

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated :

27 OCT 1989

CONTEMPT

PETITION (CIVIL) APPLICATION NO (x) 67
in Application No. 812/88(F)
W.P. NO (D)

Applicant (x)

Shri A.S. Murthy

v/s

The Station Director, All India Radio,
Bangalore & 2 Ors

To

1. Shri A.S. Murthy
'Kalakshetra'
Hanumanthanagar
Bangalore - 560 019

4. The Director General
All India Radio
Akashavani Bhavan
Parliament Street
New Delhi - 110 001

2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

5. The Secretary
Ministry of Information & Broadcasting
'A' Wing, Shastry Bhavan
New Delhi - 110 001

3. The Station Director
All India Radio
Rajbhavan Road
Bangalore - 560 001

6. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/STRAEX/INTERIM ORDER
passed by this Tribunal in the above said application(x) on 23-10-89

R. Jay
SECTION OFFICER
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE.

DATED THIS THE 23RD DAY OF OCTOBER 1989

Present: Hon'ble Shri Justice K.S.Puttaswamy .. VICE CHAIRMAN
Hon'ble Shri L.H.A.Rego .. MEMBER(A)

CONTEMPT PETITION (CIVIL) NO. 67/89
in A.No.812/88

A.S.Murthy,
'Kalekshethra',
Hanumanthanagar,
Bangalore 19. .. Applicant
(Dr. M.S.Nagaraja .. Advocate)

vs.

1. The Station Director,
All India Radio,
Rajbhavan Road,
Bangalore 1.

2. Director General,
All India Radio,
Akashavani Bhavan,
Parliament St.,
New Delhi 110 001.

3. The Secretary,
M/o Information and
Broadcasting,
'A' wing, Shastry Bhavan,
New Delhi 1.

.. Respondents.

(Shri M.S.Padmarajaiah .. SCGSC)



This application has come up today before this

Tribunal for Orders. Hon'ble Vice Chairman made the following:

ORDER

Petitioner by Dr.M.S.Nagaraja.

Respondents by Shri M. Vasudeva Rao.

In this petition made under 17 of the Administrative

Tribunals Act, 1985 (the Act) and the Contempt of Court Act, 1971, the petitioner has moved this Tribunal to punish the respondents for not implementing the order dated 31.3.1989 in Application No.812/88.

2. In Application No.812/88, the applicant had challenged his removal in a disciplinary proceeding. On an examination of the rival contentions urged, we made an order in favour of the applicant in these terms:-

"In the light of our above discussion, we make the following orders and directions:

1. We quash order No.PF 9/23/72-SVIII (Vol IV) dated 1.3.88.(Ann-A11) of the AA and Order No. 6/54/82-Vig. dated 18.9.1985 (Ann-A9) of the DGAIR.

2. We declare that the applicant was on duty from 8.9.82 to 15.8.87 and that all financial benefits due to him on that basis shall be computed and made available to him deducting the amounts already paid to him as subsistence allowance for the period he was under suspension from 8.9.1982.

3. We direct the respondents to compute all the financial benefits due to the applicant on the basis of our declaration at para 2 supra and make them available to him with all such expedition as is possible in the circumstances of the case and in any event within a period of 3 months from the date of receipt of this order.

Application is disposed of in the above terms. But, in the circumstances of the case. We direct the parties to bear their own costs."

The petitioner has complained that this order had not been implemented in letter and spirit.

3. Shri Rao informs us that on the Supreme Court declining to interfere with the order made by us, Government had issued instructions for implementing our order and payment of all the

amounts due to the applicant. Shri Rao has also shown us the instructions received by him in that behalf. We have shown the same to Dr.Nagaraja. From the submissions made by Shri Rao, we are satisfied that the respondents had complied with the order made by this Tribunal in letter and spirit. If that is so, then the Contempt of Court proceedings are liable to be dropped. We, therefore, drop these Contempt of Court proceedings. But in the circumstances of the case we direct the parties to bear their own costs.



Sd/-

VICE CHAIRMAN
22/10/89

TRUE COPY

Sd/-

MEMBER(A) 12.10.89

R. Jayaram
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

★ ★ ★ ★ ★

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 4 APR 1989

APPLICATION NO (S) 812 / 88(F)

W.P. NO (S) _____

Applicant (s)

Shri A.S. Murthy

To

v/s The Station Director, AIR, Bangalore
& 3 Ors

1. Shri A.S. Murthy
C/o Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009
2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009
3. The Station Director
All India Radio
Rajbhavan Road
Bangalore - 560 001
4. The Deputy Director General
All India Radio
Sansad Marg
New Delhi - 110 001

5. The Director General
All India Radio
Sansad Marg
New Delhi - 110 001
6. The Secretary
Ministry of Information &
Broadcasting
Shastri Bhavan
New Delhi - 110 001
7. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/REPLY/REPLY/REPLY
passed by this Tribunal in the above said application(s) on 31-3-89.

Re: enclose two copies for S.I. nos 1 & 2

J.A. Shetty
u/4/89

(J.A. Shetty)

Encl : As above Ady/Co/Co

A. Shetty
for DEPUTY REGISTRAR
(JUDICIAL)

o/c

5-2-89

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 31ST DAY OF MARCH, 1989.

Present:

Hon'ble Mr. Justice K.S.Puttaswamy, .. Vice-Chairman.

And

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATION NUMBER 812 OF 1988

A.S.Murthy,
S/o late A.N.Subba Rao,
Aged 58 years,
Ex-Staff Artist,
All India Radio,
BANGALORE.

.. Applicant.

(By Dr.M.S.Nagaraja, Advocate)

v.

1. Station Director,
All India Radio, Bangalore.
2. Deputy Director General,
All India Radio, NEW DELHI.
3. Director General,
All India Radio, NEW DELHI.
4. Secretary,
Ministry of Information and
Broadcasting, NEW DELHI.

.. Respondents.

(By Sri M.S.Padmarajaiah, Standing Counsel)

This application having come up for hearing, Hon'ble Vice-Chairman made the following:

ORDER

This is an application under Section 19 of the Administrative Tribunals Act,1985 ('the Act').



2. Sri A.S.Murthy, the applicant before us born on 16-8-1929 joined service in the All India Radio ('AIR') Station, Bangalore on 1-1-1960 as Staff Artist on contract basis. He has continued ever since then on the terms and conditions of the contract first entered into between him and the President of India/Government of India ('GOI') on 29-12-1959 (Annexure-A1) for a period of 3 years from 1-1-1960 renewed and supplemented from time to time. Under

the very last contract entered into between them, the applicant was due to retire from service on 15-8-1987 on attaining the age of retirement or superannuation stipulated for others in the GOI. But, alas, that smooth sailing with all its other concomitants did not happen.

3. From 1-11-1981 a daily programme in Kannada called Ondu Mathu or 'One Word' for a duration of 5 minutes on the lines of similar Hindi programmes in other AIR stations was introduced in the Bangalore station. On and from that date, the applicant was assigned the duty of collecting, collating and broadcasting that programme which he was doing with conspicuous distinction from that date till 26-8-1982 without any hitch and problem to anybody.

4. In his Memo No. 23(3)/82-G dated 27-8-1982 the Station Director, Bangalore directed that Ondu Mathu programme be broadcast from 1-9-1982 to 30-9-1982 by three other artists of the Station namely Sriyuths H.S.Venugopal, G.Neelakanta Rao and B.S.Swamy. On the actual service of this order and its date, on the applicant there is dispute to which we will revert at a later stage. But, evidently, knowing the same, on 29-8-1982 the applicant recorded his broadcast under the said programme to be relayed on the next day at 7.15 p.m. which also was relayed by those concerned the next day namely on 30-8-1982.

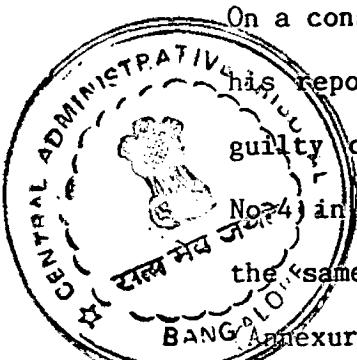
5. On hearing or examining the contents of the broadcast recorded by the applicant on 29-8-1982 under the programme Ondu Mathu the Station Director in his Memo No. 15/3/82-SA dated 30th August, 1982 (Annexure-A2) called for his explanation on what was stated therein to which he tendered his reply on 31-8-1982 (Annexure-A3). With a better understanding of the whole situation, tact, helpful attitude by both, the matter should have normally ended only with a severe warning to the applicant by the Station Director on the former expressing sincere regret. But, alas that did not happen. On the other

hand, the matter took a queer and tortuous turn.

