

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 225/2011

This the 24th day of May, 2013

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Abhay Shankar Gaur aged about 55 years son of Shiv Shankar Gaur
r/o Place- Station Road, Hardoi.

Applicant

By Advocate: Sri R.C. Singh

Versus

1. Union of India through its Secretary, Information and Broadcasting, Shastri Bhawan, New Delhi.
2. Chief Executive Officer, Prasar Bharti, PTI Building, Sansad Marg, New Delhi.
3. Director General, All India Radio Directorate, Akashwani Bhawan, Sansad Marg, New Delhi.
4. Director General (News), New Services Division, Akashwani Bhawan, Sansad Marg, Lucknow.
5. Deputy Director General/ Head of Office, All India Radio, Vidhan Sabha Marg, Lucknow.
6. Station Director, All India Radio, Vidhan Sabha Marg, Lucknow.
7. Director News (RNU) All India Radio, Vidhan Sabha Marg, Lucknow.
8. Ratna Prakash, Director (News), NSD, All India Radio, Sansad Marg, New Delhi.

Respondents

By Advocate: Sri Pankaj Kumar Awasthi for Sri Rajendra Singh.

ORDER

HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- a) to quash the impugned termination order dated 6.5.2011 passed by respondent No.5 as contained in Annexure A-1 to the O.A. with all consequential benefits.
- aa) to quash the impugned order dated 12.10.2011 passed on behalf of respondent No.5 as contained in Annexure A-18 to the O.A. with all consequential benefits.

AS

aaa) to direct the respondents to renew the contract of the applicant as Part Time Correspondent.

b) to direct the respondents to allow the applicant to continue as Part Time Correspondent under the respondents with all consequential benefits.

c) to pay the cost of this application

d) Any other order which this Hon'ble Court may deem just and proper.

2. The case of the applicant in brief is that he was initially appointed/ engaged by All India Radio (hereinafter referred to as AIR) in February, 1985 as a Part Time Correspondent (In short PTC) at Hardoi on a casual basis on a monthly emoluments of Rs. 250/- per month. This engagement was on certain terms and conditions agreed between AIR and the applicant. Contract was to be renewed from month to month followed by Part Time Staff Artist Contract. Since then, he is continuing in the job for the last about 26 year having exemplary service record without any complaint being received. In due course of time, with a view to get redressal of the grievances of PTCs, a society was got registered by All India PTCs and the applicant was chosen the President of the Union. The association of the PTCs held meetings at regional basis. In the same sequence, in response to an invitation from PTCs, Patna, he attended a meeting there on 7.9.2010. Immediately, thereafter, on 7.10.2010, he received a show cause notice based on newspaper reports asking him to explain as to why his engagement as PTC may not be terminated for violation of model code of conduct for going to press for redressal of grievances of PTC's and criticizing Prasar Bharti (Annexure -9). The applicant promptly replied on 24.10.2010 denying the allegation (Annexure -12). Sri Ratan Prakash the then Director (News) endorsed a noting on the relevant file stressing that the Minister who inaugurated the meeting was a PWD Minister belonging to BJP and this meeting was held in a building



belonging to RSS. This noting was made to prick the mind of the present congress Govt. to initiate action against the applicant in a prejudiced manner. On the basis of report published in newspaper 'Aaj' on 9.9.2010. It was said that the applicant blamed Prasar Bharti firstly for ignoring the problems of the PTC and secondly that the PTC are getting united against that. The newspaper report are merely hearsay without having any evidentiary value. Two PTCs of Patna namely K.K. Kaushik and Sri Daddanji Pandey who had arranged the meeting, were also issued show cause notices in the same manner. But both of them were exonerated by giving warning while the contract of the applicant was terminated vide impugned order dated 6.5.2011 (Annexure -1) and this was done without taking into consideration the detailed reply submitted by the applicant. Applicant, had therefore, preferred a representation to the Director General (News). This reflects patent malice in law, arbitrariness and colourable exercise of power. The applicant, therefore, filed this O.A. on 25.5.2011. On 27.5.2011, this Tribunal directed to keep the order of termination in abeyance. The respondents however, issued another order on 9.8.2011 to the effect that the applicant's yearly contract has come to an end on 31.7.2011. Hence he cannot be continued as PTC after that. On an application moved on behalf of the applicant a detailed order was passed by this Tribunal on 9.9.2011, directing the respondents to consider the matter of renewal in accordance with the scheme/modified scheme. Thereupon, the impugned order dated 12.10.2011 was passed by the respondents declining the renewal on the ground that the renewal of contract is absolute discretion of the respondents. It was also mentioned that the performance of the applicant during the subsistence of the agreement was satisfactory or not could be considered only if a decision is taken to renew the agreement and therefore, in its discretion it has been decided not to enter into any fresh agreement with the applicant (Annexure A-18). According to the applicant in view of the scheme

