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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR.**

**Original Application No. 176/2002.**

**Date of decision: 25.10.2004.**

**Hon'ble Mr. Kuldip Singh, Vice Chairman.**

**Hon'ble Mr. G.R.Patwardhan, Administrative Member.**

Ahtesham Ul Haque, S/o Shri M.Yusuf Sahib, Chundri House,  
Nakhas Gate, Nagaur 341 001 (Rajasthan)

; Applicant.

Rep.by Mr. S.Y Khan : Counsel for the applicant.

**VERSUS**

1. Union of India through the Secretary, Ministry of Information and Broadcasting Shastri Bhavan, Dr. Rajendra Prasad Marg, New Delhi.
2. The Director General and Chief Executive Officer, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi.
3. Station Director, All India Radio, Nagaur ( Rajasthan)

: Respondents.

Rep. By Mr. Vinit Mathur; Counsel for the respondents.

**ORDER( ORAL )**

**Per Mr. Kuldip Singh Vice Chairman.**

The applicant has filed this O.A under Sec. 19 of the Administrative Tribunals Act, 1985, as he is aggrieved by the inaction in the part of the respondents in not regularising his services as Announcer, whereas the other categories of casual artists like Production Assistant, General Assistant, Floor Assistants etc. have already been regularised. The applicant

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claims that he is also similarly placed in all respects. He is also working on casual assignments since 1994 and is fully eligible in terms of the recruitment rules as the casual announcers are required to possess the same qualification as required for appointment as Announcer on regular basis. As he possesses all the essential qualifications he is entitled to be regularised. Thus the applicant prays a direction be issued to the respondents to regularise his services on the post of Announcer on the basis of judgements rendered by various Benches of this Tribunal in similar cases. In support of his contention he relied on a judgement of this Bench of the Tribunal in O.A. No.182/99 **[Nasir Ali Zaidi and ors. vs. UOI and others]** decided on 16.03.2000, wherein certain directions were given to the respondents that Doordarshan and All India Radio should frame a scheme for regularisation of Casual Artists/Announcers of various nomenclature and regularise all the casual artists on the available vacancies. It was further directed that the respondents therein should consider regularisation of all the Casual Announcers (whether they are applicants before us or not) under the existing scheme or a scheme to be formulated in terms of the orders of the Principal Bench given in O.A. No. 541/97 decided on 03.12.99. The applicant has also relied upon the scheme for regularisation of Casual Production Assistants and General Assistants in All India Radio as per the Judgement of the Principal Bench in O.A. No. 822/91 decided on 18.09.92, which



scheme envisages about regularisation of Casual Production Assistants and General Assistants in all categories. He specifically relied on the order of the Principal Bench in O.A. No. 541/97, which reads as under:

" We dispose of this O.A with the direction to the respondents to consider the case of the applicants for regularisation and eventual absorption against the regular vacancy in due course in terms of the scheme formulated for regularisation of casual Production Assistant and General Assistant in All India Radio pursuant to the judgement of the Principal Bench of the Central Administrative Tribunal in O.A. No. 822/91 dated 18.09.92, as at Annex A/3 or according to the scheme to be formulated and implemented by the respondents for regularisation of the eligible applicants in the light of the schemes already formulated ....."

Based on this the learned counsel for the applicant submitted that the applicant who was working as Casual Announcer is also covered by the above order. The learned counsel further relied on the judgement of the Hon'ble Patna High Court in C.W.J.C. No. 8362 of 2000 and C.W.J.C. No. 1368 of 2001 dated 04.02.2003. Both the petitions were filed by Union of India against the orders passed by the Patna Bench of this Tribunal. CWJC No. 1368/2001 had been filed against the orders passed by the Patna Bench of this Tribunal in O.A. No. 606/98 [Sweta **Ghosh and eight others vs. The Union of India**] decided on 28.07.2000. The applicants in the above O.A were working as Casual Artists engaged by Broadcasting Division of Ministry of Information and Broadcasting at Patna since 1993. The Tribunal has directed the Union of India that to draw up a scheme in terms of its earlier order and the applicants should be



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regularised accordingly. The other CWJC No.8362/2000 has been filed against the orders of the Patna Bench of this Tribunal in O.A. No. 541/97 [**Manoj Kumar Pathak and 13 others vs. Union of India and ors.**] The applicants therein were also casual artists working as Announcer-cum-compere at the All India Radio. While both the writ petitions were pending, the Union of India filed an inter locutory petition praying for withdrawal of the writ petition CWJC No. 1368/2001 stating that the Union of India has conformed to the order of the Tribunal by formulating a scheme for considering casual/empanelled artists for appointment as regular artist staff in song and drama division. Ultimately, the Hon'ble High Court of Patna declined the prayer for withdrawing the writ petition No. 1368/2001 for the simple reason that while a scheme had been made for casual artist in the song and drama division, no scheme had been forthcoming for the other casual artists working as announcer-cum-compere at the All India Radio. Hence both the writ petitions were dismissed by the Hon'ble High Court of Patna and directed the Union of India to frame a scheme for casual announcers also. On the basis of the above judgement of the Hon'ble High Court of Patna, the learned counsel for the applicant contended that the applicant in this case also is a casual announcer and a vacancy is available and therefore he should be regularised under the existing scheme or a direction



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be issued to the respondents to frame a scheme for regularisation of Casual Announcers also.