6. On the programme recorded by the applicant on 29-8-1982 and broadcast on 30-8-1982 as Ondu Mathu the Deputy Director General (Administration), All India Radio, New Delhi ('DDGA') by his telegraphic order dated 8-9-1982 placed the applicant under suspension pending contemplated disciplinary proceedings against him which continued till he was removed from service.

7. On that and other incidents the DDGA in his Memorandum No.6/54/82-Vig. dated 21-6-1983 ('Charge Memo') (Annexure-A5) initiated disciplinary proceedings against the applicant, levelling five charges against him in a charge-memo which was served on him on 28-6-1983 and in his statement filed within the permitted time, the applicant denied the charges levelled against him. On that, the DDGA in his Memorandum No.6/54/82-Vig dated 11-8-1983 appointed one Sri G.T.Iyengar, who was then functioning as the Station Director, AIR, Dharwad as the Inquiry Officer ('IO') and directed him to submit his report thereon to him. While this inquiry was pending, the DDGA in his Memorandum No.6/54/82-Vig dated 27-2-1984 (Annexure-A6) framed two more charges against the applicant and served the same on him authorising Sri Iyengar to inquire into them also and submit his report. On 12-3-1984 the applicant filed his statement denying the two additional/new charges levelled against him.

8. On the authority conferred on him by the DDGA, the IO commenced the inquiry on 29-8-1983 and concluded the same on 17-9-1984. On a consideration of the evidence placed before him, the IO submitted his report on 29-10-1984 to the DDGA in which he held the applicant guilty of Charge Nos. 1, 2, 5, 6 and 7 in their entirety, Charge No.4 in part and exonerated him of Charge No.3. On concurring with the same, the DDGA in Office Memorandum No.6/54/82-Vig dated 20-5-1985 (Annexure-A7) issued a show cause notice to the applicant which we will hereafter refer to as the second show cause notice proposing



to terminate his contract or remove him from service. In response to this, the applicant filed his statement on 12-6-1985 (Annexure A8) before the DDGA inter alia contending that the report of the IO should not be accepted and he should be exonerated of all the charges levelled against him. On that, the Director General, All India Radio, New Delhi ('DGAIR') by his Order No.6/54/82 Vig. dated 18-9-1985 (Annexure-A9) had terminated the contract of the applicant with immediate effect or had terminated his service with immediate effect.

9. Against the said order of the DGAIR, the applicant filed an appeal on 20-10-1985 before the Secretary to Government, Ministry of Information and Broadcasting, Government of India and Appellate Authority ('AA') who by his order bearing No. Ban 21 (102)/86-S dated 22-12-1986 dismissed the same.

10. In Application No. 1635 of 1986 the applicant challenged the said orders of the AA and DA before this Tribunal. On 13-2-1987 we disposed of the same, quashed the order of the AA on the ground that it was not a speaking order and directed him to restore the appeal to its original file and dispose of the same in conformity with the directions contained in that order. In S.L.P.No.6049 of 1987 the respondents challenged the said order of this Tribunal before the Supreme Court which was disposed of by that Court on 16-11-1987 with a modification of the order made by this Tribunal.

11. In compliance with the remand order made by this Tribunal as modified by the Supreme Court, the AA heard the applicant on 8-1-1988 and by his order No.PF.9/23/72-SVIII (Vol.IV) dated 1-3-1988 (Annexure-A12) dismissed the same. In this application made on 27-5-1988 the applicant has challenged the said orders of the AA and the DA.

12. In justification of the impugned orders, the respondents have filed their reply and have produced their records.

13. We have so far very broadly noticed the facts. We will refer to such other details as are necessary when we deal with the specific questions.

14. Dr. M.S.Nagaraja, learned Advocate appeared for the applicant. Sri M.S.Padmarajaiah, learned Central Government Standing Counsel appeared for the respondents.

14. We heard this case on 15th, 16th, 20th and 21st March, 1989 and reserved our orders on the conclusion of arguments by both sides.

16. On the pleadings and contentions urged before us, the following points arise for our determination.

- (1) Who was the Appointing Authority of the applicant.
- (2) Whether the applicant was a civil servant of the Union of India or not?
- (3) Whether the applicant was governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('Rules') or not?
- (4) Whether the order of the AA is a speaking and legal order or not?
- (5) Whether the initiation of disciplinary proceedings by DDGA was legal and valid?
- (6) Whether the removal of the applicant by the DGAIR was legal and valid?
- (7) Whether the applicant had been afforded a reasonable opportunity to defend himself before the IO or not?
- (8) Whether the report of the IO concurred with by the DA and AA is vitiated for not sifting the evidence on each of the charges or for consulting and relying on the opinion of any outside authority?
- (9) Whether the findings of the IO concurred with by the DA and AA on all or any of the charges are based on 'no evidence'? If based on ~~no~~ evidence, are they so perverse that no reasonable man would have ever reached them on all or any of them?
- (10) To what reliefs the applicant is entitled ?



We now proceed to examine these points in their order.

RE: POINT NO.1

17. On this important point namely as to who actually appointed the applicant to the post of Staff Artist, none of the authorities have addressed themselves and recorded their finding. As if to compound this glaring deficiency, the pleadings of both sides do not also state anything on the same. We have, therefore, to ignore the orders of the authorities and the pleadings on this aspect and independently ascertain the same.

18. The post of a Staff Artist with due regard to the fee or time-scale of pay allowed in 1959/60 was a class III or a Group-C post as is now classified. The DGAIR as the head of the department was competent to appoint Staff Artist in 1959-60. We can presume that to have been done in the case of the applicant. This is in accord with the legal presumption in Section 114 of the Evidence Act. On this we should hold that the DGAIR had appointed the applicant.

19. In the Service Book of the applicant maintained at AIR station, Bangalore under column Nos. 10 and 11, there is an entry, which reads thus:

"Appointed as Staff Artist vide DG AIR Memo No.1/17/59 P4 dated 5-12-1959.

Sd/- Station Director,
All India Radio,
Bangalore. 10-2-1960."

In the context, this entry appears to refer to the authority or the order on the basis of which the applicant was appointed. Order No.1/17/59-P4 referred to necessarily refers to an order made by the DGAIR. Even the terms of this entry support our earlier conclusion.

20. We are informed that in 1959-60 the post of DDGA did not exist. If that is so, then anybody holding that post then would not arise. Even otherwise, the existence or non-existence of the

post of DDGA in 1959-60 makes no difference in deciding point No.1.

21. On the foregoing discussion, we hold that the DGAIR was the appointing authority of the applicant.

RE:POINT NO.2

22. Dr. Nagaraja has urged that the applicant who had been appointed as a Staff Artist, which was a civil post, was a civil servant of the Union of India. In support of his contention Dr. Nagaraja strongly relied on the ruling of the Supreme Court in UNION OF INDIA v. M.A.CHOWDHARY [AIR 1987 SC 1526 = 1987 SCC (L&S) 379] and a ruling of the Kerala High Court in RADHA v. STATION DIRECTOR, AIR, TRIVANDRUM [1985(1) Labour Law Journal 385].

23. Sri Padmarajaiah has urged that the applicant though holding a civil post was not a civil servant of the Union of India.

24. In the All India Radio which is a department of Government of India, there were and are posts of Staff Artists, the fee or salary or emoluments payments of which are met from the Civil Estimates of the Union of India. On the principles enunciated in THE STATE OF ASSAM AND OTHERS v. KANAK CHANDRA DUTTA (AIR 1967 SC 884) there cannot be any doubt on the fact that the post of a Staff Artist was a civil post.

25. In Chowdhary's case the question whether the post of a Staff Artist appointed under contract in AIR was a civil post or not directly arose for consideration before the Supreme Court. On that question, the Supreme Court noticing the concession made by the Union of India expressed thus:



"Shri A.K.Ganguli, learned counsel for the Union of India submits that Art.311 of the Constitution is applicable to the Staff Artists of the All India Radio. We are of the view that the statement made on behalf of the Government represents the true legal position because the Staff Artists are holding civil posts under the Government. In view of the above statement, this appeal filed against the judgment of the High Court of Allahabad in Special Appeal No.258 of 1974 which has also taken the view that Art.311 is applicable to those Staff Artists has to be dismissed. This appeal is accordingly dismissed. No costs."

This decision sets at rest this controversy completely.

26. When once the post is held to be a civil post under the Union of India, a fortiori it follows that the person holding that post can only be civil servant of the Union of India and cannot be anything else. The holder of a civil post is necessarily a civil servant of the Union of India. A person holding a civil post either under a contract or otherwise cannot be treated as holding that post only to render "personal service" under a contract as urged by Sri Padmarajaiah. The service rendered by a person holding a civil post is undoubtedly personal. But, that service is not personal service rendered to any other person other than the Union of India, for love, affection or any other consideration. Any other conclusion will do violence to the concept of civil service under our Constitution and civil servants of the Union.

