

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAI PUR BENCH, JAI PUR

O.A. No. 48 & 49/2002 2 ~~199x~~
T.A. No.

DATE OF DECISION 17.9.02

Sarla Manglani and another Petitioner

Mr. Rajendra Vaish Advocate for the Petitioner (s)

Versus

The Director General, Doordarshan Respondents
and another

Mr. Bhanwar Bagri Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Gopal Singh
Mr. Gopal Singh
Hon'ble Member(A)

G.L. Gupta
(G.L. Gupta)
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

Original Application Nos. 48/2002 &
49/2002

Sarla Manglani
D/o Shri Atma Ram Manglani,
r/o 82, Vasundra Colony
Tonk Road,
Jaipur.

: Applicant in O.A.No.48/2002

Rajendra Prasad Saxena,
S/o Shri Ramsewak Saxena
r/o Plot No.2
Rajhans Colony Scheme No. 3
Bhrampuri Road,
Jaipur.

: Applicant in O.A.No.49/2002

rep. by Mr. Rajendra Vaish : Counsel for the applicants.

-versus-

1. Director General
Prasar Bharti
Doordarshan Bhawan
Copernicus Marg
New Delhi.
2. Director,
Prasar Bharti,
Doordarshan Kendra,
Jhalana Institutional Area
Jaipur.

: Respondents.

rep. by Mr. Bhanwar Bagri : Counsel for the respondents.


CORAM: The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
The Hon'ble Mr. Gopal Singh, Administrative Member.

Date of the order: 17.09.02

Per Mr. Justice G.L. Gupta

ORDER

Identical questions of law and facts have
arisen in the aforementioned two cases and therefore
they have been heard together and are being disposed
of by this common order.



2. The facts have been borrowed from O.A. No. 48/2002, filed by Sarla Manglani. It is averred that the applicant was appointed as General Assistant (re-designated as L.D.C.) on casual basis in the year 1990. She worked continuously upto 1995, but she was not appointed on regular basis on the post of L.D.C. However, consequent upon the decision of the C.A.T., New Delhi, a Scheme was formulated for regularisation all casual employees working upto 31.12.91. This Scheme is known as Regularisation Scheme 1992 as it was circulated vide order dated 9.6.92. As per the provisions of the Scheme, all the casual employees who had completed 120 days in a year were eligible for regularisation and relaxation could also be given. The respondents had considered the cases of many employees.

The applicant's case was also considered as she was eligible under the Scheme of 1992, which is evident from the document at Annex. A.3. The respondents had called for the detailed information in the prescribed proforma and the applicant submitted all information vide Annex. A.4 for considering her case for regularisation. Thereafter the respondents issued regular appointment order to the applicant on the substantive/permanent post of LDC by order dated 25.5.95 (Annex. A.5)

In the said order a condition was imposed that she would get her annual increments only after passing



been resisted. It is averred that consequent upon the directions of the Principal Bench, C.A.T. New Delhi the applicants were regularised under the Scheme on the post of LDC. The applicants had passed the typing test and they were confirmed on the posts of LDC and annual increments were also granted to them. However, pursuant to the decision in Lallu Ram Sharma's case, the Director General, Door Darshan obtained all informations about the Staff Artists under the Scheme of Regularisation and on examination it was found that Lallu Ram Sharma who stood at Sl. No. 8 in the seniority list was senior to Rajendra Prasad Saxena and Sarla Manglani, who stood at Sl. No. 9 and 12 respectively. It is stated that seniority was to be determined on the basis of date of initial booking, but the applicants had been regularised due to erroneous interpretation by the Director, Door Darshan and when the matter was re-examined by the Director General, Door Darshan, he found that the regularisation of Sarla Manglani and Rajendra Prasad Saxena was irregular and Lallu Ram Sharma, being senior ought to have been regularised first. It is averred that in order to rectify this irregularity, it was advised to terminate the services of the two applicants, after issuing show cause notice to them and after giving an opportunity of hearing. It is the case for the respondents that in order to comply with the directions given by the CAT, Jaipur Bench in the case of Lallu Ram



the typing test. The applicant passed the test and the respondents granted annual increments to her and at the same time she had completed the probation period. She was confirmed in service vide order dated 14.9.98 (Annex. A.7) as the respondents were satisfied with her work, conduct and efficiency and she was awarded cash and appreciation certificates also. There was no complaint whatsoever and no departmental inquiry was held against her. No adverse remarks appearing in her APARs were communicated to her, yet the respondents have issued the show cause notice dated 17.1.2002 calling upon the applicant to show cause as to why her services should not be terminated.

