

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD**

**Original Application No. 47/2012**

**Date of C.A.V. : 22.09.2017**

**Date of Order : 13.12.2017**

**Between :**

K.S.Sarma, IAS (Retd),  
S/o K.V.Sastry, Aged : 67 years,  
Formerly Addl.Secretary in the  
Ministry of HRD of Govt. of India  
& CEO, Prasar Bharati, New Delhi,  
Ministry of Information & Broadcasting, Govt. of India,  
R/o Plot No.1745, H.No.8-2-677/B/1,  
Road No.12, Banjara Hills, Hyderabad-34. ... Applicant

**And**

1. Union of India, Rep. by its Secretary  
Ministry of Department of Personnel & Training,  
North Block, New Delhi.

2. Union of India, Rep. by its Secretary,  
Ministry of Information & Broadcasting,  
Shastri Bhavan, New Delhi.

3. Government of A.P.,  
Rep. by its Chief Secretary,  
Secretariat, Hyderabad. ... Respondents

Counsel for the Applicant	...	Mr. K.Sudhakar Reddy, Advocate
Counsel for the Respondents	...	Mrs.K.Rajitha, Sr.CGSC
		Mr.E.Peddanna, SC for A.P.

**CORAM:**

<b>Hon'ble Mr.Justice R.Kantha Rao</b>	...	<b>Member (Judl.)</b>
<b>Hon'ble Mrs.Minnie Mathew</b>	...	<b>Member (Admn.)</b>

## ***ORDER***

***{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }***

The applicant is a retired IAS officer belonging to 1968 batch of A.P. Cadre. While he was holding the post of Additional Secretary in the Ministry of HRD of Government of India at New Delhi, his name was recommended for the post of CEO of Prasar Bharati on deputation by the Selection Committee under the Chairmanship of Vice President of India. The applicant submits that it was mandatory on his part to join the post on deputation. As regards the selection for the post he states that he had not applied for the post, he was never interviewed, but the Selection Committee on its own recommended his name.

2. He further submits that the post of CEO Prasar Bharati carries the pay scale of Secretary to the Government of India which at that time was Rs.26,000/- fixed. By that time he was empanelled for the post of Secretary to Government of India and was awaiting the post of Secretary. While so, he was informed about his selection as CEO, Prasar Bharati. At the time of joining the post of CEO, Prasar Bharati, he was asked to submit technical resignation / voluntary retirement from the Indian Administrative Service to join Prasar Bharati, inspite of his citing the instances of IAS officers who joined similar organizations like RBI and Vigilance Commission without submitting voluntary retirement from the IAS. Thus according to him he was under compulsion to submit voluntary retirement. All the officers of 1968 batch of IAS were promoted to the rank of Secretary and

retired. By that time the difference in pension was only be Rs.750/- per month and his pay was Rs.24,500/- as against the pay of Secretary of Rs.26,000/-. Therefore, he was persuaded by the department to reconcile himself and he could not pursue the matter due to pre-occupations of job. However, he appealed to Government to make sure that being an IAS, his lien should be kept in IAS cadre until he attained the age of superannuation of 60 years as was done in the case of Governor RBI, Chief Vigilance Commissioner, etc., which he would have in normal course drawn the pension of Secretary to Government of India. As a dutiful Government servant he did not disobey the orders of the Government with a hope that his request regarding his lien on IAS would be considered favourably. Subsequently his request was not accepted by the Government with considerable delay of almost 18 months. All his batchmates including those who are juniors to him were promoted by the Government to the scale of Secretary to the Government of India by the time the applicant had been directed to submit voluntary retirement. At that time the applicant was awaiting the post of Secretary to the Government of India and he would have been posted as such if he was not selected for the post of CEO of Prasar Bharati.

3. Nextly he submits that he accepted the appointment on such condition that the DoPT may stipulate for cadre clearance including the necessary acceptance for deemed voluntary retirement / technical resignation from the Indian Administrative Service from the date of his assumption of the charge of the office of Member Executive, Prasar Bharati Board and joined as CEO, Prasar

Bharati on 14.03.2002 and retired on 30.06.2006. In the post of CEO, Prasar Bharati he was paid the salary equivalent to that of a Secretary to the Government of India.

