

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00464/2016

DATED THIS THE 04TH DAY OF JANUARY, 2018

HON'BLE DR. K.B. SURESH, MEMBER (J)
HON'BLE SHRI K. N. SHRIVASTAVA, MEMBER (A)

Mr. K.T. Krishna Kanth,
S/o K.N. Thimmaiah,
Aged about 64 years,
Retd. News Reader-cum-Translator,
All India Radio, Bangalore – 560 204
Residing at:
291, Gangamma Gudi Road,
Chikballapura – 562 101

.....Applicant

(By Advocate Shri S. Sugumaran)

Vs.

1. Govt. of India,
By its Secretary to information
And Broadcasting Ministry,
Shastri Bhavan, AGCR Building,
New Delhi – 110 001.

2. The Director General,
All India Radio,
Parliament Street, New Delhi – 110 001.

3. The Chief Executive Officer,
Prasar Bharati,
PTI Building, Parliament Street,
New Delhi – 110 001.

4. The Station Director,
All India Radio,
Raj Bhavan Road,
Bangalore – 560 204

....Respondents

(By Shri S. Prakash Shetty, Senior Panel Counsel)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. The matter is covered by the judgment of the Hon'ble Apex Court in National Union of All India Radio and Others Vs. Union of India reported in AIR 1990 SC 1720. According to this, the Hon'ble Apex Court had directed that an option be given to the people like applicant to choose to be regularized and therefore come under the fold of regular government employees. The learned counsel for the respondents would say that 99% of the employees chose to be regular government employees and continued to get benefits, one person chose to remain out of it. Now the case put forth by the applicant is that following Section 11 of the Prasar Bharati Act some changes have taken place and therefore he had filed a Review Application. The Review Application seeks that since the ACP benefits have been granted to others *pari materia* it has to be extended to him on the ground that now he has been regularized by an order of the government and granted pension and promotion which is an attribute of regular employees only. But the question is from where onwards his regularization and status of the regular government employee had commenced. Apparently the Ministry had taken a view that since had had taken a view and chosen to opt out of the scheme of regularization and remained only as a contract employee this period cannot be counted for granting the benefit of ACP. Apparently the government in their wisdom had granted the benefit of promotion also for this interregnum period. That may be so, but it is not within the Tribunal or any adjudicatory bodies as has been clear in the judgment passed by the Hon'ble High Court in Writ Petition and

Review Application as well. When the Tribunal's earlier order in OA No. 469/2009 dated 29.07.2011 was taken up before the Hon'ble High Court in Writ Petition No. 40409/2011 dated 19.07.2013 the Hon'ble High Court has said that they were unable to disagree with the findings of the Tribunal but they held that if the government wishes to extend that benefit then it is open to them to consider the same.

2. This was taken up in review in Review Petition No. 806/2013 in Writ Petition No. 40409/2011 dated 10.09.2015 by another Bench. This Bench also said that if the government wishes to extend the said benefits to them then the dismissal of the case by the Tribunal or the Hon'ble High Court will not come in the way of the government.

3. Now this may be so. If the government wishes to extend any benefit to any of its employees it need not be judicially interdicted but an adjudicator cannot positively direct the government by a mandate that this benefit must be made available to them as then it will be an intrusion into executive formation. Therefore there is no merit in the OA.

4. Abiding by Annexure-A5 and A6 the learned counsel would insist that Prasar Bharati had actually taken up the matter with the Ministry but the Ministry had disagreed on the ground that since on his own choice the applicant remained as a contractual employee, getting special benefits of the same, then he cannot turn back and claim both benefits together. This view taken by the Ministry is absolutely correct. Under the law of election, after he

had chosen the benefit A he cannot turn around and seek some portions of the benefit available in benefit B. That being so, there is no merit in the OA.

5. At this point of time the learned counsel wanted to address the Court further. He would say that the DG, AIR had taken up the matter with the government but then the DG, AIR is not the final authority. He would say that the government intervention may not be required as Prasar Bharati is an independent corporation. We do not want to enter in this controversy. Once the Hon'ble Apex Court in 1990 had fixed the parameters of contention there should not have been any other doubt about this. We felt that a frivolous and vexatious litigation had been hoisted on the respondents by the applicant. Therefore, while we hold that there is no merit in the application, we also hold that this is a frivolous and vexatious litigation.

