

**Central Administrative Tribunal  
Ernakulam Bench**

**O A No.180/00873/2019**

Thursday, this the 26<sup>th</sup> day of November, 2020

**C O R A M :**

**Hon'ble Mr.P.Madhavan, Judicial Member**  
**Hon'ble Mr.K.V.Eapen, Administrative Member**

D.Pradeep Kumar, aged 57 years  
S/o.K.Damodaran  
Programme Executive, All India Radio  
Manjeri – 676122  
Residing at Prayaga, Automobile Road  
Palarivattom, Ernakulam - 682 025.

Applicant

(Advocate: Mr.M.R.Hariraj)

**versus**

1. Prasar Bharati Broadcasting Corporation of India  
represented by its Chief Executive Officer  
Prasar Bharati House  
Copernicus Marg, New Delhi 110 001
2. Director General, All India Radio  
Akashvani Bhawan  
New Delhi – 110 001
3. Union of India, represented by its Secretary  
Ministry of Information and Broadcasting  
A Wing Shastri Bhawan  
New Delhi – 110 001.

Respondents

(Advocate: Mr.Thomas Mathew Nellimoottil)

This application having been heard on 14<sup>th</sup> October 2020, this Tribunal delivered the following order on 26.11.2020:

**ORDER**

**By P.Madhavan, Judicial Member**

This is an Original Application filed seeking the following reliefs:

- (i). *To quash Annexure A1, A9 and A10*
- (ii). *To direct the respondents to consider and grant*

*promotion to the applicant to the cadre of Assistant Director (Programme) (JTS) with effect from the date of promotion of his juniors on regular basis with all consequential benefits including arrears of pay and allowances;*

*(iii). Grant such other reliefs as may be prayed for and the court may deem fit to grant, and*

*iv. To grant the costs of this Original Application. "*

2. The applicant in this case is imposed with minor penalty and he has filed this Original Application challenging the Charge Memo, punishment order and order of implementation of punishment, which are produced as Annexures A-1, A-9 and A-10 and also to quash the appellate order which is produced as Annexure A-21.

3. According to the applicant, the alleged charge memo was issued alleging the airing of commercials in excess of the time fixed and also alleging that he has aired commercials relating to chit funds etc. which is not proper as per the policy of the Prasar Bharati. According to him, the said order of punishment is arbitrary, illegal and against the procedures prescribed by CCS(CCA) Rules. The applicant denied the charges and gave a representation denying the same, which is produced as Annexure A-3. The respondents declined to extend the adhoc promotion given to him as Assistant Director stating the pendency of disciplinary proceedings. So he filed O.A 132/2019 challenging the issuance of Charge Memo. The Tribunal disposed of the said O.A by directing the respondents to complete the Inquiry within a period of 3 months from the date of receipt of a copy of that order. The respondents had thereafter conducted DPC and promoted even his juniors, but he was not considered and was overlooked. A true copy of the order of promotion is produced and marked as Annexure A-8. The respondents thereafter imposed a minor penalty of reduction to a lower stage in the time-scale of pay by one stage for a period of 2 years as Annexure A-9. The punishment was implemented and reduction in pay was effected as per Annexure A-10 order. The applicant thereafter preferred an appeal against the imposition of penalty on 15.7.2019 as Annexure A-

11. There was no response from the respondents' side. Thereupon, he produced additional documents also along with the appeal as Annexure A-12. Then, the respondents had informed him that the appeal is under consideration. But the appeal was not forwarded so far to the Appellate Authority mentioned in the appeal. Subsequently, as per the orders of Hon'ble High Court in OP(CAT) 75/2020, the Board of Prasar Bharati which is the competent authority to dispose of the appeal had rejected the appeal of the applicant and issued Annexure A-21 order. The Hon'ble High Court has directed the applicant to amend the O.A accordingly and he filed an application for amendment and the present O.A is the amended O.A filed by the applicant.

4. The main ground alleged by the applicant in this case is that the applicant is not directly involved in airing the commercials in the Radio. According to him, scheduling, production and airing of the advertisements are in the charge of Programme Executive and Transmission Executive.