4. He further submits that now he finds that the difference in the pension is very high as much as Rs.15,000/- per month as against Rs.750/- per month which he imagined. All the 1968 batch IAS officers retired in the rank of Secretary and all of them are drawing higher pension, whereas the applicant is being paid only the pension in the rank of Additional Secretary. According to him he in no way can be held responsible for accepting the mandatory posting as CEO Prasar Bharati and denying the pension on par with 1968 batch of IAS officers is clearly illegal, arbitrary and it amounts to clear violation of his fundamental right guaranteed under Article 14 and 16 of the Constitution of India. His contention is that he is entitled for the sanction of pension on the basis of scale of pay of Secretary to Government of India since he worked in the same scale as CEO, Prasara Bharati for 4 years and 3 months treating it as a mandatory posting.

5. It is under these circumstances, he filed the present OA seeking a direction to the respondents to sanction pension to him on the basis of scale of pay of Secretary to Government of India on par with his batch mates with arrears treating his posting as CEO, Prasara Bharati as a mandatory posting.

6. In their reply statement, the respondents 1 and 2 contended as follows :

The applicant held the position of Executive Member (Chief Executive Officer) Prasar Bharati (Broadcasting Corporation of India) from 14.03.2002 to 30.06.2006. The Prasar Bharati is governed by the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 and the rules made there under which were amended from time to time. The Selection Committee chaired by Vice President of India, recommended the name of the applicant as Executive Member (CEO) Prasar Bharati. In pursuance of Section 4 (4) of the Act, the recommendations of the Committee being binding for the purposes of appointment, the Ministry of Information & Broadcasting i.e. R-2 wrote a letter to the Department of Personnel and Training (DOP&T) i.e. R-1, the cadre controlling authority for the IAS officers in the Central Government to convey the cadre clearance for the appointment of the applicant as Executive Member of the Prasar Bharati and at the same time maintaining that the pay, allowances and other terms and conditions of the office of the Executive Member are governed by the provisions of the Act and the rules framed there under from time to time. A copy of the letter of the 2<sup>nd</sup> respondent dated 18.02.2012 was also marked to the applicant. The applicant referred to this letter dated 18.02.2012 and conveyed his acceptance to the 2<sup>nd</sup> respondent for the appointment as the Executive Member on such terms and conditions that the 1<sup>st</sup> respondent might stipulate for the cadre clearance, including if necessary, acceptance for his deemed voluntary retirement / technical resignation from the IAS from the date of assumption of the charge of

the office of the Executive Member by him. The applicant conveyed his willingness for the appointment, the 2<sup>nd</sup> respondent issued the appointment order dated 14.03.2002. This order conveyed the appointment of the applicant as Executive Member of the Prasar Bharati Board with effect from the date of assumption of charge of the office. In the appointment order it was also stated that the pay, allowances and other terms and conditions of the applicant's appointment will be governed by the provisions of the Prasar Bharati Act, 1990 and the rules framed there under from time to time.

7. It is submitted that as per sub-section (7) read with sub-section 2 (A) of Section 6 of the Act, the whole time Members of the Prasar Bharati Board including the Executive Member shall be the employees of Prasar Bharati Corporation and as such they are entitled to such salaries, allowances and shall be subjected to such terms and conditions of service in respect of leave, pension, etc. as may be prescribed. As per the Prasar Bharati (Broadcasting Corporation of India) Salaries, Allowances and other conditions of Service of Chairman, Whole time Members and Part-time Members, Rules, 2000, the pay of the Executive Member is Rs.26,000/- per month (fixed) which is equal to the pay scale of the Secretary to the Government of India in 2000.

