

(2022) 08 CAT CK 0033

In the Central Administrative Tribunal

Case No : Transfer Application No. 1033 Of 2021 (Service Writ Petition No. 17 Of 2016)

Abdul Shakoor Hussaini

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 31-08-2022

Acts Referred:

Citation : (2022) 08 CAT CK 0033

Hon'ble Judges : Anand Mathur, Member (A); D.S. Mahra, Member (J)

Bench : Division Bench

Advocate : M.S. Latief, Hakim Aman Ali, S.N. Ratanpuri

Final Decision : Disposed Of

Judgement

Anand Mathur, Member (A)

1. In the present T.A, learned counsel for the applicant states as under:
2. The applicant was appointed as General Assistant in Doordarshan Kendra, Srinagar in terms of Order No.19 (2) S(TV)/92/5722 dated 16-12-1992& 02.02.1993, as per which he was placed on probation for a period of two years.
3. The respondents formulated a common seniority list of Copyists/General Assistants(Junior/Senior) in the J&K Zones as on 01-06-2008, wherein the applicant figures at S.No.17 and in view of the eligibility and merit, the case of the applicant alongwith one similarly situated employee (Smt. Asifa Ara, General Assistant) was recommended for their promotion to the next higher post of Transmission Executive (TRES) (G&P). On the basis of the recommendations of D.P.C., the applicant was promoted vide order dated 06-01-2009 to the post of Transmission Executive (TRES) (G&P) and was accordingly placed in the pay band of Rs.9300-34800/-.
4. It is further submitted that the applicant is aggrieved of the impugned action of the respondents vide communication dated 14th of December 2015, wherein

his promotion was sought to be reviewed and he was reverted to the post of General Assistant. He has taken the ground that the impugned communication being in absolute breach and disregard to the doctrine of audi-altrum-partum. He has placed reliance on the judgment of the Hon'ble Apex Court in Union of India vs. Narender Singh 2008 Vol.II SCC 570, wherein it has been held that in case the employer forms a view that promotion was given erroneously, a show-cause notice is required to be issued.

5. The applicant has prayed for the following reliefs:-

"I. A Writ in the nature of Certiorari, quashing the impugned communication dated 14th of December 2015.

II. A writ in the nature of Prohibition, prohibiting the respondents from reverting the petitioner from the post of (TREx) presently held by the petitioner for the last more than seven (7) years.

III. A writ in the nature of Mandamus, commanding the respondents to allow the petitioner to continue on the post held by him for the last more than seven years.

IV Any other order/direction which this Hon'ble Court deems just and proper in the circumstances of the case though not prayed for in the instant petition be also passed in favour of the petitioner and against the respondents."

6. The respondents have filed their counter reply. They have taken the preliminary objections that the applicant was neither eligible to be considered for appointment to the post of General Assistant (Jr. Grade), that too, by regularization of his services under the scheme of regularization of Casual Artists introduced by DG Doordarshan in June,1992, nor was he eligible to be considered for promotion to the post of Transmission Executive (G&P), a sub-feeder grade post in the channel of promotion to the entry grade post of Indian Broadcasting (Programme) Service. Therefore, it was only as a corrective course of action that the Head of Office, Radio Kashmir, Srinagar was requested by the Respondent No. 2 to undertake a review of the erroneous promotion granted to the applicant and revert him to his substantive post of General Assistant.

7. Though the scheme of regularization of Casual artists in Doordarshan was introduced by DG Doordarshan vide their Office Memorandum dated 09.06.1992 in pursuance of the directions of the Hon'ble Supreme Court of India and the order dated 14.02.1992 in the O. A. No. 563/1986 (titled Sh Anil Kumar Mathur Vs. Union of India) passed by the Principal Bench of this Tribunal, the applicant could not have been considered either for regularization of his service as General Assistant in pursuance of the said scheme or for his initial appointment and thereafter to the post of General Assistant at Doordarshan Kendra (DDK) Srinagar vide order dated 05.01.1993 mainly due to the following reasons:

"(a) There could not have been any sanctioned but vacant post or General Assistant at any Doordarshan Kendra or Office when it was decided by DG Doordarshan with the approval of Ministry of I&B way back in 1979 that there

would be no recruitment in the posts of General Assistant, Laboratory Assistant and Script Writer which had been abolished on the recommendations made by the Staff Inspection Unit (SIU).