dated 26.11.2007, particularly para 13, the renewal was at the discretion of the authority. It was to be subject to satisfactory performance during earlier contract period. The past performance of the applicant has been brought on record and placed at Annexure A-7 of the O.A. which indicates his excellent performance as certified through certificate dated 31.12.2010. The entire scheme dated 26.11.2007 nowhere gives discretion to the respondent No.5. Therefore, the respondent No.5 has wrongly mentioned that in his discretion, it has been decided not to enter into any fresh agreement with the applicant. In fact, the above scheme does not talk about any fresh agreement. Rather it talks about the renewal of the agreement which has to be done on the basis of the past performance. This renewal has always been done in favour of the applicant right since 1985. Even, if the respondent No.5 had a discretion, it ought to have been exercised judiciously and not in a whimsical or capricious manner. Though the applicant's contract was only upto 31.7.2011, yet the respondents continued to accept work as per past practice and broadcasted news from the material supplied by the applicant and as such they are estopped from not renewing the contract, particularly when they continued to take news from the applicant in August, 2011 as well as in October, 2011.

3. The official respondents have filed a detailed C.A. saying that this Tribunal has no jurisdiction because the applicant is not an employee. The association of the applicant with the Union and the position held by him in the same has no bearing with the working of the AIR and the said association is not recognized by the AIR. Press report published in the newspaper 'Aaj' Patna dated 9.9.2010 has established that the applicant indulged in activity which were against the terms and conditions laid down in the guidelines for engagement of PTCs and the contract signed by the applicant. Therefore, the notice was issued and the termination was invoked according to the terms of the contract.

AP

The reply filed by the applicant against the show cause notice was taken into consideration before passing the order of termination (But in fact no reference of the reply has been made in the entire impugned termination order). In the C.A. filed on behalf of the official respondents, after amendment in O.A. in para 55, a plea has also been taken that termination /non-renewal of the contract is done after making a proper enquiry and giving due opportunity to the applicant to answer the queries. [This plea appears to be against the record because no proper enquiry was held and if it was held, applicant was not associated with the enquiry].

4. From the side of the applicant, Rejoinder Reply and Supplementary Rejoinder Reply have been filed denying the pleadings contained in the C.A. and Supple. CAs and reiterating the pleas contained in the O.A. In respect of jurisdiction of this Tribunal and maintainability of this O.A., it has been said and rightly so that this point has already been decided on 9.9.2011 in favour of the applicant after taking into consideration the judgment of the Principal Bench in the case of **Mamta Chopra and others Vs. Union of India** and others and **B.G. Dandekar (Dead) by L.R. Smt. Sheela Balwant Dandekar Vs. UOI and others.**

5. Simultaneously vide order dated 9.9.2011 after considering all the aspects of the matter as discussed in the order (running into five pages), the respondents were directed to consider the matter pertaining to issuance of an offer of yearly contract of PTC in favour of the applicant in accordance with the relevant scheme, ignoring the Patna incident. In furtherance thereof, the respondents considered the matter but decided against the applicant by passing an order dated 12.10.2011 which has also been impugned (Annexure -18).

6. After hearing the arguments at length, it was noticed that as per guideline 13 of the Scheme of Net Work of PTC of Prassar Bharti (Annexure -8), the PTCs were to be offered the renewal of contract

subject to satisfactory performance during the earlier contract period.

In the second impugned order dated 12.10.2011, it is mentioned that the entire case was considered and thereafter in its administrative discretion, it was decided not to enter into any fresh agreement with the applicant. But it was not ascertainable as to what relevant material was available with the competent authority to access the satisfactory performance of the applicant as provided under para 13 of the scheme. In the entire C.A., also no such relevant material had been indicated. From the side of the applicant it has been claimed that his performance has been satisfactory all through. In this regard, a D.O. letter dated 31.12.2010 (Annexure -7) from Sri R.P. Saroj, Incharge, Regional News Unit addressed to the applicant was also referred which mentions about commendable performance of the applicant till December, 2010.

7. From the side of the respondents, it was however reiterated that performance of the applicant was not satisfactory on account of which contract was not renewed. But this Tribunal did not find any thing to substantiate this contention of the respondents. Therefore in order to ascertain the actual position, this Tribunal directed on 21.3.2013 the respondents to bring on record specific version or averment showing relevant material in respect of unsatisfactory performance if any of the applicant on the basis of which administrative discretion has been exercised against the applicant declining renewal of contract vide order dated 12.10.2011. In compliance of the above order a supple. C.A. has been filed by the respondents on 12.4.2013 enclosing the performance report of the applicant as Annexure -1. This report in a tabular form has 4 columns. First column pertains to months from August 2010 to July 2011. The second column is in respect of news received. The minimum number of news shown are 20 in the month of November, 2010 and April, 2011 and the maximum number of news are 52 in July, 2011. The third column shows used news out of the

Ad

aforesaid received news and the last column pertains to dispatch. But in para 12 of this Supple CA, there is no specific averment of the respondents as to whether on the basis of the above chart, the performance of the applicant was found satisfactory or not. Instead an irrelevant averment has been made that applicant's case is not that his performance was Very Good.

8. In response to the above a Supple. R.A. has been filed by the applicant on 22.4.2013 saying that even after expiry of contract on 31.7.2011 and even after issuance of order dated 12.10.2011, declining the renewal of contract, news report/ voice dispatched sent by the applicant were accepted and broadcasted by the Prasar Bharti. An electrostat copy of the same obtained under RTI has been annexed as SRA-1. There is no rebuttal from the side of respondents. In respect of aforesaid chart pertaining to performance of the applicant, it has been averred that it has been neither pleaded in the Supple. CA nor it appears from its perusal that the performance of the applicant was unsatisfactory. According to applicant, therefore it is apparent that the renewal was declined without any basis under the garb of administrative discretion.

9. Under challenge in this O.A. are the two orders dated 6.5.2011 and 12.10.2011. Besides, a direction has been sought for the respondents to consider the renewal of annual contract of the applicant as PTC. The aforesaid first impugned termination order / notice dated 6.5.2011 (placed at Annexure -1) is as under:-

"Whereas, you had entered into a contract on dated 5th August, 2010 with station Director, All India Radio, Lucknow acting on behalf of Prasar Bharti, which charge is presently held by the undersigned, to work as Part Time Correspondent for one year with effect from 01.08.2010 to cover District Hardoi (U.P.).

AND whereas, as per the provisions envisaged in clause 4(i) of Contract it has been decided to terminate the said

AL

contract by giving one calendar month notice to you. This notice is being issued accordingly to the effect that the said contract shall stand terminated on expiry of one calendar month from the date of this notice.

This issues with the approval of Competent Authority."

10. According to the respondents, the aforesaid order/notice of termination of the contract is not stigmatic. It is an order simpliciter based under clause IV (i) of the form of agreement for PTC (Annexure 13). It provides that without assigning any reason, the agreement was terminable by giving one calendar month's notice in writing or by giving one calendar month's fee and accordingly one calendar month's notice dated 6.5.011 (Annexure -1) was given as a consequence of which his contract stood terminated after expiry of one month i.e. on 5.6.2011. As mentioned in para 1 of this notice, lastly the contract was entered into on 5.8.2010 which was effective from 1.8.2010 to work as PTC for one year i.e. upto 31.7.2011. But on 25.5.2011, an interim order dated 27.5.2011 was passed for keeping the aforesaid order /notice in abeyance.

11. According to the applicant, the aforesaid order/ notice was not a simpliciter. Admittedly, about six months before i.e. on 7.10.2010, a show cause notice was issued to the applicant (Annexure -9) in respect of Patna incident. The contents of the notice are as below:-

"NOTICE

It has been noticed from press reports published in newspapers in Patna (copies enclosed) that after announcement of the assembly elections in the Stat while the model code of conduct was in force PWD Minister Sri Prem Kumar was invited to inaugurate a meeting of PTCs of Bihar. Media reports also mentioned that Sri Abhay Shankar Gaur PTC Hardoi criticized Prasar Bharati in this meeting . Thus, he has

AP

violated code of conduct and this type of his act disrepute the image of Prasar Bharti.

He is also responsible to keep Prasar Bharti and All India Radio/ Doordarshan and its officials at all times indemnified in respect of consequences following any breach of warranties and undertakings made and in respect of all actions, proceedings, claims, demands and expenses whatsoever which may be brought against or incurred by him. In consequence of any breach of any such warranties or undertakings or on ground that ny such work as aforesaid is an infringement of any right of any other person or is libelous or landerous or controversial or otherwise in any way arising out of the exercise of the rights granted to him.

He is directed to reply within 15 days of issue of this notice as to why his engagement as PTC, Hardoi may not be terminated for violating model code of conduct and going to Press for redressal of grievances and criticizing Prasar Bharti in the media which is against the provisions of the agreement made by him with Prasar Bharti."

12. Concededly in response to this notice, the applicant submitted his detailed reply which is on record. Though it is claimed by the official respondents that after taking into consideration the contents of the said reply, the contract of the applicant was terminated but as would be apparent from the aforesaid notice of termination dated 6.5.2011, there is not even a whisper about the consideration of any of the contents of reply submitted by the applicant. Though ostensibly this notice is a simpliciter action taken in accordance with clause IV (i) of the Contract. But in fact the official respondents took a short cut method by issuing the aforesaid notice/ order in the garb of so called absolute administrative discretion as claimed by them. In other words, this exercise was to camouflage the real intention of the official respondents

AR

which was to do away with the applicant whose activity as All India President of PTCs were prejudicial according to their perception. Therefore, this order was undoubtedly passed under colourable exercise and hence deserves to be set aside. Secondly, this order is also bad in the eye of law because, though the respondents claim that the points raised by the applicant in his detailed reply submitted well within time were duly considered and thereafter, this order was passed, but there is not even a whisper about any of those points in the entire order.

13. The second impugned order is dated 12.10.2011 which is reproduced below:-

"Reference order dated 9.9.2011 of the Hon'ble Central Administrative Tribunal, Lucknow Bench in M.P. NO. 1691/2011 in O.A. No. 225/2011.

At the very outset, it is made clear that the present speaking order is without prejudice to the rights of Prasar Bharti and same does not create any right in your favour or any obligation on Prasar Bharti.

As you are aware your engagement as a retainer Part Time Correspondent with Prasar Bharati was by virtue of agreement dated 5.8.2010 which agreement was valid upto 31.7.011 only and it comes to an end after expiry of the said period unless renewed by the Station Director absolutely at his discretion. In this regard clause 2 of the agreement is very clear and specific.

Even the agreement was for a period of one year, in terms of clause 4 of the agreement, it could be terminated at any point of time by Prasar Bharti and there was no obligation to assign any reason for the same. Moreover, the said agreement does

Be

not confer any right of employment in your favour either permanent or temporary.

It is made clear that as per procedure, there is no automatic renewal of the agreement and as to your performance during the substance of the agreement was satisfactory or nor could be considered or looked into only if a decision is taken to renew the agreement.

The scheme dated 18.9.2009 relied upon by you is not applicable in your case as the same is applicable to person who have jural relationship of employer-employee with Prasar Bharti, which in your case is absent. During your engagement as PTC, you were not even full time casual worker and you were at liberty to work elsewhere with any other set up.

After having considered the entire case, the competent authority in its administrative discretion has decided not to enter into any fresh agreement with you and the decision in this regard is final and binding."

14. As mentioned in the beginning, this order has been passed in furtherance and in compliance of the order of this Tribunal dated 9.9.2011, by means of which, the official respondents were directed to consider the renewal of yearly contract in favour of the applicant in accordance with relevant scheme. In para 11 of the O.A., it has been specifically averred that the relevant modified scheme/ circular is dated 26.11.2007 (Annexure -8). This averment has not been specifically denied in the corresponding paragraph 16 of the initial C.A. According to clause 13 of this scheme, the PTCs will be offered yearly renewable contract and their renewal will be subject to satisfactory performance during the earlier contract period. There is no quarrel on the point that the applicant was initially appointed in Feb., 1985 as PTC at Hardoi on contractual basis and since then he has been continuing in the job for the last about 26 years. The applicant claims that he has rendered

exemplary service and no complaint has been ever received against his working. This averment also does not appear to have been specifically denied anywhere. However we have to confine to the 'satisfactory performance' during the earlier contract period. In the aforesaid impugned order dated 12.10.2011, while considering the renewal of the applicant for the next year (ignoring the aforesaid Patna incident) the respondents have nowhere mentioned that his performance of the previous year was not satisfactory. They have in fact side tracked and adopted a short cut and novel method by saying that the renewal is absolutely at the discretion of Station Director as mentioned in para 3 of the aforesaid order and that the satisfactory performance has to be looked only if a decision is taken to renew the agreement. In the last paragraph, it has been merely mentioned that the competent authority in its administrative discretion has decided not to enter into any fresh agreement with the applicant. Aforesaid clause 13 clearly provides that yearly renewal contract will be offered and it will be subject to satisfactory performance during the earlier contract period. Obviously, therefore the respondents have acted against the aforesaid specific guidelines and on the pretext of the absolute discretion they have passed the above order ignoring specific direction contained in their own Scheme for taking into consideration the satisfactory performance during the previous year. The obvious reason appears to be that for the last about 26 years, the yearly contracts of the applicant were being renewed on the basis of his satisfactory performance upto the mark and during the immediate last year also there was nothing on record against the applicant to show his unsatisfactory performance. But the authorities were probably annoyed with him for his leadership activities. It is worthwhile to mention here that on 21.3.13 during course of arguments, statement was given on behalf of the respondents that the performance of the applicant was not satisfactory on account of which the contract was not renewed. But there was nothing on record to