5. According to the applicant, the charge memo shows that the disciplinary authority mainly relied on a computer generated log-sheet. In fact, no such log sheet can be generated automatically by the software used in the All India Radio at that time. It is a log sheet typed out on computer and it has no authenticity. The RTI reply given clearly shows that no computer generated log sheet can be generated automatically by the system installed there.

6. According to the applicant, the studio log book is the main reliable document which can show the broadcast details and it is the main record of authentication as per the AIR manual.

7. The alleged incident of airing commercials in excess of time had taken place in the year 2012 and the charge memo was issued only in the year 2018. This has caused serious prejudice to the applicant as he could not get promotions. The

applicant also submits that even though the facts have been specifically disputed before the disciplinary authority and a personal hearing was sought by him, no detailed Inquiry was conducted before issuing Annexure A-1 charge memo and also before imposing the penalty. The documents relied upon are not at all mentioned in Annexure A-2. According to the applicant, three separate preliminary Inquiries were allegedly conducted by the respondents before the issuance of Charge Memo and no copy of the report was given to the applicant and no witness was also examined. So this was highly prejudicial to the applicant. The respondents ought to have conducted a proper Inquiry as envisaged under Rule 16 of CCS (CCA) Rules in this matter.

8. It was also contented by the counsel for the applicant that the appellate order Annexure A-21, is not a speaking order as required under CCS(CCA) Rules. None of the grounds raised by the applicant in the appeal had been considered. It was also argued that Annexure A-1 Charge Memo does not show the details of documents which are relied upon by the disciplinary authority. The advertisements of chit funds were aired from various AIR stations and Annexure A-24(B) and Annexure A-24(C) RTI replies issued from Kochi and Thiruvananthapuram stations shows that in other All India Radio Stations also, advertisements of chit funds were aired during this period. So according to the applicant, the action of the respondents is highly arbitrary and illegal.

9. In the additional reply statement filed, the respondents submitted that the applicant has been promoted to Junior Time Scale (JTS) cadre prospectively with effect from 20.5.2020 after the punishment is over. Since the direction of the Tribunal was to consider the appeal by the Secretary (I&B) who is not the appellate authority, the respondents filed an R.A against the same. But it was dismissed by the Tribunal. Thereupon, respondents approached the Hon'ble High Court through

OP(CAT) 75/2020 and the Hon'ble High Court has directed the Board to consider the appeal and pass an order within a period of one month. The Competent Appellate Committee had taken a formal decision on 18.12.2019 after considering various grounds. A true copy of the formal decision taken by the Committee was furnished in a sealed cover before the Hon'ble High Court for perusal in OP(CAT) 75/2020. The applicant has not exhausted the statutory remedies available to him under Rule 29 and Rule 29-A to the CCS (CCA) Rules, 1965 by filing a review. The proceedings initiated against the applicant were only minor disciplinary proceedings under Rule 16 of the CCS (CCA) Rules, 1965 and the respondents had complied with all the procedures prescribed under Rule 16 and there were no irregularities committed by the disciplinary authority. They have not violated any statutory provisions in conducting the disciplinary case of the applicant under Rule 16 of the CCS (CCA) Rules, 1965.

**10.** We have heard the learned counsels appearing for the applicant as well as the respondents. Even though, many grounds were raised by the applicant, the main argument was regarding the delay in issuing charge memo and regarding the procedure adopted by the respondents in the disciplinary proceedings. Eventhough, the alleged incident had taken place in the year 2012, the Charge Memo was given only on 4.4.2018. There is no explanation offered for this undue delay. Another arrangement put forward is that, even though the applicant has raised many objections including the correctness of computer generated log-sheet etc., the respondents did not conduct a detailed formal Inquiry regarding the facts alleged and imposed a minor punishment under Rule 16 of the CCS (CCA) Rules. According to the counsel for the applicant, the system installed in the Station has no facility to generate log-sheet. It is stated in the Memo that the same is used as the main evidence against the applicant for finding him guilty of the charges

