

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.100/2634/2011
M.A.No.100/970/2015
M.A.No.100/2702/2016
M.A.No.100/2703/2016

Thursday, this the 8th day of September 2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

1. Sohan Lal Passi, aged 57 years
s/o late Mr. Kishan Lal Passi
r/o E-1564, Jahangir Puri
Delhi-53 (since expired)
2. Raj Kamal age 40 years
s/o late Mr. Ramnath
r/o A-195, Vikas Kunj Loni
Gaziabad (UP)
3. Rajesh Kumar age 39 years
s/o late Mr. Om Prakash
r/o 143, Samanan Bazar
Jangpora Bhogal New Delhi
4. Jagdish Singh age 43 years
s/o Mr. Rewati Lal
r/o B-148, 149 New Kondli
Mayur Vihar Phase III
Delhi – 96

..Applicants

(Mr. Shashi Kiran, Advocate)

Versus

1. The Secretary
Govt. of India
Ministry of Information & Broadcasting
Shastri Bhawan, New Delhi
2. The Director
Song and Drama Division
Ministry of Information & Broadcasting
Soochna Bhawan, 10-11 Floor
CGO Complex, Lodhi Road, New Delhi
3. The Deputy Director
Song and Drama Division
Ministry of Information & Broadcasting

Soochna Bhawan, 10-11 Floor
CGO Complex, Lodhi Road, New Delhi

4. The Deputy Director (SH)
Song and Drama Division
Ministry of Information & Broadcasting
15/16, Subhash Marg, Daryaganj
New Delhi

..Respondents

(Mr. R V Sinha, Mr. R N Singh and Mr. Amit Sinha, Advocates)

O R D E R (ORAL)

Mr. P.K. Basu:

M.A. Nos.2702 and 2703/2016

M.A. No.2702/2016 has been filed for bringing on record the LR's in respect of applicant No.1, who has since expired. Since the appointment can be made only of the persons, who had actually worked as casual Staff Artist, in view of the fact that applicant No.1 (Sohan Lal Passi) has already expired, this M.A. is dismissed. As a corollary thereto, M.A. No.2703/2016 for condonation of delay in filing said Application is also dismissed.

Therefore, O.A., qua applicant No.1 is dismissed, as the LR's cannot be considered for appointment based on the claim of applicant No.1.

O.A. No.2634/2011

This O.A. has been filed by the applicants, who are working as casual Staff Artistes in Song and Drama Division of Ministry of Information & Broadcasting. They had approached this Tribunal in O.A. No.1115/1997 for regularization of their services. The said O.A. was disposed of vide Order dated 05.06.1998 with the following directions:-

“10. In the result, the O.A. is partly allowed and the respondents are directed to frame a Scheme for considering Casual Actors in the Song and Drama Division for their appointment as regular Staff Artists, by

amending the recruitment rules, if necessary, and till that is done to continue to engage the Casual Actors as before. This shall be done by the respondents within a period of four months from the date of receipt of a copy of this judgment. Needless to say that till this judgment is fully implemented, the applicants shall be given engagement according to their seniority in the panel and the fact they had approached the Tribunal or had been disengaged from 31.03.1997 shall not act as a bar for the applicant's reengagement on casual basis."

2. The matter came up before the Hon'ble High Court of Delhi in C.W. No.5462/1998 and vide Order dated 27.09.2001, the writ petition filed by the respondents herein was dismissed.

3. In compliance of the Order of this Tribunal in above O.A. No.1115/1997, as upheld by the Hon'ble High Court, the Department notified a scheme on 05.04.2002 for considering casual/empanelled artistes for their appointment as regular staff artistes in Song and Drama Division. The relevant part of the scheme is that in case of selection by Selection Committee (i.e., other than by UPSC/SSC), 25% of direct recruitment posts would be reserved for casual/empanelled artistes.

4. The grievance of the applicants is that they have not been considered for regularization under the scheme. The O.A. has, therefore, been filed seeking the following reliefs:-

“(a) call for the records of the case;

(b) pass an order directing respondents to consider the applicants for regular appointment to the post of Actor/Staff Artist in the Song and Drama Division, of Ministry of Information Broadcasting against the 25% vacancies in the direct recruitment quota as per the orders dated 05.06.1998 and 08.03.1999 of this Hon'ble Tribunal and the scheme of regularization formulated by the respondents in pursuance thereof.

(c) pass such further or other orders which this Hon'ble Tribunal fit and proper in the circumstances of the case.”

5. Learned counsel for respondents contends that after the year 2000 no regularization of such casual Staff Artistes has been made. Moreover, in the year 2009, the respondents constituted a Cadre Review Committee to undertake review of all the cadres in Song and Drama Division, including the Staff Artistes. The recommendations of the Committee are under examination and once the number of posts that would be available for direct recruitment would be known, further recruitment shall be made in Song and Drama Division accordingly. In case any direct recruitment is made as per the revised cadre structure, the recruitment as per the scheme framed shall be made.

