

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

Pronounced on : 10.05.2019

Reserved on : 24.04.2019

**OA No. 062/00004/2016**

**MAs No. 062/00427/2019 & 062/1608/2018**

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)  
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

1. Saif-ud-Din Lone, aged about 47 years, S/o M.Y. Lone, R/o Zirhama, Kupwara.
2. Mubashir K. Fazili, Aged about 52 years, S/o K.U. Fazili, R/o Faziliabad, Bandipora.
3. Syed Zaffar Islam Andrabi, Aged about 45 years, S/o Mushtaq Ahmad, R/o Doulibagh, Soura, Srinagar.
4. Zulfiqar Hamid Wani, Aged about 46 years, S/o Abdul Gani Wani, R/o Ghani Guest House, Shivpora, Srinagar.
5. Ms. Tahira Mir, Aged about 38 years, D/o Abdul Wahid Mir, R/o Nawakadal, Srinagar.

.....Applicants

BY ADVOCATE: **Sh. R.A. Jan, Sr. Advocate along with Sh. Sandeep Siwatch**

**Versus**

1. Union of India through Secretary to Government, Ministry of Information and Broadcasting Service, Shastri Bhawan, New Delhi.
2. Prasar Bharati Broadcasting Corporation of India, Doordarshan through its Chief Executive Officer (CEO) PTI Building, Parliament Street, New Delhi-1.
3. Director General, (News and Current Affairs), Prasar Bharti (Doordarshan), Copernicus Marg, Mandi House, New Delhi-1.
4. Director, Prasar Bharati Broadcasting Corporation of India, Doordarshan Kendra, Srinagar.
5. In charge Regional News Unit, Prasar Bharati Broadcasting Corporation of India, Doordarshan Kendra, Srinagar.

.....Respondents

BY ADVOCATE: **Sh. K.K. Thakur for respdt.No.1  
Sh. Anil Soni along with Sh. Karan Singh  
Sadan for respdt. No. 2-5**

**ORDER**

**MRS. P. GOPINATH, MEMBER(A):-**

1. The applicants in this OA are before us, assailing the action of respondents in declining the order passed by the Tribunal on 07.07.2015 for regularizing their services, an order which was upheld and confirmed by the Hon'ble High Court vide judgement dated 30.11.2015. This matter has been adjudicated by the Tribunal and the Jurisdictional High Court on various occasions and order in the form of a recommendation had been given by the Tribunal. However, the applicants are back before us because apparently the order in the form of a recommendation either given by a Tribunal or a Parliamentary Committee was not acted upon by the respondents or did not have an impact so as to make the respondents act positively in the matter. Hence, we are now looking at this matter in a different perspective.

2. The applicants are persons who have remained in continuous employment of the respondents at Doordarshan Kendra Srinagar since early 1990s and assigned the work of News Monitor/Production Executive/Production Assistant. The applicants have been before the Tribunal earlier in TAs No. 59/JK/2013 & 633/JK/2013 decided on 07.07.2015 wherein the detailed facts of the matter have been recorded.

3. Applicants plead that due to militancy in Kashmir in 1990, a large number of employees in All India Radio Srinagar, migrated from the Valley paralysing the functioning of All India Radio in the Valley. With a view to tide over the resultant crisis and to maintain the functioning of All

India Radio, the respondents initiated the process to recruit Clerks Grade II and in that context, a requisition was sent to the District Employment Board for sponsoring the names of eligible candidates. The District Employment Officer Srinagar sent the names of 181 candidates for consideration for appointment to the post of LDC. The names of the applicants find a mention in the said list. The respondents conducted a selection and the applicants were appointed as Clerk Grade III. The appointment was ad hoc and for a period of six months which was extended from time to time.

4. Applicants' argument is that their appointment was made after an open selection from a recognized Employment Exchange and by a competent body and hence, they are entitled to regularization.

5. The respondents initiated action in September, 1991 to dispense with the services of the applicants. This forced the applicants to file SWP No. 602/1991 in the J&K High Court which was dismissed on 13.09.1991. This order was challenged in LPA No. 26/1991 and the impugned order was stayed. It was made clear that the staying of the order shall not disturb the applicants, if they have been allowed to join. If there are any vacancies available, the applicants shall be allowed to continue, subject to the result of the appeal. In pursuance thereof, the applicants were allowed to continue in service. When the appeal came up for hearing, the respondents made a statement at the Bar that in the light of the interim directions granted by the Division Bench on 16.12.1991, applicants were working against available vacancies from August, 1992. It was also stated at the Bar that the Union of India "was

not desiring” to disturb the appellants which statement was recorded by the Court. Appeal was therefore disposed of by the Hon’ble High Court as unnecessary.

