

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3767/2010

MA 2914/2010

MA 3289/2011

Reserved on: 27.07.2016

Pronounced on: 05.08.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Association of UPSC recruited Cameramen
of Doordarshan (Regd)
Q-10/12, 1st Floor, Srinivaspuri
New Delhi
(Through its Secretary, C. Anandan)
 2. Mr. C. Jonathan Andrews
Cameraman Grade-II, Room No.10
Doordrshan Kendra, Doordarshan Bhawan,
Phase-II, Mandi House, New Delhi
 3. Mr. D. Nanda Kumar,
Cameraman Grade-II
CPC, Doordarshan, Khel Gaon
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 4. Mr. S. Anil
Cameraman Grade-II, Room No.10
Doordarshan Kendra, Doordarshan Bhawan
Phase-II, Mandi House,
New Delhi
 5. Mr. M. Raja
Cameraman Grade-II
DD News, Doordarshan Bhawan,
Phase-II, Mandi House,
New Delhi
- ... Applicants

(Through Shri M.K. Bhardwaj with Shri M.D. Jangra, Advocates)

Versus

1. The Secretary
Ministry of Information and Broadcasting
Shastri Bhawan,
New Delhi-110001

2. The Secretary
Union Public Service Commission
Shahjahan Road
New Delhi-110001
3. The Director General
Doordarshan, Mandi House
Copernicus Marg,
New Delhi-110001
4. The Secretary
Department of Personnel & Training
North Block, New Delhi
5. The Secretary
Ministry of Law & Justice
Shastri Bhawan, New Delhi
6. Shri Ranbir Bhattacharya
Video Executive
Doordarshan Kendra
Kolkatta
7. Shri R.R. Kadam
Cameraman Grade-II
Doordarshan Kendra
Ahmedabad
8. Rajesh Bhatha
Cameraman Grade-I
Doordarshan News, Doordarshan Bhawan,
New Delhi
9. Y.K. Loknath
Cameraman Grade-II
DDK, Bengluru
10. S.P. Sharma
Under Secretary
Ministry of Information and Broadcasting
Shastri Bhawan,
New Delhi
11. Doordarshan Cameraman
Welfare Association
Through its President
Pradeep Kumar
CPC Khelgaon, New Delhi
12. Om Prakash
37-D, Pocket-I
Mayur Vihar, Phase-I
New Delhi-110091

13. Soban Singh
Q. No.125-B, Pocket-2
Dilshad Garden,
Delhi-110095

14. Gyan Singh
H.No.473, Sec. 31
Faridabad

15. Mrs. Indu Dang
20/64, Lodhi Colony
New Delhi-110003

....Respondents

(Through Shri Rajeev Sharma with Ms. Radhalakshmi, for
respondent 1 and 3 to 5
Shri Naresh Kaushik with Ms. Joymoti Mize, for
respondent 2
Shri Padma Kumar S. with Shri K.K. Mishra, for
respondent 7, 8 and 12 to 15)

ORDER

Mr. P.K. Basu, Member (A)

The applicants are Cameramen Grade II working in Doordarshan offices. They have been selected by Union Public Service Commission (UPSC). As per the Recruitment Rules (RRs) notified on 5.12.1987, minimum prescribed qualification for the post was Diploma/ Degree in Cinematography from a recognized University or equivalent. The applicants are aggrieved by the seniority list of Cameramen Grade I dated 13/15.10.2009. According to them, those who do not possess the requisite qualification but fully unrelated qualification including matric, higher secondary, B.Sc., B.Com, M.A. etc. have been shown above them as Cameraman Grade II and Cameraman Grade I officers. It is further stated by the applicants that the RR's notified on 12.10.1987 for Technical Camera Group 'A' and Group 'B' clearly provide under Rule 5

that those holding the post of Cameraman Grade I or Cameraman Grade II on contract basis shall be initially screened by the Screening Committee of UPSC and if he is considered fit, he will be deemed to have been appointed to the post on and from the date of commencement of the rules. It is thus argued that those private respondents who have been included in the seniority list above the applicants have not gone through the rigours of screening and, therefore, their inclusion in the seniority list has to be declared illegal. Our attention was also drawn to the said seniority rule of 1987 where it has been indicated that appointment to Cameraman Grade II will only be through direct recruitment and there was no scope of appointment of the private respondents who were initially engaged on casual basis and then regularized. Therefore, their appointment is violative of the RRs and their inclusion in the seniority list above the applicants is illegal on this ground as well. In fact, it is pointed out that the RRs clearly provide for diploma or degree in Cinematography from a recognized University or equivalent as essential qualification for Cameraman Grade II. Therefore, no one who does not have this qualification, could be appointed as Cameraman Grade II.

