CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 361 OF 2008

Monday, this the12th day of October, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

K.Chandrasenan
Announcer Grade IV
(Removed from service)
All India radio, Thiruvananthapuram
Residing at Devika, Thuruvickal P.O.
Thiruvananthapuram – 695 031 ... Applicant

(By Advocate Mr. Sasidharan Chempazhanthiyil)

versus

1. The Station Director
All India Radio, Prasar Bharathi
Broadcasting Corporation of India
Thiruvananthapuram

2. The Deputy Director General
Prasar Bharathi
Broadcasting Corporation of India
All India Radio, Chennai – 4

3. Chief Executive Officer (Revisional Authority)
Prasar Bharathi
Broadcasting Corporation of India
Directorate General, Akashawani Bhavan
All India Radio, New Delhi ... Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 05.10.2009, the Tribunal on 12.10.2009 delivered the following:

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant challenges the penalty order and appellate order whereby as a matter of penalty he was removed from services. The

grounds of challenge are purely legal issues. As to the order of the Disciplinary authority, the ground is that he had, while disagreeing with the finding of the Inquiry Authority, rendered his finding without calling for the representation from the applicant and in the course of the same, he had held as proved one of the charges, when there is absolutely no evidence to prove the same. As regards the Appellate authority's order, the legal lacuna is with reference to the reliance, to justify the penalty of removal, upon a document, which is admittedly posterior to the order of penalty.

2. The facts capsule: The applicant, while functioning as Announcer Grade IV in All India Radio, Thiruvananthapuram, was issued with a charge sheet under Rule 14 of the CCS (CC&A) Rules, 1965, which contains the following articles of charge:-

ARTICLE – I

That the said Shri. K. Chandrasenan, while functioning as Announcer Gr. IV at AIR Thiruvananthapuram left India and went abroad without official permission which is unbecoming of a Government servant and thus violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

ARTICLE – II

That the said Shri. K. Chandrasenan, while functioning as Announcer Gr. IV at AIR Thiruvananthapuram went to Dubai (UAE) and worked for a Private Radio channel viz. Asianet Radio, which is also unbecoming of a Government Servant and violative of Rule 3(i)(iii) of CCS Conduct Rules, 1964.

ARTICLE – III

That the said Shri. K. Chandrasenan, while functioning as Announcer Gr. IV at AIR Thiruvananthapuram went abroad without taking permission from the Competent authority during the period of his leave from 1.9.2002 to 3.2.2003 and again he went abroad without taking permission of the Competent authority during the period of his absence from duty from 7.3.2003. His absence from duty with effect from 7.3.2003 without official permission is unbecoming of a government Servant and violative of Rule 3(I)(iii) of CCS (Conduct) Rules 1964.

ARTICLE – IV

That the said Shri. K. Chandrasenan, while employed as Announcer Gr. IV at AIR Thiruvananthapuram has left India and is still working for Asia Net Radio in Dubai, UAE on a remunerative basis, as intimated vide Consulate General of India, UAE letter dated 21.7.04. This is unbecoming of Government Servant &lid thus Shri.K. Chandrasenan has violated Rule .15(1)(b) of CCS (Conduct) Rules, 1964.

3. The applicant having denied the charges, regular inquiry was held and the inquiry officer held Articles I to III as proved. As regards Article IV, the finding of the Inquiry Authority is as under:-

" The evidence on this article is the letter No. Dubai/Misc./Hoc./1/04 dated 21.07.2004 issued by Sri. R.P. Kapil, Head of Chancery, Consulate General of Dubai, UAE. The letter concludes that " the claim of Sri. Chandrasenan that he is not being paid for the programmes he is conducting for the Radio, does not seem to be convincing". Since the disciplinary authority could not produce direct documentary support of remuneration, the charge appears to be a presumption. Hence Article-IV is found to be weak and found not established strongly."