27. On the foregoing discussion, we hold that the applicant was a civil servant of the Union of India.

RE:POINT NO.3

28. Dr. Nagaraja urged that the applicant as a civil servant of the Union of India, was governed by the Rules and the proceedings completed in derogation of them and the orders made thereon were illegal. In support of his contention Dr. Nagaraja strongly relied on the ruling of the Kerala High Court in Radha's case.

29. Sri Padmarajaiah urged that the applicant was exclusively governed by the terms of the contract and not the Rules and that in any event, the "New terms and conditions for engagement of 'Artists' by All India Radio and Doordarshan" ('New Terms') framed by Government of India conveyed in its letter No.45011/26/80-B(A) dated 26-8-1983 expressly excluded them to Staff Artists.

30. In the Charge Memo, the DDGA had not invoked the Rules. In his show cause notice dated 20th May, 1985 the DDGA had stated

at para 3 that the IO had held the inquiry under the Rules. In his final order made on 18-9-1985, the DGAIR had relied clause 4(iv) of the contract to terminate the contract or the services of the applicant. The conclusions reached by the DDGA and the DGAIR on this aspect are not supported by any discussion and reasons.

31. In the first sentence of the preamble, the AA had stated that the proceedings against the applicant had been completed under the Rules. But, having so stated, the AA in the discussion part of the order, had expressed that the Rules had no application to the applicant. In reaching this apparent contradictory conclusions, the AA had not given reasons.

32. On what we have noticed earlier, we must necessarily ignore the views and conclusions of the AA, DGAIR and DDGA on this aspect and independently examine the same.

33. We have earlier held that the post held by the applicant was a civil post and he was a civil servant of the Union of India. This very conclusion should prima facie lead us to hold that the Rules govern the applicant. We need hardly say that this is logical. But, remembering the famous saying of Justice Holmes in his classic treatise "The Common Law" that "The life of the law has not been logic, it has been experience", we propose to examine the question in depth.

34. The Rules have been framed by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution.



35. The Rules have been made to regulate classification of the civil services of the Union, their control and the appeals to be made by them thereto.

36. Rule 1 of 1965 Rules deals with the title and commencement of the Rules. Rule 2 defines certain terms that generally occur in the Rules.

37. Rule 3 with the heading 'Application' dealing with the 'application' of the Rules which is decisive to answer the question reads thus:

Application

3. (1) These rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to -

- (a) any railway servant, as defined in Rule 102 of Volume I of the Indian Railways Establishment Code,
- (b) any member of the All India Services,
- (c) any person in casual employment,
- (d) any person subject to discharge from service on less than one month's notice,
- (e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.

(2) Notwithstanding anything contained in sub-rule(1), the President may by order exclude any class of Government servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railways Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within Exception (a) or (e) in sub-rule (1); to whom, but for such transfer, these rules would apply.

(3A) Notwithstanding anything contained in these rules, where any civilian Government servant in the Defence Services is temporarily made subject to the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), or the Air Force Act, 1950 (45 of 1950), these rules shall continue to apply to such civilian Government servant in the Defence Services and, for the purpose of discipline, he shall be dealt with under these rules unless the appropriate authority, for reasons to be recorded in writing, is of the opinion that sterner action is called for and directs that he be dealt with under the Act he is subject to.

(4) If any doubt arises, -

- (a) whether these rules or any of them apply to any person, or
- (b) whether any person to whom these rules apply belongs to a particular Service,

the matter shall be referred to the President who shall decide the same.

Sub-rule (1) of this Rule declares that the Rules apply to all civil servants of the Union of India except those who are expressly excluded

under that rule itself like Railway servants for whom separate analogous Rules had been made. The Staff Artists do not fall within any one of the clauses (a) to (e) of this sub-rule. The desperate stand of Sri Padmarajaiah that clause (d) of the sub-rule 'that any person subject to discharge from service on less than one month's notice' by interpreting the expression 'one month' in clause (4) of the contract as less than one month is without any merit. On this it follows that Staff Artists are not excluded in clauses (a) to (e) of this Rule.

38. Sub-rule (2) empowers the President/Government of India by an order made thereunder to exclude the Rules to any class of Government servants of all or any of the Rules. The power to exclude is conferred in this Rule. That power must be exercised by making an order invoking this Rule.

39. In their orders, the DA and AA have not stated that there was an order made under sub-rule (2) excluding the Rules to Staff Artists. In their reply, the respondents have not so pleaded. But, more than all these, the respondents have not produced any order made by the President/Government of India under this Rule excluding the Rules to Staff Artists. In the absence of an order made under the said sub-rule, then by force of Rule 3(1), the Rules would necessarily apply to Staff Artists.

40. An essay into the origin, recruitment and conditions of service of Staff Artists of AIR is not necessary for our purpose. But, as noticed earlier till 31-8-1983, they were employed on contracts entered into and renewed from time to time, extending them all other benefits except the benefit of pension.

41. On the representation of Staff Artists, Government in 1982 decided to terminate the earlier contract system and to achieve those objects issued communication No.45011/26/80-B(A) dated 26-8-1983 scheme and the same appended to the same.



42. When the aforesaid order was made and issued, the applicant was in service. On the option, if any exercised by the applicant there is dispute between the parties. We consider it wholly unnecessary to deal and decide that aspect in this application. But, on the very plea of the respondents on this aspect, they cannot rely on the scheme, which had not also been done by them earlier.

43. Even otherwise, the communication dated 26-8-1984 and the scheme appended to the same including para 17 of the scheme cannot be read as an order made under sub-rule (2) of Rule 3 excluding the Rules to Staff Artists.

44. In Radha's case, Bhat, J. dealing with the very question repelling the very contention urged in that case expressed thus:

"In these circumstances it is futile for the respondents to contend that the CCS (CCA) Rules have not been made applicable to the Staff Artists".

We are in respectful agreement with these views.

45. On the foregoing, we hold that the applicant was governed by the Rules.

RE: POINT NO.4

46. Dr. Nagaraja urged that the order made by the AA even on the second occasion was not a speaking order and is illegal.

47. Sri Padmarajaiah urged to the contrary.

48. We have earlier noticed that the applicant's appeal was dismissed by the then AA without making a speaking order, on which ground, this Tribunal set aside his order and directed the AA to redetermine the same giving the applicant or his Advocate if he so decides an opportunity of personal hearing. In its order the Supreme Court had affirmed the same except to the extent of our direction to be represented by an Advocate.

49. In our earlier order, we have relied on the ruling of the Supreme Court in RAMCHANDER v. UNION OF INDIA (AIR 1986 SC 1173) for holding that the order of the AA on appeal should be spea

order.

50. In pursuance of our order as modified by the Supreme Court the AA heard the applicant on 8-1-1988. On hearing the applicant on that day, the AA made an order on 29-2-1988 on the original file in these words:

"I gave personal hearing to Shri A.S.Murthy on January 8, 1988. I have gone through the record of the case and have also considered the points made by Shri Murthy in his personal hearing. I consider that the order of termination of contract passed by the competent authority was justified. The appeal has no force and is hereby rejected. A detailed order is placed on the file and may be issued".

The detailed order referred to in this order and communicated to the applicant and others on 1-3-1988, in the very first para refers to the inquiry held under the Rules, then sets out the charges, the report of the IO, the proceedings before this Tribunal and then the contentions urged by the applicant before him and thereafter dispose of the contentions in these words:

"The submission made by Shri A.S.Murthy that the entire enquiry bristles with technical irregularities, factual inaccuracies and legal infirmities and there was denial of opportunity to him to present his case is totally incorrect. Though the Central Civil Services (CC&A) Rules are not applicable to Staff Artists, the proceedings of the enquiry were conducted in accordance with the detailed principles laid down for conducting inquiry in the CCS (CC&A) Rules, 1965 and by following principles of natural justice as to afford ample opportunities to Shri Murthy to present his case. Shri A.S.Murthy was duly charge sheeted and enquiry was conducted in the manner as prescribed in the vigilance manual. As regards the contention made by him that his work required him to travel to and visit different places, the same is true only of specific official work assigned to him.

Shri A.S. Murthy has also stated that there was no office order or circular/instructions prescribing the procedure to be followed in cases of programmes to be broadcast. As per general policy guidelines issued by the Director General, All India Radio, each programme is to be broadcast only after approval of the script by the competent authority. No such approval was obtained by Shri A.S.Murthy before the broadcast of the 'ONDU MAATHU' on 30th August, 1982. Moreover, the said programme 'ONDU MAATHU' broadcast on 30th August, 1982 was found to be in self praise and in violation of conventional norms of broadcast.

The averment of Shri A.S.Murthy that the disciplinary authority did not apply his mind while passing the order of termination of contract and that the order was passed in a mechanical manner is also not valid. The decision



to terminate the contract was taken after due consideration of all the facts and circumstances of the case.

Taking into consideration the enquiry report and the position indicated above, the undersigned has come to the conclusion that the charges of irregular broadcast by Shri A.S.Murthy in the programme 'ONDU MAATHU' on 30-8-1982, lack of punctuality irregular attendance, unauthorised participation in Private Programmes in Goa and Mysore and also his participation in Kannada Film 'CHAKRAVYUHA' and also leaving the headquarters without seeking the permission of the Competent Authority are true and proved and it was for these acts of omission and commission that the contract of Shri A.S.Murthy was terminated. There is, therefore, no question of setting aside the order of termination of his contract served on him vide Directorate General, All India Radio Order NO.6/54/82-Vig. dated 18-9-1985.

NOW THEREFORE having regard to the above findings and taking into account all the circumstances of the case, the undersigned hereby rejects the appeals dated 20-10-1985 and 8th January, 1988, submitted by Shri A.S.Murthy."

We doubt whether this order has been made by the AA. But, since the original of the same had been signed by the AA, we hold that the same had been made by him and examine this contention.

51. What is meant by a speaking order and what are its real contents are no longer in doubt. In Ramachander's case, the Supreme Court had explained the same in these words:

"4. The duty to give reasons is an incident of the judicial process. So, in R.P.Bhatt v. Union of India (C.A. No.3165/81 decided on Dec.14,1982):(reported in 1986 Lab IC 790) this Court, in somewhat similar circumstances, interpreting R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules,1965 which provision is in pari materia with R.22(2) of the Railway Servants (Discipline and Appeal) Rules,1968, observed:

"It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules had been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in the failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate, inadequate or severe, and pass orders confirming, enhancing, reducing or setting aside the penalty, or remit back the case to the authority which imposed or enhanced the penalty, etc."

It was held that the word 'consider' in R.27(2) of the Rules implied 'due application of mind'. The Court emphasized that the Appellate Authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in that case,

as here, no indication in the impugned order that the Director-General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in these terms:

"(1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under:

(a) by the evidence on record, the findings of the disciplinary authority are warranted; and

(b) the penalty of removal from service imposed on you is merited.

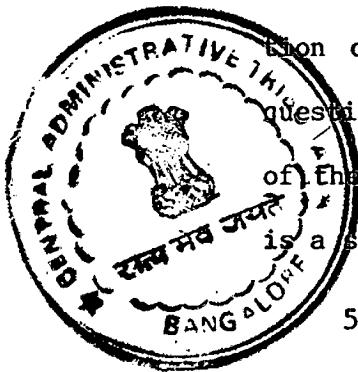
(2) The Railway Board have therefore rejected the appeal preferred by you."

5. To say the least, this is just a mechanical reproduction of the phraseology of R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshall the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirement of R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

We must examine this order in the light of these principles.

52. The mere length of an order does not convert an order into a speaking order. What makes a speaking order is the genuine application of mind of the authority to the appeal and then deciding the question raised thereto with reasons for the same. The substance of the order and not its form is decisive to decide whether an order is a speaking order.

53. The very first infirmity we notice in the order of the AA is that the questions are dealt in a rambling manner. But, more important is that the conclusions are not supported by reasons. Lastly the AA had not examined the appeal with due regard to the three



essential requirements of Rule 27(2) of the Rules emphasised by the Supreme Court in Ramchander's case. From this we very reluctantly hold that the order of the AA is not a speaking order in the true sense of that term.

54. We had remitted the matter to the AA once before. We will not be justified in doing the same over again. Even otherwise every sound principle of law and justice compel us to give a finality to these proceedings. For all these reasons, we decline to interfere with the order of the AA and proceed to examine all other questions.

RE:POINT NO.5

55. Dr. Nagaraja urged that the DDGA was not a Disciplinary Authority authorised either by the Rules or the President and, therefore, the initiation of disciplinary proceedings by him thereto against the applicant, were unauthorised and illegal.

56. Sri Padmarajaiah urged to the contrary.

57. We have earlier held that the applicant appointed by the DGAIR, was a civil servant of the Union of India and the Rules were applicable to him.

58. Both the Charge Memos had been issued by the DDGA. The charge memos really initiate disciplinary proceedings against the applicant (vide: K.CH.VENKATA REDDY AND OTHERS v. UNION OF INDIA AND OTHERS - (1987) 3 Administrative Tribunals Cases 174). Even the second show cause notice proposing to terminate the contract or remove the applicant from service had been issued by the DDGA only and not by the DGAIR. From this it follows that the initiation of disciplinary proceedings including the second show cause notice were by the DDGA and not by the DGAIR.

59. The DDGA was not the Appointing Authority of the applicant. In the Rules, the DDGA had not been named as a Disciplinary Authority. The President by a general or special order had not empowered the

DDGA to act as the Disciplinary Authority under the Rules.

60. With this it is now useful to read Rule 12(1) to (3) and Rule 13 of the Rules which read thus:

12.(1) The President may impose any of the penalties specified in Rule 11 on any Government servant.

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on-

(a) a member of a Central Civil Service other than the General Central service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President.

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.

3. Subject to the provisions of sub-rule(4), the power to impose any of the penalties specified in Rule 11 may also be exercised, in the case of a member of a Central Civil Service, Class III (other than the Central Secretariat Clerical Service), or a Central Civil Service, Class IV-

(a) if he is serving in a Ministry or Department of the Government of India, by the Secretary to the Government of India, in that Ministry or Department, or

(b) if he is serving in any other office, by the head of the office, except where the head of the office is lower in rank than the authority competent to impose the penalty under sub-rule (2).

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13. (1) The President or any other authority empowered by him by general or special order may:

(a) institute disciplinary proceedings against any Government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

Sub-rule (1) of Rule 12 which empowers the President to impose any



of the penalties against any civil servant of the Union of India, has no application as the punishment on the applicant has not been imposed by him under that Rule.

61. Sub-rules (2) and (3) of Rule 12 empower the Appointing Authority or any authority specified in the Rules or authorised by a general or special order made by the President to act as a Disciplinary Authority. An officer irrespective of his status in the department cannot act as Disciplinary Authority if he is not the Appointing Authority and is not authorised by the Rules or by a general or special order made thereto by the President. On the terms of Rule 12(2) and (3) of the Rules, the DDGA was not competent to act as Disciplinary Authority against the applicant. If that is so, then it was not open to the DDGA to initiate disciplinary proceedings against the applicant. Rule 13 of the Rules removes all doubts on this legal position. On a combined reading of these Rules, it was not open to the DDGA to initiate disciplinary proceedings against the applicant.

62. In any event it was not open to the DDGA to issue the second show cause notice proposing to inflict the penalty. That could have been made and issued only by the DGAIR and no other subordinate officer in his office.

63. On the foregoing discussion, we answer point No.5 in favour of the applicant.

RE:POINT NO.6

64. Dr. Nagaraja urged that the termination of the applicant either by dismissal or removal by the DGAIR on unauthorised disciplinary proceedings initiated and completed by the DDGA was illegal and invalid.

65. Sri Padmarajaiah sought to support the order of the DGAIR.

66. The final order made by the DGAIR on 18-9-1985 (Annexure A9) reads thus:

"GOVERNMENT OF INDIA
DIRECTORATE GENERAL: ALL INDIA RADIO

No. 6/54/82-Vig.

New Delhi, the
18th September, 1985.

ORDER

Shri A.S.Murthy, Staff Artist (Drama Voice) who was placed under suspension vide telegraphic order No.9(23)/72-S-VII(S-8) dated 7-9-1982 and charge sheeted vide Memorandum No.6/54/82-Vig. dated 21-6-1983 and 27-2-1984 has been found guilty after enquiry conducted by Shri G.T. Iyengar, Station Director, All India Radio, Gauhati of the charges of provocative broadcast made on the morning of 30-8-1982 without approval of the script by the concerned Programme Executive; unauthorised communication of information to the Press; lack of punctuality and irregular attendance and his unauthorised participation in the plays staged in Goa, Mysore and also in Kannada films 'Chakravyuha' and his leaving the Headquarters without authority and permission of the competent authority.

2. Shri A.S.Murthy is a Staff Artist, a contract employee, and his services are subject to the provisions of contract signed by him with the Government.

3. The undersigned having considered the records of the case, enquiry report and the evidence in records agrees with the findings of the Inquiry Officer wherein Shri Murthy was found guilty of most of the charges framed against him (Inquiry report already supplied).

