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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::GUWAHATI-5.

O.A.No. 179 of 1994

DATE OF DECISION..... 2.7.1998

Shri Anjan Benjamin (PETITIONER(S))

Mr B.K. Sharma, Mr M. Goswami,
Mr M.K. Choudhury and Mr S. Sarma ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others RESPONDENT(S)

Mr S. Ali, Sr. C.G.S.C.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN
THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.179 of 1994

Date of decision: This the 2nd day of July 1998

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Anjan Benjamin,
Rajabari Toklai Basti,
Jorhat.

.....Applicant

By Advocate Mr B.K. Sharma, Mr M. Goswami,
Mr M.K. Choudhury and Mr S. Sarma.

- versus -

1. The Union of India, represented by the
Secretary,
Ministry of Information & Broadcasting,
New Delhi.

2. The Director General,
All India Radio,
New Delhi.

3. The Deputy Director General,
N.E.R., All India Radio,
Guwahati.

4. The Station Director,
All India Radio, Tezu,
Arunachal Pradesh.

.....Respondents

By Advocate Mr S. Ali, Sr. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

In this application the applicant has challenged the Annexure 7 order dated 6.7.1994 issued by the 4th respondent terminating the services of the applicant as adhoc Transmission Executive and also sought for direction to appoint the applicant on regular basis in the post of Transmission Executive or any other similar post or in the alternative the applicant prays for direction to allow him to continue as adhoc Transmission Executive giving the

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applicant an opportunity to qualify himself through the Staff Selection Commission.

2. Facts for the purpose of disposal of this application are:

The applicant was associated with the All India Radio (AIR for short), Tezu, since 1980. He served as Announcer on casual basis since 1982 to 1989. By Annexure 1 order dated 7.4.1989 he was appointed Transmission Executive on adhoc basis with effect from 10.4.1989 and on the basis of the said order he continued to serve till 31.5.1991. After one day break his appointment was renewed by Annexure 4 order dated 2.6.1991 for ten days with effect from 2.6.1991 to 31.6.1991 with intermittent breaks. Similarly by Annexure 5 order dated 7.6.1993 his adhoc appointment was renewed from 7.6.1993 to 21.6.1993 with intermittent breaks. Again by Annexure 6 order dated 6.7.1993 he was appointed on adhoc basis being sponsored by Employment Exchange and on the basis of this Annexure 6 order he continued till he was terminated by Annexure 7 order dated 6.7.1994.

3. According to the applicant he was continuously working in the department from 1982 with intermittent breaks. Before the impugned Annexure 7 order dated 6.7.1994 was passed the applicant submitted Annexure 8 application dated 13.6.1991 requesting the authority to regularise his service. However, without considering the prayer made as per Annexure 8 application the authority terminated the engagement by Annexure 7 order dated 6.7.1994. Feeling aggrieved, the applicant has approached this Tribunal by filing this present application.

4. In due course the respondents have entered appearance pursuant to the notice to show cause and also filed reply to the show cause. Thereafter this Tribunal admitted

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the application and after admission the respondents had filed the written statement controverting the averments made in the application and disputing the claim of the applicant.

5. We have heard Mr M. Goswami with Mr B. K. Sharma, learned counsel for the applicant and Mr S. Ali, learned Sr. C.G.S.C. The main thrust of argument of Mr Goswami is that the applicant was serving in the department since 1982 continuously with intermittent breaks. According to him the sole purpose of making these breaks was to deprive the applicant of his legitimate due. Mr Goswami further submits that these breaks were artificially created. Mr Ali, on the other hand, disputes the same. He submits that the applicant was given employment whenever there was work and these breaks were necessary as and when there was no work.

6. On the rival contention of the learned counsel for the parties, it is now to be seen whether the applicant is entitled to get his service regularised in view of the fact that he served the department since 1982. On looking to the dates of appointment we have no hesitation to come to the conclusion that the breaks were intermittent and these breaks do not show that due to paucity of work there were such breaks. Mr Goswami has drawn our attention to two decisions of the Apex Court in Jacob M. Puthuparambil and others -vs- Kerala Water Authority and others, reported in AIR 1990 SC 2228, State of Haryana and others -vs- Piara Singh and others, reported in AIR 1992 SC 2130. Relying on these two decisions, Mr Goswami submits that the present case is squarely covered by the ratio laid down in the above two decisions, because according to the learned counsel for the applicant the breaks were artificially made just to deprive the applicant of the continuity.....