6. The OA is dismissed with a cost of Rs.2,000/-.

(K. N. SHRIVASTAVA)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00464/2016

Annexure A-1: Copy of Order No. Ban.19(2)/85-S dated 16.10.1985

Annexure A-2: Copy of the order of Central Administrative Tribunal, Bangalore Bench in O.A. No. 469/2009 dated 29.07.2011

Annexure A-3: Copy of the order of Hon'ble High Court of Karnataka in Writ Petition No. 40409/2011 dated 19.07.2013

Annexure A-4: Copy of the order of Hon'ble High Court of Karnataka in Review Petition No. 806/2013 in Writ Petition No. 40409/2011 dated 10.09.2015

Annexure A-5: Copy of reply filed in CP No. 88/2014 filed before the Central Administrative Tribunal, Bangalore Bench

Annexure A-6: Copy of Prasar Bharati letter No. 32/4/2013-S.VIII dated 24.11.2014

Annexure A-7: Copy of Prasar Bharati Order No. 4/4/2013-S.VIII dated 31.03.2015

Annexure A-8: Copy of representation of the applicant dated 24.09.2015

Annexures with reply statement:

Annexure R1: Copy of Office Memorandum No. 35034/1/97-Estt(D) dated 09.08.1999

Annexure R2: Copy of letter No. 18/I/91-SVIII dated 13.12.1991

Annexure R3: Copy of form of option of the applicant to convert the staff artists/artists or not to become government servants

Annexures with rejoinder:

Annexure A-9: Copy of Gazette notification of Ministry of Law and Justice dated 09.01.2012

Annexure A-10: Copy of Agreement contract for artists 16.10.1985

Annexure A-11: Copy of Recruitment Rules for various posts in AIR extract of page 307

Annexure A-12: Copy of Terms and Conditions of engagement of artists by All India Radio and Doordarshan

Annexure A-13: Copy of statement of fixation of pay of the applicant dated 19.09.2008 under CCS (RP) Rules, 2008

Annexure A-14: Copy of office order No. 22/02/97-S.VIII/472 dated 01.09.2009

Annexure A-15: Copy of order No. Ban.19(2)/86-S dated 17.09.1986

Annexure A-16: Copy of order No. Ban.19(2)/90-S dated 29.10.1990

Annexure A-17: Copy of old Recruitment Rules for Various Posts in AIR

Annexure A-18: Copy of extract from AIR Manual para 7.3.8 regarding contract notification

Annexure A-19: Copy of judgment of Hon'ble Supreme Court in CWP No. 13636/1983

Annexure A-20: Copy of Seniority List of Newsreader-cum-Translator as on 01.01.1999

Annexure A-21: Copy of Gazette of India new Recruitment Rules dated 15.10.1996

Annexure A-22: Copy of order No. A-32013/15/2014-BAP dated 26.03.2015

Annexure A-23: Copy of letter No. 1/19(7)2014-AP-4 dated 27.02.2015

Annexure A-24: Copy of order of Central Administrative Tribunal, Bangalore Bench in OA No 1014/12

Annexure A-25: Copy of the order of Hon'ble High Court of Karnataka in Writ Petition No. 33981/2015 dated 18.08.2015

Annexure A-26: Copy of judgment of Hon'ble Supreme Court in SLP No. 24717-24718/2015

Annexure A-27: Copy of additional reply filed by the respondents in MA in CP No. 88/2014

Annexure A-28: Copy of reply by R-1 in CP No. 88/2014

Annexure A-29: Copy of DOPT clarification dated 05.05.2004 and the orders passed thereon granting ACP

Annexures with Additional Reply:

Annexure R4: Copy of Office Memorandum No. 45011/67/90-B(A) dated 28.06.1990

Annexures with Additional Rejoinder:

Annexure A-30: Copy of Memorandum of Writ Petition No. 33981/2015 with Index and annexure

Annexure A-31: Copy of Pay and Accounts Office letter No. PAO/AIR/CHEN/PEN/2016-17/106 dated 28.04.2016

Annexure A-32: Copy of relevant parts of Memorandum of SLP 25337/2015 with index and annexure

Annexure A-33: Copy of Office Order dated 30.03.2007 issued by DG, AIR

Annexure A-34: Copy of DoPT Estt D Reference preceding note

Annexure A-35: Copy of letter No. 20/4/2003-SVII/477 dated 28.09.2004

Annexure A-36: Copy of Reply filed by the respondents in OA No. 1014/2012

Annexure A-37: Copy of order of Central Administrative Tribunal, Mumbai bench in OA No. 2109/2013 dated 05.05.2017

Annexure A-38: Copy of letter F.No. Misc-1/30/2012-PPC dated 10.10.2013
