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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 1310 of 2004
Cuttack, this the 17th day of July, 2008

Manavanjan Hota ... Applicants
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Manavanjan Hota, aged about 66 years, Son of Late Sivakumar Hota,
Village/PD/PS.Athamallick, District-Anugul.

..... Applicant

By legal practitioner: M/s. S.K.Rath & R.K.Parida, Counsel.

-Versus-

1. Director General, Prasar Bharati Broadcasting Corporation of India Limited, Akash Vani Bhawan, Parliament Street, New Delhi.
2. Station Director, Prasar Bharati Broadcasting Corporation of India Limited, All India Radio, Sambalpur, At/PD/Dist. Sambalpur.

...Respondents.

By legal practitioner: Ms. Swapna Mohapatra, ASC

O R D E R

MR. C.R.MOHAPATRA, MEMBER(ADMN.):

The Applicant in this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeks the following relief:

"To direct the Respondents to count the monthly contract period of service with effect



15.08.1968 till 24.01.1978 for the purpose of notionally fixation of scale of pay at the rate of Rs.133/- w.e.f. 15.07.1968 and Rs.170/- w.e.f. 01.04.1971 and Rs.425/- w.e.f. 01.01.1974 and be re-fixed as per the subsequent pay revision as effected till 30.11.1995 for the post of Compare/Announcer and further to direct the Respondents to grant arrear differential pension to the applicant with interest at the rate of 12 per cent per annum with effect from 01.12.1995 till such payment.

To quash the order dated 31.10.2000 as in Annexure-10 and in consequence thereof, to direct the respondents to notionally fix time scale of pay of the applicant at the scale of pay of Rs.210/- with effect from 01.04.1971 and accordingly fixation be revised in the appropriate time scale till 30.11.1995 as per the scale available for the post of Announcer and the monthly pension be revised and the differential pension amount be released in favour of the applicant with interest at 12% per annum. This may be done and fixation be made as in Annexure-11 (the chart)."

2. Fact, in nut shell, according to Applicant is that he was appointed under Station Director, All India Radio, Sambalpur, on long term monthly contract basis as Staff ARTIST(Compere) with the pay of Rs.133/- plus allowances as admissible to regular staff Artists w.e.f. 15.7.1968 and continued to discharge his duties without any break 24.01.1978. The Applicant was getting the same scale of pay what was



drawn by regular Staff Artists of the All India Radio. However, in the year 1971 the scale of Artists was enhanced from Rs.133/- to Rs.170/- But the Applicant was deprived of getting the enhanced scale granted to the regular Staff Artists of All India Radio, although he was discharging the same duties with same qualification. His repeated representations, in this connection, did not yield any fruitful result. Such contractual appointment of the Applicant continued till 24.01.1978 followed by regular appointment as Staff Artists Announcer (Compere) on 25.01.1978. Protracted correspondence between the Applicant for counting the past contractual periods for all purposes yielded no result, the Applicant approached this Tribunal in OA No. 219 of 1991. However, in the light of the directions of this Tribunal dated 19.07.1995 to consider the grievance of Applicant, the Respondents vide order under Annexure-5 dated 13th October, 1995 directed for counting the contractual period of service of the Applicant from 15.07.1968 to 24.01.1968 for the purpose of pensionary benefits only. On 30.10.1995 the Applicant retired from service. Fixation of pension taking into consideration his existing pay without notional increment and fee for the contractual periods, in spite of recommendation of the Station Director, All India Radio, formed the subject matter of consideration in O.A. No. 795 of 1995 with prayer to direct the Respondents to fix the pension of applicant after taking into

consideration his past period of service as staff Artist on monthly contract basis and after giving him notional increment and fee as per recommendation contained in letter dated 31.3.1989 and for payment of differential salary from 25.01.1978 till 30.10.1995. This OA was disposed of by this Tribunal on 7th August, 2000 with certain direction relevant portion of which are quoted herein below:

"7. From the perusal of the file of the Directorate produced by the respondents, no view can be taken if the case of Nisith Ranjan Nayak was similar to the case of the Applicant. Along with the file, the Learned Additional Standing Counsel has produced a certificate dated 08.09.1993 issued by Station Director, All India Radio, Cuttack in which it has been certified that casual contract service of Nisith Ranjan Nayak, Selection Grade, Announcer, All India Radio is counted with effect from 01.09.1964 as per Directorate General, All India Radio, New Delhi's Order No. 12/6/83-S.VII dated 11/30-08-88. From this also it is not clear whether in the case of Nisith Ranjan Nayak his period of contract service was counted as pensionable service only or if in the case of Nisith Ranjan Nayak, on regularization his pay was notionally fixed at a higher stage taking into account the period of his contract service. The Tribunal had directed in their order in OA No. 219/91 the Director General, All India Radio to consider the representation of the applicant. In his representation filed in pursuance of the above direction of the Tribunal the applicant has mentioned the case of Nisith Ranjan Nayak. The dealing assistant had suggested checking up of the case of Nisith Ranjan Nayak.

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But unfortunately this suggestion was ignored at higher level and this aspect was not considered. The suggestion of the dealing assistant to check up the matter with Station Director, All India Radio, Cuttack where Sri Nisith Ranjan Nayak was regularized was not followed up. From the certificate dated 8.9.1993 filed by the Learned Additional Standing Counsel it appears that casual service of Nisith Ranjan Nayak was counted with effect from 1.9.1964 as per Directorate General, All India Radio, New Delhi Order No. 12/6/83-S.VII dated 11/30.8.1988 referred to by us earlier. It will, therefore, not be difficult for the respondents to locate the case of Nisith Ranjan Nayak in the Directorate itself now that the number and date of the order of the Directorate are available. In view of this, we direct that respondent no.2 should check up the case of Nisith Ranjan Nayak and in case pay of Nisith Ranjan Nayak, on his regularization, was fixed at a higher stage taking into account his service on monthly contract basis, then the same benefits should be allowed to the applicant notionally subject to a second more important consideration. This consideration is **whether the cases of Nisith Ranjan Nayak and the applicant are exactly identical**. From the letter dated 31.3.1989 at Station Director, All India Radio, Sambalpur was created in Directorate's letter dated 3.8.1968. The applicant was booked against that post. The post was advertised and recruitment was made, but the selected candidate did not join the post. It is further mentioned that two persons were issued offer of appointment, one after another but none of them joined. Under these circumstances the applicant continued to be booked on monthly contract basis without any break till he

was regularized with effect from 25.1.1978. It also appears that **the applicant was regularized after relaxation of the Recruitment Rules**. Thus the circumstances may not be the same as in the case of Nisith Ranjan Nayak. We are unable to take any view on this primarily because in this OA **the petitioner has not made any averment with regard to the case of Nisith Ranjan Nayak** and therefore, the respondents were not in a position to give any reply. In spite of this, the above direction is being issued because the Tribunal in their order in OA No. 219 of 1991 had mentioned the case of Nisith Ranjan Nayak and about identically of the two cases. The applicant has also mentioned the case of one L.D.Sahu. But his case has been mentioned by the applicant only in the rejoinder and therefore, no direction is being issued for comparing the case of the applicant with that of Shri L.D.Sahu. The above direction of ours regarding checking up of the case of Nisith Ranjan Nayak **to determine if his case was exactly identical** to that of the applicant and to allow the applicant the same benefit as had been allowed to Nisith Ranjan Nayak only with regard to notional fixation of pay, should be complied with within a period of 60 (sixty) days from the date of receipt of copy of this order."

