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CENYRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 408 of 2012

Cuttack this the 4th day of April, 2016

Nihar Ranjan Sahoo & anr...Applicants

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ^{No}
2. Whether it be referred to CAT, PB, New delhi for being referred to various Benches of the tribunal or not? ^{No}

S.K.Pattnaik
(S.K.PATTNAIK)
MEMBER(J)

R.C.Misra
(R.C.MISRA)
MEMBER(A)

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CORAM;
HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)

1. Nihar Ranjan Sahoo
Aged about 53 years
C/o.Niranjan Sahoo
D.P.M., G.P.O.,
Buzi Bazar
Cuttack-753 001
2. Chitta Ranjan Mohanty,
Aged about 38 years
S/o.Bholanath Mohanty
At-Deulasahi
PO-Tulasipur
City/Dist-Cuttack-753 008

...Applicants

By the Advocate(s)-M/s.K.P.Mishra
S.Mohapatra
T.P.Tripathy

-VERSUS-

Union of India represented through:

1. The Secretary
Ministry of Information & Broadcasting
ShastriBhawan
New Delhi-110 001
2. Director General
All India Radio
Akashvani Bhawan
SansadMarg
New Delhi-110 001
3. Chief Executive Officer
Prasar Bharati
New Delhi-110 001

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 4. Station Director
 All India Radio
 Akashvani
 Cuttack
 City/District-Cuttack-753 001

...Respondents

By the Advocate(s)-Ms.S.Mohapatra

ORDER

R.C.MISRA, MEMBER(A):

Both the applicants in this O.A. having a common cause of action and on being permitted by the Tribunal to jointly prosecute this O.A. have invoked the jurisdiction of this Tribunal under Section 19 of the A.T.Act, 1985, seeking the following relief.

"To quash the microphonic voice test in response to review of performance by the respondent no.4 by concurrently holding the same as bad, illegal, especially when O.A.No.346 of 2011 is pending for adjudication".

2. Facts of the matter in a nut shell are thus: Both the applicants claim to have been empanelled for engagement as Announcers/Comperes on casual basis under the administrative control of the Station Director, All India Radio, Cuttack (res.no.4) through a regular process of selection. Seeking regularization of their services they along with others have filed O.A.No.346 of 2011 before this Tribunal. In the instant O.A. their grievance is directed against A/5 dated 4/23.4.2012 issued by res.no.4 in pursuance of communication at A/4 whereby and whereunder all the Programme Heads

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have been advised to annually review the performance of all the Casual Announcers, FM Presenters and Comperes of special Audience Programmes on the panel and to submit report to the Additional Director General by 31.03.2012. Consequent upon this, A/5 dated 04/23.4.2012 has been issued by the office of res.no.4 to the applicants herein ^{who} ~~to~~ have been asked to appear at microphonic voice test on 23.05.2012. Protesting against this, applicant no.2 had submitted a representation dated 05.05.2012(A/7) requesting therein to res.no.4 to withdraw the said order. This is followed by another representation dated 10.5.2012(A/8) addressed to res.no.4 wherein applicant no.1 along with some others have made a request to stop the screening process. Since their endeavors did not evoke any result, they have moved this Tribunal in the instant O.A. seeking the relief as already mentioned above.

3. It is the case of the applicants that review of performance of past services and fresh microphonic test are different concepts. Review of performance means appraisal of performance/conduct. But, inviting the applicants for microphonic voice test is arbitrary and without jurisdiction and this has been done only to eliminate or strike down the names of the applicants from the empaneled list of casuals.

4. According to applicants their performances are being reviewed day by day by the concerned authorities and if it had not been so, they could not have been allowed to work for more



than a decade. The action of conducting performance test has purportedly been initiated with a view to deprive the applicants of their services being regularized, for which a litigation is pending before this Tribunal. It has been contended that besides the casuals, the work of Announcer/Compere is being done both by the regular and retired employees. Amongst the retired employees and casuals, the work on a ratio of 50 : 50 is distributed. By this the applicants want to convey that whereas they being the casuals have been directed to appear for a voice test, the others, i.e., the regular employees or the retired personnel, as the case may be, have not been so summoned for the test. Therefore, according to applicants, in order to eliminate them from the list of casuals and on the other hand, to assign the work to newly empanelled casuals, a deliberate attempt has been made by the respondents. In this regard, the action of the respondents has been assailed as arbitrary, unreasonable and discriminatory.