8. Nextly it is submitted that as per the requirements of sub-section (7) of the Act, the applicant on his appointment as Executive Member had become

the employee of the Prasar Bharati Corporation and therefore required to sever his relations from the IAS or the Government. The 1<sup>st</sup> respondent wrote a letter dated 29.05.2003 to the Chief Secretary, Government of Andhra Pradesh that the applicant having joined Prasar Bharati was required to take voluntary retirement from the IAS with effect from the date he joined the office of the Executive Member and requesting the State Government to take further necessary action accordingly. The applicant in para 4.3 of the OA stated that w.e.f. 13.02.2002 i.e. from the date of assumption of charge of Executive Member, he had tendered technical resignation from IAS.

9. It is further submitted that under the Prasar Bharati (Broadcasting Corporation of India) Salaries, Allowances and other conditions of Service of Chairman, Whole-time Members and Part-time Members Rules, 2000 there is no provision for payment of pension towards the services rendered as the Member including the Executive Member of the Prasar Bharati Board. Following the acceptance of the technical resignation of the applicant by the State Government of A.P., the Central Government has no role to play in fixation of his pension which would have to be calculated at the rate of 50% of average emoluments drawn by the applicant during the last ten months of his service in the IAS as per the then existing rules. The Government of A.P. being the pension sanctioning authority for the applicant may also be impleaded for presenting their view point in fixation of pay.

10. In its reply the 3<sup>rd</sup> respondent contended inter alia as follows :

The Government of India, Department of Personnel & Training in their letter dated 30.05.2003 quoting Rule 5 (2) of the All India Service (DCRB) Rules, 1958, has informed to the State Government that the applicant has been appointed as Executive Member in the Prasar Bharati Board w.e.f. 13.03.2002 and as per requirements of the Prasar Bharati Act, 1990 the Member of Service was required to sever his relation from the IAS on his aforesaid appointment. The applicant who joined Prasar Bharati Board in March 2002 was required to take voluntary retirement from Indian Administrative Service with effect from the date he joined the Prasar Bharati Board. The competent authority granted waiver of notice period of three months for retirement of the applicant under Rule 16 (2) of AIS (DCRB) Rules, 1958 and requested the State Government to take further necessary action. In this regard the applicant was requested to submit his voluntary retirement to the State of A.P. with effect from the date he took over the aforesaid post. On receipt of the voluntary retirement proposals from the applicant, the State Government permitted the applicant vide G.O.Rt.No.5172, General Administration (Spl.A) Department, dated 04.11.2003 to retire from service voluntarily under sub-rule (2) of Rule 16 of All India Services (Death-cum-Retirement Benefits) Rules, 1958 w.e.f. F.N. of 14.03.2002., i.e. the date of assumption of charge of the post of Executive Member in the Prasar Bharati Board. Therefore, according to the 3<sup>rd</sup> respondent, the applicant at the time of his voluntary retirement, holding the post of Additional Secretary to Government of



India, Ministry of HRD in the above super time scale of IAS. As the 1968 batch IAS Officers of Andhra Pradesh cadre are eligible for promotion to Fixed Grade Scale of pay during the year 2003, the State Government considered the name of the applicant along with other IAS Officers of 1968 batch who were on central deputation, as per para-5 of the Annexure-II of guidelines for promotion of IAS to various grades issued by the DOP&T, New Delhi in No.20011/4/92-AIS-II, dated 28.03.2000. The promotional benefits if any to the officer to whom proforma promotion has been granted would be available with effect from the date on which he had returned and reported to the State Cadre only. In the instant case knowingly the applicant has not returned and reported to the State cadre and hence the promotional benefits are not extended to him. Further consequent on his appointment as Executive Member in the Prasar Bharati Board w.e.f. 13.03.2002 and as per requirements of the Prasar Bharati Act, 1990, the applicant applied for voluntary retirement to the State of A.P. with effect from the date he took over the aforesaid post and State Government permitted the applicant to retire voluntarily from service under sub-rule (2) of Rule 16 of All India Services (Death-cum-Retirement Benefits) Rules, 1958 w.e.f. F.N. of 14.03.2002 vide G.O.Rt.No.5172, General Administration (Spl.A) Department, dated 04.11.2003 in the cadre of Additional Secretary to Government of India, Ministry of HRD in the above supertime scale of IAS.