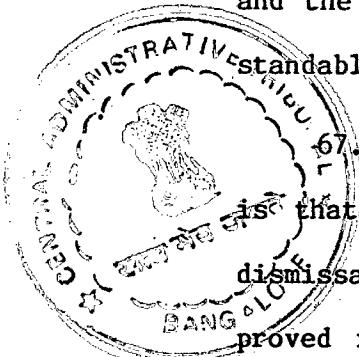
4. Having found Shri Murthy guilty, the undersigned in pursuance of the provisions contained in clause 4(iv) of the contract entered into by the said Shri Murthy with Government hereby terminates his contract with immediate effect.

Sd/- Suresh Mathur,
Director General."

This order rather inaptly states that the contract of the applicant stands terminated with immediate effect. That a contract is terminated or rescinded under Section 75 of the Contract Act for its non-performance or breach thereof by the other party on one or the other grounds is understandable. But, to say that a punishment is imposed and the contract is terminated for a proved misdemeanour is ununder-

standable.

67. Without any doubt the real meaning and effect of this order is that the services of the applicant stand terminated either by dismissal or removal as a punishment on the charges levelled and proved in the inquiry against him. This is what has been done by the DGAIR.



68. While dealing with point No.5 we have found that the initiation and completion of the disciplinary proceedings were unauthorised and illegal. If that is so, then the removal of the applicant on such invalid proceedings will be unauthorised, illegal and invalid.

69. On the legal position, Ramajois, J. in his treatise 'Services under the State' has expressed thus:

"5. Authority competent to initiate disciplinary proceedings.

(1) **Disciplinary proceedings must be instituted by competent authority:-** (i) An enquiry against a Government servant must be instituted at the instance of a competent disciplinary authority. Where a civil servant is appointed by the head of the department who alone was competent under the rules to institute disciplinary proceedings for imposing a major penalty, any enquiry instituted by a subordinate officer (who is not the disciplinary authority) is without jurisdiction. In such a case, even the head of the department is not competent to impose punishment on the basis of the enquiry held under the orders of an incompetent authority. There can be no valid imposition of punishment on the basis of an enquiry held by an unauthorised agency".

This is the correct legal position and we are in respectful agreement with these views.

70. We have earlier held that the Rules were applicable to the applicant. The Rules elaborate the guarantee to civil servants embedded in Article 311(2) of our Constitution. That a civil servant cannot be removed without complying with the requirements of Article 311(2) of the Constitution and the Rules is well-settled. The removal of the applicant was in contravention of the Rules and illegal.

71. Clause (4) of the terms of the agreement providing for termination of the contract which is material reads thus:

"4. This agreement shall be terminable as follows:-

(1) by the Government without any notice during the period of first three months.

(ii) At any time on one calendar month's notice in writing given to him by the Government if, in the opinion of the Government he proves unsuitable for efficient performance of his services under this agreement.

(iii) By the Government without previous notice if the Government are satisfied on medical evidence that he is unfit and is likely for a considerable period to continue unfit by reason of ill-health for rendering the services hereby provided for.

Provided always that the decision of the Government that the said Staff Artist is likely to continue unfit shall be conclusively binding on him.

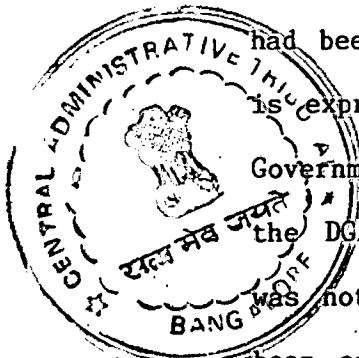
(iv) By the Government or their Officers having proper authority without any previous notice if the said Staff Artist shall be guilty of any insubordination intemperance or other misconduct or if any breach of non-performance of any of the provisions of these presents or conduct rules prescribed from time to time for Staff Artists.

During investigation into any charge of misconduct etc., mentioned above, the Government or other Officer having proper authority may keep the said Staff Artist under suspension and during such suspension the said Staff Artist shall not be entitled to any fee but shall be entitled to receive subsistence grant as such rate as the Government may decide to allow him.

(v) By one calendar month's notice in writing given at any time during the period hereby provided for under this agreement (except) the first three months thereof either by him to the Government or by the Government or their authorised Officer to him, without cause assigned.

Provided always that the Government may in lieu of any notice herein provided for give the said Staff Artist a sum equivalent to the amount of his fee for one month or shorter notice than one month if they pay him a sum equal to the amount of his fee for the period by which such notice falls short of one month. In case the said Staff Artist terminates this agreement without giving the Government, the full period of notice herein provided for, he shall be liable, without prejudice to other rights and remedies of Government to pay to the Government a sum equivalent to his fee for one month. Provided that in the event of such notice being shorter than one month, the said Staff Artist shall be liable to pay the Government (subject as aforesaid) a sum equivalent to the said Staff Artist's fee for the period by which such notice falls short of one month. The notice would be deemed to have been served on the said Staff Artist if it is handed over to him personally or sent to him by Registered Post or left at his last known residence".

Under this clause, the power to remove or terminate the contract had been reserved to Government or to an officer on whom that power is expressly conferred by Government. We have earlier noticed that Government had not conferred its power in terms of clause (4) on the DGAIR or on any other officer. The removal of the applicant was not by Government. If that is so, then the DGAIR who had not been authorised could not have terminated the contract and removed the applicant from service.



72. On the foregoing discussion, we hold that the removal of the applicant by the DGAIR was unauthorised and illegal.

73. On the findings recorded by us on points 1 to 6, the applicant is entitled to succeed. On this, it is really unnecessary for us to examine and deal with other points formulated by us. But, as our order is subject to correction by the Supreme Court, it is necessary to examine and decide all other points also which we now proceed to do.

RE: POINT NO.7

74. Dr. Nagaraja urged that the IO in not permitting the outside witnesses to be examined, had denied a reasonable opportunity guaranteed to the applicant under Article 311(2) of the Constitution and the Rules which incorporate the principles of natural justice and had acted illegally.

75. Sri Padmarajaiah urged to the contrary.

76. The DDGA framed 7 charges against the applicant which he denied. In support of his case, the applicant had proposed to examine witnesses who were not working in the AIR station.

77. On the very first day of inquiry, the IO inter alia directed thus:

"Witnesses if any to be produced in support of arguments etc., will be from the Department. No outsider will be allowed to participate in the proceedings of the Inquiry".

On this direction the IO did not permit the applicant to examine any of the outside witnesses and did not record their evidence.

78. We know no law which empowered the IO to direct that only witnesses from the Department should be examined and outside witnesses should not be examined. Without any doubt this embargo created by the IO except for its novelty and cussedness, had no support in law and justice. We are amazed at this direction of the IO.

79. Some of the charges levelled against the applicant, if not all, called for examination of outside witnesses. On this, the IO should not have shut out the applicant from examining outside witnesses and prove his innocence. Without any doubt, the IO acted in total disregard of Article 311(2), the Rules and the principles of natural justice and thus denied reasonable opportunity to the applicant. Even this finding justifies us to interfere with the impugned orders.

80. Sri Padmarajaiah has urged that even if we were to accept this contention we should reserve liberty to the Disciplinary Authority to examine outside witnesses and then complete the proceedings against the applicant in accordance with law.

81. Dr. Nagaraja naturally opposed the liberty sought by Sri Padmarajaiah.

81. We have earlier noticed that the applicant would have retired from service on 15-8-1987 even if he had remained in service. This itself justifies us not to reserve the liberty sought before us. Even otherwise, the nature of the charges levelled do not also justify us to reserve liberty sought before us.

RE: POINT NO.8

82. Dr. Nagaraja had urged that the IO, DA and AA have found the applicant guilty of the charges without a critical evaluation or sifting the evidence on each charge and in so doing they have acted illegally.

83. Sri Padmarajaiah had urged to the contrary.

84. In deciding the appeal the AA had not examined the material evidence on each charge and had not found that the findings recorded by the IO and concurred by the DA were justified or not.

85. We have earlier set out the entire order of the DA. The DA had not evaluated the evidence on each charge. On the other hand

he had only concurred with the IO which he was entitled to do. With this we must now see whether the IO had evaluated or sifted the evidence on each charge.

86. The report of the IO is fairly lengthy. But, we notice that it is only repetitive and does not evaluate or sift the evidence on each charge critically. The findings are recorded on vague assumptions and without appreciation of the entire evidence. From this it follows that the criticism of Dr. Nagaraja is well-founded.

87. Dr. Nagaraja urged that it was not open to the IO to consult anybody much less the Additional Legal Adviser (ALA) and rely on his opinion to hold the applicant guilty of Charge Nos. 1 and 2.

