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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.149 of 2006

Cuttack, this the 3rd day of October, 2007

Namita Satpathy

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ? *yes*.
- 2) Whether it be sent to the Principal Bench of the Tribunal or not? *yes*.



(N.D.RAGHAVAN)
VICE-CHAIRMAN

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MA 214/06
with reply &
reply memo?

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.149 of 2006
Cuttack, this the 30 day of October, 2007

CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

.....
Namita Satpathy, d/o Sri Nrusingha Charan Senapati @ Satpathy,
At-Rajabagicha (Baimundi Marg), P.O-Telenga Bazar, Town/Dist.
Cuttack, through Sri Srimant Das, Advocate.....Applicant

Advocates for applicant - M/s Srimanta Das
A.Mohanty
M.K.Swain

Vrs.


1. Union of India, represented through the Secretary to Government of India, Ministry of Information and Broadcasting, New Delhi.
2. Prasar Bharati (Broadcasting Corporation of India) represented through Chief Executive Officer (C.E.O.), Mandi House, New Delhi.
3. Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi 1.
4. Station Director, Prasar Bharati (B.C.I.), All India Radio, At/PO/Dist.Cuttack

..... Respondents.
Advocate for Respondents - Mr.S.B.Jena, ASC

ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This Original Application was filed on 14.2.2006 and placed before the Bench for considering the question of admission on 20.2.2006 when notices on the question of admission were directed to be issued to the Respondents requiring them to file counter within six weeks. After completion of pleadings, the O.A. was placed before the Bench on




18.7.2007 when, at the request of the learned Additional Standing Counsel, the hearing was adjourned to 31.7.2007.

2. When the O.A. was placed before the Bench on 31.7.2007 the learned counsels M/s Srimanta Das, A.Mohanty and M.K.Swain for the applicant and the learned Additional Standing Counsel Mr.S.B.Jena for the Respondents remained absent due to ~~due to~~ Advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar resolutions passed without ^{- any basis, like} substance or value but violating principles of natural justice too. In this connection, I would like to refer to the decision in the case of Ramon Services Private Limited Vrs. Subash Kapoor and Others, reported in JT 2000 (Suppl. 2) Supreme Court 546, holding as follows:

"When the advocate who was engaged by a party was on strike, there is no obligation on the part of the court either to wait or to adjourn the case on that account. It is not agreeable that the courts had earlier sympathized with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods, it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without — the — aid — of — a — Counsel."
(Judgment Paras-5 & 14)

"In future, the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate. The litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, the same court has power to permit the party to realize the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause, — the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any Advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. So, when he opts to — strike work or boycott the court, he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his



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brief to that advocate with all confidence that his cause would be safe in — the — hands — of — that — advocate.”
(Para-15)

“In all cases where court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realize the costs from the advocate concerned without driving such party to initiate another legal action against the advocate.”
(Para-16)

“Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two, besides statutory limitations, restrictions, and guidelines incorporated in the Advocates Act, the Rules made thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service oriented profession. The relationship between the lawyer and his client is one of trust and confidence.”
(Para-22)

“No advocate could take it for granted that he will appear in the Court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing or further proceedings. In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting Counsel for the costs paid. In appropriate cases, the Court itself could pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting Courts may also be contributory to the contempt of this Court.”

(Paras-24, 27 &

28)

3. Keeping in view the aforesaid case law laid down by the Hon'ble Supreme Court, condemning severely such strike as contempt of Court particularly Hon'ble Supreme Court itself and leaving the Ld.Counsels including those representing Government/s at the peril of



facing the consequences thereof, the available record on hand has been perused for adjudicating the issue as below.

4. Applicant Smt. Namita Satpathy has filed this Original Application for the following relief:

“8. Relief(s) sought for:-

In view of the facts mentioned in paragraph 4 above the applicant prays for following reliefs:-

- (a) To admit the O.A. and issue notice to the respondents asking them as to why the grievance of the applicant shall not be mitigated by regularizing her services in vacant post of Trexe/Editor or such other post available in A.I.R., Cuttack as per the Scheme of Prasar Bharati meant for casual Artists/Comparers.
- (b) Call for the records;
- (c) In absence satisfactory reply to direct the respondents to consider the valuable service of the applicant of rendered to AIR since November 1999 and more particularly from July 2001 till date and to regularize her services against the vacant post of Trexe-Editor or such other post available in F & H Section, A.I.R., Cuttack as per the benevolent Scheme of Prasar Bharati meant for Casual Artists/Comparers/Announcers with all financial and service advantages.
- (d) Also to direct the respondents to pay Rs.600/- and above per assignment bookings instead of Rs.300/-and to disburse the payment for the 24 days extra broadcastable programme in each month since July 2001 till date, in view of the applicant's continuous high rated programme since 2001 till regularization is effected.
- (e) To direct the respondents not to take any adverse or harsh actions against the applicant in view of the present claim through litigation;
- (f) To pass such other order(s)/direction(s) as deem fit and proper in the facts and circumstances of the case.”