11. It is further contended that the applicant submitted his pension papers along with commutation application on 09.05.2008 i.e. after 6 years from

the date of voluntary retirement. Accordingly after the receipt of the pension verification report of the Accountant General, A.P. Hyderabad necessary sanction has been accorded inter-alia for payment of an amount of Rs.12,250/- (Rupees twelve thousand two hundred fifty only) per month w.e.f. 14.03.2002 towards service pension to the applicant who retired from service in the cadre of Additional Secretary to Government of India w.e.f. 14.03.2002 F.N. voluntarily. Under Prasar Bharati (Broadcasting Corporation of India) Salaries, Allowances and Other conditions of Service of Chairman, Whole-time Members and Part-time Members Rules, 2000, there is no provision of payment of pension towards the services rendered, therefore the service rendered by the applicant as Executive Member, Prasar Bharati Board shall not be counted for sanction of pension as he is not a member of IAS from 14.03.2002 and he is not eligible for sanction of pension on the basis of scale of pay of Secretary to GOI on par with his batch mates. The version of the 3<sup>rd</sup> respondent is that if the applicant had returned to the IAS cadre he could have got rank of Secretary to the Government of India by confirming the proforma promotion granted to him to the fixed grade scale on 25.03.2013 along with the other 1968 batch IAS Officers who are on central deputation. The applicant relinquished the IAS for joining the post of Executive Member, Prasar Bharati Board w.e.f. 14.03.2002 and continued upto 30.06.2006 i.e. till the date of attaining the age of 62 years. Therefore, his pay cannot be compared with other 1968 batch IAS Officers and therefore the sanction of pension by the State Government on the basis of the scale of pay of Secretary to Government of India to the applicant does not arise.

12. Lastly it is submitted that the applicant forwarded his pension proposals to the State Government in the year 2008, he was sanctioned the pensionary benefits in 2008 itself. He was satisfied with the pensionary benefits and enjoying them without any objection. Originally there was no claim against the State Government and subsequently the applicant filed MA seeking to implead the State Government as party respondent. Even in the impleading petition also, the applicant did not claim any pension against the Government of Andhra Pradesh and also did not make any allegations against the State of Andhra Pradesh. Therefore, the OA is not maintainable against the 3<sup>rd</sup> respondent.

13. Contending as above, the respondents sought to dismiss the OA.

14. We have heard Sri K.Sudhakar Reddy, learned counsel for the applicant, Smt.K.Rajitha, learned Senior Central Government standing counsel and Sri E.Peddanna, learned standing for the State of Andhra Pradesh.

15. The point for determination in the present OA is whether the applicant can be granted pension on the basis of scale of pay of Secretary to Government of India on par with his batch mates (1968 batch) considering that he had a lien on the IAS cadre till his attaining the age of superannuation in the normal course.

16. Before accepting the post of CEO, Prasar Bharati, the applicant was fully aware that he had to submit voluntary retirement as a condition precedent for accepting the said post and that he was deemed to have been retired from the IAS cadre by virtue of the provisions of Prasar Bharati Act, 1990 and Rules made there under. On assumption of the said post by virtue of the provisions of Section 6 of the said Act, he shall be the employee of the Prasar Bharati Corporation and will be governed by the provisions of the said Act. It is the contention of the applicant that he never applied for the post and that virtually it was mandatory on his part to accept the said post. It may be a fact that he was not applied for the post, but he was appraised of the consequences of the acceptance of the post before he agreed to accept the same. On the date of accepting the said post, he was drawing the salary of Additional Secretary only. Indisputably as per the service conditions of the post of CEO, Prasar Bharati, he would get extended age of superannuation and in fact he got it. From the pleadings of both the parties it is not possible for us to infer that there was no scope for the applicant for not accepting the post if he was really not interested. He could have as well declined to join the said post. Therefore, we do not agree with the contention that there was some kind of compulsion on him to accept the said post. A copy of the letter written by the 2<sup>nd</sup> respondent to the Department of Personnel & Training (DOP&T) i.e. the 1<sup>st</sup> respondent containing the pay and allowances and other terms and conditions of the office of the Executive Member of Prasar Bharati, which are governed by the provisions of the Act and rules framed there under from time to time were said to have been marked to the applicant. The applicant did not deny