3. The case for the applicant is that the notice dated 17.1.2002 is nothing but a termination order as the words used therein indicate that it is post decision hearing. It is averred that the impugned order is stated to have been issued because of the decision in the case of Lallu Ram Sharma, whose case was not covered by the Scheme of 1992.

It is prayed that the order dated 17.1.2002 Annex. A.7 (in the case of Sarla Manglani) and Annex. A.14 (in the case of Rajendra Prasad Saxena) be quashed and set aside and the applicants be permitted to continue on the permanent posts.

4. In the detailed reply dated 17.7.2002, filed by the respondents, the claim of the applicants has



been resisted. It is averred that consequent upon the directions of the Principal Bench, C.A.T. New Delhi the applicants were regularised under the Scheme on the post of LDC. The applicants had passed the typing test and they were confirmed on the posts of LDC and annual increments were also granted to them. However, pursuant to the decision in Lallu Ram Sharma's case, the Director General, Door Darshan obtained all informations about the Staff Artists under the Scheme of Regularisation and on examination it was found that Lallu Ram Sharma who stood at Sl. No. 8 in the seniority list was senior to Rajendra Prasad Saxena and Sarla Manglani, who stood at Sl. No. 9 and 12 respectively. It is stated that seniority was to be determined on the basis of date of initial booking, but the applicants had been regularised due to erroneous interpretation by the Director, Door Darshan and when the matter was re-examined by the Director General, Door Darshan, he found that the regularisation of Sarla Manglani and Rajendra Prasad Saxena was irregular and Lallu Ram Sharma, being senior ought to have been regularised first. It is averred that in order to rectify this irregularity, it was advised to terminate the services of the two applicants, after issuing show cause notice to them and after giving an opportunity of hearing. It is the case for the respondents that in order to comply with the directions given by the CAT, Jaipur Bench in the case of Lallu Ram



Sharma, who was admittedly senior to the applicants, show cause notice was issued to the applicants. The respondents have justified the issuance of the show cause notice on various grounds.

The further case for the respondents is that the show cause notice has not been issued by an incompetent authority and show cause notice is not a final order. It is prayed that the applications be dismissed as premature.

5. In the rejoinder, the applicants have reiterated the facts stated in the O.A.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. Mr. Vaish, learned counsel for the applicants pointing out that in the show cause notice dated 17.1.2002 it is stated that the Director General, Doordarshan has given a direction to the Director Doordarshan Kendra, Jaipur, to terminate the services of the applicants, contended that the Director General being the highest authority, the issuance of a show cause notice is a mere formality and it is a case of post decision hearing. He drew our attention to the various documents to show that the applicants cases are fully covered by the Scheme 1992 and there was no illegality committed by the respondents when they were regularised. He pointed out that the



applicants have served for more than 10 years and for 6 years after regularisation of their services and contended that the impugned notice should not be allowed to stand. He cited the cases of

(i) Union of India and another vs. M/s Brij Fertilizers Pvt. Ltd and others ([1993].3.SCC.564)

(ii) Lt. Col. Jitendra Singh Sahi Petitioner vs. the Union of India and others (1993.LAB.I.C. 2019)

(iii) K.R. Abdul Majeed vs. The State of Kerala &

others (2001.(3).ATJ. 539); (iv) Buddhi Nath Chaudhary

vs. Abahi Kumar (2001.(2). SCT.352); (v) Agra

District Co-operative Bank Ltd. vs. Prescribed

Authority, Labour Court U.P. and others (AIR.2001.SC.

2396); (vi) Ashok Kumar Sharma and another vs.

Chander Shekher and another (1993. Supp(2).SCC.611)

(vii) H.C. Puttaswamy vs. Hon'ble Chief Justice of

Karnataka (AIR. 1991.SC.295) (viii) Dr. M.S. Mudhol

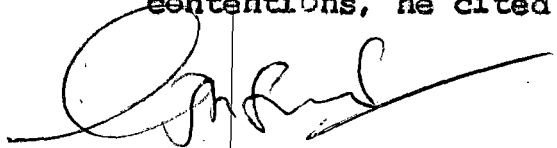
and another vs. S.D. Haleekar and others (1993.3.SCC.

591); (ix) K.R. Mudgal and others vs. R.P. Singh

and others (1986.(3).SLR. 752) in support of

his contentions.

8. On the other hand Mr. Bhanwar Bagri, learned counsel for the respondents contended that the applications should be dismissed on the ground that no final order has yet been passed and only a show cause notice has been issued. His contention was that the applications are not maintainable against show cause notices. In support of his contentions, he cited the cases of Channan Singh vs.



Registrar Co.op Societies Punjab and others

(AIR. 1976.SC.1821); Geep Flashlight Industries

Ltd. vs. Union of India and others. (AIR. 1977.SC.456)

Alphonse Cazlingarayar and others vs. Inspector

General of Police and others (2000.10.SCC.153).

He submitted that the application should be dismissed on the ground that it is premature and the other contentions raised by the learned counsel for the applicants may not be considered at this stage.

9. We have given the matter our thoughtful consideration. The notice/order under challenge is read hereunder:

प्रसार भारती
॥ भारतीय प्रसारण निगम ॥
दूरदर्शन केन्द्र : जयपुर

क्रमांक: दूरके/जय/2४-ए॥/2002-एस/14447

दिनांक: 17.01.2002

कारण बताओ नोटिस

महानिदेशालय, दूरदर्शन, नई दिल्ली के कार्यालय ज्ञापन संख्या:2/3/86- कर्म-1 दिनांक 09.06.1992 द्वारा जारी योजना एवं कार्यालय ज्ञापन संख्या:2/3/86- कर्म-1 दिनांक 17.03.1994 के द्वारा जारी संगोदित योजना के अन्तर्गत आकस्मिक कलाकारों एवं सामान्य सहायकों को नियमित नियुक्ति योजना के अन्तर्गत अवर श्रेणी लिपिक के पद पर सुश्री सरला मंगलानी की नियुक्ति महानिदेशालय द्वारा अनियमित पायी गयी है ।

सामान्य सहायकों की पात्रता सूची में ॥ सामान्य श्रेणी ॥ आपका नाम श्री लल्लू राम शर्मा से कनिष्ठ होते हुए भी आपको नियुक्त किया गया है ।

अतः इस अनियमितता में सुधार के लिए महानिदेशालय दूरदर्शन, नई दिल्ली के कार्यालय ज्ञापन संख्या:19/24/98-एस-2/51 दिनांक 07.01.2002 के द्वारा आपकी अनियमित नियुक्ति को समाप्त करने के निर्देश दिये गये है ।

कृपया स्पष्ट करे कि क्यों ना आपकी इस अनियमित नियुक्ति को समाप्त किया जावे । इस संबंध में अपना पक्ष दिनांक 21.01.2002 तक अवश्य प्रस्तुत कर देवे । निर्धारित तिथि तक आपका अभ्यावेदन प्राप्त नहीं होने की स्थिति में सेवायें समाप्त करने हेतु अगली कार्यवाही की जायेगी ।

॥ अपर्णा वैश ॥
निदेशक

सुश्री सरला मंगलानी,
अवर श्रेणी लिपिक,
दूरदर्शन केन्द्र,
जयपुर ।

प्रतिलिपि:-

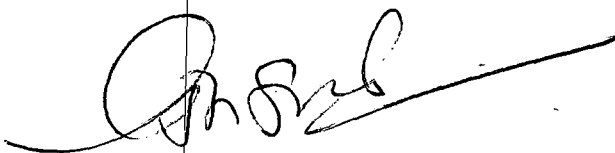
1. महानिदेशक ॥ नामत:श्री दर्शन लाल, उप निदेशक ॥ प्रशासन ॥ कर्म-2 दूरदर्शन, दूरदर्शन भवन, कॉपरनिकस मार्ग, नई दिल्ली को उनके पत्र संख्या:19/24/98-एस-2 दिनांक 7.1.2002 के संदर्भ में सूचनार्थ ।

निदेशक

A reading of the ^{notice} indicates that the show cause notices have been issued in pursuance to the view taken by the Director General, Door Darshan that the appointment of the applicants was irregular in as much as they were junior to Lallu Ram Sharma in the eligibility list. The notices further indicate that the applicants have been asked to submit their explanation by 21.1.2002 showing cause as to why their services should not be terminated.

10. True, it is, the notices speak that there are directions of the Director General, to terminate the services of the applicants, yet when the notices have been given to the applicants for showing cause against the proposed action of termination, it cannot be said that a final decision has been taken to terminate their services. It is significant to point out that notices have been issued in the back ground of case filed by Lallu Ram Sharma, who was held to be senior to the applicants and whose case for appointment on regular basis was to be considered before the consideration of the cases of the applicants. It is in this context, that the Director General has asked the Director to terminate the services of the applicants.

11. There is no cause to believe that the applicants' explanation/reply to the notices will not be considered, and straight away the orders of termination would be issued.



Had it been the intention of the respondents they could have issued the order of termination straightaway.

The very fact that show cause notices have been given to the applicants, goes to show that no final decision has been taken as yet. The competent authority may take a view that the appointment of the applicants was regular after seeing the reply. It cannot be said to be a case of post decision hearing.

12. It has been the consistent view of the Supreme Court that at the stage of show cause notice courts should not interfere. The earliest decision in the case of Chanan Singh (supra) was rendered in 1976, wherein it was clearly held that if no punitive action was taken an application before the Court is premature. In the case of Geep Flashlight Industries (supra) it was held no mandamus can be issued against the issuance of the notice to the parties, when they had been asked to re-present their case. It was observed in para 24 of the report as under:

- " 24. The appellant's prayers for writs of certiorari and mandamus are misconceived. There is no order either judicial or quasi judicial which can attract certiorari. No mandamus can go because there is nothing which required to be done or forborne under the Act.

Apart from the two cases cited by the learned counsel for the respondents there is another decision of the Supreme Court in the case of Executive Engineer,



Bihar State Housing Board vs Rameshkumar Singh and others (AIR 1996.SC.691), wherein it was clearly held by their Lordships that Writ Petition is not maintainable against show cause notices. The relevant observations appearing at para 10 and 11 of the report are reproduced hereunder:

"10. We are concerned in this case, with the entertainment of the writ petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P.4 notice is ex-facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression that is to say, that even the commencement of initiation of the proceedings on the fact of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show cause notice at the stage, it should be shown that the authority has no power or jurisdiction to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision it will certainly be open to him to assail the same either in appeal or revision as the case may be, or in appropriate cases, by invoking the jurisdiction under Art.226 of the Constitution of India.

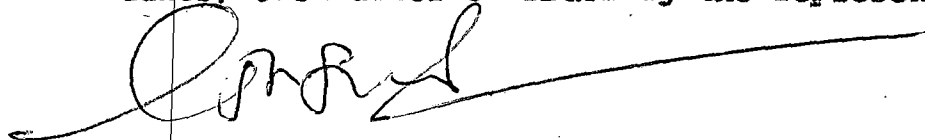
11. On the facts of this case, we hold that the first respondent was unjustified in invoking the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India without first showing cause against Annexure Ext. P.4 before the 3rd respondent. The appropriate procedure for the 1st respondent would have been to file his objections and place necessary materials before the 3rd respondent and invite a decision as to whether the proceedings initiated by the 3rd respondent under Sec. 59 of the Bihar State Housing Board Act.1982 are justified and appropriate. The adjudication



in that behalf necessarily involves disputed questions of fact which require investigation. In such a case proceedings under Article 226 of the Constitution can hardly be an appropriate remedy. The High Court committed a grave error in entertaining the writ petition and allowing the same by quashing Annex. Ext. P.4 and also the eviction proceedings No. 6/92.....

