

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 24th day of March, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.  
HON. MR. D. R. TIWARI, A.M.

O.A. No. 662 of 2000

Sri S.V.L. Satya Narayana, aged about 25 years S/O Sri S. Panduranga Rao R/O Doordarsan Kendra, Gorakhpur.  
.....  
.....Applicant.

Counsel for applicant : Sri. S. Agarwal, K.P. Singh.

A N D

O.A. No. 663 of 2000

Sri Amjad Hasan Rizvi, aged about 24 years S/O Late Mahmood Hasan Rizvi R/O 56, Awas Vikas Colony, near Supply Office, Lal Mothi, Shahpur Gorakhpur, P.O. Gita Batika-273 006.  
.....  
.....Applicant.

Counsel for applicant : Sri S. Agarwal, Sri K.P. Singh.

Versus

1. Union of India through the Secretary, Information and Broadcast, Govt. of India, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi.
2. The Chief Executive Officer, Prasar Bharti Board, B.C.I. Doordarshan Bhawan, Copernicus Marg, New Delhi.
3. The Director, Doordarshan Kendra, Gorakhpur.  
.....  
.....Respondents.

Counsel for respondents : Sri G.R. Gupta.

ORDER (ORAL)

BY HON. MRS. JUSTICE S.R. SINGH, V.C.

Heard Sri S. Agarwal and Sri K.P. Singh, learned counsel for applicants and Sri G.R. Gupta, Additional Sr. Standing Counsel appearing for the respondents. We have also perused the pleadings. As the cause of action and relief sought for are same, with the consent of both the parties, ~~this~~ <sup>the</sup> <sup>one</sup> O.A. is disposed of by a common order. The leading O.A. is 662/00.

*(Signature)*

2. The applicant, it is not disputed, was appointed to the post of Film/Video Editor the vacancy to which post was advertised by the Director, Prasar Bharti, Braodcasting Corporation of India, Doordarshan Kendra, Gorakhpur vide advertisement No.EN 35/125 published in Rozgar Smachar 27.11.99 - 3.12.99. The applicant being eligible had applied for the post and on being selected he was offered appointment to which he gave his consent where upon he was appointed vide letter dated 21.3.2000. The appointment order dated 21.3.2000 reads as under : -

"Shri S.V.I. Satyanarain son of Shri S.Pandurganga Rao, 4-121, Chandrampalam, Maduerawada, Visakhapatnam, Andhra Pradesh is appointed as Film/Video Editor at this Kendra in the scale of pay of Rs.5000-150-8000 w.e.f. 21.3.2000(F/N) in a temporary capacity until further orders. He will be drawn an initial basic pay of Rs.5000/- per month plus usual allowances admissible as per rules from time to time.

He will be on probation for a period of two years from 21.3.2000."

3. By impugned order dated 7.6.2000, the services of the applicant have been terminated w.e.f. the date of expiry of a period of one month from the date of service of the order. The impugned order purports to have been passed in exercise power under sub-rule(1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Sri G.R.Gupta has raised a preliminary objection as to maintainability of the O.A. on the grouud that the applicants happens to be the servant of Prasar Bharti, which is a Corporation and has not yet been notified under section 14(2) of the A.I. Act 1985 and, therefore, the Tribunal has no jurisdiction to entertain the application which pertains to a service dispute of an employee of Prasar Bharti. Sri S.Agarwal, counsel for the applicant submits that the applicant happens to be a Govt. on "deemed deputation" w.e.f. 1.4.2000 under the Prasar Bharti. Sri S. Agarwal has placed reliance on Section 9 and 10 of the Prasar Bharti Act, 1990 and order No.20/2002-BA-P dated 05.9.2002 issued in partial modification of an earlier order

149

of  
earlier order dated 19.2.2002/Government of India, Ministry of Information & Broadcasting thereby providing that "services of all the Government Servant presently working in erstwhile Akashvani and Doordarshan are placed at the disposal of Prasar Bharti on existing terms and conditions, on deemed deputation without deputation allowance with effect from 1.4.2000." The order further provides that it would remain in force till these employees are transferred to Prasar Bharti Corp. in accordance with the provisions of Section 11 of Prasar Bharti Act, 1990 or until further orders, whichever is earlier. Section 9 of the Prasar Bharti Act provides for appointment after consultation with the Recruitment Board, of the Director General (Akashvani), the Director General (Doordarshan), the Executive Director (Finance), the Executive Director (Personnel) and such other officers and other employees as may be necessary. The method of recruitment of such officers and employees, it is provided in Section 9(2) of the Act, shall be such as may be provided by regulations. It is not disputed that regulations have not yet been framed in exercise of powers under section 9(2) of the Act.