levelled against him. At the same time, the studio-log book which is considered as the main legal document which can show the broadcast details (as per AIR manual) is not at all considered by the authorities. The counsel pointed out the RTI reply given from the Station (Annexure A22) which shows that there is no provision to generate computer log-sheet. The statement of the respondents that they had conducted 3 preliminary Inquiries before issuing with the Charge Memo itself shows the complexity of the matter and the respondents ought to have opted for a detailed Inquiry under Rule 16(1) of CCS (CCA) Rules. The counsel also invited our attention to the Hon'ble Apex Court's decision in ***Food Corporation of India & Others v. Sarath Chandra Goswami*** reported in (2014) 13 SCC 211 wherein the Hon'ble Supreme Court laid down principles relating to disciplinary proceedings for imposing minor penalties. In the said case, the disciplinary proceedings was initiated under Regulation 60(1)(b) and 58 of Food Corporation of India (Staff) Regulation 1971. The above provisions are very much similar to Rule 16 of the CCS (CCA) Rules and the principle can be applied in this case also. He also invited our attention to ***Anant R.Kulkarni v. Y.P.Education Society*** and others reported in 2013 (6) SCC 515 wherein the Hon'ble Supreme Court has dealt with delay in concluding disciplinary proceedings. He also cited the decisions of the Hon'ble Supreme Court in ***P.V.Mahadevan v. Managing Director, T.N.Housing Board*** (2005 (6) SCC 636); ***State of M.P v. N.Radhakrishnan*** (1998) 4 SCC 154 and the Hon'ble Kerala High Court decision in ***Kunchikannan Nambiar v. Govt of Kerala*** (2001 SCC online KER 526). But the Senior counsel appearing for the official respondents would contend that this being a case of minor penalty proceedings, there is no need of a detailed Inquiry and only summary procedure is sufficient. It was also contended that delay alone cannot be considered as a sufficient reason to set aside the Charge Memo or punishment imposed. The Standing Counsel for the

respondents relies on the decision of the Hon'ble Apex Court in *State of Punjab and Others v. Chamanlal Goyal* (1995) 2 SCC 570; *State of Andhra Pradesh and Others v. Chitra Venkata Rao* (1975) 2 SCC 557 and similar judgments in support of this case.

11. Rule 16 of CCS (CCA) Rules reads as follows:

**"16. PROCEDURE FOR IMPOSING MINOR PENALTIES:**

(1)(1) Subject to the provisions of sub-rule (5) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

\*[(d) consulting the Commission where such consultation is necessary. The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission to the Government servant, who shall be required to submit, if he so desires, his written representation or submission on the advice of the Commission, to the Disciplinary Authority within fifteen days; and

(e) recording a finding on each imputation or misconduct or misbehaviour.]

\*[Substituted vide the Central Civil Services (Classification, Control and Appeal) (Second Amendment) Rules, 2014 - Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification dated the 31st October, 2014 issued from 11012/8/2011-Estt.(A)]

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- \*\*[(vi) representation, if any, of the Government servant on the advice of the Commission
- (vii) the findings on each imputation of misconduct or misbehaviour; and
- (viii) the orders on the case together with the reasons therefor.] "

12. On a reading of Rule 16(1)(b), it can be seen that the disciplinary authority is empowered to conduct an Inquiry as provided under Rule 14 if such an Inquiry is necessary in a case. In *Food Corporation of India v. Sarath Chandra Goswamy* referred supra, the Hon'ble Apex Court citing its earlier decision in *Food Corporation of India v. A Prabhakar Rai* (2001) 1 SCC 165 has held that in proceedings for imposing minor penalties, the Disciplinary Authority has to record his opinion that there is no need to hold a regular Inquiry. Here in this case, the Disciplinary Authority has not recorded his opinion that there was no necessity for conducting a detailed Inquiry. The discretion conferred under Rule 16(1)(b) is similar to the one conferred in the Regulations of Food Corporation of India and the ruling is squarely applicable in this case also. On a perusal of pleadings, we find that the respondents had conducted 3 Inquiries before they came to the conclusion to initiate disciplinary proceedings. It is brought out that the main document relied upon to impose the penalty is a computer generated log-sheet. But as per Annexure 22 RTI reply, there is no facility for generating computer generated print out of log-sheet in the computer system installed in the Thrissur Station. The main allegation made against the applicant is that he had given more airtime to commercial advertisements for chit funds. It seems that the matter involved is complicated in nature and a detailed Inquiry ought to have been conducted as per Rule 16(1)(b) of CCS (CCA) Rules. The Disciplinary Authority in this case has not recorded his opinion as to why he proceeded without recording



his opinion in this respect. So there has occurred procedural violation and the applicant has not got an opportunity to adduce his evidence in support of his objection. So we find this contention in favour of the applicant.

