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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.168/2012

Jodhpur this the 10th day of July, 2013

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Rajendra Kumar Modi S/o Shri Laxminarayan Modi, aged about 46 years, R/o 87, L-Block, Near Hanuman Temple, Sriganaganagar, working as Typist, Prasar Bharti (Broadcasting Corporation of India), All India Radio, Suratgarh, District Ganganagar.

.....Applicant

(Through Advocate Mr. Sanjay Nahar)

Versus

1. The Union of India through the Secretary, Ministry of Information & Broadcasting, New Delhi.
2. The Director General, Prasar Bharti (Broadcasting Corporation of India), All India Radio, Akashvani Bhavan, Sansad Marg, New Delhi.
3. The Deputy Director General (Engg.)/ Head of Office, Prasar Bharti, (Broadcasting Corporation of India), All India Radio-Akashwani, Suratgarh.

.....Respondents

(Through Advocate Mr. Kuldeep Mathur)

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

By way of this application, the applicant Rajendra Kumar Modi has challenged the legality of the order at Annexure-A/1 dated 02.04.2012, passed by the Deputy Director General (Engineer), Prasar Bharti (Broadcasting Corporation of India), All India Radio, Suratgarh, by which a notice was served upon the applicant in compliance to the order of the Central Government

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Industrial Tribunal-cum-Labour Court, Jaipur, dated 05.11.2001, which was affirmed by the Hon'ble High Court in S.B. Civil Writ Petition No.7175/2005 vide order dated 10.03.2006, and further he also claims for regularization of his services.

2. The short facts of the case as averred by the applicant are that the he has been selected under due sanction and requirement made by the Director General, All India Radio under its letter dated 01.08.1991, and as per the recruitment rules for various posts in All India Radio, the appointment through employment exchange is also permissible and he was selected and appointed by a duly constituted selection board after undergoing the due process of selection and appointed accordingly vide order dated 07.11.1991, and he joined on 11.11.1991 and he is still continuing till date. After more than 20 years of his service and when the sanctioned post is available and the applicant is the only person working on the post of Hindi Typist, he cannot be allowed to be terminated, therefore, Annexure-A/1 dated 02.04.2012 is liable to be quashed. In impugned notice cum order of termination dated 02.04.2012 (Annexure-A/1) two reasons are given,; first is that the applicant is not selected through Staff Selection Commission and second his services are no longer required. Applicant submitted that the first reason does not survive because the similarly situated candidates who have not passed the Staff Section Commission's Examination have been allowed to continue by the respondents, and in spite of the availability of sanction post and when no regularly selected

candidates appointed, the order of termination of his services were issued. The applicant having length of more than 20 years service cannot be allowed to be retrenched vide order dated 02.04.2012 by which his services were ordered to be retrenched w.e.f. 01.05.2012. While issuing the impugned retrenchment notice, the seniority list was drawn. Therefore, his retrenchment is bad in law and the retrenchment can only be resorted on the basis of seniority list and as per the Law.

3. The applicant has annexed 29 documents with his OA, as Annexure-A/1 to A/29.

4. The respondent-department by way of reply raised a preliminary objection that the applicant was engaged as Adhoc Hindi Typist and his services were terminated as the Adhoc appointee is not entitled for continuance and regularization of services. It has been averred that following the decision of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur, dated 05.11.2001 (in reference of 02.06.2000), the services of applicant as Adhoc Hindi Typist under Clause of Section 25-F of Rule 14 of the Industrial Disputes Act, 1947 has been dispensed with one month notice w.e.f. 01.05.2012, as applicant has not been selected by the Staff Selection Commission which is necessary. Besides, services of the applicant were no longer required and the services of All India Radio are governed by Civil Services Regularization or Civil Services Temporary Rules and the terms

and condition laid down in the offer of appointment. The services of the applicant were contractual and pm adhoc basis. The terms and conditions of Section F-25 of Industrial Disputes Act and Rule 77 of the I.D. Rules as per Central Government Industrial Tribunal's verdict was followed. As per award passed by Central Government Industrial Tribunal, the respondent were free to dispense with the services of applicant after complying with the provisions of Section 25-F of the Act 1947. The act of the respondents is, therefore, legal and the claim of the applicant is totally incorrect, unjustified and devoid of merit. The award of Central Government Industrial Tribunal-cum-Labour Court was challenged before the Hon'ble Single Judge, Rajasthan High Court, Jaipur, in S.B. Civil Writ Petition No.7175/2012 and the Hon'ble Single Judge vide dated 10.03.2006 upheld the judgment of the Central Government Industrial Tribunal-cum- Labour Court, Jaipur; against which the respondent department filed a Special Appeal before the Division Bench of the Hon'ble High Court Jaipur, bearing D.B. Civil Special Appeal (Writ) no.1226/2008, which was dismissed. It is submitted that earlier also the applicant had approached this Tribunal by filing OA No.22/1995 for regularization of his Adhoc services on the post of Hindi Typist, but the same was dismissed vide order dated 22.05.1995. The present OA is, therefore, barred by the Principle of Res-judicata. It has been further averred in the reply that 90% of posts of LDC are filled up by the direct recruitment quota through Staff Selection Commission, and 5% from amongst educationally qualified Group