88. Sri Padmarajaiah sought to support the reasonings of the IO.

89. In the order dated 27-8-1982 of the Station Director Exhibit-III there is an initial stated to be that of the applicant which he had denied. On that, the applicant claimed that the same should be referred to hand writing expert which was not allowed by the IO. But, very strangely the IO on the conclusion of inquiry and before writing his report consulted the ALA and acted on his advice.

90. The IO was acting as a Judge in the case and, therefore, as a Judge, it was not open to him to consult the ALA and rely on his opinion to hold the applicant guilty of charge No.1.

91. On the foregoing discussion, we answer point No.8 in favour of the applicant.

RE:POINT NO.9

92. Dr. Nagaraja urged that the findings of the IO concurred with by the DA and AA on all the 7 charges were based on 'no evidence' or were such that no reasonable man would have reached them.

93. Sri Padmarajaiah urged to the contrary.

94. We will examine this contention from the standpoint of 'no evidence' and manifest perversity in the appreciation of evidence chargewise.

95. The programme recorded in Kannada on 29-8-1982 under the caption Ondu Mathu and broadcast on 30-8-1982 which has given rise to charges 1 and 2 and which are interconnected reads thus:

ನನ್ನ ಶ್ರೀತಿಂತ್ಯ ಕೇಳಣ,

ಇಷ್ಟ ದೀಪ ನಿನ್ನ ಉಲ್ಲಂಘ ನನ್ನ ಕೃಂಬಯುವನ್ನು ತುಂಬಿ.
ನಿನ್ನ ಬದ್ರಕಿನ ಅನ್ದಕೆ ಮುಖಭಾಗದಲ್ಲಿ ನನ್ನಖಲ್ಲೆ ಸೇರಿಸಿಕೊಂಡಿರುತ್ತೇ.
ನಿನ್ನ ನಿನ್ನ ಇರಿಸಿದ ನಂಬಿಕೆ, ನಿನ್ನ ನೈರಾವತ್ತೆ ನನ್ನ ದೀನಂಯಿತ್ತು.
ಬಂಧುಗಳ ಅವಕಾಶ ಕರ್ತವ್ಯದ್ವಾರಾ, ಪ್ರತಿನಿತಿದ್ದ ಬಂಧು ನಿವಿಷಯ ನಿನ್ನ ಅನಂತರಾತ ಕಡ್ಡುಗಳಿಗೆ, ಸುಖಗಳಿಗೆ ನಾನು ಅಕ್ರಮ ಕೂರಿತಿನಲ್ಲಿ ಪ್ರಯೋಗಿಸಿದ್ದೆನ್ನು ಅನ್ನಿ.
ಅನ್ನು, ಫಲಾಭರಿಕ್ಕು, ಎಲ್ಲವೂ ಎಂದೂ ಮರಾಣವಾರಿವಿಷಯದಲ್ಲಿ. ಅಪಾರಾಣ
ತೆಂಪುರ್ಲೀ ಪೂರಣ ತಂಪು ಕೂಡಿ. ನುಖು ನಾಂತಿಯು, ಗಾಂಧಿ ಸುಕಿರ
ರಾಮಪಾಷಣಿ, ನಮ್ಮ ಪಾಲಿಗ ರಾಜಿಲ್ಲ ಸೆಂಬಿ ನೋಡಿ, ಸಮರಾಜಣ ಬಿಂಬಿಕು.
ಎಲ್ಲಕೂ ಅಧಿಕಾರವಾಗಿದೆ ಬೀಗಿರಿಬೀ ಕೆಂಡಿಲ್ಲ. ನಮ್ಮನ್ನು ನಾವೇ
ನಮ್ಮ ಅಂತ:ನೂಕಿಗಾರಿಗೆ ನಕಾರಿಕಾರಿಗೆ ನಿರಿದಿಸುತ್ತೇನು ಆಗುತ್ತಿದ್ದ,
ಎನ್ನ ಅಗ್ರಿಂದುತ್ತು, ಎನಿದಿರೆ ಕೊಡುತ್ತು, ಎಂದು ಆಗ್ನೇಯನ್ನು ಕೂರಿಸಿತ್ತು.
ನಾನ್ ಪ್ರಯತ್ನದಲ್ಲಿ, ನಿಂತೆ ಬೀಂಗಾರವರಿಗೆ ಬಂದಿರಿ. ನೀವೇ ತೀಕ್ಷಣ ಎಲ್ಲ
ಅಪಿಂದುರ್ಲೀ ಸಂಬಂಧಿಕ್ಕೂ ಅಲಂಕಾರಕೆ ನಾನು ಅಂಶಗಳನ್ನು ಕೊಡುತ್ತು.
ಇದ್ದ ಸಂದರ್ಭದಲ್ಲಿ, ಮತ್ತೆ ಮತ್ತೆ, ನನ್ನಪಾಗುವ ಕೆಲ್ವ ಅಂಶಗಳನ್ನು
ಹೀಳುತ್ತಿದ್ದನೇ. ಬುಂಬತ್ತಿ, ತೆರುವರಿ, ಖಲ್ಲಿ ಕುರುಗು ನಿನಿಂದ ಧ್ಯಂಗ್ರ
ರಾಲಿ, ನಿನಗೂರಬಿನಿಗೆ ಇದ್ದು ನಾರ್ಥ, ಅರ್ಥಮಾತ್ರ ಸರಾಷಾರಿ ದ್ರಾಗ್ಣವೂತ್ತ
ಹೀಳತ್ತಿ. ಇದ್ದ ಸಮಾರಾಣ ಪೂರ್ಣಾಂಶ ಪೂರ್ಣಾಂಶ ಕೆಂಡನ್ನು. ಎಂದ
ವರು ನಮ್ಮ ನಿಮಿಷಕ್ಕೆ ಶ್ರೀತಿಂತ್ಯ ಕಿರಿಂಬಿಲ್ಲ ಮೂರ್ನಿ. ಇಲ್ಲ ತುಂಬಿ;
ಎಂದು ಮೂರಿತ್ತು. ಅದ್ದು ದಂಪುರ್ಣ ನಿನಗೆ ಈ ರಕ್ತ? ! ಎಂದು
ವರು ರಾಕಿ.

ನನ್ನ ಶ್ರೀತಿಂತ್ಯ, ನಿನ್ನಲ್ಲಿ ಮೂರಾತ್ ಅಭಿಪ್ರಾಣವಾಗಿರುತ್ತೇ, ನಿನ್ನ ದ್ವಿನಿ
ಎಂದಿರೆರು ಕುದೆಂದು. ಇದಕ್ಕಿಂತ ಬೇರೆ ಇದಕ್ಕಿಂತ ಗಿಡ್ಡಿಗೆ ನಿನ್ನನ್ನು
ಎಂದು ಕುದುರು ಶ್ರೀಪರಿಂದ ನಿರಿಂಬಾರದ ಸ್ವರ್ವದರ್ಶ ಇದು ನಿಡಾದ ಕೆಲಸಿ.
ಇದ್ದ ಕುದುರುನ ಕೈಗೆ ನಿರಿಂಬಾರದ ಕೆಲಸ ತೀರಿದಿರಿ; ವಸ್ತಿಯವರಿನಿಂ
ಅಂತ ಬಂದಿರು. ನಿಂತೆ ಎನ್ನಲ್ಲ ಕುದುರು ಕೈಗೆ ಇನ್ನು ತಾಳಿಸುತ್ತ ಮೂರಿ
ಕೈತೆಂಬ ಕೈನ ಕ್ರಾಂತಿಕ್ಕಿಂತಿರಿ. ಕ್ರಿಯಾ ಪ್ರಾರಂಭಿಸಿ ಪೂರಾರಾಯಿಸ್
ನಿಂದ; ಅಂದರು, ಅಂದು ಪೂರ್ವಾರ್ಥ ಇರಾವಿಂತ್ಯಾಲ್ಲಿ ದಿ ರಾವಾನಿಸ್ತಂ
ಅಧಿಕಾರ ವರಗ್, ರಂಥುರಾಮಿಯಂತ್ಯ ಜನ ಕೊಂಬಿಕರ್, ರೀತರಲ್ಲ
ನೇಕೊರಿರು, ಕನ್ನಡಾಭಿಭಾಷಿಗಳು, ದಿಲತಾಗಾ ಈ ಉಂದು ಮೂರಾತ್
ಕಿರಿಂಬಾರಿಯಿತ್ತು. ಎದುರಿಗಿ ನಿಕಾಗಿ ಗಿರಿಂಬಾರಿದ್ದುಗಳನ್ನು ನೀಡಿ
ಕಾಗೆ ಸಮಾನಿಕ್ಕಿರಿಸ್ತಾನ್ನು ಇಷ್ಟಾರ್. ನಿನ್ನ ಕಿರಿಂಬಾರಿ ಬಂದಿರೆಲ್ಲ ಬಿಂಬಿಸ್ತಾನ್
ಅದರಿಂದ ನಿಮಿಷ ಮಾತ್ರಿನಿಂದ ಬಂದಿರಿಯು ತಾ ನಮ್ಮಲ್ಲಿ ನಿಕಿ ದರಿಯಿ
ಜನಕ್ಕಾಗಿ ಪ್ರೇಮವನ್ನು. ಭೂಮಿತೆಂಬುನ್ನ ಬಿಡಿ ನಿಡುಗಿನಿರ್ದಿಂದು ನಿಡಿ.
ಅದರಿಂದ ಬಂಡಿನತೆಂಬು ಬಗಿನಿ ಪ್ರೇಮ ಇತ್ತು. ನಿಡು ಮನಸ್ಸಿಗೆ
ಕ್ರಾಂತಿಗೆ, ದಿನಂದುರಾಗಿಯು ಕುದುರು ಕಿರಿಂಬಾರಿಯನ್ನು, ಆಗ್ನಾರಿಯೆ ಉಮನ್ನ
ದಿಯಿ ಇಕ್ಕಂಬು ಮಾನ್ಯ ನೀಡಿಕೊಂಡಿರಿ. ನಿನ್ನ ದೀಪವನ್ನು ನಿಂಬಿರ್ಪಿ.
ನಿನ್ನದ್ವಾರಾ ನಿಮಿಷಗಳಿಗೆ ಸುಖಿದ ಮೂರಿನಿಲ್ಲ, ಕಿರಿಂಬಾರಿದ್ದ; ನಿರ್ಭಾಕ ಕಿಂತ
ಇಂಧ ಕಾರಣಕ್ಕ ಮೆ ಸ್ಪೃತಿಕ್ಕು ವಿಂದರು ಕಿರಿಂಬಾರಿದ್ದ; ನಿರ್ಭಾಕ ಕಿಂತ
ಸೇರಿಕಾಣಿ ಇಪ್ಪಿ, ಅನಾರ್ಥ್ಯ ಇರ್ದ, ಎಂದರೆ ಉದ್ದ ಕಂಣಿರಿದ್ದರೆ ಅಂತ
ಸರಿಸಬೇಕೆಲ್ಲ ಪ್ರಯೋಗವನ್ನು ನರಕಾರಾತ್ಮ ಉಂದು ಸಮೀಕ್ಷಾರಿಗೆ ಇದೆ.

ಆರ್. ಹೃದಯಪ್ಪಾ ಇದೆ ಅನ್ನಿಸಿದೆ ರಲವೆ ಭಾರಿ. ನನ್ನ ಕೋರ್ಡ್‌ಕ್ರಿಪ್‌ಕ್ ಬಂದ ಪ್ರತಿ, ಓಪೆಗ್ರಿಂಡ ಎಲ್ಲ ಒಳಿಗ್ನಾ ಒಂದು ಕೂನೆ ಇದೆ. ಸಿಹಿಂಪು ಅಭ್ಯ ಕಹಿಂಪು ನವಿ ಕಂಡವನಿಗೇ ವಿರಿತಿ. ಇರಿ ಗೇಂಪುರೆ; ನೀವೆ ನಾವು ಎಂದೂ ಒಂದೆ. ನಿಮಗಾಗಿ ಏನಾದರೂ ಮಾಡುತ್ತಿರುತ್ತೇನೆ. ಹೀಗಾದರೂ, ನಿಮ್ಮ ಅಳರ್ಗೆ, ಅಹವಾಲ್ಗೆ, ನನ್ನದ್ದು ಆದ ಮಿಶಿಂಪುಗ್ಗೆ ಖಂಡಿತ ಕೋರ್ಡ್‌ಕ್ರಿಪ್‌ಕ್ ಇನ್. ಒಳಿಗ್ಲೆ, ಒಂದು ಅಂತ್ಯಾರ್ಥಿ ಅಂದಕ್ಕಾಗೆ ಅದು ಮತ್ತಾವಾದಕ್ಕಾಗಿ ಅದಿಂಪು ಅದೀತೆಂಬ ಆಶಾಭಾವನೆಯಿಂದ ವುಪ್ಪಾಗಿ ಬೇಕೆನ್ನುವರನು ನಾನು. ನನ್ನ ಕೀ ಹೃಡಿ, ಮಾರ್ಧಿಮಧ್ಯ ಇದಂಕೂರ್ತಿ, ನಿರಂತರವಾಗಿ ಇರನ್ನ ನಾಧಿಸಿ, ನಿರ್ದಿಷ್ಟಕ್ಕೂರ್ತಿ ಬಂದಿದ್ದೇನೆ. ಒಗ್ಗೇಂಪು; ಕೇಳಬಗ್ಗೆ; ನನ್ನ ಪ್ರತಿಂಪು ಒಡಂಪುನೂ ನೀನೆ. ನಾನೆಂದು ನಿನ್ನ ಖೂತ್ತಿನೆ. ಪ್ರಂಪುಪಾಗಿರಿನ್ನು, ಬೇಕೆನಿಸಿದ್ದನ್ನು ನನ್ನ ಬಳಿ ಹೇಳಲು ನೀನೆಂದೂ ನೀತಂತ್ರಕ್ಕಿ. ನಿನ್ನ ನಾತಂತ್ರಕ್ಕಿ ಎಂದೂ ತರಣವಾಗಿರುತ್ತಿ; ಅಗಪಾಡುತ್ತಿ. ನೀನು ನನ್ನವನು. ನಿಗಾಗಿ ನಾನು. ನಿನ್ನ ಕೂನೆಯು ನಮಸ್ಕಾರ; ಇನ್ನು ಬರಲೇ? ನಮಸ್ಕಾರ. ನಮಸ್ಕಾರ ಬಂಧು.

An English translation of this admitted in evidence before the IO (Exhibit-2) reads thus:

"My dear listeners, my heart is filled to the brim with the love and affection showered by you. You have made me a part of the various phases of your life. I had full scope to voice all your pains, agonies and difficulties; and I tried to express in words your daily difficulties and troubles during the five minutes of broadcast allotted to me every day.

We are not always able to reap the fruits of our good deeds in life. In imperfection lies, the road to perfection. It is painful to realise that we have not been able to achieve the object of Gandhiji's dreams, that is, a Ramarajya of peace and happiness. It does not mean that the bureaucratic machinery should always be there to back us. We embarked upon the daily routine of musing for ourselves on how things are happening; and how they ought to or ought not to have happened. You have always stood by me in my efforts. I have often been pained at my inability to give a free vent to all the woes and agonies that you have expressed to me, during the short span of just five minutes a day allotted for my Ondu Maatu.

I would like to narrate to you a few things that occur to my mind off and on in this context. It was the revered Masti Venkatesh Iyengar who patted me on the back and ran a gentle, loving hand on my head and said "well done, boy. you alone could do it. It required guts; and you have done what the Mass Medium such as yours ought to do". And then, "You naughty boy, how talkative you are! I wonder from where you get all the energy to talk so much" said "Raa.Shi" (Dr.M.Shivaram). "Whatever you say is pregnant with meaning! I have fallen in love with your voice. You are a brave man doing brave deeds!" So said Kuvempu (Dr. K.V. Puttappa). Shreeranga (Dr. Adya Rangacharya) said: "could there be a better social service than yours? DVG's younger brother (D.v.Seshagiri Rao) wrote to AIR to say: "You have been doing something really worthwhile and I am happy that you people (Akashvani) have been able to extract brilliant work from this boy. Please keep it up". "You have me a hell of a lot of work by detecting and pointing out this and that and so many other things!" So said the then

Deputy Commissioner of Police, Dr. P.S.Ramanujam, College teachers, Theatremen, Industrial Workers, Ryots, Weavers, Kannada Protagonists and the down-trodden proletariat were all ears for my Ondu Maatu. When met in person they gave me lists of all their problems as though they were submitting a memorandum. I drew lots of people from different walks of life into my orbit. I deem my life worthwhile if I have been able to give atleast a few stray moments of peace and consolation to these people.

What men hankers after in life is life of his fellow men. Probing corruption I have of course made the corrupt shiver in their shoes. But, behind all that there was my love and concern for the poor and the downtrodden. I had to put up with the taunts and snubbings from some quarters for my sin of having voiced your grievances. I did not believe in Fate, but found my God in the people around me who were like me and lived like me; I found happiness in what I advocated for them and it gave me extreme satisfaction. "A programme of this kind deserves all praise", said Smt. Varalakshmi Gundu Rao (Wife of the Chief Minister). We have a Government that will accept a fault when pointed out and which struggles to right the wrong always. And I have felt that there are kind and loving hearts after all, which react to my programmes.

