

RESERVED

O.A. No.303/05

With

O.A. No.304/05

With

O.A. No.418/05

This the 23<sup>rd</sup> day of April, 2005.

Hon'ble Mr. S.P. Arya, A.M.

Hon'ble Mr. K.B.S Rajan, J.M.

Present: Sri S Mandhyan learned counsel for the applicant in O.A. No.303/05 and 304/05;

Sri I.P. Srivastava and Sri S.C. Tripathi learned counsel for the applicant in O.A. No.418/2005; and

Sri S Singh learned counsel for the respondents in O.A. No.303/05, 304/05 and O.A. No.418/05.

Heard on the maintainability and interim orders in respect of the O.A. No.303/05, O.A No.304/05 and 418/05 which are tagged together in view of commonality of the subject matter.

The applicants through the above O.As have sought, as interim order, stay of operation and implementation of the impugned order dated 25.02.2005, passed by the Director (P&EA) of the office of Director General All India Radio, New Delhi. As the counsel for the respondents raised a preliminary objection relating to maintainability in as much as the applicants being employees of Prasar Bharti, this Tribunal has no jurisdiction to deal with this case. This order shall deal with the preliminary objection relating to maintainability and the interim prayer as stated above.

Briefly stated, the applicants in all these O.As are presently working in the post of Programme Executive and posted at Doordarshan Kendra Varanasi.

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By order dated 25.02.2005 the Director (P&EA) has reverted a number of Programme Executive who was functioning on ad-hoc basis to their substantive posts of Transmission Executive or Production Assistants etc. whichever the case may be, with immediate effect to be replaced by ad hoc appointees. It is this order that the applicants have assailed on various grounds. As interim relief, the applicants have prayed for stay of operation of this order.

Earlier, the case which was listed for 7<sup>th</sup> April, 2005, was advanced to 29<sup>th</sup> March, 2005 as the applicants have moved a Misc. application apprehending that the respondents would give effect to the order dated 25-02-2005. The Tribunal passed an order to the effect that "status quo as of today, is directed to be maintained."

The respondents have filed a short counter reply. It has been stated by them that the Akashvani and Doordarshan have been converted into corporation w.e.f. 24.11.1997 under the Parsar Bharti Act 1991 and pay scale of certain categories of officers/officials of Programming and Engineering wing has been upgraded, after obtaining prescribed options from the concerned individuals. Options were to be called as no recruitment rules of Prasar Bharti could be finalized. Undertaking in regard to the increased pay was rendered by the individual concerned and difference of pay w.e.f. 16.04.1984 till 01.04.1999 was paid as arrears and thereafter such individuals are being paid the upgraded pay. It has further been stated that the applicants were promoted purely on ad-hoc basis till a particular time and it was on account of the expiry of the period of ad-hoc promotion that the reversion

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order dated 28.02.2005 came to be passed. The order of reversion, due to non-availability of some applicants in the office was sent to their permanent address. It has further been stated that the applicants should be reverted to their respective posts in the wake of reversion order which is much before passing of the order of maintenance of status-quo passed by this Tribunal on 29.03.2005.

The respondents have raised the preliminary objection as to the maintainability stating that the matters of Prasar Bharti do not come within the jurisdiction of the Tribunal. It has also been stated that earlier, some applicants filed O.A 138/2003 which was dismissed by this Tribunal on 19.08.2004 on the point of maintainability. The order of this Tribunal in the said O.A. was challenged in Civil Writ petition 33/05 before the Hon'ble High Court of Allahabad and the same was dismissed by a Division Bench.

The learned counsel for the parties were heard. The counsel for the applicants has maintained that in so far as jurisdiction is concerned this Tribunal very much has jurisdiction. The following two reasons are advanced by the counsel for the applicants in regard to jurisdiction:-

(a) The Prasar Bharti Act 1991 specifically provides as to the drill for transfer of services of the existing employees to corporation. Section 11 of the Act deals with the same.

11. Transfer of service of existing employees to Corporation.-(1) Where the Central Government has ceased to perform any functions which under

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Section 12 are the functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates as may be specified in the order, to the Corporation any of the officers or other employees serving in the Akashvani or Doordarshan and engaged in the performance of those functions:

Provided that no order under this sub-section shall be made in relation to any officer or other employee in the Akashvani or Doordarshan who has, in respect of the proposal of the Central Government to transfer such officer or other employee to the Corporation, intimated within such time as may be specified in this behalf by the Central Government, his intention of not becoming an employee of the Corporation.

(2) .....