3. The above order of this Tribunal was challenged by the Applicant in the Hon'ble High Court of Orissa in OJC No. 11318 of 2000. While the matter was, thus, pending before the Hon'ble High Court of Orissa, the Respondent-Department in compliance of the aforesaid order of this Tribunal considered the case of Applicant vis-à-vis Shri Nisith



Ranjan Nayak and did not find any substance on the grievance of Applicant. Accordingly, rejected the claim of Applicant and communicated to him vide letter under Annexure-10 dated 31.10/01.11.2000 which reads as under:

"In pursuance to the order dated 7th August, 2000 passed by Hon'ble CAT, Cuttack in OA No. 795/95, the competent authority has examined your case in comparison to the case of Shri N.R.Nayak, Announcer, AIR, Cuttack. While Shri Nayak was given monthly contract w.e.f. 01.09.1964 after his regular selection your appointment on regular selection was made only on 25.01.1978. Moreover, in both the cases monthly contracts have been counted for pensionary benefits. However, the pay of **Shri Nayak has not been fixed notionally due to counting of his monthly contract.** Accordingly, you are also not entitled to any benefit of notional fixation of pay for the monthly contract from 15.7.68 to 24.1.78."

4. In view of the order dated 31.10/01.11.2000 passed by the authority during the pendency of the Writ petition, the Hon'ble High Court disposed of the matter with liberty to the Applicant to approach this Tribunal, if so advised, as against the order dated 31.10.2000. Hence this OA.

5. Respondents have contested the claim of the Applicant by filing counter and additional counter and the Applicant has also filed rejoinder to the counter and additional counter filed by the Respondents.

6. Heard Learned Counsel for both sides and perused the materials placed on record. Learned Counsel for the Applicant submitted that the order of rejection under Annexure-10 was passed by the Respondents without verification of the official records of the Applicant vis-à-vis his counter parts namely Shri N.R. Nayak and Shri L.D. Sahu. Impugned order under Annexure-10 is also not sustainable being opposed to the mandate available under Article 14 of the Constitution of India envisaging that none can be discriminated against. Further contention of the Learned Counsel for the Applicant is that on scrutiny of earlier order of this Tribunal vis-à-vis the order of rejection under Annexure-10 it would be established that the rejection is not in accordance with the orders of this Tribunal and is a bald one. He has also argued that there has been no difference between the appointment of S/Shri Naik, Sahu and the present Applicant. In the same manner and procedure all of them were selected and appointed and as such, grating the benefits to them and denying the same to Applicant is against all canons of justice, equity and fair play. It has been stated that in case his prayer is allowed, there would be some enhancement in his pension and pensoinary benefits which would be immense help for him for his last part of his life. Accordingly, Learned Counsel for the Applicant has very much insisted for allowing his prayer made in this OA.

7. Per contra, Learned Counsel appearing for the Respondents relying on the averments made in the additional counter filed on 21.05.2008 submitted that the case of the Applicant and S/Shri Nayak and Sahu stand on different footing. It has been clarified that monthly contract was issued to Shri N.R. Nayak from 01.09.1964 pending completion of verification of character and antecedents as he was appointed as staff artist (Announcer) on the basis of regular recruitment. In other words, Shri Nayak was given monthly contract w.e.f. 01.09.1964 after his selection for regular appointment to the post of staff artist (Announcer) till such time of completion of verification of character and antecedents. After completion of verification, his appointment was regularized w.e.f. 01.09.1964 (Long Term Staff Artist Contract) on 01.01.1966. Accordingly, the Applicant Shri M.V.Hota was informed vide D, AIR's letter No. 32/1/96-SVIII/1214 dated 31.10/01.11.2000 that the pay of Shri Nayak had not been fixed notionally with effect from 01.09.1964 by counting the period of his service rendered on monthly contract basis w.e.f. 01.09.1964 (Annexure-R/VI). Similarly, it has been stated by him that in the case of Shri L.D. Sahu, he was appointed as regular staff Artist w.e.f. 01.12.1966 as per a valid agreement signed between Shri L.D.Sahu and competent authority in All India Radio, Cuttack on 18.3.1967. For the said regular appointment Shri