6. It is also stated that the cut-off age for direct recruitment is 27 years and the scheme allows for 2 years relaxation in age for casual Artistes, which means that the cut-off age will be 29 years but applicant Nos. 2, 3 and 4 respectively are 40 years, 39 years and 43 years on the date of filing of this O.A., namely in 2011.

7. The respondents have also taken a stand that in view of the law settled by the Hon'ble Supreme Court in **Secretary, State of Karnataka & others v. Umadevi & others**, (2006) 4 SCC 1, the applicants have no right to claim regularization *de hors* the relevant Recruitment Rules.

8. Learned counsel for applicants states that though the applicants have not been considered for appointment, 10 outsiders and 25 other persons were regularized by the respondents in the year 1999-2000 and, therefore, the applicants, who had been working as empanelled Staff Artistes even before these 35 candidates who were regularized, should have been considered first.

9. Learned counsel for applicants also argued that the Order of the Tribunal in O.A. No.1115/1997 came in June 1998, and, therefore, the cut-off date for calculating the age should be treated with respect to the date of the Order, in which case applicant No.2 (Raj Kamal) and applicant No.3 (Rajesh Kumar), both being less 29 years on that date, would qualify.

10. *Per contra*, learned counsel for respondents has argued that since the scheme came in the year 2002, there is no question of considering the cut-off date as the date of passing the aforementioned Order in June 1998 and in June 2002 only Raj Kumal (applicant No.2) would be eligible.

11. We have heard the learned counsel for the parties and perused the records. We have also gone through the detailed Order dated 05.06.1998 passed by this Tribunal in O.A. No.1115/1997. The Tribunal had gone into the various schemes of regularization formulated by the Ministry of Information & Broadcasting, namely, the schemes of 1992 and 1993 for Staff Artistes in All India Radio and Doordarshan. It had also considered the decisions of the Hon'ble Supreme Court in **Union of India v. M.A. Chaudhari**, AIR 1987 SC 1526 and **Y.K. Mehta & others v. Union of India & another**, 1988 (2) AIR 406, which relate to regularization of Staff Artistes in various wings of Ministry of Information & Broadcasting. In fact the observations of the Tribunal in paragraph 8 would make it clear in what background the directions in paragraph 10 already quoted above, were made. Paragraph 8 is quoted hereinbelow:-

“8. We are really astonished to find that despite a catena of judgments from the Apex Court on the subject, particularly in relation to the other departments of the Ministry of Information & Broadcasting itself, the respondents never considered it necessary to frame a Scheme for regularizing the services of the Staff Artists, more

particularly the Casual Actors in the song & Drama Division. Respondents have admittedly been engaging such Casual Artists even after framing of the relevant recruitment rules and they have been working for a large number of days in each month. In such circumstances, the respondents ought to have made some provisions for regularizing them, after prescribing the necessary eligibility conditions. The respondents could have even amended the recruitment to make provisions for that purpose.”

12. It is in this background that the respondents were supposed to frame the scheme and implement it. It is obvious that for those casual / empanelled Staff Artistes, who are working for number of years, insistence on cut-off date stipulated in respect of fresh direct recruits (with a two years grace period), which will normally be for young candidates, would defeat the basic letter and spirit of the directions contained in O.A. No.1115/1997. Obviously, the applicants will not be able to meet the age bar, and, therefore, age cannot be a factor in such cases of regularization.

13. On the other question of no recruitment being made under direct recruitment quota and non-availability of posts, it is seen that had the Department been prompt enough to implement the Order of the Tribunal passed in June 1998, the subsequent developments of filling up existing vacancies would not have occurred thus denying regularization to the applicants.

14. While we agree with the learned counsel for respondents, in view of the judgment cited by them, that the applicants have no right to claim relief for regularization, we have before us the Order of this Tribunal in O.A. No.1115/1997, in which a direction for framing a scheme for regularization had been given in the background in which we have already explained above, which has been upheld by the Hon'ble High Court of Delhi, and the

respondents have complied with the said Order, *albeit* half-heartedly by issuing the order dated 05.04.2002. Therefore, this argument cannot be accepted at this stage.

15. In view of the above discussion, we allow the O.A. with direction to the respondents to consider the applicants, other than applicant No.1, who has since expired, for regular appointment to the post of Staff Artistes in Song and Drama Division, Ministry of Information & Broadcasting against 25% vacancies in direct recruitment quota without insisting on the cut-off age of 29 years. Since the respondents have filled up several vacancies by regularization of other candidates, we have no option but to direct the respondents to regularize the applicant Nos. 2, 3 and 4 by creating supernumerary posts and appoint them, such posts for appointment/regularization having adjusted against future vacancies. No costs

M.A. No.970/2015

In view of the aforementioned detailed Order, no Order is required in this M.A., which is accordingly disposed of.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

September 8, 2016
/sunil/