2. Learned counsel for the applicants drew our attention to order dated 15.06.1993 by which the Staff Artists had been converted into government servants from the date of their appointment, in which the name of one of the applicants Shri R.R. Kadam also appears. It is stated that this is a unique order of "conversion of casual workers as Government Servants"

whereas no such provision of appointment through conversion exists. Moreover, these appointments have been done from a back date without any justification. The applicants being aggrieved by the action of the respondents have filed this OA seeking the following reliefs:

- a. Quash and set aside impugned seniority list of Grade-I and Grade-II dt. 13/10/2009 & 20/7/2007 respectively as well as the promotion order dated 11/6/2010 and direct the respondents to make seniority list of such Cameraman Grade – II who have recruited through UPSC and as per the rules and thereafter made further promotion on the basis of said list from due date with all consequential benefits.
- b. Declare the appointment/ promotion of respondent No. 5 to 8 and other similarly persons made in the cadre of Cameraman to the post of Cameraman Grade – I & II and Video Executive as illegal being violative of statutory RRs.
- c. Declare the action of the respondents in making appointment to the post of Cameraman Grade II, Grade I and video executive without following the due procedure as followed by appointing the applicant, as illegal and unconstitutional.
- d. Direct the respondents to remove all the illegally appointed persons including private respondents from the regular cadre of Cameraman as well as from the seniority list.
- e. To quash and set aside the order dated 15/6/1993 vide which the respondents have illegally made appointments to the post of Cameraman Grade-II in violation of rules.
- f. To direct the respondent no.1 and 2 to fix the responsibility of the concerned official including respondent no.10 who have been instrumental in making aforesaid illegal appointments and promotions.
- g. To call for the records of appointment and promotion of respondent no. 5 to 8 and similarly placed persons given place in the impugned seniority list and promotion orders.

3. In support of their case, the applicants referred to order dated 1.01.1992 of the Bombay Bench of the Tribunal in OA 197/1989, **Y.K. Mehta Vs. UOI and others** where the applicant was a Video Executive. The grievance of the applicant in that case was that the Union of India after regularizing the services of many non-qualified Cameramen Grade-I in violation of the RRs of 1987 have promoted them over him and, therefore, the question before the Tribunal was similar as to whether the Union of India could regularize the non-qualified against the provisions of 1987 rules of minimum qualification. The Tribunal allowed the OA holding that those who did not possess the minimum qualification and had been brought in as Cameraman Grade I, could not gain seniority over those who fulfilled the requisite qualification.

4. Learned counsel for the respondents 1 to 3, first of all, raised the ground of limitation. It is stated that this OA has been filed in 2010 whereas cause of action arose when order dated 15.06.1993, cited above, was issued. It was further argued that order dated 4.05.2006 (Annexure A-VII) could have been the second cause of action when certain officers were promoted from Cameraman Grade-I to the post of Video Executive. Even here, there is delay of more than three years.

5. Secondly, it is argued that in relief clause (b), the applicants have prayed for declaring the appointment of respondents 5 to 8 and other similarly placed persons without specifying who these persons are and without impleading them

as party, as illegal. Therefore, this OA suffers from the defect of non-joinder of necessary parties and should be dismissed as per provisions of Order 1 Rule 9 of the Code of Civil Procedure, 1908. It is further pointed out that seniority list of Cameraman Grade II had been first circulated vide OM dated 9.10.1990. This was never challenged by the applicants. Again, a seniority list was circulated on 30.08.1996, which was not challenged by the applicants. Similarly, seniority list dated 25.10.2002 of Cameraman Grade-I was again not challenged by the applicants and now they have challenged the seniority lists dated 13.10.2009 and 20.07.2007. It is argued that it is well settled law that seniority and promotions, which are once settled, cannot be unsettled after a delay of several years:

- (i) **Rabindra Nath Bose & ors. Vs. Union of India & ors.**, (1970) S.C.R. (2) 697
- (ii) **Malcom Lawrence Cecil D' Souza Vs. Union of India & ors.**, AIR 1975 SC 1269
- (iii) **M.B. Hiregoudar Vs. State of Karnataka and others**, AIR 1992 SC 410
- (iv) **Bimlesh Tanwar Vs. State of Haryana and others**, JT 2003 (2) SC 610

Moreover, as pointed out, neither in 1990 nor 1996 or 2002, the applicants bothered to challenge the seniority list.

