

**Central Administrative Tribunal
Principal Bench**

OA No.1414/2011

New Delhi, this the 27th day of April, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Sudhir Kumar, Member (A)**

1. L. S. Rawat
S/o Shri B. S. Rawat
R/o D-200, Gautam Nagar,
New Delhi 49.
2. S. Nagarajan
S/o Shri D. L. Srinivasan,
R/o 61/A, G/F, DD Flats,
Shahpurjat, near Siri Fort,
New Delhi-49. Applicants.

(By Advocate : Shri Yogesh Sharma)

Vs.

1. Union of India through
The Secretary
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi.
2. The Director General
Doordarshan, Doordarshan Bhawan,
Copernicus Marg,
New Delhi.
3. The Director/Supdt. Engineering,
CPC, Doordarshan,
Asiad Village Complex,
New Delhi. Respondents.

(By Advocate : Ms. Vertika Sharma)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

Applicants No.1 & 2 were initially engaged as Production Assistants on casual basis in the year 1992 and 1987 respectively. Their services were also regularised w.e.f. 26.05.2005 and 09.03.2004 respectively.

2. It is alleged that services of some juniors to the applicants were regularized w.e.f. 21.03.1994. Some similarly situated persons filed OA No.1617/2001 titled as ***Hari Om Dubey vs. The Secretary, Ministry of Information & Broadcasting and others*** before this Tribunal seeking the benefit of pay scale of Rs.1400-2600 w.e.f. 21.03.1994. The aforesaid OA was decided vide judgment dated 22.01.2002 with the following directions:-

“7. In the above view of the matter the OA succeeds and is accordingly allowed. The respondents are directed to grant regularization to the applicant from 21.03.1994, the date on which his juniors have been regularized, with full consequential benefits including seniority.”

3. The aforesaid judgment dated 22.01.2002 became subject matter of challenge in CWP No.257/2003, and the same was dismissed as withdrawn vide order dated 29.01.2003. A review petition preferred before the Tribunal being RA No.122/2003 also came to be dismissed vide order dated 18.09.2003. The judgment of the Tribunal came to be implemented vide order dated 03.03.2005, which reads as under:-

“In pursuance of order OA No.1617/01 filed by Shri Hari Om Dubey and OA No.2325/01 filed by Smt. Aruna Dhavan, all appointments made in the grade of Production Assistant after issuance of guidelines dated 17.3.1994 for regularization scheme of casual artists dated 9.6.1992 has been reviewed.

2. It has been decided that seniority of all regularized Production Assistant be determined as per their position in the eligibility list prepared on the basis of date of initial booking of casual artist. After consideration of the representations received against the draft seniority list issued vide OM of even no. Dated 16.3.2004 and 23.7.2004 a final seniority list of Production Assistants regularized on or after 21.3.94 has not been drawn (Annexure-I). Production Assistant having placed higher in seniority list will be entitled for consequential benefits not less than their junior as per rule. If they desire to do so for removal pay anomaly, if any, they may make representation justifying their case to their concerned kendras, who will examine their claim and take appropriate action as per rules.”

Consequent upon the implementation of the aforesaid judgment, the applicants in that case were granted benefit of regularisation of their

services w.e.f. 21.03.1994 and their pay was accordingly fixed w.e.f. the said date at par with their juniors.

4. The present applicants filed OA No.1776/2008 seeking higher pay scale of Rs.6500-10500 which was allowed vide judgment dated 24.09.2008. Writ Petition No.8261/2009 filed before the Hon'ble Delhi High Court was withdrawn vide order dated 17.03.2011. The aforesaid judgment of the Tribunal was implemented vide order dated 30.04.2009 and the applicants were granted the revised pay scale of Rs.6500-10500 on filing contempt petition, and their pay was also refixed vide order dated 13.05.2009.

5. The applicants are aggrieved of order dated 10.11.2010 refixing their pay from 26.05.2009 and 09.03.2004 respectively in the pay scale of Rs.6500-10500 instead of 21.03.1994. It is stated that the said order has been communicated with the letter dated 14.01.2011. Vide order dated 10.11.2010, apart from refixation of the salary of the applicants, recovery has also been ordered. An amount of Rs.2,70,780/- and Rs.2,51,328/- has been ordered to be recovered from the applicants No.1 & 2 respectively. Validity of the aforesaid order has been challenged on the grounds viz., (i) that the benefit having been granted in implementation of the judgment of the Tribunal cannot be taken away and (ii) no show cause notice has been issued before refixation of the salary and ordering recovery.

6. Vide OM dated 22.07.2010 (Annexure R/4), the Directorate letter No.2/29/2001 SI dated 03.03.2005 has also been superseded. It is contended on behalf of the applicants that the said OM superseding the order dated 03.03.2005 is also illegal.

7. In the counter affidavit filed by the respondents, the clear stand projected is that the services of the applicants were regularised in terms of the Regularisation Scheme dated 09.06.1992, read with Scheme dated 17.03.1994, and according to law and the aforesaid two schemes, they were entitled to the benefit of regularisation from the date of regularisation and so would be their seniority from the date of their regularisation. The DoP&T has clarified the position vide letter dated 03.09.2009 referring to Rule 26 (a) of Fundamental Rules. It is mentioned in the said letter that there is no provision in the Fundamental Rules for fixation of pay in case of contractual appointments and such individuals on their subsequent appointment to a government post are treated as fresh entrants and are not entitled to benefit of contractual service. In the impugned office memorandum dated 11.06.2010 (Annexure R/3), it is also clarified that the service rendered by the Production Assistants on casual basis would not count for the purpose of their seniority in that grade, and for eligibility for promotion to the next higher grade. The aforesaid office memorandum was forwarded by another communication dated 07.09.2010 whereby clarification regarding withdrawal of memorandum dated 03.03.2005 has been indicated. It is further stand of the respondents that Directorate letter No.2/29/2001-SI dated 03.03.2005 along-with its annexures, having been withdrawn, the eligibility of casual Production Assistants prepared on the basis of their initial booking Kendrawise will only be for the purpose of regularisation under the 1992 and 1994 Schemes. It is also averred that seniority of the casual Production Assistants under the said Scheme shall be counted from the date of their regularisation/appointment as is evident from the office memorandum dated 11.06.2010.

8. The respondents have justified the withdrawal of the benefit of regularisation of pay fixation earlier granted to the applicants w.e.f. 21.03.1994 and consequential refixation of pay and recovery vide order dated 10.11.2010 referred to hereinabove.

9. We have heard learned counsel for the parties.

10. The controversy in the present Application is covered by the judgment of Coordinate Bench of this Tribunal dated 10.03.2016 passed in OA No.337/2013 tilted as ***Om Prakash Sharma vs. Union of India & Ors.*** The said Application was also filed by Production Assistants who were initially appointed on casual basis and thereafter their services were regularised in the year 2000 giving effect of regularisation w.e.f. 21.03.1994 at par with their juniors relying upon an earlier order dated 07.07.2015 passed in OA No.3520/2010 titled as ***Nagendra Kumar Rai vs. Union of India and Others.*** The Coordinate Bench considering the entire gamut of the controversy, held as under:-

“18. Moreover, in its order dated 07.07.2015 in OA No.3520/2010, the Tribunal has considered the DoP&T clarification dated 11.06.2010 and as stated earlier, the OA had been rejected for a similar claim, accepting the principle that no benefit of service rendered on contract basis prior to regularisation can be given in pay fixation order. In our view, this latest order of the Coordinate Bench would prevail.

19. The O.A. therefore, does not succeed and is accordingly dismissed. However, any recovery to be made from the applicant would be in accordance with the directions of the Hon’ble Apex Court in ***Rafiq Masih*** (supra) as cited above. There shall be no order as to costs.”

11. We find no reason to disagree with the aforesaid findings. This Application is accordingly rejected insofar as the fixation of seniority and pay fixation from the date of regularisation is concerned. As far as the recovery is concerned, the issue has been crystallized by Hon’ble Supreme Court in ***State of Punjab & Others vs. Rafiq Masih (White***

Washer) [Civil Appeal No.1527/2014 decided on 18.12.2014],

wherein the following directions have been issued:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.”

12. In view of the above mandate of law, the question of recovery would be governed by the aforementioned judgment of Hon’ble Supreme Court.

No order as to costs.

(Sudhir Kumar)
Member (A)

(Permod Kohli)
Chairman

/pj/