'D' staff of All India Radio Service in Group 'D' Post and another 5% from the seniority-cum-fitness. The applicant could not pass the examination conducted by the Staff Selection Commission and a requisition was placed to Staff Selection Commission on 05.02.1990 for nominating of a qualified candidate on the post of Hind Typist. It has been averred that the appointment of the applicant purely adhoc and the applicant has earlier approached this Tribunal for regularization of his services, which was dismissed by this Tribunal and then the applicant has challenged the retrenchment order dated 09.05.1998 in reference of 21.06.2000 before the Central Government Industrial Tribunal-cum- Labour Court, Jaipur, and the order of the Court dated 05.11.2001 was affirmed by the Hon'ble High Court and now the notice at Annexure-A/1 has been issued as per the provision of Section 25 F of the Industrial Disputes Act, therefore, this OA of the applicant is misconceived and lacks merit because virtually if order at Annexure-A/1 is quashed by this Tribunal than it will amounts to quashing of the order of the Hon'ble High Court passed in S.B. Civil Writ Petition No.7175/2005 and the same cannot be permissible in the eyes of law, therefore, the respondents prays for dismissal of the OA.

5. The applicant by way of rejoinder reiterated the same facts and also filed Annexures-A/30 to A/34 with the rejoinder.

6. We have heard both the parties.

7. Counsel for the applicant contended that the applicant has served more than 20 years in the respondent department and now the order for retrenchment/termination of services of the applicant has been passed, which is unconstitutional and illegal. In support of his arguments, the learned counsel for the applicant has relied upon the following three judgments, i.e. (i) **Bhagwan Sahai vs. Udyog Bhawan Common Facility & Anr.** Reported in *RLW 2009 (3) Raj, 2383*, and (ii) order passed in *Civil Writ Petition No.278/1991* titled as **Captain Murari vs. State of Ors.**, and (iii) the order passed in *D.B. Civil Special Appeal No.2684/2011* arising out of S.B. Civil Writ Petition No.278/1999 titled as **State of Rajasthan & Anr. Vs. Captain Murari Badhadrra.**

8. Per contra, counsel for the respondents contended that the case of the applicant does not come within the purview of para 53 of **Secretary State of Karnataka and Others vs. Uma Devi (3) and other's** case reported in *SCC (2006) 4 SCC*, because the applicant has earlier challenged the order of retrenchment/termination of his services before the Central Government Industrial Tribunal-cum-Labour Court, which was accepted subject to fulfilling the provisions of Section 25-F of the Labour Court Act and the same was upheld by the Hon'ble High Court and now the department issued the retrenchment notice at Annexure-A/1 in pursuance of the order of the Central Government Industrial Tribunal-cum-Labour Court and the Hon'ble High Court, therefore, the applicant cannot challenge this order in this Tribunal.

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The applicant has earlier approached this Tribunal by filing of OA No.22/1995, which was dismissed by this Tribunal vide order dated 22.05.1995.

9. Counsel for the respondents relied upon the judgment of Uma Devi's case (supra), contended that as the applicant has served for more than 10 years with the intervention of the Court, therefore, his services cannot be regularized even considering the case of Uma Devi's.

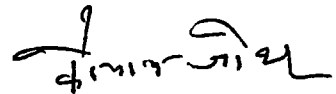
10. We have considered the judgments cited by counsel for the applicant and it appears that the facts of these cases are different from the present case as in all the above judgments the services of the applicant/s were not continuing due to intervention of the Court, but in the present case, the services of the applicant are continuous due to the order passed by the Central Government Industrial Tribunal, Jaipur, otherwise his services had been terminated long back. It is also an admitted fact that earlier the services of the applicant had been terminated/retrenched and against which the applicant approached the Central Government Industrial Tribunal-cum-Labour Court, Jaipur. Therefore, the judgments cited by the counsel for the applicant are different from the facts of the present case and para 53 of the Uma Devi's case (supra) is also not attracted in the present facts of the case.

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11. So far as the legality of the order at Annexure-A/1 is concerned, the retrenchment part cannot be challenged before this Tribunal because it has attained the finality after the dismissal of the writ petition and Special Appeal filed by the Department. Now, so far as regularization is concerned, the respondents' contention is that the post of Hindi typist is required to be filled through the Staff Selection Commission and the applicant was given appointment purely on adhoc basis and as and when the regular person joins, his services are required to be terminated. It is not disputed fact that the applicant was not appointed/selected through the examination conducted by the Staff Selection Commission and was given adhoc appointment and also the applicant is in service due to intervention of the Court, therefore, in view of the Uma Devi' case, the applicant is not entitled to any regularization. Therefore he has no cause of action for regularization, therefore, his case does not stand scrutiny on merits. The OA is therefore dismissed at the admission stage with no order as to costs.



(Meenakshi Hooja)
Administrative Member



(Justice K.C. Joshi)
Judicial Member