AS

substantiate it. Therefore, the respondents were specifically directed to bring on record such relevant material, if any, in respect of unsatisfactory performance, on the basis of which, the administrative discretion has been exercised declining renewal of contract. In compliance thereof, a Supple. Affidavit has been filed by the respondents vide M.P. No. 863/13. But they could not bring on record any such material showing unsatisfactory performance during the previous year. They enclosed only a performance chart at Annexure 1 showing received news/ used news/ dispatch from August 2010 to July, 2011. But on the basis of it, neither it can be perceived that the performance was not satisfactory nor it has specifically averred so by the respondents themselves in their aforesaid entire supplementary affidavit. There is also no comparative chart/material to show the performance of other PTCs. In the relevant para 12 of this affidavit also, there is not even a whisper that the performance was not satisfactory or it was assessed as not satisfactory on the basis of this chart. It was for the official respondents to satisfy on this point but they could not. Instead they have made a peculiar and irrelevant averment that it is not the case of the applicant that the performance was Very Good. This sentence again expose the hollowness of the stand taken by the respondents. In fact, according their own case there was no requirement of Very Good performance during the last year. The only requirement, as mentioned in the above scheme was only of 'satisfactory performance' during the earlier contract period. On the other hand the applicant has brought on record a certificate dt. 31.12.10 (Annexure-7) issued by a Senior official of the respondents praising the performance of the applicant. It has not been rebutted by the respondents.

15. The official respondents also appear to be under a wrong impression that they have absolute discretion. We are living in the age

As

of transparency. The transparency is supposed to be one of the significant component of real justice. Even administrative orders should indicate proper reasons showing application of mind. In fact giving reasons ensures not only application of mind but it also prevents unnecessary litigation. It is also settled law that the public authorities in exercise of administrative discretion are bound to act reasonably and fairly. The whole edifice of democratic and impartial contract of public authorities of whom the public have reposed their confidence and mandated to act as such is the sign-qua-non of civilized governance. A discretion can never be absolute as claimed by the respondents. It can also not be unguided. In **W.P. No. 218 (M/B) of 2012 Naresh Agrawal Vs. State of U.P. and others decided on 8.2.2012** relied upon by the learned counsel for the applicant, the Hon'ble High Court, Allahabad, Lucknow Bench has referred to the meaning of word 'Discretion' as discussed in the case of **Sharp Vs. Wakefield reported in 1891 AC 173,179**, Lord Halsbury rightly observed that 'Discretion' means that some thing is to be done according to the rules of reason and justice, not according to private opinion... according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular.The latitude or liberty accorded by statute, circular or order to the higher authority does not permit to exercise such power in unjust and unfair manner.

16. From the side of the respondents, reliance has been placed on the following two case laws:-

i) **District and Session Judge, Baghpat Vs. Ratnesh Kumar Srivastava and another reported in (2005) UPLBEC 1156-** As the facts and circumstances of the present case are different, this case law has no application in the present matter.

ii) **Satish Chandra Anand Vs. The Union of India reported in AIR 1953 SC 250-** In this case it was held that in respect of contractual

As

appointment, if such contract has been terminated by notice under one of its clause- Constitutional protection has no application. There cannot be two opinions on the aforesaid ratio laid down by the Hon'ble Apex Court in the Full Bench. But the facts and circumstances of the present case and point of adjudication as discussed herein above being different, this case law does not provide any benefit to the respondents. Therefore the second impugned order dt.12.10.11 also deserves to be quashed.

17. Finally, therefore, the O.A. is partly allowed. The orders dated 6.5.2011 (Annexure-1) and 12.10.2011 (Annexure -18) are hereby quashed. The respondents are directed to consider the renewal of the contract in favour of the applicant in accordance with law and also keeping in view the observations made in the body of this order/judgment expeditiously say within a period of 2 months. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh)
Member (J) 24.5.13

HLS/-