of Rs.1500/- in a month, whether for working for 10

days or for two or three assignments in a month and the minimum wage prevailing in the State at that time was Rs. 50/- per day, the staff artist would be deemed to have worked for 30 days in a month subject to the condition that the days so computed would not exceed 25 days in a month.

4.2 It is averred that after the judgement of the Hon'ble CAT vide order dated 31.07.2001 in O.A. No. 155/98 filed by Shri Lallu Ram Sharma casual General Assistant, it was found that the regularisation of the applicants was irregular and they had been regularised ignoring the seniority of Lallu Ram Sharma and other senior eligible casual General Assistants, who had been engaged prior to the date of initial engagement of the applicants. It is stated that the seniority has been determined on the basis of initial date of engagement which is the criteria for regularisation. It is also stated that the applicants and some others were regularised due to erroneous interpretation of the Regularisation Scheme of 1992 and therefore show cause notices were issued to them and the competent authority after considering the reply of the applicants has terminated the services of the applicants.

5. In the rejoinder, the applicants' stand is that Lallu Ram Sharma was not eligible for regularisation under the Scheme of 1992 and his candidature could be considered under 1994 Scheme and under the garb of implementation of the order of the CAT in Lallu Ram Sharma's case, the services of the applicants could not be terminated. It is also stated that Prasar Bharti has four wings having one controlling authority and many vacancies were available under the administrative control of the Station Director, All India Radio, Jaipur and therefore the services of the applicants ought not to have been terminated. It is also stated that the respondents

have cleverly used the words 'reversion' in the impugned orders whereas they have terminated the services of the applicants.

6. The respondents have filed reply to the rejoinder in which it is admitted that the Station Director, All India Radio, Jaipur, is the cadre controlling authority for LDCs and he looks after promotion/transfer of the staff. It is stated that a common seniority list of LDCs of Rajasthan region is being maintained by the Station Director, All India Radio, Jaipur. It is emphatically denied that any person junior to the applicants has been retained. It is stated that there are no two separate Schemes of 1992 and 1994 and the 1994 order is only a clarification of the 1992 Scheme and the lists prepared in the years 1992 and 1994 have been merged and in the consolidated list, the names of Sarla Manglani figures at Sl. No. 17 and that of Rajendra Prasad Saxena at Sl. No. 14. It is averred that as per the list 14 casual Artists, are waiting for their turn for regularisation and hence the applicants cannot succeed in retaining their regularisation done in the year 1995.

7. The applicants have filed counter to the reply affidavit filed to the rejoinder, but the same was not pressed vide oral submission made on 19.08.2003.

8. We have heard the learned counsel for the parties and perused the documents placed on record. We have also gone through the written submissions made on behalf of the respondents.

9. The first contention of Mr. Pastogi was that as the services of the applicants had been regularised under the Scheme of 1992 and ^{as} Shri Lallu

Ram Sharma's services had been regularised Under the Scheme of 1994, the applicants could not be considered ~~junior to~~ ^{to} Shri Lallu Ram Sharma and others.

10. Mr. Sharma, learned counsel for the respondents, on the other hand, contended that 17.03.94 order did not introduce a separate Scheme, instead it was the clarification of the Scheme of 1992 and therefore regularisation was to be considered under the Scheme of 1992 keeping in view the clarification dated 17.03.94.

11. We have given the matter out thoughtful consideration. It is seen that pursuant to the directions given by the Central Administrative Tribunal , Principal Bench New Delhi in O.A. No. 563/86 [Anil Kumar Mathur vs. Union of India and others], affirmed by the Supreme Court the Government took a decision to consider regularisation of all Casual Artists against the available vacancies in the erstwhile Staff Artists category, for which the Office Memorandum dated 09.06.1992 was issued. Guidelines were issued by way of OM dated 10.06.1992.

11.1 It may be pointed out that the Scheme of 1992 was for regularisation of casual artists in Doordarshan Kendras. The applicants, however, had not been engaged as Casual Artists. They had been engaged to do typing work or to work in the News Branch. In any case, during the course of arguments, both the learned counsel submitted that the Scheme of 1992 applied to the applicants also and they have been treated as Casual Artists for the purposes of regularisation.

11.2 The Scheme introduced in June 1992 provided that all Casual Artists engaged upto 31.12.1991 were eligible for consideration for regularisation, even if they were not in engagement on 31.12.1991 or on the date of issuance of the Scheme i.e. 10.06.1992. It was further provided that the date of initial engagement on casual basis would be the sole criteria for determination of seniority of the Casual Artists under the Scheme. To over-come the bar of upper age limit of 30 years it was provided that age concession would be given to the Casual Artists treating their engagement for a total period of 120 days in one calendar year. It was also provided that the regularisation of Casual Artists under the Scheme would be done only to the extent of existing vacancies.

11.3 It seems that after the introduction of the Scheme facts were collected by the respondents for consideration of regularisation of the Casual Artists. The applicants' case was also considered. Vide communication dated 25.5.95, applicant Sarla Manglani was informed that her case for regularisation was under consideration, and vide order dated 1.3.95 Shri Rajendra Prasad Saxena was intimated that his regularisation was under consideration. In the communications, it was clearly stated that their appointment would be purely on temporary basis and their services could be terminated by giving one month's notice. It was further stated in the order that the applicants would have to pass the typing test within one year of the date of their appointment and after that they could be given the benefit of grade increments and in case they did not pass the typing test they would not get grade increment and they would continue to be on probation. Admittedly, the applicants cleared the typing test and got the benefit of grade increment and their services were regularised vide communication dated 5.9.95.

11.4 At the stage, it may be pointed out, further guidelines were issued vide communication dated 17.3.94 for the implementation of the Scheme of 1992. It was stated in the communication dated 17.3.94 that the number of days for the purpose of regularisation would be computed on the basis of actual wages given to the Casual Artists in the month divided by the minimum wage prevalent state during the relevant time of booking and the number of days so computed would not exceed 25 days in a month. In that letter, it was stated that the Kendras were required to review the cases of regularisation rejected by them under the Scheme of 1992 and regularise them if they were found eligible.

12. This contention of the learned counsel for the applicants that a new Scheme was introduced vide communication dated 17.3.1994, cannot be accepted. All the conditions mentioned in the Scheme 10.6.92 continued to apply even after the memorandum dated 17.03.94 was issued. What was done by Memorandum dated 17.03.94 was that the method of calculation of number of days worked by the Casual Staff Artists was provided.

12.1 It may be pointed out that all the Casual Artists engaged were not required to be paid identical wages and their wages varied. At the same time, it was also not necessary that all the Casual Artists worked for similar number of days in a month. Some Casual Artists worked only for two days whereas the other Casual Artists worked for 25 days in a month. Since some of the Casual Artists were paid more amount than others, the system of calculation of number of days was evolved by Memorandum dated 17.03.94, wherein it was provided that the number of days would be computed by dividing the total wages paid, by the minimum wages prevalent

in the State at the time of booking. For example, if a Casual Artist was paid Rs. 1500/- and the minimum wage prevalent in the State was Rs. 50/- then the staff artist would be deemed to have worked for 30 days in a month, subject to the condition that the days so computed would not exceed 25 days in a month.

12.2 A reading of the Scheme of 1992 and the OM dated 17.03.94, makes it crystal clear that the O.M dated 17.103.94, did not introduce a new Scheme. As a matter of fact, the cases of some of the Casual Artists could not be considered under the Scheme of 1992 because of their number of days of work, therefore the clarification was issued to consider their cases on the basis of number of days to be calculated as per the Memorandum dated 17.03.94. for the purposes of regularisation. It may be pointed out that there are no guidelines in the Memorandum dated 17.03.94. If it is accepted that it was a different Scheme than the Scheme dated 10.06.92, there could not be regularisation of any person under the memorandum of 17.03.94. In the Memorandum dated 17.03.94, even it was not stated as to who were the Casual Artists eligible to be considered for regularisation and what would be the age concession in their cases. In other words, the implementation of OM dated 17.03.94, could be made only when it was read in continuation of the Scheme of 1992.

12.3 In sum, it has to be held that OM dated 17.03.94, did not introduce a separate Scheme rather it was the clarification of the Scheme of 1992. That being so, the contention that the services of the applicants regularised under the Scheme of 1992 could not be terminated on the ground of regularisation of Shri Lallu Ram Sharma which was done under the Memorandum of 1994, is not acceptable. When on review of the left out

cases, as of Shri Lallu Ram Sharma, it was found that Shri Lallu Ram Sharma was initially engaged before the date of engagement of the applicants, he would be senior to the applicants. If no vacancy was available for the regularisation of the services of Lallu Ram Sharma or any other person, the services of the applicants on the post of LDC were bound to be terminated.