13. In the instant matter, it is not the case for the applicants that Fundamental Rights guaranteed by the Constitution of India have been infringed. It also cannot be said that the notices issued in this case are ex-facie nullity or totally without jurisdiction. It is also not the case for the applicants that the authority who has issued the show cause notices had no jurisdiction to issue such notice. Keeping in view the legal position as stated in the case of Executive Engineer Bihar State Housing Board (supra) it has to be held that these applications are premature and are liable to be dismissed without going into the merits of the case.

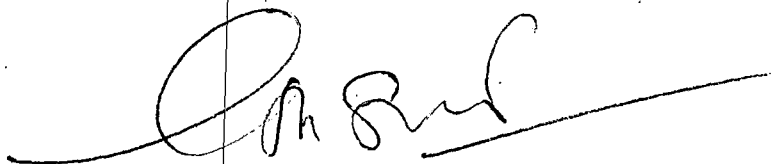
14. As to the cases relied on by the learned counsel for the applicants, it may be stated that the cases at Sl. No. (iii) to (ix) are on the point that whether the employees who have worked for a longer period, should be removed or not. The Apex Court had held that it cannot be proper to remove them from service even if some irregularity was committed. The principles laid down in those cases do not assist the applicants since the applications have been filed against the shown cause notices only. In case, the respondents terminate the services of the applicants, even after considering the representation/explanation



of the applicants against the show cause notices then if the order of removal is challenged, the above rulings may be of some help to the applicants.

15. The case at Sl. No. (i) cited on behalf of the applicants i.e. M/s Brij Fertilizers Pvt. Ltd and others (supra) was decided on peculiar circumstances of that case. Writ Petitions had been filed by the Manufacturers of Fertilizers, who had been granted subsidy under a Scheme framed by the Government of India. As the said subsidy was withheld, the manufacturers filed Writ Petitions before the Delhi High Court. One of the questions raised in that case was whether the High Court committed any error in exercising its extra ordinary jurisdiction on interfering at the stage of show cause notice. Their Lordships, keeping in view the purpose of granting subsidy to the manufacturers, who had set up small scale units in the hope that the said units would stand on their own on the subsidy granted by the Government at the admissible rates since each unit depended on the subsidy, held that the interference by the High Court at the stage of Show cause notice was not improper, yet, their Lordships observed in categorical terms that the High Court, normally should not interfere at the show cause notice stage. It is evident that keeping in view, the peculiar circumstances of the case, interference by the High Court, at the show cause notice stage, was upheld.

16. The second case relied on by the learned counsel for the applicants was of Lt. Col. Jitendra Singh Sahi (supra), which was decided by the Madhya Pradesh



High Court. That case was decided on the basis of the earlier ruling of the Apex Court in Major Dharam Pal Kukrety, wherein the following observations had been made:

" Where the said notice issued without jurisdiction, the respondent would have then suffered a grave, prejudicial injury by an act which was without jurisdiction. Where the threat of a pre-judicial action is wholly without jurisdiction, a person cannot be asked to wait for the injury to be caused to him before seeking the Court's protection. If on the other hand, the Chief of the Army Staff had the power in law to issue the said notice, it would not be open to the respondent to approach the court under Art. 226 of the Constitution at the stage of notice only and in such an event his writ petition could be said to be premature. This was, however, not a contention which could have decided at the threshold until the court had come to a finding with respect to the jurisdiction of the Chief of the Army Staff to issue the impugned notice. Having held that the impugned notice was issued without any jurisdiction, the High Court was right in further holding that the respondent's writ petition was not premature and was maintainable. "

From a reading of the above case, it is clear that their Lordships had noticed that the impugned notice had been issued by the authority without any jurisdiction. The interference by the Court in such circumstances at the stage of show cause notice, was held to be permissible.

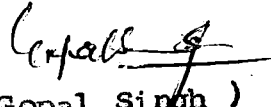
17. In the instant case, it cannot be said that the notice dated 17.1.2002 has been issued by an incompetent authority and that the proposed action is wholly without jurisdiction. We cannot forget that


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the necessity of issuing the show cause notices had arisen because of the Court decision in Lallu Ram Sharma's Case

18. That being so, there is no justification for deciding these cases on merits. The applications have to be dismissed as premature.

19. Consequently, we dismiss these two applications as premature. No order as to costs.


(Gopal Singh)
Administrative Member


(G.L. Gupta)
Vice Chairman.

jsv.