5. Brief facts of the applicant's case are that in response to the advertisement aired by the Prasar Bharati(Broadcasting Corporation of India), All India Radio, Cuttack, in Radio in July 1999, she submitted



her application for selection as Casual Compere of Farm and Home Programme, All India Radio, Cuttack. She was issued with call letter dated 19.7.1999 (Annexure A/2) requiring her to appear at the written and voice tests. By letter dated 31.8.1999 (Annexure A/3) it was intimated to the applicant that she had been found suitable for Casual Compere of Farm & Home Programme. In appreciation of her performances as Casual Compere, she was issued certificates of appreciation by the concerned authorities, vide annexure A/4 series. In due course, the Respondent-authorities enhanced her remuneration in 2001, vide Annexure A/5 series. Annexures A/6 series and A/7 series are the Gate Passes, Log Book, Cue Sheets and other Registers showing the applicant to have been performing her duties regularly. The applicant submitted representation in December 2003 (Annexure A/8) and another in November 2004 (Annexure A/9) praying for absorption in a permanent post of Compere/Announcer/Editor or Sub-editor/Trexe lying vacant at AIR, Cuttack. When no decision was taken on her representations, she had also filed OA No. 596 of 2005 which was disposed of by the Tribunal on 20.7.2005 (Annexure A/11) with a direction to the Respondents to dispose of her representation dated 5.11.2004 within sixty days from the date of the Tribunal's order. Notwithstanding the direction of the Tribunal, the Respondents having not considered and disposed of her representation, the applicant has filed the present Original Application for the reliefs, mentioned earlier.



6. The Respondents have filed a detailed counter resisting the prayer made by the applicant. They have, inter alia, stated that the O.A. is not maintainable; that the applicant had applied for engagement as Casual Compere and was engaged by Cuttack Station on 'casual assignment basis'; that the question of regularization of her service as Transmission Executive/Editor/Production Assistant/Sub Editor/Assistant Editor did not arise because she was neither engaged on casual basis in any of the said posts nor she did perform the duties attached to the same; that the Recruitment Rules do not provide for regularization of her services against any of the said posts; that there is no scheme for regularization of Casual Compere; that booking of casual artistes/talents is an inherent feature of programme broadcast in AIR and the panel of Casual Artistes is subject to revision from time to time to induct fresh talents; and that therefore, the claim of the applicant is baseless. The Respondents have also relied on different judicial pronouncements by the Hon'ble Apex Court, High Courts and Tribunal and strongly refuted the claim of the applicant and have prayed for dismissal of the Original Application as being devoid of merit.

7. No rejoinder has been filed by the applicant refuting the stands taken by the Respondents.

8. From the above recitals it is clear that that the applicant had applied for engagement as Casual Compere and was engaged by Cuttack Station on 'casual assignment basis' in July 1999. She was never



engaged as Casual Transmission Executive/Editor/Production Assistant/Sub Editor/Assistant Editor, nor did she perform the duties attached to any of the posts. She has been continuing as Casual Compere on 'casual assignment basis' only. Though the Respondents have raised a plea in their counter that the present O.A. is not maintainable, but they have not indicated therein as to how the present O.A. is not maintainable. Undoubtedly, the All India Radio has since become Prasar Bharati (Broadcasting Corporation of India) with effect from 23.11.1997. Under sub-section (3) of Section 14 of the Administrative Tribunals Act, 1985 the Central Administrative Tribunal shall exercise, on and from the date with effect from which the provisions of the said sub-section apply to any local or other authority or corporation or societies, all the jurisdiction, powers and authority exercisable immediately before that date by all Courts except the Hon'ble Supreme Court in relation to recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society and all service matters concerning a person appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs. Under sub-section (2) of Section 14 of the Administrative Tribunals Act, 1985, the Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the



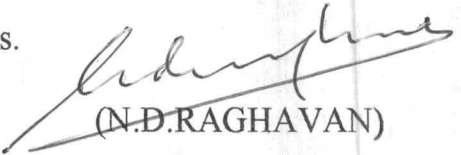
territory of India or under the control of the Government of India and to corporation or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government. Admittedly, while continuing as Casual Compere on 'casual assignment basis' in the Prasar Bharati, the applicant has filed the present O.A praying for a direction to Respondents, who are functionaries of the Prasar Bharati, to regularize her services in vacant post of Trexe/Editor or such other post available in A.I.R., Cuttack and to pay Rs.600/- and above per assignment bookings instead of Rs.300/-and to disburse the payment for the 24 days extra broadcastable programme in each month since July 2001 till date, in view of the applicant's continuous high rated programme since 2001 till regularization is effected. She has also prayed for a direction to the respondents not to take any adverse or harsh actions against the applicant in view of the present claim through litigation. It is thus clear that the reliefs claimed by the applicants are directly against Prasar Bharati. The posts against which she seek regularization and/or appointment are borne in the establishment of Prasar Bharati over which this Tribunal has no jurisdiction in the absence of a notification being issued by the Central Government under Section 14(2) of the Administrative Tribunals Act, 1985. In view of this, the Tribunal cannot entertain and try the Original Application for the purpose of granting the reliefs claimed by the



applicant against the Prasara Bharati and the Original Application in its present form is not maintainable.

9. In the above view of the matter, I am not inclined to proceed further and discuss the issues raised by both the parties on merits. See

10. In the result, the Original Application, being not maintainable due to lack of jurisdiction of the Tribunal over Prasara Bharati, is rejected at the stage of admission itself. The interim order passed on 20.2.2006 stands vacated. No costs.


(N.D. RAGHAVAN)

VICE-CHAIRMAN

fix for pronouncement
on 03.10.07 at PM.
See