All good things should come to an end some day. He alone knows the pleasure of sweet taste that has tasted bitterness. Be that as it may; friends, you and I are always one. I shall always be doing something or the other for you people. I shall be your mouthpiece to give expression to all your woes and agonies; and when I say that all good things must end, I am also optimistic that it may lead to some other good thing and with that I want to close. Throughout my career in this Mass Medium, I have always been struggling to achieve this and have succeeded.

O my friend, my listener, you are my dear master, and I your servant ever. You are always free to express to me what you like and what you desire and your freedom will never be snatched away from you. You are mine, and I am always at your service. My last solutation to you! May I take leave of you? Good-bye, friend, Good-bye... good-bye!"

This translation is a correct translation of the Kannada version.



96: Charges 1 and 2 levelled against the applicant read thus:

ARTICLE I

Shri A.S.Murthy, while functioning as Staff Artist (Drama Voice) at All India Radio, Bangalore recorded the programme "Ondu Maathu" without the approval of the script by Programme Executive (Co-ordination), Shri Kanajanavar and the same was broadcast on the morning of 30-8-1982 at 7.15 a.m.

ARTICLE II

Shri A.S.Murthy, while functioning as Staff Artist (Drama Voice) at All India Radio, Bangalore, by his provocative broadcast "Ondu Maathu" programme on 30-8-1982 offended the conventional norms of broadcast, by indulging in self-praise in the said programme.

The statement of allegations in support of these charges set out the facts and evidence or the necessary details to elaborate them.

97. On these charges, there is oral and documentary evidence, which is also relevant. From this it follows that it is futile to contend that the findings on charges 1 and 2 are based on 'no evidence'.

98. On charge No.1 the principal controversy centres round the prior approval from one Sri Kanajanavar, Programme Executive (Coordination) ('PEC') on what was recorded on 29-8-1982 and broadcast on 30-8-1982. The defence of the applicant was that such prior approval was not required and that he was not served with the order dated 27-8-1982 (Exhibit-III) of the Station Director on or before 29-8-1982. On this, the applicant had also denied the initials on which the department relied as his initial. He has demanded, the IO to examine a handwriting expert to which the IO did not accede.

99. No one who had seen the applicant putting the controversial initial was examined and none speak to the same. PWs 1 to 3 who speak to charge No.1 at great length do not speak to the same and do not state one way or the other. But, notwithstanding all this, the IO held that the controversial initial was the initial of the applicant on which score, he held him guilty of not obtaining the prior approval of PEC. We have no doubt that the applicant was aware of the changes made by the Station Director from 1-9-1982. But, that knowledge cannot be confused with the service of the order dated 27-8-1982 on the applicant. We are constrained to say that this finding of the IO besides being strange, is manifestly perverse.

100. In the initial stages the programme appears to have been vetted or approved by the PEC. But, later that was not adhered to by the applicant.

101. Except for the order dated 27-8-1982 (Exhibit-III) no other order, Rule or Regulation had been produced before the IO to hold that prior approval of the PEC was necessary. On this we cannot

say that there is no merit in the criticism of Dr. Nagaraja that finding of the IO concurred with by the DA without discussion and upheld by the AA without a critical examination of the question, has no merit.

102. Ondu Mathu recorded by the applicant on 29-8-1982 is undoubtedly in the nature of a farewell address by him to the listeners. On this there can be more than one opinion. No Rules, Orders or guidelines for broadcast have been placed to hold that the applicant should not have so recorded. But, the IO in holding the applicant guilty on Charge No.2 had lost sight of the same.

103. Charge No.3 levelled against the applicant reads thus:

"Shri A.S.Murthy, while functioning as Staff Artist (Drama Voice) at All India Radio, Bangalore unauthorisedly communicated information to the Press".

On an examination of the evidence placed before him, the IO had exonerated the applicant of this charge, with which the DGAIR and AA have concurred. On this the question of our taking exception to the same does not arise.

104. Charge No.4 levelled against the applicant reads thus:

"Shri A.S.Murthy, while functioning as Staff Artist (Drama Voice) at All India Radio, Bangalore took part in a public meeting held on 18-1-1981 for criticising the Government. There he staged a play to whip up the people. He also criticised the functioning of the Government and of Akashvani especially in a speech he delivered on 14-10-82 as the Chief Guest of the B.M.S. Law College Students Kannada Sangha."

The applicant had denied this charge and, therefore, it was for the Department to prove the same. On this charge, the only evidence available is stated to be a report or note, Exhibit-10 submitted by one Sri G.N.Changal Rao who was then working in the AIR died before the inquiry started. No one who was present at the incident referred to in the charge had been examined before the IO to sustain the same.

But, despite this, the IO takes the note of Changal Rao as gospel truth and holds the applicant guilty of charge No.4. We are of the view that the finding of the IO concurred with by the DGAIR and AA



on this charge is really based on no evidence or irrelevant evidence. On this, we cannot but uphold the criticism of Dr.Nagaraja from both aspects.

105. Charge No.5 levelled against the applicant reads thus:

Shri A.S.Murthy, while functioning as Staff Artist (Drama Voice) at All India Radio, Bangalore was not punctual in attending the office and not regular in signing the attendance register. He signed the attendance register at a stretch for all the days from 6-8-1982 to 31-8-1982 after he was placed under suspension.

Shri A.S.Murthy, by his above acts is guilty of misconduct and, a breach of proper performance of his duties, and has violated several provisions of the contract executed by him with the All India Radio.

The applicant has denied this charge and therefore, it was for the department to prove the same. On this no one who has seen the applicant affixing his alleged signature to the attendance register had been examined. No one speaks to the fact that the applicant initialled the attendance register Exhibit IX after he was placed under suspension. In these circumstances, the finding on charge No.5 is really based on no evidence.

106. Charges 6 and 7 levelled against the applicant read thus:

ARTICLE VI

Shri A.S.Murthy, while functioning as Staff Artist (Drama Voice) at All India Radio, Bangalore has taken part in Drama at Goa and Mysore and has also taken part in Kannada film 'Chakravyuha'.

ARTICLE VII

Shri A.S.Murthy, while functioning as Staff Artist (Drama Voice) at All India Radio, Bangalore has left the Headquarters without obtaining the previous written permission of the competent authority.

Shri A.S.Murthy, by his above acts is guilty of misconduct and has violated provisions of the contract executed by him with the All India Radio.

Both these charges have been denied by the applicant. Both these charges are held to be proved merely on the basis of newspaper reports. Except for the newspaper reports, there is no other evidence to sustain these charges. The newspaper reports were not substantial evidence to sustain these charges [SAMANT N.BALAKRISHNA ETC.v. GEORGE FERNANDEZ AND OTHERS - AIR 1969 SC 1201 para 47]. On this it follows

that the findings recorded on charges 6 and 7 are based on 'no evidence'.

RE:POINT NO.10

107. On the findings recorded by us on points 1 to 9 and in particular points 1 to 7, we have no alternative but to quash the impugned orders. We have earlier expressed that this is not a fit case in which we should reserve liberty to the authorities to re-do the matter.

108. In the normal circumstances the applicant would have retired from service on 15-8-1987. On and from 8-9-1982 the applicant had been kept out of duty. We have generally denied backwages to those who have not rendered public service. But, that cannot be applied in this case for more than one reason. Firstly, the applicant has been deliberately kept out of duty by the respondents till he attained superannuation. Secondly, it appears that the proceedings had been pursued with vindictiveness. On these we will not be justified in allowing the respondents to take advantage of their own wrong and deny back wages to the applicant. We must, therefore, grant the reliefs sought by the applicant.

109. Before parting, we would like to observe that the authorities have needlessly made a mountain of a mole hill in this case and used a sledge hammer to swat a fly.

110. In the light of our above discussion, we make the following orders and directions:



We quash Order No.PF 9/23/72-SVIII (Vol.IV) dated 1-3-1988 (Annexure-A11) of the AA and Order No.6/54/82-Vig. dated 18-9-1985 (Annexure-A9) of the DGAIR.

We declare that the applicant was on duty from 8-9-82 to 15-8-1987 and that all financial benefits due to him on that basis shall be computed and made available to him deducting the amounts already paid to him as subsistence allowance for the period he was under suspension from 8-9-1982.

3. We direct the respondents to compute all the financial benefits due to the applicant on the basis of our declaration at para 2 supra and make them available to him with all such expedition as is possible in the circumstances of the case and in any event within a period of 3 months from the date of receipt of this order.

III. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.



Sd —

VICE-CHAIRMAN. B1-2-KV1

Sd —

MEMBER(A) B1-3-KV1

TRUE COPY

P. B. Hegde/1/89

SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE