

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

16th September, 2009

OA. 315/2005
MA 65/2008

Present: Applicant present in person.
Shri Taj Prakash Sharma, counsel for respondents

Heard applicant, who is present in person as well as counsel
for counsel respondents.

For the reasons to be dictated separately the OA is dismissed.


(B.L.Khatri)
Member (Administrative)


(M.L.Chauhan)
Member (Judicial)

Mk

Later on Shri Rajendra Soni appears on behalf of the applicant
and argues his case


(B.L.Khatri)
Member (Administrative)


(M.L.Chauhan)
Member (Judicial)

Mk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16th day of September, 2009

ORIGINAL APPLICATION No.315/2005

CORAM:

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

B.K.Das,
s/o late Shri Shyam Lal,
r/o C-44, Bajaj Nagar, Jaipur
at present working as Cameraman-III,
Doordarshan Kendra,
Jhalana Doongari,
Jaipur.

.. Applicant

(By Advocate: Shri Rajendra Soni)

Versus

1. Union of India through its Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. Director General, Doordarshan, Prasar Bharti, Mandi House, New Delhi.
3. Director, Doordarshan Kendra, Jhalana Doongari, Jaipru.
4. Dy. Director (Admn.), Doordarshan, Mandi House, New Delhi.

... Respondents

(By Advocate: Shri Tej Prakash Shama)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"It is, therefore, respectfully prayed that the entire record relating to this case may kindly be called for and after perusing the same the impugned order dated 9/3/2005 be quashed and set aside and the respondents be further directed to absorb the appellant on the post of Cameraman Gr.II instead of Cameraman-Gr.III w.e.f. October, 1993 with all consequential benefits.

Any other appropriate order or direction which this Hon'ble Tribunal may deems think fit and proper may kindly be passed in favour of the applicant.

Cost of the Original Application may also be awarded in favour of the applicant."

2. Briefly stated, facts of the case are that the applicant was appointed as Lighting Assistant on 16.8.1977. He appeared in the test for the post of Cameraman Gr.II on 2.12.1984 but he could not be selected. According to the applicant, he was informed about the result of the interview only on 14.12.1993. Feeling aggrieved by the action of the respondents, he filed OA No.139/1994 before this Tribunal in which relief regarding regularization/promotion of the applicant on the post of Cameraman Gr.II from retrospective effect was claimed besides one additional relief to the effect that the applicant be also paid pay of the post of Cameraman Gr.II on the principle of equal pay for equal work. The said OA was disposed of by this Tribunal vide order dated 29.11.1995 thereby declining relief to the applicant for regularization/promotion/appointment on the post of Cameraman Gr.II from 1985 or at least w.e.f. 26.8.1991. However, this Tribunal was inclined to grant relief to the applicant

on the principle of equal pay for equal work thereby directing the respondents to determine the period during which the applicant has worked as Cameraman after deducting the payment already made to him in the post of Lighting Assistant. However, the Review Application was also filed by the respondents against the order dated 29.11.1995 in which the plea taken by the respondents was that w.e.f. February, 1995 cadre of Cameraman Gr.III has been introduced and this fact was not brought to the notice of this Tribunal when the matter was heard on 29.11.1995, as such, the review may be allowed. This Tribunal rejected the review on the ground that cadre of Cameraman Gr.III was introduced w.e.f. February, 1995 and this fact should have been brought to the notice of this Tribunal when the matter was decided on 29.11.1995 and this being a case of negligence on the part of the respondents no case for review was made out and the Review Application was dismissed. The matter was carried to the Supreme Court and the judgment has attained finality. Thereafter, the applicant filed another OA No.41/2002 thereby claiming almost identical relief which was prayed by him in earlier OA No. 139/1994. Since this subsequent OA was barred by the principle of res-judicata, the learned counsel for the applicant made submission before the Tribunal that the applicant is entitled for regularization from subsequent date i.e. 21.10.1993, the date when the applicant was fully entitled for regularization on the post of Cameraman Gr.III. This Tribunal after noticing the facts that representation of the applicant is pending and grievance of the applicant has not been settled so

far, direction was given to the applicant to make detailed representation to respondent No.2 within a period of two weeks thereby justifying his promotion to the post of Cameraman Gr.II w.e.f. 21.10.1993 onwards and the respondents were directed to decide such representation by passing a speaking and reasoned order. Pursuant to the order passed by this Tribunal, the respondents have passed the impugned order dated 9.3.2005 (Ann.A1). At this stage, it will be useful to quote relevant portion of this order which thus reads:-

"The grounds of representation of Shri B.K.Das have been examined in the light of the relevant records and the Recruitment Rules by the competent authority. Shri B.K.Das was initially appointed as Lighting Assistant w.e.f. 23rd January, 1978 on contract basis initially for 3 years and thereafter, the contract was extended upto the age of 58 years. He was declared government servant on 10th December, 1984 and was promoted to the post of Camerama Gr.III w.e.f. 21.12.2005.

The claim of the applicant for his promotion to the post of Cameraman Gr.II has been examined and it has been found that in accordance with the notified Recruitment Rules, the post of Cameraman Gr.II is required to be filled up 100% by direct recruitment basis through the Union Public Service Commission and there is no provision for promotion of Cameraman Gr.III to the post of Cameraman Gr.II. In view of the above, the competent authority is of the opinion that the request of Shri B.K.Das for promoting him to the post of Cameraman Gr. II cannot be acceded to.

As per directions of Hon'ble CAT, Jaipur, Shri Dass has been paid Pay & Allowances for the period (24.10.1991 and 19.07.1993) during which he was deputed to perform the work of Cameraman while working ion the post of Lighting Assistant and no dues are pending with DDK, Jaipur."

As can be seen from the portion as reproduced above, the stand taken by the respondents is that as per recruitment rules to the post of Cameraman Gr.II, the same is required to be filled 100% by direct recruitment through Union Public Service Commission and

there is no provision for promotion of Cameraman Gr.III to the post of Cameraman Gr.II. The applicant nowhere in the OA stated that the post of Cameraman Gr.II has to be filled in by promotion and not by direct recruitment, as stated in the impugned order. The main case of the applicant is that, in the earlier OA No. 139/1994 decided on 29.11.1995, this Tribunal has directed to consider the case of the applicant for regularization to the post of Cameraman Gr.II which order has attained finality, as such, action of the respondents thereby refusing regularization of the applicant as Cameraman Gr.II vide order dated 9.3.2005 is required to be quashed and set aside.

3. Notice of this application was given to the respondents. The respondents by filing reply have justified their action.

4. The applicant has filed rejoinder thereby reiterating the stand taken in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record. We have given due consideration to the submissions so made by the applicant in the OA. We are of the firm view that the contention so raised by the applicant deserves out right rejection. As already stated above, the case of the applicant for grant of promotion to the post of Cameraman Gr.II from the year 1985 or atleast w.e.f. 26.8.1991 with all consequential benefits was rejected by this Tribunal in earlier OA. The limited relief granted to the applicant was regarding payment with respect to minimum scale of pay of Cameraman Gr.II and allowances as admissible for the period during which he had

actually performed the duty of the said post. The Tribunal has further specifically held that the applicant may also be considered for promotion/appointment as Cameraman as may be due to him as per rules. At this stage, it will be useful to quote operative portion of the judgment, which thus reads:-

".... In the result, we direct the respondents to determine the period during which the applicant has worked as Cameraman from the records and grant the minimum of the scale of pay of Cameraman Gr.II with allowances as admissible for the period during which he had actually worked as Cameraman after deducting the payment already made to him in the post of Lighting Assistant. The respondents are directed to comply with the order within a period of 3 months, from the date of the receipt of a copy of this order. The applicant may also be considered for regularization/ promotion/ appointment as Cameraman, as may be due to him as per rules."

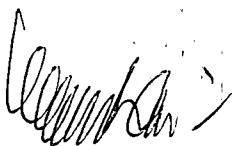
Thus, from the portion as quoted above, it is evident that case of the applicant for future promotion was to be considered as per rules. Thus, contention of the applicant that this Tribunal in the earlier OA has directed the respondents to grant him promotion to the post of Cameraman Gr.II which order has attained finality cannot be accepted. The case of the applicant has to be considered in accordance with rules. As already stated above, the rules prescribe that the post of Cameraman Gr.II has to be filled in by way of direct recruitment and not by promotion, which fact has not been disputed by the applicant in this OA. Thus, we see no infirmity in the order dated 9.3.2005 (Ann.A/1) whereby case of the applicant for promotion to the post of Cameraman Gr.II has been rejected. We are also of the firm view that no direction can be

given to the respondents to make promotion contrary to provisions contained in statutory rules.

6. For the foregoing reasons, we find no merit in this OA, which is accordingly dismissed with no order as to costs.


(B.L.KHATRI)

Admv. Member


(M.L.CHAUHAN)

Judl. Member

R/