6. Explaining the background of the case, learned counsel for respondents 1 to 3 stated that the Hon'ble Supreme Court had given a direction to the Government of India to review the entire

situation regarding Staff Artists and prepare a Scheme. In its order dated 25.04.1988 in Writ Petition Civil No.13636/1983, **National Union of All India Radio & ors. Vs. Union of India & anr.**, in the very first paragraph, the Hon'ble Supreme Court has recorded as follows:

".....we have declared that all the Staff Artists of the All India Radio are holding civil posts under the Government and they are governed by Article 311 (2) of the Constitution of India.

In view of the above decision it is no longer necessary to make any further declaration in these petitions that the staff artists are Government servants."

It is stated that in view of the above order of the Hon'ble Supreme Court, the Ministry of Information and Broadcasting drew up the modalities to implement the said order and issued letter dated 29.11.1991. Para 2 of the order reads as follows:

"2. All Staff Artists/ Artists under the 1982 Scheme working in All India Radio and Doordarshan (except Foreign nationals) who were in service on 6th March, 1982 or appointed as such thereafter will be deemed as Government Servants. Such Staff Artists/ Artists, instead of being governed by separate conditions of service laid down in the contract and other orders issued in this regard from time to time shall be governed by normal conditions of service applicable to Civilian Central Government employees."

Para 9 of the order provides that the order will take effect from 6.03.1982. Staff Artists who retired before that date will not be covered by these orders. It is in this background that the Staff Artists were regularized and their names included at appropriate position in the seniority list. Thus it is wrong on the part of the

applicants to state that some irregularity has been committed by the respondents.

7. Shri Naresh Kaushik, learned counsel for UPSC stated that the claim of the applicants is vis-à-vis respondents 1 and 3 and, therefore, UPSC should not have been made a party in this matter at all. Shri Padma Kumar S., learned counsel for respondents 7, 8 and 12 to 15 stated that one applicant was appointed in the year 1990 and all others in the year 1999 whereas respondents 7, 8 and 12 to 15 were appointed before the RRs of 1987 came into effect and, therefore, the stipulation of screening under Rule 5 will not apply in their case as they have been regularized with effect from 1985 itself. The learned counsel stated that 1987 rules will have prospective effect and not retrospective effect. Even before the rules came into existence, employees were holding various posts by virtue of executive power of the government. In this regard, the learned counsel relied on judgment of the Hon'ble Supreme Court in **H. Anraj & ors. Vs. State of Maharashtra**, AIR 1984 SC 781 and stated that the executive power to make appointments and regulate the conditions of service of its employees is co-extensive with the power of the President to make rule. He further relied on the order of the Tribunal in OA 509/1993 on the argument that settled seniority cannot be unsettled after more than a decade. It is argued that while disposing of OA 509/1993, in para 12 of the order dated 18.05.1999, the Tribunal discussed Y.K. Mehta (supra) and while distinguishing the same, dismissed the OA. Therefore, reliance on Y.K. Mehta

(supra) is no longer valid. He further supported the argument of the learned counsel for respondents 1 and 3 regarding limitation and non-joinder of necessary parties.

8. In reply to the above contention of the respondents counsel, the learned counsel for the applicants stated that in letter dated 6.03.2012 (Annexure RJ-5) by DoP&T to the Secretary, UPSC regarding finalization of inter-se seniority list of Staff Artists of All India Radio and Doordarshan and Programme Executives directly recruited by the UPSC, the ministry had in sub-para (i) stated as follows:

“(i) Staff Artists who were in service before 06.03.1982, were allowed status of Government servant w.e.f. 06.03.1982 and those joining after 06.03.1982 w.e.f. date of joining, through executive instructions.”

9. Learned counsel for the applicants states that except one private respondent, all others have been recruited after the cut-off of 1982 and, therefore, they should have been subjected to screening as per Rule 5 of the aforesaid Rules. Further attention is drawn to the judgment of the Hon’ble Supreme Court in **Union of India and others Vs. Satish Chandra Mathur**, Civil Appeal No.12801/1996, where the Supreme Court held as follows:

“The respondent, however, had been filing objection to the said seniority list, and finally approached the Administrative Tribunal. When the seniority list was drawn in 1989, he was shown at serial No.107 excluding the ad-hoc period from consideration. The Tribunal by the impugned judgment relying upon the

earlier decision of the Tribunal in the case of one M.P. Verma came to hold that since the respondent has been continuously holding the post of Programme Executive from October 1976 till 1.01.1979, the date on which his services stood regularized, it would be unequitable not to count that period for the purposes of the seniority merely because of mentioning 'ad hoc' in the letter of appointment. In effect, the Tribunal follows the earlier decision of the Tribunal in Verma's case. Mr. Goswami, the learned senior counsel, appearing for the Union Government contended that in the teeth of the provisions of the Statutory Recruitment Rules prescribing the procedure for filling up post of Programme Executive, and that procedure not having been followed, and instead the respondent having been appointed by the Director General on 28th October, 1976, and the terms and conditions of the appointment having clearly stipulated that the period will not be counted either for regular recruitment or for any purpose, the Tribunal committed error in reckoning that period for the purposes of determining the seniority of the respondent in the cadre of Programme Executive."