13. Another argument raised by the counsel for the applicant is that, there has taken place a delay of more than 6 years in issuing a Charge Memo in this case. The proceedings initiated is only minor penalty proceedings which show that the misconduct was not grave. In *Anant R. Kulkarni's* case (referred supra), the Hon'ble Apex Court held in paragraph of judgment that :

" Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The court has to consider the seriousness and magnitude of the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, the balance and weight the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of delay in their conclusion. "

14. We have gone through the pleadings and find that there had taken place 6 years' delay in initiating a disciplinary proceedings. According to respondents, they had conducted 3 Inquiries and it is only because of procedure delays in getting vigilance opinion, the issuance of Charge Memo was delayed. The explanations offered by the respondents are reasonable and we do not find that the delay was purposeful or has prejudiced the applicant in any way in his defence.

15. Another serious contention put forward by the counsel for the applicant is that the appellate order passed in this case is cryptic and not a speaking order as envisaged under CCS (CCA) Rules. As per Government of India O.M

No.134/1/81.AVDI dated 13.7.81, the order passed in appeal must be a speaking and reasoned order citing the decision of judgment in *Mahavir Prasad v. State of U.P* (AIR 1970 SC 1302). In this case, the appellate authority ought to have considered all the objections raised and should have given its reasoning for rejecting the appeal. In this case, it can be seen that the appellate order is not a speaking order and hence Annexure A 21 is liable to be set aside on that ground alone. So we find merit in the above argument of the counsel for the applicant.

**16.** The counsel for the respondents would contend that the airing of commercials regrading chit funds was against the policy of Prasar Bharati and the airing of such commercials is a violation of Code of Conduct. We have perused the Annexure A11 & A12 series obtained by the applicant under RTI. It shows that AIR stations like Kozhikode, Kochi & Thiruvananthapuram used to air commercials of chit funds during this period. Further, Annexure A25 taken from Prasar Bharati shows that commercials of Chits and Kuries are permitted to be aired by stations. We are not expressing any opinion on it as we are are not sitting in appeal to the finding of the disciplinary authority.

**17.** From the discussion above, it can be seen that there had occurred procedural infirmities in conducting the inquiry and imposing penalty by the Disciplinary Authority. The order of the Appellate Authority is also liable to be set aside since it is not a speaking order.

**18.** In the result, we set aside the impugned orders passed as Annexure A9 & A10 by the Disciplinary Authority and the Appellate Order passed as Annexure A21. The Disciplinary Authority has to go through the available material collected in the preliminary inquiry and take a reasoned decision on whether to proceed summarily or under Rule 16 (1) (b) after hearing the applicant. The Disciplinary Authority should record all these in the proceedings and complete the proceedings

and pass final orders within a period of six months from the date of receipt of a copy of this order.