4. The disciplinary authority, however, did not agree with the above finding with regard to article IV and observed as under:-

" In the case of Article-IV, I find it difficult to agree with the observation of the Inquiring Authority. His view is that direct documentary support of remuneration is necessary to establish the said charge. It seems that the Inquiring Authority is not believing the letter of Consulate General of India at Dubai. It appears to be as strange that the Inquiry Authority is not believing the statement of one of the highest Gov. of India officials. To disbelieve the statement of of Consulate General of India, the Inquiry Authority is not relying on any evidence before him. In a scathing manner he rejects the letter of the Consulate General of India by saying, it is not a direct documentary support. Besides the Inquiring Authority knows well that the direct documentary support in the form of a certificate from the Asianet Radio at Dubai, could not be obtained. The Consulate General of India clearly stated that Sri. Chandrasenan claim that he is not being paid for the programmes which he is conducting for the Asianet

> Radio, does not seem to be convincing. I, find no reason or evidence to disbelieve the statement of the Consulate General of India, therefore I hold that Sri Chandrasenan has been working in the Asianet Radio, Dubai on remuneration basis, while absenting himself from duties as Announcer Gr.IV at AIR, Trivandrum, unauthorisedly, I further hold, on the strength of the letter of the Consulate General of India, one of the highest Govt. of India officials ion Dubai, that Article IV of the charge is also proved."

5. The applicant filed his representation against the above report and the Disciplinary Authority's finding on Article IV and as regards the said Article IV, the specific stand taken by the applicant, vide Annexure A-3 representation dated 05-01-2006 is as under:-

> " As regards Article IV Inquiry Officer did not find any solid materials or reliable evidence to reach a finding that I am working for Asianet on remuneration basis. The letter of the Consulate General of India in Dubai contains a mere opinion which is not facts of evidence to establish a serious
> charge. In request you to kindly appreciate the position and review the decision already taken. "

6. The Disciplinary authority, however, did not agree with the representations of the applicant, both with reference to Art. I to III as well as Art. IV and finally passed Annexure A-4 order dated 23-01-2006, imposing penalty of removal from service.

7. The applicant had filed his Annexure A-5 appeal before the appellate authority and submitted that he had been obeying the orders of the authority and it was only after applying for necessary leave that he went abroad, of course, without waiting for the permission, which was not forthcoming immediately on application. As regards the disciplinary authority's view over Art. IV, specific ground had been taken as under:-

> " There is no evidence on record to establish fourth charge against the appellant. The inquiry officer rightly reached a conclusion that the fourth charge is not

established as there was no solid evidence to rely on a serious charge like working for another employer on remuneration basis while employment under AIR. The Consul General of India, Dubai did not categorically state that the appellant was receiving remuneration from the Asianet Radio Dubai. It was within the power and authority of the Consul General of India to obtain materials very easily from the Asianet Radio Dubai if the appellant was receiving any remuneration for work under it. The Consul General either did not do this or failed to do this. In either case the only conclusion is that there was no evidence to support the charge that the appellant was getting remuneration from the Asianet. The statement of the Consul General of India which was relied on by the disciplinary authority is nothing but an expression of opinion. The disciplinary authority failed to notice the difference between material evidence and an expression of opinion by a generalist. The Consul General did not positively state that the appellant received remuneration. He only stated that the claim of the appellant was not convincing. That is only a negative statement and not a positive assertion to be treated as an unquestionable fact of evidence. The disciplinary authority went wrong in allowing him self to be guided by the statement of the Consul General of India as gospel truth. "

8. The Appellate authority had vide impugned order dated 21st/24th July 2006 at Annexure 6 dismissed the said appeal. He opined over Article IV as under:-