13. It may be that the applicants were not party to the O.A. filed by Shri Lallu Ram Sharma, but it did not matter. What was directed in the case of Lallu Ram Sharma was that the official respondents therein would regularise the services of Shri Lallu Ram Sharma from the date his juniors had been regularised with all consequential benefits. In that case, the contention of Shri Lallu Ram Sharma was that Shri Rajendra Prasad Saxena and Sarla Manglani and others were junior to him. However, the Court did not adjudicate on the point as to whether Shri Lallu Ram Sharma was junior to the applicants or not. The Court only gave directions to the official respondents to regularise the services of Shri Lallu Ram Sharma if any person junior to him was regularised. For the implementation of the order it was the duty of the official respondents to consider the cases of all the persons similarly situated and if it was found that the regularisation of the applicants was not proper and legal, the respondents had the power to review their regularisation.

13.1 It is significant to point out that the respondents have not reviewed the regularisation of the applicants without issuing show cause notice to the applicants. Admittedly, show cause notices were issued to the applicants. They filed their reply and the official respondents after considering their

reply have passed the impugned order. It was held that the applicants services could not be regularised as they were junior to Lallu Ram Sharma.

13.2 That being so there was nothing wrong on the part of the respondents in terminating the services of the applicants.

14. The second contention of learned counsel for the applicants was that ^{the} in order Annex. A.9 dated 10.05.98, the names of S/Shri Hanuman Sahay Sen, Mahesh Kumar Thakur, Nathu Lal Hamhar, and Rajesh Haryani were shown below the names of the applicants and in the Seniority List Annex. A.23 dated 31.07.2002 also the names of these persons were shown at Sl. No. 97,98, 103 and 104, whereas the names of the applicants were shown at Sl. Nos. 85 & 91, yet these four persons have been retained in service and the applicants services have been terminated.

14.1 As against this, Mr. Sharma contended that the order dated 18.05.98 or the memorandum dated 31.07.2002 are not the seniority lists. He submitted that no person junior to the applicants has been retained while terminating the services of the applicants.

15. It is seen that the case in the O.As was founded only on the ground that for accommodating Shri Lallu Ram Sharma the applicants termination could not be ordered. It is nowhere stated that S/ Shri Hanuman Sahay Sen, Mahesh Kumar Thakur, Nathu Lal Hamhar and Rajesh Haryani were junior to the applicants and they have been retained in service. The respondents therefore did not have an occasion to state their case regarding these persons. In any case, it has been emphatically stated in the reply that no person junior to the applicants has been retained in

service. It may be pointed out that even in the rejoinder, the applicants did not state that these four persons were junior to the applicants and they have been retained in service. Without any foundation whatsoever in the pleadings, the contention of Mr. Rastogi cannot be accepted that some person/s junior to the applicants has/have been retained in service.

15.1 The Memorandum dated 31.07.2002, cannot be said to be the seniority list of LDCs. A reading of the document shows that it contains the names of LDCs, Tabulator Clerks, Language Typists, Security Guards, Peons, Safaiwalah and Farash etc. True a reading of the document shows it to be a eligibility-cum-seniority list but as the document does not disclose seniority of one particular grade and it contain names of various categories of persons, it cannot be accepted that it was seniority list. On the basis of this document, it cannot be said that S/Shri Hanuman Sahay Sen, Mahesh Kumar Thakur, Nathu Lal Khumhar and Pajesh Haryani, were junior to the applicants and that they have been retained in service.

16. One of the contentions of Mr. Rastogi was that after the show cause notice was given to the applicants, they made detailed representations but the representations have been rejected in slipshod manner. According to him, the order does not indicate that there was application of mind of the competent authority. In this connection he pointed out that the representation was to be considered by the competent authority as defined at page No. 389 of the Law of Lexicon by former Chief Justice of India Justice Y.V Chandrachud 1997 edition. In the said Law Lexicon, the word 'Consider' has been defined as (1) to think over and (2) to regard as or deem to be on the basis of the decision of the Apex Court in **Divisional**

Personal Officer, Southern Railway vs. T.R. Chellapan [AIR 1975 SC 2216 AT PAGE 2226].