**19.** OA is disposed of accordingly. No order as to costs.

**(K.V.Eapen)**  
**Administrative Member**

**(P.Madhavan)**  
**Judicial Member**

SV

**List of Annexures**

- Annexure A1 – True copy of the charge memo no.7/11/2012-254 dated 4/4/2018
- Annexure A9 - A true copy of order No.7/11/2012-vig. Dated 4/6/2019 issued by the 1<sup>st</sup> respondent
- Annexure A10 - True copy of order No.MJY-21(1)S(DPK)2019/1933 dated 5/7/2019
- Annexure A21 - True copy of order no.7/11/2012-Vig./dated 19.6.2020 issued for the first respondent
- Annexure A2 - A true copy of notice no.CLT/5 (DDE)/2017-2018/93 dated 9/5/2018
- Annexure A3 - A true copy of the representation dated 18/5/2018
- Annexure A4 - True copy of the order No.F.No.A-17/01/2017-SI(A)/946 dated 16/11/2018
- Annexure A5 - A true copy of the representation dated 19/11/2018 submitted by the applicant
- Annexure A6 - A true copy of the representation dated 13/12/2018 submitted by the applicant
- Annexure A7 - A true copy of the final order dated 7/3/2013 in O.A 132/2019
- Annexure A8 - True copy of order No.A-01/02/2015-S-I(A)/Vol.-V/234 dated 10/4/2019 (without annexures)
- Annexure A11 - True copy of an appeal dated 15/7/2019 submitted by the applicant
- Annexure A12 - A true copy of representation dated 26/9/2019 along with the additional documents
- Annexure A13 - True copy of letter F.No.08/34/2019-S.I (B)/985 dated 30.10.2019 of the 1<sup>st</sup> respondent
- Annexure A14 - True copy of the letter F.No.I-11011/837/2019-BAP dated 13.11.2019 of the 3<sup>rd</sup> respondent
- Annexure A15 - True copy of the letter No.I-11011/734/2019-Vig. Dated 15/10/2019 of the 3<sup>rd</sup> respondent
- Annexure A16 - True copy of letter No.01/02/2015/S-I(A)/Vol.VI/741 dated 23/9/2019

- Annexure A17 - The true copy of the interim order dated 11.3.2020, of the Hon'ble High Court of Kerala, in OP (CAT) 75/2020
- Annexure A18 - A true copy of the I.A I/2020 in OP (CAT) 75/2020
- Annexure A19 - True copy of the order dated 26.5.2020 in OP(CAT) 75/2020
- Annexure A20 - A true copy of the judgment dated 22.6.2020 of the Hon'ble High Court of Kerala
- Annexure A22 - A true copy of the order No.TRC.DDE/6/2019-2020 dated 2.4.2020 and the request under Right to Information Act
- Annexure A23 - True copy of the representation dated 16.8.2019
- Annexure A24(A) - True copy of the order No.Clt-29(2)2019-20/G/2688 dated 20.9.2019
- Annexure A24(B) - True copy of the order No.CHN.3(2)2019-S dated 24.10.2019
- Annexure A24(C) - True copy of the order No.CBS/TVM/1(15)/2019-20/1569 dated 28.11.2019
- Annexure A25 - True copy of the letter No.7/1/2013-P IV dated 8.5.2013
- Annexure R1 - True copy of the Prasar Bharathi (Broadcasting Corporation of India ) Act 1990
- Annexure R2 - True copy of the Prasar Bharathi (Broadcasting Corporation of India) Authorities for Disciplinary Proceedings Regulations 2012 dated 19.11.2012
- Annexure R3 - True copy of Prasar Bharathi (Broadcasting Corporation of India ) Amendment Act 2011
- Annexure R4 - True copy of order imposing penalty on Smt. G.K.Geetha P.Ex dated 23.10.2019
- Annexure R5 - True copy of order imposing penalty Shri.Prasad Balakrishnan P.Ex dated 23.10.2019
- Annexure R6 - True copy of order implementing R4 dated 30.12.2019 in respect of Smt.Geetha P.Ex
- Annexure R7 - True copy of order implementing R 5 dated 20.1.2020 in respect of Shri.Mr.Prasad Balakrishnan P.Ex
- Annexure R8 - A true copy of the reply dated 9.12.2014

- Annexure R9 - A true copy of the forwarding letter dated 10.9.2015
- Annexure R10 - A true copy of the covering letter of the Central Vigilance Commission dated 23.1.2018
- Annexure A26 - The true copy of letter no.CSU 1(3) 2012-PIV dated 24.8.2012 issued by the Assistant Director of Sales, Central Sales Unit, All India Radio
- Annexure A27 - A true copy of letter on File No.15/02/2019-PIV/367 dated 16.7.2019 CPIO, ADP (Commercial)
- Annexure A28 - True copy of reply dated 30.9.2015
- Annexure M.A 1 - A true copy of interim order dated 16.12.2019 in O.A No.873/2019
- Annexure M.A2 - A true copy of order dated 8.1.2020 in RA No.01/2020

...