6. The respondents again passed order dated 04.07.2002 with a view to dispense with the services of the applicants which forced them to file OA No. 711-JK-2002 in this Tribunal. The Bench allowed the OA on 06.05.2006 with the observation that the applicants had joined the post after being sponsored by the Employment Exchange and undergoing a selection process. The applicants had been working for almost ten years continuously, sometimes by virtue of court orders and hence, they are held to be entitled for their regularization in the peculiar facts, situation and circumstances prevailing in the Valley.

7. It is also observed that bearing in mind that the applicants have rendered service in the Valley at a very crucial period of militancy, when nobody was willing to work in the area and they had also shown courage to face the adversities of the situation, they cannot be discriminated by placing them on the same footing as other similar persons who had not been regularized, as argued by the respondents.

8. The Bench also noted the settled law that persons, who are appointed on ad hoc basis after undergoing the selection process and fulfilling the requisite qualifications as per rules, and having continued for sufficiently long time in the engagement, can be considered for regularization. The Bench found it a fit matter to refer to respondent No. 1 to consider the case of the applicants for regularization as a special case.

9. However, in disregard to the observations made by the Hon'ble High Court and the Tribunal, the claim of the applicants was rejected vide order dated 13.06.2007. Applicants in that OA had argued that the order suffers from the vice of hostile discrimination. Applicants also argue that respondents had not followed the mandate of the Apex Court in the case of **Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors., 2006(4) SCC 1** wherein as an exception, a window was provided to regularize the services of individuals who have been continuing in service for more than ten years against regular available posts. The respondents, however, relied upon this judgement to reject the case of the applicants for regularization, ignoring the fact that the applicants' case was covered by the exception carved out in the above Apex Court order. Applicants also cited the provisions of the Casual Labour (Grant of Temporary Status and Regularization) Scheme of the Government of India, 1993 to substantiate their claim for temporary status and regularization.

10. The respondents confirm the facts of the case and stated that applicants were engaged on an ad hoc basis for a period of six months with a technical break after 89 days or till such time as the candidates are allotted by SSC whichever is earlier. Permission was also taken from SSC for engaging the applicants against available posts on temporary basis, pending regular appointment. Since SSC was not able to sponsor the candidates, the applicants were allowed to continue.

11. Applicants had filed MA No. 060/0003/2014 as a consequence of which the salary paid to them was enhanced to Rs.

15,000 p.m. The Original Application was allowed and the impugned order rejecting the claim of the applicants for regularization was quashed and set aside. The respondents were directed to consider the claim of the applicants for grant of regularization, strictly in terms of the observations made by the Tribunal in the earlier list and take a view accordingly, as that view had attained finality. Thus, the directions in the order of 07.07.2015 were very clear and the respondents ought to have complied with the said order.

12. The respondents passed speaking order dated 16.03.2018 where they have reproduced the recommendations of the Standing Committee on Labour. In their fourth report 2014-2015, it was recommended as under:-

“taking into consideration the vast experience and dedicated service rendered by them in hostile conditions, the Committee urge that they may be considered for regularization for the rest of their service period and such relaxation, may be made as a onetime gesture so that they get all the financial benefits available to regular employees and are able to lead a peaceful retired life.”

The same Committee in the year 2015-16 in para 12 recommended as under:-

“The Committee, therefore, urge the Ministry to impress upon the Prasar Bharati to display requisite professional urgency and resubmit the proposal with all the required details without further loss of time so that the aggrieved casual artists get the much needed succor and relief.”

The respondents placed an Action Taken Note on 26.05.2016 to the Standing Committee wherein the following was submitted:-

“A Fact Finding Committee was set up by Prasar Bharati on 14.11.2014 for going into the various issues associated with the engagement of various categories of casuals/assignees by Radio Kashmir, CBS Radio Kashmir and Doordarshan Kendra,



Srinagar the report of which was under examination in Prasar Bharati. Ministry will consider the proposal only after Prasar Bharati formulates its view and sends a formal proposal.”