(b) The erstwhile cadre of General Assistants was, merged with the Clerical Cadres/Grades at the time of conversion of Staff Artists of AIR and Doordarshan into Govt. Servants by Ministry of I&B in 1982 and a large number of General Assistants/Copyists (Junior Grade) belonging to the merged cadre had been promoted to the 'post of Clerk Grade-I and some General Assistants/Copyists (Senior Grade) had also been promoted to the next higher grade of Head Clerk/Accounts etc.

(c) Adequate promotional avenue and scope for career progression through competitive/departmental examination were created in the All India Radio (Group-c) Recruitment (2nd Amendment) and (3rd Amendment) Rules, 1983 notified by Ministry of I&B on 19.09.83 and 29.10.83 respectively for General Assistants (Upgrade) of All India Radio and Doordarshan belonging to erstwhile Staff Artist category.

(d) If the name of the petitioner was included in the approved panel of Casual General Assistants in the J&K Zone immediately before introduction of the scheme of regularization by DG Doordarshan in June, 1992, he could have been regularized as General Assistant at DDK, Srinagar but re-designated as Clerk Grade-II (in which the post of General Assistant was merged) or any other equivalent post in the Clerical Grade/Cadre of DG Doordarshan with effect from the same date of his joining the post of General Assistant."

8. The respondents have submitted that the All India Radio and Doordarshan (Transmission Executive) Recruitment Rules, 1992 notified on 29.05.1992, having provision for filling up the vacant posts of Transmission Executive in various disciplines, 90% by direct recruitment and 10% by promotion, failing which by direct recruitment which did not include the post of General Assistant in Doordarshan in the feeder grades to be considered. It was, however, mentioned in the said Recruitment Rules that, for the purpose of allocation of vacancies between the direct recruitment quota and promotion quota, the vacancies at all the stations or offices AIR and Doordarshan in a particular State or Union Territory would be pulled together by Heads of AIR Stations.

9. It is further submitted that the applicant, who was not only ineligible for regularization of his services as General Assistant in terms of the Scheme of Regularization of Casual Artists introduced by Doordarshan in June, 1992 but he was also ineligible to be considered for appointment to the post of General Assistant (Junior Grade) at Doordarshan Kendra, Srinagar w.e.f. 16.12.1992 and thereafter to be considered for promotion to the post of Transmission Executive (G&P) at the same Kendra w.e.f. 19.01.2009.

10. The applicant has filed rejoinder more or less reiterating the averments made in the TA.

11. We have heard the learned counsel for both the parties and perused the material available on record.

12. As has been brought out by the learned counsel for the respondents, the impugned communication dated 14.12.21015 is an internal communication of the administration from Deputy Director (Admn.) to Head of Office and neither has a copy of the said communication been marked to the applicant nor has any adverse order been issued against him till date. Therefore, strictly speaking, the contention of the respondents is correct that the OA is pre-mature and is liable to be dismissed on this count alone. However, it is also a matter of record, as alleged by the learned counsel for the applicant that Smt. Asifa Ara, General Assistant, who is similarly placed to the applicant and had also been given promotion to the post of Transmission Executive (TREX) (G&P) in the pay band of Rs.9300-34800/-also needs to be meted out the same treatment as the applicant.

13. Keeping the full facts of the case in view, we find that this OA is technically pre-mature inasmuch as the impugned order is an internal communication of the administration and no adverse action has yet been taken against the applicant. However, the contention of the learned counsel for the applicant is that similarly placed employee is being allowed to continue on the promoted post. Therefore, we feel that the ends of justice would be met by disposing of the present O.A. as being pre-mature with the proviso that whatever action is taken against the applicant in pursuance of the impugned order, the same treatment would be meted out to the similarly placed employee also.

14. In view of the above, the T.A. is disposed of. No order as to costs.