16.1 It is stated that the word 'consider' connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. It is obvious that the explanation stated against the word 'consider' is with reference to the word used Railway Servants (Discipline and Appeal) Rules 1968. The plain meaning of the word consider is to think over or to regard as or deem to be. No doubt when an authority considers, it has to apply its mind. It is not necessary that detailed reasons or orders are recorded showing the consideration or the application of mind. In the order dated 27.1.2003 the competent authority has stated that it had considered the representation/reply of the applicants in consultation with the Director General Doordarshan and thereafter the order was passed. We have no reason to accept the contention that there was no application of mind when the Director issued the order dated 27.1.2003.

16.2 No statutory provision or rule laying down that the consideration should be in a particular manner has been brought to our notice. In our opinion while passing the order dated 27.1.2003 the competent authority had applied its mind.

17. The further contention of the learned counsel for the applicant was that vacancies were available to accommodate Shri Lallu Ram Sharma and others and therefore the services of the applicants ought not to have been terminated. In this connection he invited our attention to the facts averred

at para 4.28 of the O.A wherein it was stated that as on 30.01.2003 as many as 20 vacancies of LDCs were available in Rajasthan zone. He also invited our attention to para 13 of the reply to the rejoinder wherein it has been admitted that 8 posts of Clerk Gr.II were vacant. His contention was that there was no need to terminate the services of the applicants and they ought to have been allowed to continue even after Shri Lallu Ram Sharma and others were accommodated.

17.1 First, it may be pointed out that there is no admission of the respondents in the reply to the rejoinder regarding 8 posts. The admission, if any, it is for the year 1994. What has been stated in that para is that in the year 1994 when the Scheme was implemented 8 posts of Clerk Gr. II were vacant and the services of the applicants were regularised in 1995. It is manifest that the averment of the eight posts is for the year 1994.

17.2 It has, however, to be accepted that there is no emphatic denial regarding the 20 vacant posts of LDCs as stated in para 4.28 of the O.A. The fact remains that there were vacancies available under the Station Director, All India Radio on the date, the services of the applicants were terminated.

17.3 Be that as it may, there is nothing on record to accept that any person junior to the applicants has been retained in service. The applicants therefore, did not have a legal right to continue on the post.

18. Mr. Rastogi's further contention was that the applicants, having served for more than 10 years and for more than 7 years from the date of regularisation, ought to have been accommodated keeping in view the

decisions of the Apex Court in the cases of H.C. Futtaswamy vs. The Hon'ble Chief Justice of Karnataka [AIR 1991 SC 235], M.S Mudhol and another vs. S.D. Halegkar and others [1999 (3) SCC 591], Agra District Co-operative Bank Ltd., vs. Prescribed Authority Labour Court U.P. and others [AIR 2001 SC 2395] and Mrs. Rekha Chaturvedi vs. University of Rajasthan and others [JT 1993 (1) SC 220] . He canvassed that the applicants' services should not have been terminated, when the vacancies were available.

19. We have given the matter our thoughtful consideration. It is seen that the applicants have worked for more than 12 years on the post of casual General Assistant/Clerk. It is further seen that the respondents have not emphatically denied that on the date, the services of the applicants were terminated, there were vacancies available under the cadre controlling authority.

20. It has to be accepted that when the applicants were regularised earlier, they became certain that they were in permanent Government job and they were not required to make any efforts to get some job. Keeping in view the decisions cited by the learned counsel for the applicants we think it a fit case in which directions should be given to the respondents to consider appointment of the applicants on the available vacancies. Appointment of the applicants on the available vacancies will not only benefit the applicants but it will be beneficial to the respondents as they will have experienced persons to do the job. In the peculiar facts and circumstances of the case, we think it appropriate to direct the respondents to consider the appointment of the applicants on the available vacancies.

21. Consequently the OAs are dismissed insofar as the prayers made

therein. However, the respondents are directed to consider the appointment of the applicants on the available vacancies keeping in view their seniority position under the Scheme of 1992 as amended in 1994. If there is any person senior to the applicants certainly he/she will have a prior right of consideration over the applicants for appointment.

22. No order as to costs.

(A.K. Bhandari)

Administrative Member.

(G.L.Gupta)

Vice Chairman.

jsv.