Sahu was called for necessary tests on 24th and 25th February, 1966 at AIR Jeypore (Orissa) vide AIR, Jeypore's letter No. JPR-I(I) 66-P-IV/329 dated 22.02.1966 (Annexure-R-XII). Subsequently an agreement in the prescribed format for Staff Artist (Announcer) was signed between Shri Sahu and SD, AIR, Cuttack. As per the agreement dated 18.3.1966 (Annexure-R-XIII) the initial staff artist contract in respect of Shri Sahu was for a period of one year w.e.f. 01.12.1966 pending completion of verification of character and antecedents. The long Term Contract with Shri Sahu was extended till 27.9.97 after completion of verification of character and antecedents (Annexure-R/XIV). The pay of Shri Sahu had not been fixed notionally prior to his date of regular appointment w.e.f. 01.12.1966. Learned Counsel for the Respondents has submitted that the applicant was initially engaged to perform the job of Announcer/Compere in the Farm and Home Unit of AIR, Sambalpur on casual monthly contract basis w.e.f. 15.07.1968. He continued to be so engaged as casual assignee on monthly contract at different times up to 24.1.1978. The Applicant was given regular appointment as Announcer/Compere (Staff Artist) in relaxation of the recruitment rules for staff artist w.e.f. 25.1.1978 at AIR, Sambalpur in accordance with the instructions regarding engagement of Staff artists in All India Radio on long term staff artist contract with only modification that he would

remain on probation for one year. It was also decided to offer him a contract for three years after completion of formalities in regard to verification of his character and antecedents, medical examination etc. as per the DG, AIR's Memorandum No. 10/12/74-VIII (Sambalpur) dated 21.01.1978 (Annexure-R/IX). It has further been clarified that as per the Director General, AIR, New Delhi Memorandum dated 11/30.08.1988 it was decided in consultation with Department of Pension and Pensioner's Welfare that service rendered under short term contract (without any break in service) including monthly contract pending completion of verification of character and antecedents will be counted for the purpose of pensionary benefits in case of Staff Artists converted into Civil Central Government Employees or Artists converted into Civil Central Government Employees or Artists, as the case may be. It was made clear in the said memorandum that the contract service rendered on casual basis/assignment basis for a period of fortnight or 6 days will not be taken into account for this purpose. It was subsequently clarified in the matter of tenure of contract to be offered to the Staff Artists vide Memorandum dated 18.03.1991 that the contractual service, if any, rendered prior to the date of their selection for the posts of Staff Artists, will not be counted for the purpose of retirement benefits (Annexure-R/I and R/II).

8. In the rejoinder to the additional counter filed by the Respondents it has been averred by the Applicant that the case of applicant is identical with N.R. Nayak and L.D. Sahu and, therefore, as per the settled position of law since the identical employees got regularized their casual period for purpose of promotion, seniority and consequently pension, there is no legal bar to grant applicant only notional fixation for pension for 15-8-1968 to 24-01-1978.

9. Thoughtful consideration has been given to various arguments advanced by the parties. Also perused the materials placed on record. We find no satisfactory answer as against the reasons explained by the Respondents to accede to the request of the Applicant. Applicant has stated in his rejoinder that in view of the recommendation of the station director he had a strong case for absorption as regular staff artist earlier like that of Nayak and Sahu. But it is too late in the day to take such plea; for the same having not been agitated at the right time. It is trite law that any appointment made contrary to rules is void and the appointee cannot claim any legal right over such illegal/irregular appointment. It is settled law that the Tribunal cannot sit over the decision of the administrator it has only power to interfere if there has been miscarriage of justice in the decision making process of the matter. From the foregoing notes, we find no wrong in the decision

making process of the matter in not allowing the Applicant to have notional fixation of his pay by taking into consideration the contractual period of service. In view of the above, we are bound to hold that the Applicant has failed to substantiate his claim made in this OA. Thus, the OA stands dismissed by leaving the parties to bear their own costs.

Kappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Chapka
(C.R. MOHAPATRA)
MEMBER (ADMN.)

KNM/PS.