5. Per contra, respondents have filed a preliminary counter as well as a regular counter-reply resisting the relief sought by the applicants.

6. In the preliminary counter-reply, respondents have submitted that expansion of panels of announcers/comperes on assignment basis is a regular routine work. Keeping in view ~~of~~ the fact that artistic ability, particularly, voice or speech being not permanent in nature owing to advancement of age and



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other reasons, AIR requires a periodic empanelment of persons of such artistic fitness at least twice in a year so that their ability/talent could be utilized without any disruption. Periodic audition and screening, according to respondents, is therefore, necessary to scout such artistic talents to find out whether the person already empanelled still retains the required artistic ability or otherwise. It is the case of the respondents that review of performance of assignees has been held on 23nd, 23rd and 24th May, 2012 in accordance with the DG, AIR's letter dated 19.1.2012(A/4). There is no ulterior motive in conducting such test or screening, respondents have added. Further, it has been sated by the respondents that 37 assignees who did not feel inclined to turn up for audition test had filed O.A.Nos.346 of 2011 and 379 of 2011. Some of the applicants of O.A.No.346 of 2011 appeared at the review audition and got through and the applicant who was at Sl.No.10 in that O.A. for the reasons best known did not appear. It has been submitted by the respondents that the assignees are neither the employees of AIR nor are they under the administrative control of res.no.4.

7. In the regular counter-reply, the respondents more or less have focused on the same point of view as in the preliminary counter-reply. However, they have stoutly denied the claim of the applicants that they have been engaged through a regular process of selection.

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8. At this juncture, it is to be noted that this matter came up for admission before this Tribunal on 25.6.2012, and this Tribunal, while directing notice to respondents requiring them to file their counter-reply, held that the date for audition test having already over and the tests having been conducted on 22nd, 23rd and 24th of May, 2012, the prayer for interim relief has become infructuous. However, this Tribunal, as an interim measure, directed not to take any coercive action against the applicants.

9. We upon ~~the~~ perusal of pleadings, have heard the learned counsels for both the sides.

10. Admittedly, applicants are casual announcers/comperes and they are carrying out the jobs on assignment basis. It is also a fact that they have not been empanelled through any regular process of selection. Further, it is an admitted position that that they had earlier filed O.A.No.346 of 2011 along with others praying for direction to respondents to regularize their services in the post of Announcers/Comperes against the vacancies available under the Station Director, AIR, Cuttack, inter alia, by quashing Annexure-A/9 whereby applications had been invited for engagement in the post of Announcer/Compere on contractual basis. This Tribunal, vide order dated 26.5.2011 disposed of the said O.A. in the following terms.

“Since the applicants have not ventilated their grievances before the authorities against Annexure-16, it would be proper on their part to at first move the authorities by preferring representation



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bringing to their notice the decision of the Hon'ble supreme Court within a period of seven days and in that event the respondent-Department shall consider and dispose of the same through cogent orders within one month from the date of receipt of such representations. Until the representations, as directed above are disposed of, annexures-16 dated 10.5.2011 shall be kept in abeyance".

11. It reveals from the record that in compliance with the aforesaid direction, representations preferred by the applicants having been duly considered, the same has been turned down vide order dated 22.7.2011 being devoid of merit. Nothing is forthcoming from the record as to whether applicants have challenged the legality of the said order or not. Be that as it may, the apple of discord in the instant O.A. is A/5 issued in pursuance of A/4 in the matter of review of performance of announcers and compères on contractual assignment basis, by virtue of which applicants had been called upon to appear at the microphonic vice test on 23.05.2012. As has been indicated above, the audition test having already been conducted, this Tribunal held that the prayer of the applicants for interim relief had become infructuous. *Therefore, a short point that emerges for consideration is whether applicants having been engaged as casual Announcers/Comperes on assignment basis could challenge the legality of A/5 or in other words, whether the respondents were within their right to issue A/5.*

12. It is the case of the applicants that once they have been selected through a test and empanelled as casual



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announcer/comperes, their record of service being the determining factor would speak for itself in so far review of performance is concerned. Had they not maintained the same quality and standard of artistic aptitude, they would not have been given assignments any further. Moreover, applicants have made a point of discrimination in the matter of review of performance between the casuals and the regular employees. They have also maintained that whereas the retired employees who are shared and distributed equal assignments as that of casuals have also not been called upon for review of their performance. Apart from the above, it has been urged by the applicants that only with a view to eliminating them from the list of empanelment which is already in existence, A/5 has been issued by the respondents.

13. We have given our in-depth consideration to the rival arguments as advanced in the light of the materials available on record.

14. First of all, we have to deal with the point as to whether A/5 issued by the respondents puts a spanner on the conditions of service of the applicants or curtails any of their conditions of service. Conversely, whether the respondents were within their right to issue such A/5.

15. Indisputably, applicants being engaged as casual casuals on assignment basis, their service conditions, by no stretch of



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imagination, are governed under the rules as applicable to the holders of civil posts.

16. Secondly, they have urged the point of discrimination between them and the regular employees, so also the retired employees engaged for discharging the same duties.

17. An element of discrimination comes into being where equals are treated unequally. Applicants have attempted to bring parity of their service conditions with that of the regular employees in the matter of review of performance. It is but natural that the service conditions of regular employees are governed under a set of codified rules whereas applicants are casuals being engaged on assignment basis. The source of recruitment of regular employees is quite distinct and different from the source of drafting casuals. Therefore, it would be against all canons of law to hold that the conditions of service of regular employees vis-à-vis the casuals are one and the same.

18. As regards the retired employees engaged on assignment basis as that of the applicants, we would like to note that it is not the case of the applicants that along with them the retired employees had been subjected to the same test and they being qualified, had been engaged as such along with them. Viewed from this, applicants cannot be equated with the retired employees even though both the classes have been discharging the same nature of duties and therefore, the



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contentions of the applicants that they are at par with the status of the retired employees does not stand to reason.

19. Since applicants are not similarly situated persons as that of either regular employees or the retired employees, the argument advanced that a discriminatory treatment has been meted out to the applicants is far fetched.

20. The next point to be considered is that applicants' regularization of service, which was the subject matter of O.A.No.346 of 2011 having been disposed of, a decision has already been taken by the respondents on the representations preferred by them, which gives rise to a separate cause of action. It is also not in dispute that decision taken by the respondents in pursuance of the orders of this Tribunal in O.A.No.346 of 2011 has any reasonable nexus which will help adjudicatory process of this O.A.

21. At this stage, it would be appropriate to reduce it to writing that some of the applicants in O.A.No.346 of 2011 having appeared the voice test have got through and consequently, empanelled. Therefore, non-appearance of the present applicants in the voice test pursuant to A/5 runs at their risk. Be that as it may, this Tribunal vide order dated 25.6.2012 has already held that the test having been conducted already, interim relief sought for staying the operation of call letters, in this O.A. has become infructuous and in the circumstances, it is quite inconceivable to accede to the relief



sought by the applicants, except determining the right of either of the parties to the claim.

22. As indicated above, the status and recognition of the applicants being casuals on assignment basis, they cannot be said to be employees serving in connection with the affairs of the Union or of any State. Therefore, the conditions of service as bestowed on the holders of civil posts are quite inconspicuous in their case. This being the position, it was incumbent upon the applicants to abide by the directives issued by the respondents vide A/5 and to that extent, respondents were well within their authority.

23. Last but not the least, we would like to note that even conceding for the sake of argument, the prayer of the applicants is allowed and A/5 is quashed, then a point arises for consideration as to what would be the consequence by such quashment. In such a situation, a number of persons who have derived benefit due to implementation of A/5 and are not parties in this O.A. will be seriously prejudiced. To make it more conspicuous, we would say that the Tribunal cannot declare an order null and void based on which benefits have been conferred on some persons behind their back. Therefore, we would hold that the employer has every right to review performance and conduct test of an employee engaged as casual and discharging the duties on assignment basis.



24. For the discussions held in the preceding paragraphs, we hold that applicants are not entitled to any relief sought for and accordingly, the O.A., which is ~~totally~~ devoid of merit is dismissed. No costs.

S.K.Pattnaik
(S.K.PATTNAIK)
MEMBER(J)

R.C.Misra
(R.C.MISRA)
MEMBER(A)

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