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continuity of service. In Jacob's case (Supra) the Apex Court observed thus:

"Now to the text of Rule (a)(i) of the Rules. It empowers the appointing authority to appoint a person temporarily otherwise than in accordance with the rule if (i) it is necessary in public interest, and (ii) where an emergency has arisen to fill any particular post which has fallen vacant, immediately. In the present case it is difficult to say that all appointments made after 1st April, 1984 were required to be filled immediately because of an emergency of the type contemplated by the said rule. On the contrary it seems appointments were routinely made in purported exercise of power conferred by this rule. The proviso on which reliance is placed, which we have extracted earlier, merely states that ordinarily such appointments will be of those persons who possess the requisite qualifications for the post. If any person who does not possess the requisite qualifications is appointed under the said clause, he will be liable to be replaced by a qualified person. Clause (iii) of Rule 9 states that a person appointed under clause (i) shall, as soon as possible, be replaced by a member of the service or an approved candidate qualified to hold the post. Clause (e) of Rule 9, however, provided for regularisation of service of any person appointed under clause (i) of sub rule (a) if he had completed continuous service of two years on December 22, 1973, notwithstanding anything contained in the rules. This is a clear indication that in the past the Government also considered it just and fair to regularise the services of those who had been in continuous service for two years prior to the cut-off date. The spirit underlying this treatment clearly shows that the Government did not consider it just, fair or reasonable to terminate the services of those who were in employment for a period of two years or more years prior to the cut-off date. This approach is quite consistent with the spirit of the rule which was intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by sub-rule (e). Such an approach alone would be consistent

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with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the amoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered 'age barred' for securing a job elsewhere....."

Again in State of Haryana -vs- Piara Singh (Supra) the Apex Court observed thus:

"Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Art.309 of the Constitution or (in the absence of such Rules) by issuing Rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long.

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Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above. The principles relevant in this behalf are stated by this Court in several decisions....."

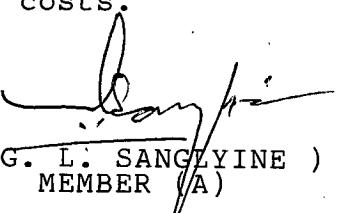
From the above two decisions it is very clear that normally the employees, especially those unemployed persons, seeking employment are in a helpless position and in such a situation an employee is ready to accept any condition imposed by the Government or the employer. But will it be proper to impose such unreasonable conditions. Keeping a person in temporary status for such long period will be unreasonable and the same strikes at the basic tenet of the equality principles of Articles 14 and 16 of the Constitution. The above two decisions also indicate that when an employee is employed temporarily for a pretty long time the normal presumption will be that the department or the Government is in need of such service and if that is so, the employee who is searching for job should not be kept on temporary basis for such a long time. It is well known that jobs are few and the number of unemployed persons is very high and so an employee will continue even on temporary basis because of the paucity of jobs and in the process the employee becomes overaged and he will not be able to find any other job suitable for him. This is not expected of in a welfare State. Therefore, it is the duty of the Government or any other employer to see that such person who is employed, if qualified for the post and working for a long time then such person should be employed on regular basis. In the present case the written statement does not say that the applicant is not qualified for the post and it

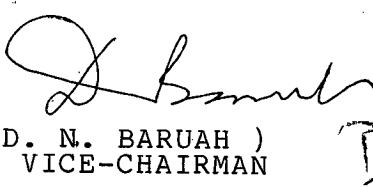

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also does not say that the Government does not need such service. In fact the written statement indicates that the Government is in need of such service. In view of these facts we are of the firm opinion that the Government is in need of services of an Announcer as well as Transmission Executive. At least from the records, which have been placed before us, we come to know that advertisement had been made for appointment to these posts on permanent basis. This itself is indicative of the fact that the Government is in need of such services. Removal of the present applicant definitely violates Articles 14 and 16 of the Constitution. We also hold that the intermittent breaks given to the applicant were only for depriving him.

7. In view of the above and following the decisions of the Apex Court we hold that the impugned Annexure 7 order of termination dated 6.7.1994 is illegal, arbitrary and contrary to the provisions of the Constitution and therefore, liable to be set aside, which we accordingly do. The applicant is deemed to be in temporary service and as he has been working continuously with some artificial breaks his service needs to be regularised. We, therefore, direct the respondents to take steps for regularisation of his service. As he has been serving for more than twelve years on the date of termination of his service it can be safely presumed that he is qualified; otherwise the department would not have allowed him to continue for such a long time. Therefore, the authorities shall take steps for regularisation of his service and this must be done within a period of three months from the date of receipt of this order.

The application is accordingly allowed. No order as to costs.


(G. L. SANCYINE)
MEMBER (A)


(D. N. BARUAH)
VICE-CHAIRMAN