13. The recommendation of the Committee was rejected on the ground that the regularization of the applicants will have pan India ramification.

14. The applicants filed OA No. 004/2016 praying for de novo consideration of their case for regularization as Production Assistant. The Tribunal in this order dated 11.01.2018 directed that the matter be placed before the Secretary of the concerned Ministry to take a final decision in the matter, with regard to the recommendations made by the Standing Committee. The respondents take the same stand that regularizing of casual employees in J&K would have far reaching consequences and pan India ramification and huge financial burden on the Government Exchequer.

15. It appears that the dilemma in the minds of both Doordarshan Kendra, J&K and the Ministry of Information and Broadcasting can be dissipated if the Tribunal passes a clear order that the regularization be restricted to only the State of J&K in view of the fact that the situation in the State was one of a disturbed area and the applicants had at the time of the disturbed situation, assisted the broadcasting agency by not only reporting for work, but also ensuring that the broadcasting agency was able to function in a disturbed area and keep the people of the State informed about the affairs of the State and the country. Applicants' contribution in the special circumstances in

which the State was placed would require a separate look at the way their services are to be treated.

16. The arguments of the respondents are repetitive in nature and similar to that as placed on record in the earlier OA and they bring no new facts to our notice. They further argue that any relief will also go against Articles 14 & 16 of the Constitution. We would argue that equality is between equals. The persons who rendered service in the disturbed State of J&K, cannot be equated with casually engaged persons in other parts of the country. That the casual employees of J&K stood by the State to ensure that broadcasting services were provided undisturbed and uninterrupted, when it was necessary to link the disturbed State with the news of the rest of the country. Such casual employees are on a different footing from the Prasar Bharati casual employees of the rest of the country. Regularization of the J&K casual employees cannot be compared with regularization of casual employees working in Doordarshan in the rest of the country. They are a class apart and a comparison does not behove.

17. The respondents bring to our notice that the judgement of the High Court had merely directed to take a view in the matter but not in a particular manner. We would say why not take a positive view on the ground that these employees stood by the State during a disturbed situation in the State. The respondents have nowhere said anything adverse about the work and conduct of the applicants which would come in the way of their regularization.



18. The Apex Court while interpreting the principle underlying the guarantee of Article 14 of the Constitution had time and again observed that all persons similarly placed should be treated alike. We are of the view that the casual employees of Doordarshan Kendra, Srinagar, are distinguishable from the casual employees of other Doordarshan Kendras as they were providing services not under their normal conditions, but under conditions of a disturbed State. Equality is a dynamic concept with many aspects and dimensions. It cannot be imprisoned in a limited interpretation and the fact that the conditions in the State of Kashmir were such that the applicants had to go out of the way to provide services, is not replicated in the other parts of the country.

19. In the case of Kashmir, it would be necessary for the State to take an affirmative action to grant the benefit as prayed for by the applicant as the classification of the State and the people working in the State was such that this segment was in need of some succor. By giving the casual employees a different treatment of regularization, which is different from those in the other parts of the country, it would satisfy the twin tests of reasonable and differential classification and the fact that, ensuring that broadcasting facilities continue uninterrupted in the State, was satisfied. Hence, objects sought to be achieved, i.e. keep the people of Kashmir connected with the rest of the country through broadcasting services in the light of disturbed conditions would be a rational principle on which such a differentiation and segregation of regularization can be made, and the classification of differential

conditions is satisfied. The act of the Government in such conditions would not be arbitrary or discriminatory, and the departure made in such regularization could be justified under compensatory treatment.

20. In the light of the above observations, action of the respondents in not regularizing the services of the applicants in the order of seniority and to the extent of vacancies available was uncalled for. Hence, we direct the respondents to delink the regularization of casuals in Kashmir from the casuals engaged in the rest of the country and regularize the services of the applicants in the order of seniority w.e.f. 2003 against the post of Production Assistant to the extent of available vacancies with all consequential benefits. The relevant exercise must be carried out within three months. MAs, pending any, are also disposed of accordingly.

21. While passing this order, we would say that the relief given in this OA is not one to be cited as a precedent in other matters of regularization of civilian employees in the country as this case which relates to the State of Kashmir is treated on a different footing from casual employees in the rest of the country.

22. There shall be no order as to costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

Dated:  
**ND\***