

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00297/2015

DATED THIS THE 3rd DAY OF MARCH, 2020

**HON'BLE DR.K.B.SURSH
HON'BLE SHRI C.V. SANKAR**

...MEMBER(J)
...MEMBER(A)

G.N. Bhat,
Aged about 54 years,
S/o Late Narayana Bhat
Programme Executive
All India Radio,
Raj Bhawan Road,
Bengaluru-560 001.

... Applicant

(By Advocate Shri N.G. Phadke)

V/s

1. Union of India,
Represented by its Secretary,
Ministry of Information And Broadcasting,
Shastri Bhavan,
New Delhi-110 001.

2. The Director General,
All India Radio,
Akashavani Bhavan,
Parliament Street,
New Delhi-110 001.

..Respondents.

(By Shri V.N. Holla, Standing Counsel for the Respondents)

ORDER

HON'BLE DR.K.B.SURESH ...MEMBER(J)

The crux of the matrix is that an enquiry was held without notice and not granting an opportunity of defence. The respondents very vehemently contested this and submitted that the order at Annexure A-2 challenging the treating of the period of absence from duty as dies-non during the various spells from 2007 to

2010, they would say that on the ground of limitation, it must be treated as time barred. But then the applicant submits this has been a continuing litigation and in it the same matrix arises for consideration and on this basis opportunity granted.

2. It is pertinent to note that the respondents now say that on the representation dated 27.9.2012, that a preliminary enquiry was held and the Inquiry Officer(not Enquiry Officer) held that the applicant was irregular among other misconduct. They would say that in that case there is no necessity of notice and opportunity of being heard.

3. They would say that the preliminary enquiry report gives a correct picture and not applicant's contentions. But then, they themselves could have verified this matrix as, if the applicant had done the days' work, it will reflect in the activity records of the office, applicant was attending to, could have easily verified on his activities. But it seems that they have imposed penalty, without a chance of being heard.

4. They argue that even though applicant may have been present in the office, but failed to submit to duty as Programme Executive, is without any specific contentions in them. The respondents being custodian of records, failed and thus an adverse presumption is drawn against them. Therefore, we had requested the learned counsel to explain on this matter, especially in the light of detailed representations submitted by the applicant. In it they record that even though the applicant has been transferred to Bangalore by the competent authority, somehow he was kept without relieving for more than 1 ½ years.

5. In the OA, the applicant has sought for quashing of the order dated 25/29.09.2014 at Annexure A-2, Inquiry Report dated 09.09.2014 t Annexure A-3 and to grant the relief as prayed in the representation at Annexure A-1 dated 27.09.2012.

6. It is contended by the applicant as follows : The applicant joined the services of All India Radio on 15.06.1989 as 'Transmission Executive', under the Ministry of Information and Broadcasting, Union of India and has been promoted to the grade and post of 'Programme Executive' on 10.10.2013 and is presently working as such in All India Radio. While the applicant was working as Programme Executive in All India Radio, Raichur Station, his due salary for the months of January, February, for part of June, October, November & December, 2007 were not paid to him for want of regularisation of leave availed by the applicant. Applicant's period of duties were unjustly treated as Dies-non by the then supervisory officer of Raichur without any authority. The applicant was also not paid with his due salaries for several months in 2008 to 16.06.2010. Although he was transferred from Raichur to Bangalore vide order dated 15.01.2009 (part of Annexure A-1) he was unjustly not relieved till June, 2010 i.e. for nearly one and a half years. The applicant had given several representations dated 15.09.2007, 15.10.2007, 17.10.2007, 18.10.2007, 19.10.2007, 05.11.2007, 09.11.2007, 21.01.2008, 23.04.2008, 21.09.2008 12.10.2008, 12.12.2008, consolidated representation dated 27.09.2012 to the Head of Office who is the Station Engineer and Director General of All India Radio (Respondent No.2). None of his representations were considered by the

concerned authorities. Records further reveal that the applicant had given complaints to even jurisdictional police regarding his manhandling by the Supervisory Officer / Assistant Station Director. The applicant approached this Tribunal by filing O.A. No. 529/2014, seeking consideration of his representation dated 27.09.2012. The applicant avers that during the pendency of the said Original Application, the 2nd respondent ordered to hold enquiry and thereafter rejected his representation vide order dated 25/29.09.2014 at Annexure A-2. The applicant contends that the enquiry was held without any notice to the applicant and in violation of the principles of natural justice and hence the enquiry report dated 09.09.2014 at Annexure A-3 is unsustainable. The applicant withdrew the said O.A and has filed the present O.A. It is further contended by the applicant that he had also represented to the then DDG (SR, I&II) by a letter dated 19.12.2008 in pursuance to the discussions with and advice of the then DDA at Chennai on 17.12.2008. The applicant was given to understand that despite the instructions of the then DDG to regularise the applicant's leave by forwarding the leave applications to the concerned and to relieve him from the duties in pursuance to the order of transfer dated 15.01.2009, the then Asstt. Station Director – ASF (ad hoc) did not do so, since he was inimically disposed towards the applicant. Without framing any charges, without holding any departmental enquiry by the competent authority and ignoring applicant's factual assertions that the applicant was very much present and discharged his duties on several days/periods have been treated as dies non and the period from 26.06.2008 to 16.06.2010 were treated as dies non, though for the said

period, the applicant was prevented to perform duties as he was denied with due salary and for not having relieved him despite the order of transfer dated 15.01.2009, though, ASD had assured the then DDG on 5.2.2007 in writing, to the effect that the applicant will be relieved without a substitute in his place while recommending the applicant's transfer to AIR, Bangalore. The applicant was compelled to take leave for some days in 2007 & 2008, to attend his ailing mother at Bangalore, who expired on 07.07.009 due to continued ill health at the age of 70 years. The applicant also could not attend to the duties for certain period, in view of non-payment of due salaries, which incapacitated him to pay his house rent at Raichur, and for his day today necessities of food etc. Also that, the then DDG (SR-I) after having found the applicant was facing extreme difficulties in Raichur, was good enough to order his transfer from Raichur to AIR, Bangalore by an order dated 15.01.2009, whereas the then ASD, for no justification failed to keep his written undertaking dated 05.02.2007 given to the DDG, to relieve the applicant in case the applicant is transferred, though the applicant was later relieved only on 17.06.2010 to report at AIR, Bangalore in pursuance to the said order dated 15.01.2009 without any change in the ground realities. The applicant was also not paid with the arrears of pay due to him under 2007 Pay Rules without any justification. The applicant's leave accounts as on 01.01.2007 which were in his credits (12 days C.L, 24 days E.L, 10 days HPL) were also not paid.

7. As the consolidated representation dated 27.09.2012 (Annexure A-1) was rejected vide order dated 25/29.09.2014 during the pendency of the O.A

529/2014 on the basis of enquiry report dated 09.09.2014 at Annexure A-3, the applicant filed the present O.A seeking quashing of the order dated 25.09.2014 at Annexure A-2, Inquiry Report dated 09.09.2014 at Annexure A-3 and to grant the relief as prayed in the representation at Annexure A-1, dated 27.09.2012, on the grounds that the enquiry was held without notice to the applicant, which in violation of principles of natural justice, that the ASD had no authority to declare Dies Non as he was not the Head of Office and it was the Station Engineer who was the Head of Office, that he was not paid due salary and was prevented from attending the office on certain days, that his leave applications were not forwarded by the concerned officer despite directions of the higher authorities.

The applicant has filed written arguments.

8. The respondents filed their detailed reply. The respondents contend that the applicant is not entitled to any relief sought and to the reliefs sought for in the representation (Annexure A-1) as the competent authority has conducted a preliminary enquiry and action taken based on preliminary enquiry report dated 09.09.2014 (Annexure A-3) and disposed off his said representation vide order dated 25./29.09.2014 (Annexure A-2). It is contended by the respondents that the findings of the preliminary enquiry shows that the applicant has violated CCS (CCA) Rules, 1965 by being absent without getting prior sanction of leave and left the headquarters and hence the action taken as per order at Annexure A-2 based on enquiry report at Annexure A-3 is in order. The respondents contend that the preliminary enquiry report itself is evident for proving misconduct of the applicant. They further contend that there is delay in filing the OA as the

representation is of 2012 and the OA is filed 2015. The respondents have filed written arguments reiterating their stand. In the written arguments submitted by the respondents they contend that there was no requirement of notice to the applicant or hearing him as it was only a preliminary inquiry and not an inquiry under Rule 14 of the CCS (CCA) Rules. But the pleadings in the reply are inadequate and not supported, even though they are the custodian of the documents.

9. From the pleading and materials on record it shows that the applicant had given many representations as aforesaid and the competent authorities never considered the same and necessary actions were not taken, including the consolidated representation at Annexure A-1. The applicant had filed OA.529/2014 seeking to consider the representation at Annexure A-1. As the same was rejected vide order dated 25/29.04.2014 during the pendency of the said OA, the applicant has filed the present OA seeking quashing of the same, which is in time. Hence, there is no delay in filing the present OA. Materials on record further disclose that the applicant had many times sought for leave to attend to his ailing mother in Bangalore and on other grounds. The action of declaring Dies-non for the period of absence was taken by the ASD (ad-hoc). The materials on record show that he was not the Head of the Office at the relevant point of time and it was the Station Engineer who was the Head of the Office and not the Programme Head (ASD- ad hoc). Hence, actions taken against the applicant by the Programme Head is without authority, illegal and as such the impugned order at Annexure A-2 confirming the actions of the Programme Head

against the applicant, fails on this count also.

10. Materials also disclose that the applicant was not paid due salaries even for periods he was not on leave and was on duty. It is also not in dispute that despite the transfer of the applicant from Raichur vide order dated 15.01.2009, he was not relieved till 17.06.2010.

11. The respondents themselves admit that no notice was given to the applicant while holding the enquiry, but they hold that the applicant was found that he was irregular in his duties among other mis-conducts. They admit that no enquiry was held under Rule 14 and it was only a preliminary inquiry. On the one hand the respondent contend that the applicant is guilty of misconduct based on preliminary inquiry and on the other they say that they have not conducted enquiry Rule 14. Not giving notice to the applicant and holding him guilty and on that basis rejecting the Annexure A-1 representation, all show that there is gross violation of principles of natural justice. Hence, the enquiry report at Annexure A-3 and the order at Annexure A-2, which is bases on the said enquiry report, are unsustainable in law.

12. The materials on record as discussed above, amply demonstrate that the applicant has been severely victimized and has suffered due to the arbitrary actions and in-actions of the authorities.

13. In view of the above discussion, we hold that the OA is in time, allow the OA and quash the order dated 25/29.09.2014 at Annexure A-2 and the inquiry report at Annexure A-3 and consequently direct the respondents to grant the reliefs sought by the applicant in the representation at Annexure A-1.

14. Preliminary enquiry held behind the back of the applicant and all the consequences are hereby quashed and consequence to be paid to the applicant and all the benefits in consequence to it, be paid within 2 months next. OA allowed as above. No costs.

(C.V. SANKAR)
MEMBER(A)

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

Annexures referred in O.A. No. 170/00297/2015

Annexure-A1: Copy of Applicant's representation dated 27.09.2012.

Annexure-A2: Copy of Impugned Order dated 25/29.09.2014.

Annexure-A3: Copy of Inquiry Report dated 09.09.2014.
