

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00309/2018
With Misc. Application No. 290/00043/2019

Reserved on : 20.02.2020
Pronounced on : 17.03.2020

CORAM

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Syed Tasneem D/o Shri Anwar Ali, aged 31 years, resident of 133, Jwala Vihar, Opp. 2nd Pulia Petrol Pump, Chopasani Road, Jodhpur. Ex Casual Compar under working R/5.

.....Applicant

By Advocate: Mr. Mahendra Choudhary

Versus

1. Union of India, Ministry of Information and Broadcasting, Govt. of India, New Delhi through its Secretary.
2. The Prasar Bharti Broadcasting Corporation of India through its Chief Executive Officer, Akashwani Bhawan, Sansad Marg, New Delhi-110 001.
3. The Director General, Prasar Bharti, All India Radio, Akashwani Bhawan, Sansad Marg, New Delhi-110 001.
4. Centre Director, Prasar Bharti, All India Radio, Akashwani, Jodhpur.
5. Programme Officer Cum Voice Test Officer, All India Radio, Akashwani, Jodhpur
6. Shri Om Prakash Lakhara, Programme Officer Cum Voice Test Officer, All India Radio, Akashwani, Jodhpur

.....Respondents

By Advocate: Mr. K.S.Yadav, for resp. Nos. 1 to 5
Mr. P.S.Rathore for resp. No. 6

ORDER

The applicant has filed the present OA seeking following reliefs :-

- a. The impugned order dated 16.08.2018 (Ann.A/1) passed by respondent No.5 may kindly be declared illegal, arbitrary, unjust and same may kindly be quashed and set aside.
- b. The respondents authority may kindly be directed to conduct the re-screening of voice test of the applicant while constituting a fresh committee excluding the name of respondent No.6.
- c. The respondent may kindly be directed to produce the result of all incumbents while showing the marks of written test as well as voice screening test.
- d. The respondents may kindly be directed to provide the appointment on the post of casual compare as per her merit.
- e. Any other appropriate order or direction which may be considered to be just and proper may be granted in favour of the applicant.
- f. Cost of the application may kindly be awarded to the applicant.

2. The brief facts, as stated by the applicant, are that pursuant to advertisement for voice test and written test for the post of Casual Compere, the applicant applied and she was declared pass in the voice test. She also successfully completed the voice training course. After completion of training she was issued a Vani Certificate on 20.8.2014. She was directed to start programme and she attended the programme on 25.02.2014 and thereafter as ordered by the higher officers. The applicant avers that respondent No.6 misbehaved with her and she made a complaint to this effect. The applicant has made various allegations against

respondent No.6 and the same was dealt with by the Internal Complaint Committee. The Programme Executive issued a communication dated 21.01.2015 for screening (voice test) for continuation of appointment on the post of Casual Compere in which the applicant participated and her appointment as casual compare has been approved as per requirement and it was informed vide communication dated 09.02.2015 (Ann.A/13). The respondent No.6 was transferred in March, 2015 and contract of the applicant remained continue. The Director General of All India Radio issued order dated 21.02.2017 by which it was decided to appoint casual comperes and announcers through written test and voice short screening on different subjects. The marks have also been prescribed for written test and interview. The contract of the applicant continued since 2014. The respondent No.6 was again transferred to Jodhpur in March, 2018 and thereafter in July, 2018 an advertisement was issued for appointment of casual compere. Pursuant to this, the applicant submitted her application. After participating in the written examination, the applicant was declared pass and was called for voice screening test. The respondent No.6 directed all the incumbents who participated in the written test as well as

voice screening test to deposit their admit card at their centres to the incharge of centre. The applicant was not in a position to be admitted in the OA (sic). Thereafter, the applicant tried her best to find out the marks of written test as well as voice screening test but no information has been provided by the respondents. The applicant is aggrieved of the order dated 16.8.2018 as well as the malafide act of the respondent No.6 by which the applicant is deprived of selection.

3. After issuance of notices, the respondents filed a Miscellaneous Application for dismissal of OA stating that the present OA is not maintainable. It is the contention of the respondents that there is no civil post of casual announcer/ casual compere included in the recruitment rules of the respondent department. The respondents only have a panel of casual announcers and comperes to present certain programs over All India Radio (AIR) stations as well as to present a particular program only. This panel is prepared every year and the said panel is periodically reviewed by way of conducting audition/screening. The sole purpose of such casual announcers and comperes is to encourage fresh talent and to impart variety of test of voices to the listeners. The respondents added that these

casual announcers/comperes are booked on assignment basis from the panel subject to maximum six days in a month and 72 days in a year. Thus, the applicant cannot be even included as a part-time employee. As the applicant is not a civil employee but only an erstwhile casual compere, this Court has no jurisdiction to entertain the present application of the applicant as per Section 14 of the Administrative Tribunals Act. Therefore the respondents prayed that the present OA deserves to be dismissed on the question of maintainability itself.

4. The applicant has filed a reply to the said Misc. Application stating that as per Section 22, the present OA is maintainable and the Hon'ble Tribunal has powers to consider the same on merit and decide the same. The plea of the applicant is that she has undergone selection process and due to which she was appointed on the post of casual announcer/compere as is evident from Annexure A-13 and therefore the Misc. Application filed by the respondents deserves to be dismissed.

5. Thereafter the respondents have filed their main reply also raising preliminary objections. The respondents pointed out that for the purpose of exploring some new talent and

to provide variety of taste of voices to listeners, an arrangement has been made for preparing panel of casual announcers / comperes to present certain programs over All India Radio (AIR). The sole purpose of empanelment/ booking of such casual announcers/comperes is to encourage fresh talent and to impart variety of taste of voice to listeners. For this purpose, a panel is prepared as and when required basis which is periodically reviewed by way of conducting audition/ screening/ re-screening with the approval of the Competent Authority. It is further stated that these casual presenters/assignees are engaged as and when their services are required by a Station as per programme exigencies. These casual announcers/ comperes are booked on assignment basis from the panel subject to maximum of 6 days in a month and 72 days in a year. These casual announcers/ comperers are not at all covered under the term Government employee of any category i.e. temporary/ adhoc/contractual/daily wager, etc. As far as the applicant is concerned, she remained on the panel of assignees of AIR, Jodhpur, but she could not succeed in clearing the voice test held on 08.08.2018 as a part of three tier re-screening process. The respondents state that in the present OA, the applicant has challenged the

impugned order /letter dated 16.08.2018 i.e. Annexure A/1 on the ground that respondent no.6 has acted malafidely in the Committee constituted for the purpose of voice test and viva voce. The said contention is denied by the respondents being false and concocted as respondent no.6 was not a Member of the Voice Screening Committee constituted for conducting the voice test proceedings on 08.08.2018, the date on which the applicant appeared for voice test. The respondents reiterated their stand stating that the applicant is neither a regular employee nor an adhoc employee. Therefore, the basic stand of the applicant that the name of the applicant did not appear in the empanelled list only at the instance of respondent no.6 is not at all relevant as the respondent no.6 was not at all in the said Committee. The respondents relied towards the judgement and order passed in identical matter in WP No. 8941 of 2018 by Hon'ble Bombay High Court in case of Vedavati Mohan Gokhale & ors. V/s. Programme Executive & Ors, wherein the Hon'ble High Court has dismissed the Writ Petition filed by the petitioner. The respondents, therefore, stated that in absence of the applicant working on any civil post, this court has no jurisdiction to try and entertain the present

application and that the present OA is devoid of any merits, therefore, the same deserves to be dismissed with costs.

6. Heard Shri Mahendra Choudhary for the applicant and Shri K.S. Yadav for the respondent nos. 1 to 5 and Shri P.S. Rathore for respondent No.6 and perused the record available on record.

7. It is not in dispute that announcers and comperes are engaged from time to time in the AIR for which panel is prepared on yearly basis. The applicant was on these panels from the year 2014 upto 2018. She made complaint against respondent No.6 in the year 2014 and the matter was referred to the Internal Complaint Committee. The applicant got satisfied by the action taken by the said Committee as is evident from the communication dated 18.9.2014 (Ann.R/3) addressed to the Chairperson, Internal Complaint Committee, Jodhpur. Thereafter pursuant to the advertisement for engagement issued in the year 2018, the applicant appeared in the written test and thereafter for voice screening, but she could not succeed in the said selection due to lower marks obtained by her. She is linking her non-selection of the year 2018 to the complaint made by her in the year 2014, which has already been settled and

she got satisfied as is evident from her own admission/satisfaction (Ann.R/3). It is noted that the respondent department have its own mechanism to deal with such type of complaints and the complaint was dealt with accordingly. It appears that after non-selection, she has cooked up a story and based her case of non-selection in the year 2018 on the ground of malafide of respondent No.6, being the member of the voice screening committee. In this regard, the respondents have categorically pleaded that respondent No.6 was not a Member of the Voice Screening Committee constituted for conducting the voice test proceedings on 8.8.2014, the date on which the applicant appeared for voice test. In view of this categorical stand taken by the respondents, the allegation made by the applicant has no merit. The respondents have also produced the marks obtained by the applicant as well by other participants in the voice test as Ann.R/7, persual of which makes it clear that due to lower marks, the applicant could not be selected.

8. Besides this, when the rules/guidelines for selection are indicated in the recruitment notification, a candidate who participated in the selection cannot assail the same when it is found that he/she is not selected. The applicant

appeared in the selection without any objection and having been unsuccessful in the selection, she has raised her grievance about her non-selection, which is not acceptable. It will be relevant to mention here that the controversy in question has been considered by various Benches of this Tribunal including the Chandigarh Bench in OA No.1546/2017-Naina Sodhi and Anr. Vs. Union of India and Ors. decided on 28.11.2019. Some of the observations made in para 13 and 14 by the Chandigarh Bench would be relevant and are as under:-

"13. It is noted that the empanelment of the Casual Announcers is to fulfil a specific need of sporadic nature of work for broadcasting of the programme as per needs of All India Radio. Appropriate quality of such Announcers is required to be maintained for which holding of audition test is prescribed and it is held from time to time.

14. In the instant case, applicants were called to appear in the audition test along with other candidates. Applicants had, however, appeared and failed in the said test. Those who passed were empanelled. Applicants' plea of still empanelling them even though they failed, and cancelling empanelment of passed candidates, is not acceptable.

In this connection, it is noted that the law is fairly well settled in this regard. If the rules or guidelines of selection for appointment are indicated in the recruitment notification, a candidate who participated in the selection cannot assail the same when it is found that he is not selected. In a way, the principle of estoppel operates against him. In other words, if he had any objection to the selection process, he is required to approach the Court or Tribunal, well in advance, and before participation. He cannot challenge the conditions after conclusion of the selection process. Reliance in this context can be made to the judgment of the Hon'ble Apex Court in the case of Madan Lal & Ors. v. The State of Jammu & Kashmir & Ors., [(1995) 3 SCC 486] where the Hon'ble Apex Court has held as under:

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.*, (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

9. In the instant case, the applicant appeared in the written test and voice test and when she failed in the selection, she has filed the present OA contending that the process of voice screening was unfair and the selection committee was not properly constituted, which is not acceptable. The allegations made by the applicant are not established as the respondents have categorically pleaded that respondent No.6 was not part of the Voice Screening Committee constituted for conducting voice test

proceedings on 8.8.2018, on which date the applicant appeared for voice test.

10. In the case of Dr. **G.Sarna vs. University of Lucknow and Ors.**, reported in 1976 AIR 2428 the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. The Hon'ble Supreme Court did not permit the petitioner to raise this issue and held as follows :-

“15. We do not, however, consider it necessary in the present case to get into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.....”

In the case of **Ramesh Chandra Shah and others vs. Anil Joshi and others** in CIVIL APPEAL NOS. 2802-2804 OF 2013 (Arising out of SLP(C) Nos. 30581-30583 of 2012) the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. The Hon'ble Supreme Court vide judgment dated 3rd April, 2013 held as follows :-

"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

11. Even otherwise, the applicant is not a holder of any civil post. The persons on these posts are engaged only for a maximum period of 6 days in a month and 72 days in a year. The said appointment therefore does not give any right to the applicant to raise her grievance before this Tribunal.

12. In view of the discussions made above, I find no merit in this OA and accordingly, the same is dismissed. In view of the order passed in the OA, the MA No.43/2019 has become infructuous, and is accordingly dismissed. No costs.

13. This, however, does not preclude the respondents from allowing the applicant to appear in future for voice screening test as and when conducted and empanel her, if she is otherwise found suitable as per the criteria and qualification specified.

(HINA P.SHAH)
Judl. Member

R/