4. Section 10 of the Act provides that 'as soon as may be after the appointment day and in such manner and subject to such conditions and restrictions as may be prescribed, the Government may establish, for the purposes of Section 9, one or more Recruitment Boards. There is nothing on the record to show that "appointed day" within the meaning of Section 10(1) has been notified nor is there anything to show that any Recruitment Board has been constituted. In the advertisement(Annexure A-4), the post of Video Film Editor has been categorised as General Central Service Group 'C' Programme (Tech. Cameraman), Non-Gazetted, Non-Ministerial. We are, therefore, of the view that the applicant belongs to the category of general Central Services Group 'C' and is a Government servant to be under deemed deputation with the Prasar Bharti in terms of the order No.20/2002-BA-P. Therefore, the Tribunal has jurisdiction to entertain the O.A. The view

Deepti

we are taking find report from a Full Bench of C.A.T. Lucknow Bench in case of Sushil Kumar Tewar and Others Vs. U.O.I. & <sup>been</sup> Others Vol.31 2000(2) AJ "wherein it has/held that Tribunal has jurisdiction to entertain the O.A.s claiming regularization against Prasar Bharti.

5. Coming on the merit, Sri S.Agarwal, counsel for the applicant has submitted that provisions contained/in rule 5 of the Central Civil Services provisions Temporary Service Rules, 1965 are not attracted for the reason that the applicant does not come within the purview of "temporary service" as defined in Sec. 2(d) of Central Civil Services Temporary Service Rules, 1965. We find substance in the submission made by Sri S.Agarwal. 'Temporary Service', as defined in section 2(d) of the rules, "means the service of a temporary Government servant in a temporary post or officiating service in a permanent post, under the Government of India." The post as advertised was a permanent post and not a temporary post. The appointment of the applicant, though temporary in nature, was against the permanent post and it being not in nature of 'officiating service in a permanent post' would not come within the purview of the term 'Temporary service' as defined to in Section 2(d) of the Rules. We are, therefore, of the view that the impugned order of termination is liable to be set aside on this ground alone.

6. The second submission of Sri S.Agarwal, counsel for applicant is that even it be assumed that the applicant was in "temporary service" as defined in Section 2(d) of the Rules, termination of the services under Rule 5(1) could be ordered on the ground of unsuitability or abolition of post or replacement by a permanent official but in the instant case, as stated in the counter affidavit, the termination of the services of the applicant was ordered on the ground that he was appointed during the period of ban. Office memo dated 5.7.99(Annexure SCA-2) makes it abundantly clear that ban on filling up the vacant post had been lifted by the Directorates's order dated 8.1.99

*(Signature)*

and by the said memo, the Heads of the Kendras were requested to fill up the posts lying vacant at their office keeping strictly in mind the reservation orders in respect of SC/ST/OBC. Office memo dated 17.8.99 would indicate that though the ban had been lifted but the Ministry, Department were undertaking review of the posts in the Ministry/Department and till the completion of review it was decided that 'no vacant posts shall be filled up except with the approval of Ministry of Finance, Department of Expenditure).' It would appear from the order dated 22.11.99 annexed as Annexure SCA-10 that the Govt. once again imposed a ban to fill up the vacant posts but this time the ban was in respect of only 4 categories of posts namely Cameraman Grade-III, Graphic Artist, Make-up Assistant and Instrumentalist. No ban was re-imposed for the post of Film/Video Editor. Though it is settled that validity and legality of an order is to be tested on the reasons given in the order it-self - Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi and others 1978 SC 851 and not on the basis of reasons stated in the affidavit but even if we test the order on the reasons given in the affidavit, we find that there was, in fact, no ban at the time of selection and appointment of the applicant. In this view of the matter, the order of termination would be deemed to have been passed arbitrarily and without any basis.

7. We also find substance in the submission made by learned counsel for applicant that termination on the ground of alleged ban without affording opportunity of showing cause was illegal and contrary to the law laid down by the Hon'ble Supreme Court in Basudeo Tiwary Vs. SIDO Kanhu University & others 2002 ESC 977 (AID). That apart the impugned order is

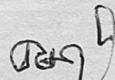
*Par*

vitiated on yet another ground. Termination of service was effected at the dictates of a superior authority vide office memo dated 2.6.2000 (Annexure SCA-16) issued by the Director (Administration), Doordarshan, New Delhi. It is well settled that exercise of statutory powers by the competent authority at the behest of superior authority is bad in law.

8. In view of the above discussion, the O.A. succeeds. The applicant is entitled to all consequential benefits. The respondents are directed to implement the order within a period of two months from the date of receipt of a copy of this order.

No order as to costs.

  
MEMBER (A)

  
VICE-CHAIRMAN

Asthana/