> The appellant's conclusion that there is no evidence to establish the 4th charge cannot be accepted because the letters dt. 21.7.2004 and 2.3.2006 issued by Consulate General of India, Dubai, UAE and the copy of his visa, clearly show that he had applied for employment visa on 3.3.2003 and he was sponsored by the Dubai Media City. The contention that we need not disbelieve the Consulate General at Dubai is upheld. Photocopy of the letter dt. 2.3.2006 from Consulate General, Dubai is enclosed for information. "

9. Undaunted by the rejection of the appeal, the applicant filed Annexure A-7 revision petition dated 25-08-2006. When initially it was not disposed and meanwhile the applicant filed OA No. 112/2007, the same was

disposed of by Order dated 16-03-2007 (Annexure A-8) with a direction to the revision authority to dispose of the pending revision petition. The Revision authority had, however, rejected the revision petition, vide impugned order dated 28-11-2007 at Annexure A-9. The Revision authority had in regard to reliance placed by the appellate authority over a document which is posterior to the date of penalty order held as under:-

> " The Appellate Authority has treated the Visa of the Revision petitioner as employment visa on the basis of the letter dated 2.3.2006 of consul ate General of India, Dubai vide which copy of the Visa as well as its English translation were enclosed. It clearly showed that the type of visa was employment visa. However, even if employment visa and resident visa are same, it does not reduce the gravity of the misconduct of the revision petitioner that he worked for private media without prior Permission of the Department and also that he did not join duties repeated communication from his office."

10. On the grounds as condensed in para 1 above, the applicant has moved this OA praying for quashing of the penalty order, appellate order and the revision order and for a direction to the respondents to reinstate the applicant with consequential benefits.

11. Respondents have contested the O.A. Their main contentions are as under:-

> " As per the Supreme Court Verdict during January 2006 it is specifically stated that the willful absence of government employees from work can invite termination from service and added that such employees will have no right to receive monetary / retiral benefits during the period in question. Honourable Supreme Court further observing that absenteeism from office for prolonged period without prior permission by government servants has become a main cause of indiscipline greatly affecting, various departments. Also opined that a government servant who has willfully been absent for a period of about three years has no right to receive the monetary/retiral benefit during the period in question."

> " He had applied for 6 months leave with effect from 01.09.2002 to 09.03.2003 in the first instance and got it sanctioned on domestic grounds. During this period, he went abroad without permission. When he was asked to report for duty he curtailed his leave and reported for duty on 04.02.2003. He again went on leave with effect from 08.02.2003 to 22.02.2003. He was further absenting himself from duty with effect from 07.03.2003 only to join duty in January 2006. The applicant's contention that no authority has refused his application for NOC to go abroad does not mean that his application had been considered and permission granted. The applicant's statements that he had gone abroad to help his ailing brother-in-law and settle his accounts is only a cooked up sting which he could not prove during the course of inquiry. "

12. Counsel for the applicant submitted that the disciplinary authority had held article IV as proved without any basis. That is a case of no evidence. The charge includes that the applicant worked for a private channel for remuneration whereas the same has not been proved. There has been no proof in this regard. Again, reliance placed by the Appellate Authority, upon the document issued by the Consulate General (Annexure R-1) is not a listed document and hence, could not have been relied upon.

13. Counsel for the respondents invited the attention of the Tribunal to para 10 of the counter which reads as under:-

> " In order to verify the complaint that the applicant is working in ASIANET RADIO in Dubai, Sri Chandrasenan was requested by the Station Director, All India Radio, Thiruvananthapuram (Appointing Authority and Controlling Officer of Sri Chandrasenan) to produce the original Passport. In reply, the applicant vide his letter dated 19.12.2003 requested the 1st respondent to quote the authority / rule under which he was asked to produce the Passport. A copy of his letter dated 19.12.2003 is enclosed and marked as Annexure R4. The reason that warranted the verification of passport was explained to the applicant vide All India Radio, Thiruvananthapuram Memo dated 24/16.12.2003 and the applicant was again requested to submit his passport. A copy of the memo is enclosed and

> marked as Annexure R5. The applicant had neither submitted his passport nor furnished any reply to the above Memo dated 24/26.12. 2003 and reminders dated 7.1.2004, 18.2.2004 and 1.7.2004. Being a Government Servant, the applicant should know that there is nothing improper in calling for his Passport by his appointing authority for verification. The applicant should have produced the passport if he had nothing to conceal."