It is thus argued that period spent as ad hoc cannot be counted for the purpose of seniority of private respondents.

10. Reliance on behalf of applicants has been placed on **Secretary, State of Karnataka and others Vs. Uma Devi and others**, (2006) 4 SCC 1 and **A.K. Bhatnagar and others Vs. UOI and others**, (1991) 1 SCC 544, to state that rules framed under Article 309 of the Constitution are solemn rules and cannot be violated. They also rely on **R.N. Nanjundappa Vs. T. Thimmiah**, (1972) SCR 799 at p.808, to state that regularization of appointment in exercise of executive power notwithstanding any rule cannot be a form or kind of appointment.

11. Learned counsel for the applicants further drew our attention to Office Order 25/2013-S.I(A) dated 31.12.2013 issued by Prasar Bharati by which they have regularized 24 Cameramen Grade II who were working on ad hoc basis. It is stated that even in this case, the provision of Rule 5 has not been followed although this regularization has been done in 2013 and a separate class of Cameraman is sought to be created.

12. On the ground taken by learned counsel for respondents of non-joinder of parties, the learned counsel for the applicants stated that his prayer is for deleting all illegal appointments made by the respondents and, therefore, it is a declaration against the illegal action of the government.

13. We have heard the learned counsel for the parties and gone through the pleadings available on record as well as judgments cited by either side.

14. First of all, we note that the applicants have never challenged seniority list of 1990, 1996 and 2002. Similarly, even order dated 4.05.2006 could have been challenged, which was also not challenged. Therefore, this is a clear case of immense delay by the applicants and the OA is hit by limitation under Section 21 of the Administrative Tribunals Act 1985.

15. We also reject the argument of the applicants that while in prayer (b) they have used the expression "similar persons", they not included them specifically as parties because their claim is against the government's illegal action. Since the prayer

specifically mentions that they want appointment/ promotion of respondents 5 to 8 and other similarly placed to be declared illegal, they should also have impleaded them as parties and that not being done, the OA has to be held to be not maintainable on non-joinder of necessary parties.

16. The respondents have explained that as a result of the judgment of the Hon'ble Supreme Court, all Staff Artists were treated as government servants and on the directions of the Supreme Court, modalities for their regularization were worked out and notified through letter dated 29.11.1991. Therefore, this action was taken by the respondents on the specific direction of the Hon'ble Supreme Court and the cut-off date of 6.03.1982 was fixed. Learned counsel for the respondents also clearly demonstrated that in OA 509/1993 (supra), the Tribunal has distinguished the case of Y.K. Mehta (supra) and then dismissed the OA. Therefore, Y.K. Mehta (supra) cannot be cited as precedent.

17. As regards order dated 31.12.2013 regarding regularization of 24 ad hoc Cameramen, we cannot get into this matter as this order is not challenged before us and this letter per se proves nothing. Therefore, this argument of the applicants is rejected.

18. As regards order dated 1.05.2001 in Civil Appeal No.12801/1996 of the Hon'ble Supreme Court cited by the applicants, this cannot be an argument as it is the Hon'ble Supreme Court itself, which has held that all Staff Artists are to

be treated as government servants and to form a Scheme and as a consequence of that, a Scheme was formulated. Therefore, the observations of the Hon'ble Supreme Court in Civil Appeal No.12801/1996 (supra) will not be relevant here.

19. With regard to applicants argument that private respondents were regularized in 1993 i.e. after 1987, this argument no longer holds valid as whatever regularization has been done, has been done as per directions of the Hon'ble Supreme Court and prior to 1987. In fact, the cut-off date was 6.03.1982, which was before the RRs of 1987 came into effect. We are satisfied that even on merits, the OA cannot sustain.

20. For the aforementioned reasons, we find that the OA is not maintainable on the ground of limitation as well as non-joinder of parties. Even on merits, the prayer cannot be allowed. The OA is, therefore, dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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