

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 175  
T.A. No.

1989

DATE OF DECISION 8.8.90

M. Sivaramakrishnan Applicant (s)

M/s. M. R. Rajendran Nair & Advocate for the Applicant (s)

PV Asha

Versus

DG, AIR, New Delhi and another Respondent (s)

Mr. N. N. Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

A handicapped Staff Artist of the All India Radio is before us. He is challenging Annexure-XVI order rejecting his request for condoning the break in service as explained by him in his representation.

2. The facts in brief are as follows. The applicant was originally appointed on 1.4.1977 as Thabala Player after complying with all the formalities of the selection. During the probation he happened to be a connecting link in the trap laid by CBI against one Sri Padmanabhan Nair, Light Music Producer in AIR Station, which resulted in a

case No. CC No. 5/88 before the Special Judge's court, Ernakulam. The applicant submitted that due to his involvement in that case his probation was extended unnecessarily and without renewing his contract the service was terminated as per Annexure-VIII order dated 30.9.80. He was thus discharged from service. He filed appeal and ultimately considering his mercy petition, he was again appointed as per Annexure-XI order dated 28.4.1981.. After completion of his probation the respondents absorbed him as regular instrumentalist (Thabala Player) on a scale of Rs. 550-900. After his regular appointment he filed representations before the respondents for regularisation of his service with pay and allowance w.e.f. 1.4.1977. These representations ultimately ended in the impugned order.

3. The impugned order is reproduced as follows:

"With reference to his representation dated 6.2.87 Sri M. Sivaramakrishnan, Tabala Player (Staff Artist), All India Radio, Trichur is informed that Directorate General, All India Radio, New Delhi has examined his representation carefully and that it has not been found possible to accede to his request.

He is informed that no further representation on the subject will be entertained by this office."

4. The respondents have filed a detailed counter affidavit and submitted that the applicant is not entitled to any relief. According to the respondents the contentions raised by the applicant are not ~~maintainable~~ <sup>unmaintainable</sup>. *h*

5. The limited request made by the learned counsel for the applicant at the time of hearing is that since the applicant's reappointment gives him the right to get continuous service, a direction may be issued to condone the break of service without the financial benefits such as pay and allowances. He further submitted that applicant's case based on FR 22 as stated in Ground A of the O.A. has not been met by the respondents either in the impugned order or in the counter affidavit. His submission is that under the first proviso of FR 22 in the matter of re-fixation of pay, he is entitled to count his past service on account of the fact that the applicant was never removed or dismissed from service. The original appointment came to an automatic termination on account of the non-renewal of the same in 1980. This was due to extraneous reasons.

6. This is a case of discharge during probation and according to us it will come within the proviso to FR 22 as explained by the DG AIR instruction which is extracted below:

" In relaxation of Recruitment Rules under clause 13, decided by the Ministry of I & B vide U.O. No. F.666/81-B(A) dated 2.4.81 the Director General, All India Radio is pleased to reappoint Shri M. Sivaramakrishnan of TC 17/209, Chadiyara Lane, Poojapara, Triyandrum Kerala as Staff Artist Instrumentalist (Tabala Player) All India Radio, Trichur on Rs. 550/- P.M. in the fee scale of R. 550-900 plus allowances as admissible to staff Artists from time to time.

3. Shri M. Sivaramakrishnan may be engaged in accordance with the instructions contained in this Directorate Memo No. 7.4.72-S VII dated 5.1.73. He will be on probation for two years. Necessary offer of appointment may be sent to him and other contractual formalities completed by the Station Director All India Radio, Trichur under intimation to the Directorate.

X


X


X "

7. As indicated above, even though the applicant has specifically explained his contention based on FR 22 there is no specific answer in the reply filed by the respondents. The impugned order also does not disclose the consideration of the applicant's case in the light of his averments. Under these circumstances, we are satisfied that the impugned order is non-speaking. There is no application of mind by the authority who failed to consider the applicant's case in the light of the relevant statutory provisions. The applicant's further arguments which require consideration on compassionate grounds on the facts and circumstances of this case, were also not dealt with by the authority.
8. On the facts and circumstances of the case, we are fully satisfied that the impugned order is liable to be set aside and it requires a reconsideration of the case of the applicant in the interest of justice. Accordingly, we quash Annexure-XVI order and direct the second respondent to consider the matter once again in the light of the averments of the applicant in this original application and the provisions of FR and the

explanation mentioned in the judgment. The respondent shall pass the order in accordance with the direction within three months from the date of receipt of a copy of this judgment.

9. There will be no order as to costs.

  
(N. Dharmadan) 8.8.90  
Judicial Member

  
(S. P. Mukerji) 8.8.90  
Vice Chairman

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