2. On the contrary, Mr. Vinit Mathur, learned counsel appearing for the respondents submitted that similar directions as that of the Patna Bench had been issued by the Principal Bench in number of cases and the Union of India had filed C.W.P. No. 946/2001 [**Union of India and another vs. Deepak Goswami**] along with C.W.P. Nos. 319/2001 [**Union of India and ors. vs. Ms Anshul Sharma and ors.**] 3592/2001 [**union of India and ors vs. Shri Roop Singh Dagar and another**] CWP No. 2900/2001 [**Union of India and ors. vs. Shri Yoginder Singh and another**] and CWP No. 2589 of 2001 [**Union of India and ors. vs. Shri Ashok Kumar and Anr.**]. In those cases also the dispute was whether the Casual Announcers could be regularised by framing such a scheme and whether the Tribunal can issue such a direction or not. The Hon'ble Delhi High Court after examining the cases in detail and after referring to various decision of the Hon'ble Apex Court, came to the conclusion that the scheme of regularisation of Casual Artists is not applicable to the Casual Announcers and had observed that neither this Court nor the Tribunal can direct the respondents to frame a scheme of regularisation. Such direction, as has been discussed herein before, would be contrary to the provisions contained in Article 309 of the Constitution. It is trite that the



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Court cannot issue a direction, which would be contrary to law as also the Constitution. The Hon'ble Delhi High Court had also found that though the Apex Court gave direction in the case of **Gujarat Agricultural University** concerning with daily rated labourers to frame a scheme, that was done under Art. 142 of the Constitution of India and such power are not vested with this Court. While arriving at this conclusion, the Court had also referred to the Judgement in **R.N. Nanjundappa vs. T.Timmaiah & Anr.** [1972 2 SCR 799] wherein it has been held that regularisation cannot be said to be a form of appointment. The Apex Court in the case of **B.N. Nagarajan and ors vs. State of Karnataka & Ors.** [(1979) 3 SCR 937] in no uncertain terms has held that regularisation cannot be a mode of recruitment in absence of a Statute or statutory rules. Similarly in the celebrated judgement in **State of Haryana & ors etc. etc vs. Piara Singh and ors. etc. etc.** [ AIR 1992 SC 2130 ], it was observed by the Apex Court that creation and abolition of a post is the prerogative of the executive and it is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate Legislature and this power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Art. 309 of the Constitution of India or by issuing Rules/instructions in exercise of its executive power. The Court comes into picture only to ensure observance of fundamental rights statutory provisions Rules and other



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instructions, if any governing the conditions of service. The Hon'ble High Court of Delhi had held that neither the High Court nor the Tribunal did possess the power to direct the respondents to frame a scheme for regularisation.

3. Now, before us two judgements of the two different Hon'ble High Court ( i) affirming the decision of the Tribunal, wherein directions were given to the respondents to frame a scheme to regularise the casual announcers also of the Hon'ble Patna High Court and the other judgement of the Hon'ble Delhi High Court in which it has been categorically stated that not only the Tribunal but also the Hon'ble High Court also does not have the power to direct the respondents to frame a scheme and it is only under Art 142 of the Constitution of India, the Apex Court can give such a direction. Following the principle of precedence, the judgement of the High Court are binding on the Tribunal, but if both judgements are contradictory to each other, the Tribunal has a right to choose as to which it should follow to decide the issue involved.



4. By analysing both the judgement of the High Courts, with great respect we find that the Judgement of the Hon'ble High Court of Patna, has not referred to any of the judgements of the Hon'ble Supreme Court, whereas large number of judgements of the Apex Court had been elaborately analysed by the Hon'ble

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High Court of Delhi. Since the Hon'ble High Court of Patna, had not considered the question of power to issue such directions by the Tribunal or by the High Court, but at the same time the Hon'ble High Court of Delhi has categorically stated that directions of such nature as given by the Apex Court in the case of **Gujarat Agricultural University** (supra) under Art. 142 of the Constitution of India cannot be given by the High Court as such powers are not vested with it nor the same can be vested in the Tribunal and bunch of Writ Petition filed against the orders of the Principal Bench of the Tribunal directing the respondents to frame a scheme have been set aside. Therefore, we would like to follow the judgement given by the Hon'ble High Court of Delhi as the judgement of Hon'ble Patna High Court as per in curium. Thus this Tribunal cannot direct the respondents to regularise the services of the applicant contrary to the statutory rules by framing some scheme. Therefore the O.A has to be dismissed.



5. Moreover, the basis of the case is the judgement rendered by the Principal Bench directing the respondents to frame a scheme for regularisation of Casual Artists and since both the judgements have been set aside by the Hon'ble High Court of Delhi, that judgement cannot be followed by this Bench of the Tribunal. Thus we find, the applicant has no case. This Tribunal cannot give any direction to the respondents to frame a scheme

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for regularising the services of the applicant. In view of the above discussion the O.A is dismissed.



6. Before parting with the case, we may mention that as the applicant has been engaged as casual announcer, the respondents shall continue to engage the applicant as casual announcer, if need be, as per the earlier terms and conditions.

No costs.

( G.R.Patwardhan )  
Administrative Member.

  
( Kuldip Singh )  
Vice Chairman.

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Received copy

~~Attorney~~ Commodore Hargis  
(Applicant) 3/11/04

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Part II and III destroyed  
in my presence on 30/10/13  
under the supervision of  
section officer (J) as per  
order dated 18/10/13

J.K. Smith 30/10/2013  
Section officer (Record)