(3) In making an order under sub-section (1), the Central Government shall, as far as may be, take into consideration the functions which the Akashvani or, as the case may be, Doordarshan has ceased or ceases to perform and the area in which such functions have been or are performed.

(4) An officer or other employee transferred by an order under sub-section (1) shall, on and from the date of transfer, cease to be an employee of the Central Government and become an employee of the Corporation with such designation as the Corporation may determine and shall, subject to the provisions of sub-sections (5) and (6), be governed by such regulations as may be made as respects remuneration and other conditions of service including pension, leave and provident fund and shall continue to be an officer or other employee of the Corporation unless and until his employment is terminated by the Corporation.

(b) The Ministry of Information and Broad Casting as recently as 29.06.2004

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addressed a communication to the Commissioner Kendriya Vidyalaya Sangathan to the effect that the services of employees Akashvani and Doordarshan have been placed at the disposal of Prasar Bharti on demand deputation basis under existing terms and conditions w.e.f. 01.04.2000 and that these employees are still Central Government Servants for all practical purposes till their services are transferred to Prasar Bharti under Section 11 of the Prasar Bharti Act.

As regards dismissal of O.A. no.938/03 vide order dated 19.08.2004 and order affirming the aforesaid order of this Tribunal by the High Court in Civil Writ Petition 33/05, the counsel for the applicants has stated that the said order pertains to Engineering Assistant at Doordarshan Varanasi while the applicants are functioning as Programme Executives. Further the counsel for the applicant stated that in his respectful submission, the order of this Tribunal having not taken into account the provisions of Section 11 of the Prasar Bharti Act 1991 as well as the unequivocal statements contained in the letter dated 29.06.2004, the said order of this Tribunal is *Per incuriam*. The counsel for the applicants has also invited our attention to the interim orders passed by the Lucknow Bench of the Tribunal vide order dated 14.03.2005 in O.A. No.101/2005 (Lucknow Bench) and also of the Chandigarh Bench vide order dated 10.03.2005 in O.A. No.201/JK/05.

In reply the counsel for the respondents reiterated that by giving the undertaking, the applicants have accepted their status as employees of Prasar Bharti and on the basis of the order

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dated 19.08.2004 in O.A. NO.938/03, this Tribunal does not have Jurisdiction.

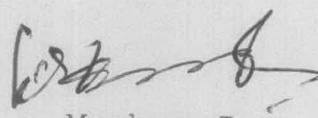
We have heard the rival contentions of both the parties. Section 11 of the Prasar Bharti Act is specific that the Central Government has to transfer, by order and w.e.f. such date as may be specified in the order, to the corporation any of the officers or other employees serving in the Akashvani or Doordarshan and engaged in the performance of those functions. The letter dated 29.06.2004 addressed by the Ministry of Information and Broadcasting confirms to the effect that such an order of transfer of employees w.e.f. a particular date has not so far been issued. As such in our considered view the applicants continue to be the employees of Central Government only. As regards the earlier order in O.A. No.938/03, the same, in our humble opinion, has not taken into consideration the statutory provisions of Section 11 of the Prasar Bharti Act extracted above. It is settled law that an order passed without taking into account any statutory provision can well be held as per *incuriam*. In addition, the said order does not deal with the Programme Executives, and nothing is on record to show that both the Program Executives and the Engineering Assistants are on the same pedestal. Hence we are of the considered view that this Tribunal has jurisdiction to deal with this case and the question of maintainability is accordingly answered in affirmative.

Coming to the next aspect of the case, i.e. the interim prayer, the applicants have contended that the order impugned is illegal, arbitrary and unreasonable and further no opportunity of hearing has been given while reverting the applicants to the post of Programme Assistant. It has also been

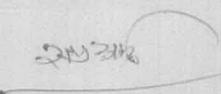


contented that the ad-hoc appointee cannot be permitted to be replaced by another ad-hoc appointee. The order has been assailed as violative of Article 14 and 16 as well. It is also been stated that the applicants have not so far been reverted from the post of Programme Executive. Considering that there is a *prima facie* case made out by the applicants and that the balance of convenience and interest of justice are in favour of the impugned order being stayed, we direct the respondents to keep in abeyance order dated 25.02.2005 (impugned in the O.As) till the disposal of these O.As. The applicants in these OAs shall continue to function in the same post as they were prior to issue of the order dated 25-02-2005.

The respondents may file their detailed counter affidavit within four weeks and rejoinder if any, within two weeks thereafter. The case is listed for further orders on 01.06.2005.



Member-J



Member-A

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