14. In addition, the other portions of the counter as extracted above have also been read over. The stand taken by the respondents is that the applicant's frequent absence, having gone abroad without due permission, having engaged in service with a private channel abroad would all be sufficient to prove the misconduct as contained in the charge sheet. As regards Charge IV, with particular reference to earning of remuneration, the counsel submitted that the applicant has admitted the fact that he had obtained a residence visa which is nothing but an employment visa. Thus, his services to a private channel has been amply proved. The fact that the applicant had obtained the employment visa would go to prove that his services to the private channel had been for remuneration. Reliance to Annexure R-1 letter dated 02-03-2006 is only a confirmation to the earlier communication dated 21st July 2004. Hence, it is not that to have Article IV proved, the lone document relied upon was the said Annexure R-1. The said annexure was only a confirmation of misconduct.

15. Arguments were heard and documents perused. The legal issues/questions for consideration are as under:-

(a) Do the proceedings really suffer from the legal lacuna as pointed out by the applicant's counsel (i.e. (i) Whether the Disciplinary authority while disagreeing with the finding of the Inquiry Authority, rendered his finding without calling for the representation from the applicant and in the course of

the same, he had held as proved one of the charges, when there is absolutely no evidence to prove the same and (ii) Whether reliance by the Appellate Authority, to justify the penalty of removal, upon a document, which is admittedly posterior to the order of penalty is permissible).

16. The Disciplinary Authority did agree with the inquiry officer with reference to the findings in the first three Articles of charge. The fourth Article is one which alleges that the applicant had while in services of the respondents, left India to work for a private channel on a remunerative basis as intimated in the Consulate General of India of UAE, in the letter dated 21-07-2004 which is unbecoming of the Government servant as the said misconduct violated the provisions of Rule 15(1)(b) of the CCS (Conduct) Rules. The said rules read as under:-

> **15. Private trade or employment**
>
> (1) Subject to the provisions of sub-rule (2), no Governments servant shall, except with the previous sanction of the Governments -
> (a) .....
>
> (b) negotiate for, or undertake, any other employment, or
>
> (c) .....
>
> (d) .....

17. The above Rule provides that without prior permission, private employment cannot even be negotiated much less undertaken. The article of charge as extracted earlier could be bifurcated into the following:-

(a) Having left India while functioning as Announcer Gr. IV;

(b) still working for a private channel in Dubai, UAE; and

(c) (such a working is) on remuneration basis.

18. In his appeal to the appellate authority, the applicant clearly indicated that he approached the private channel for getting 'residence' visa; that his 'association with the artists in the cultural field and the media persons in the media city vibrant with radio culture drew him to some academic exercise regarding the success of radio channels in the programming and marketing strategies..... However, his academic work was not a full time engagement but was carried on by him with his assignment as an aid to his ailing brother in law who had business connections in automobile industries which tied him to Dubai. Unfortunately for the appellant, his active association in the cultural events which was partly sponsored by the Asianet to whom he had slender obligation as the provider of his residence visa and definitely not as an employee, sent out signals to others .... that he was forking for Asianet in Dubai..."The dexterity with which the applicant had mentioned the fact of his having some assignment through private channel is a clear acceptance of the fact of his having left India and having undertaken an employment. Though at many places he tried to intertwine his subject matter with 'cultural' and 'academic performance', he has been careful not to disclose as to the culture character of his participation. Nor could he substantiate his version that his was not for remuneration. Though the rules warrant that the prosecution has to prove its case, opportunity given to the delinquent is meant, not only to disprove the one which has been proved, but also to strengthen the case of the delinquent in proving his innocence. For that is the first right available to the delinquent as held by the Apex Court in its judgment in the case of State of Uttaranchal vs Kharak Singh (2008) 8 SCC 236, wherein, the Apex Court has also noted the principles of holding the inquiry as under:-

15. From the above decisions, the following principles would emerge:

(*i*) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(*ii*) .....

(*iii*) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(*iv*) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

19. All the above had been followed in the case of the applicant. And the disciplinary authority had come to the conclusion with reference to Article IV that the evidence produced (communication dated 27-01-2004) would go to prove as to the applicant having worked for a private channel and for remuneration. That the fact of 'remuneration' has not been proved cannot be held to mean that the entire article of charge has not been proved or that the same is fatal to the entire inquiry. Rule 15(1)(b) mainly revolves round private employment and the same does not mention anywhere about "remuneration". Having dealing with a private channel, that too in a foreign country, the visit to which was without any proper permission and the engagement in which was also without permission has been the admitted fact. Thus, when the disciplinary authority disagreed with the findings of the Inquiry Officer with reference to that part i.e. of remuneration he had given his version and arrived at a finding. The counsel at one stage tried to assert that the very finding in this regard by the disciplinary authority without giving an opportunity is wrong. We are not inclined to accept the same, for the it is only with the available evidence that the disciplinary authority has arrived at that finding. Similarly the applicant's counsel tried to advance an argument

that proposal to impose penalty of removal, even without calling for representation against the inquiry report is fatal. This point too has to be rejected as proposal does not mean that it is a pre-conceived notion but only reflects the intention, subject to the representation of the applicant not being convincing to drop the proceedings or warranting lesser penalty. In fact, the disciplinary authority is under no obligation to inform the applicant as to the extent of penalty to be imposed. This requirement of keeping the delinquent posted with the proposed penalty had been done away with under the 42nd Amendment to the constitution. All that is required is to make available the copy of inquiry report and the dissenting part by the disciplinary and the same has been fully complied with in this case. Thus, neither any legal lacuna nor any deficiency in arriving at the finding could be discerned from the manner in which the proceedings have been conducted by the disciplinary authority. That ground of challenge is therefore, is meritless.

20. Coming to the next issue of the appellate authority having relied upon the document of March 2006 which is posterior to the date of imposition of penalty, though reliance of the said document could have been avoided, the same did not cause any prejudice to the applicant as the document relied upon is only the translated version of visa, wherein the term used is "employment visa" The applicant had, while describing the nature of visa obtained indicated as "residence visa" a term, which may or may not be figuring in, in the visa, whereas the translated version of the visa indicates, "employment visa" and the applicant had not question the correctness of translation. Thus, apparently, the applicant tried to avoid reflecting in his representations about "employment visa" having been obtained and used the other term "residence visa" . The appellate authority had not come to a conclusion only on the basis of this document. He had certainly given priority to the earlier document of 27th January 2004 which had been made available

to the applicant in advance. Again, the document of 2nd March 2006 cannot have caused prejudice to the applicant for, the subject matter is nothing but visa and nature of visa, which the applicant is already aware of.

21. On the scope of judicial Review in general, the Apex Court has, in the case of ***V. Ramana v. A.P. SRTC*** *held:*

> *" The scope of judicial review is limited to the deficiency in decision-making process and not the decision."*

22. A symphonic touch on the above line has been given in the decision in respect of ***Hombe Gowda Educational Trust v. State of Karnataka,(2006) 1 SCC 430.***

23. Though it appeared that there could have been an infraction in the decision making process, on through scrutiny of the documents we are of the considered view that the decision of the respondents cannot be faulted with in arriving at the fact that the applicant is certainly guilty of misconduct as contained in Articles I to IV.

24. The OA lacks merits and hence is **dismissed.** No cost.

Dated, the 12th October, 2009.

K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs