

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA. 960/89

Date of decision: 07.04.1992.

Shri Anil Sood

...Applicant

Vs.

Union of India & Others

...Respondents

For the Applicant

...Shri T.C. Aggarwal,
Counsel

For the Respondents

...Shri P.P. Khurana,
Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant, who is working as Announcer, Senior Grade in the All India Radio, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned orders of suspension dated 6.10.1988 and 17.10.1988 and the impugned memorandum dated 17.11.1988 proposing to hold an enquiry against him under Clause 4(iv) of the agreement executed between the applicant and the President of India. *Q*

2. On 4.01.1991, the Tribunal passed an interim order directing that while the respondents may proceed with the preliminary hearing in the enquiry, no final orders shall be passed.

3. We have heard the learned counsel of both parties and have gone through the records of the case carefully. The basic question arising for consideration is whether the applicant who is a Staff Artist in the All India Radio is a Government servant and whether the provisions of the CCS(CCA) Rules, 1965 would be applicable to him. The contention of the applicant is that he is a Government servant and that the said rules will apply to him. The contention of the respondents is that he is a contract employee and that his conditions of service are regulated by the agreement executed by him with the President of India. The contention of the applicants is valid and tenable in view of the authoritative decision of the Supreme Court in Union of India Vs. M.A. Chowdhary, 1987(4) SCC 112. In that case, M.A. Chowdhary was appointed as a Staff Artist in the All India Radio, Bombay under an agreement executed by him with the Director General of All India Radio. His services were sought to be terminated in accordance with Clause 4(v) of the agreement. The Supreme Court held that the relationship between Shri Chowdhary and the All India Radio was clearly of a master and servant and Shri Chowdhary was holding a civil post within the meaning of Article 311(1) of the Constitution. In view of

this, it was held that the termination of his services would be removal from service within the meaning of Article 311(2) of the Constitution. The learned counsel for the Union of India also submitted before the Supreme Court that Article 311 of the Constitution was applicable to the Staff Artists of All India Radio. The Supreme Court observed that the statement made by him represented the true legal position because the Staff Artists are holding civil post under the Government.

4. In A.S. Murthy Vs. Station Director, AIR 1990(12) ATC 388, this Tribunal has held that when once the post is held to be a civil post under the Union of India, a fortiori it follows that persons holding that post can only be civil servants of the Union of India and cannot be anything else. It was also held that a Staff Artist is governed by the CCS(COA) Rules, 1965. The Tribunal followed the decision of the Kerala High Court in Radha Vs. Station Director, AIR Trivandrum 1985(1) SLR 349. We respectfully reiterate the same view.

5. The further question arising for consideration is as to who is the disciplinary authority of the applicant in the instant case. The parties to the agreement whereby the applicant became a Staff Artist are the applicant ^{or} ~~and~~ on the one hand and the President on the other. The impugned order of suspension dated 6.10.1988 was issued by the Station Director, All India Radio. The second impugned order of

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suspension dated 17.10.1988 as well as the impugned memorandum dated 17.11.1988 proposing to hold enquiry against the applicant were issued by the Deputy Director General (Administration), All India Radio. The contention of the respondents is that the Deputy Director General (Administration) is the appointing and disciplinary authority vide ^{Memorandum} dated 5.10.1978 issued by the Director General, All India Radio.

In our opinion, the aforesaid memorandum ^{only} ~~sets~~ out the appointing authority for the purpose of termination of probation and extension of contract upto the age of 58 years and crossing of Efficiency Bar in the case of Staff Artists of the All India Radio. As we have come to the conclusion that the CCS(COA) Rules, 1965 apply to the Staff Artists of the All India Radio including the applicant, the office memorandum relied upon by the respondents will have no relevance. There is nothing on record to indicate that the President has ^{so} ~~authorised~~ the Deputy Director General (Administration) ~~xxxxxxxxxxxx~~, by general or special order, to act as the appointing authority or as the disciplinary authority. In our opinion, in the absence of any such order made by the President under Rule 13 of the CCS(COA) Rules, 1965, the Deputy Director General (Administration), All India Radio is not competent to place a Staff Artist under suspension or initiate disciplinary proceedings against the applicant.

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6. In the light of the above discussion, the applicant is entitled to succeed in the present application. We, therefore, set aside and quash the impugned orders dated 6.10.1988 and 17.10.1988 whereby the applicant was placed under suspension as well as the impugned memorandum dated 17.11.1988 whereby it has been proposed to initiate disciplinary proceedings against the applicant. The respondents shall reinstate the applicant as Announcer, Senior Grade, preferably within a period of 3 months from the date of communication of this order. The applicant would also be entitled to full pay and allowances from 6.10.1988 till the date of reinstatement. The subsistence allowance paid to him, if any, may however be adjusted against the full pay and allowances to be paid to the applicant.

7. We, however, make it clear that the respondents will be at liberty to proceed against the applicant afresh in regard to any alleged misconduct on his part, in accordance with law, if so advised.

There will be no order as to costs.

B. N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A)

7/4/92
(P.K. KARTHA)
VICE CHAIRMAN (J)