the said fact. The applicant having received the said letter dated 18.02.2012 conveyed his acceptance to the 2<sup>nd</sup> respondent for the appointment as Executive Member on such terms and conditions that the 1<sup>st</sup> respondent might stipulate for cadre clearance including if necessary acceptance for his deemed voluntary retirement / technical resignation for the IAS from the date of assumption of the charge of the Executive Member. On the date of his joining as CEO, Prasar Bharati his pay was Rs.26,000/- per month, which was equal to the pay scale of Secretary to the Government of India. By then he was only getting the pay of Additional Secretary in the cadre of IAS. He was fully aware of the fact that if he was to accept the post of CEO, Prasar Bharati he had to submit voluntary retirement from the IAS with effect from the date he joined the office of the new post. The applicant who joined the Prasar Bharati Board in March 2002, was required to submit voluntary retirement from IAS with effect from the date he joined the Prasar Bharati Board and the competent authority granted waiver of notice period of three months for retirement of the applicant under Rule 5 (2) of the All India Service (DCRB) Rules, 1958 and requested the State Government to take further necessary action.

17. The main contention of the applicant seems to be that even after his joining the post of CEO, Prasar Bharati his name was continued in the 1968 batch of IAS Officers which according to him is evident from the G.O.Rt. No.1459, General Administration (Spl.A) Department, dated 25.03.2003 where under he was granted proforma promotion to the fixed grade of IAS (Rs.26,000/-) along

with his batch mates. He also relied on a notification dated 23.09.2003 issued by the Government of Andhra Pradesh, General Administration (Spl.A) Department in G.O.Rt.No.4549 wherein it was mentioned that he would retire from service on attaining the age of superannuation. In the said notification the proposed dates of retirements of his batch mates who are of 1968 batch IAS cadre were also mentioned.

18. As to this it is the contention of the respondents that as per the guidelines for promotion of IAS to various grades issued by DOP&T dated 28.03.2000 the case of the applicant was also considered for proforma promotion along with other IAS Officers of 1968 batch who were on central deputation, but the promotional benefits if any to the officer to whom proforma promotion was granted would be available on the date on which he returned and reported to the said cadre only. It is asserted by the respondents in the instant case that knowingly the applicant did not return and report to the said cadre and the benefits were not extended to him. They also contended that consequent on his appointment of Executive Member in Prasar Bharati on 13.02.2002 and as per the requirement under Prasar Bharati Act the applicant applied for voluntary retirement with effect from the date he took over the aforesaid post and the State Government permitted the applicant to retire voluntarily from service under sub-rule (2) of Rule 16 of All India Services (DCRB) Rules, 1958 with effect from the F.N. of 14.03.2002 vide G.O.Rt.No.5172, General Administration (Spl.A) Department, dated 04.11.2003 in the cadre of Additional Secretary to Government of India,

Ministry of HRD in the said super time scale of IAS. Therefore, according to the respondents had the applicant returned to the IAS cadre, he could have got the rank of Secretary to the Government of India by confirming the proforma promotion granted to him in the fixed grade scale on 25.03.2003 along with other 1968 batch of IAS Officers who are on central deputation. As regards the proposed retirement, the contention of the respondents is that had the applicant returned to the IAS cadre he would have retired in the cadre of Secretary to the Government of India from the date mentioned in the notification, but the applicant voluntarily continued as CEO, Prasar Bharati and retired there from on attaining the age of 62 years.

19. Before parting with this order it would be necessary to refer to the following judgements of the Hon'ble Supreme Court :

In **(2001) 3 SCC 290 { Tek Chand Vs. Dile Ram }**, wherein the Hon'ble Supreme Court held that where rule requires the appointing authority to accept three months notice of voluntary retirement and provides that in case of the authority's failure to refuse the permission to retire before expiry of the period specified in the notice, retirement shall become effective from the date of expiry of the said period. It is further held that the acceptance by the authority is not essential for coming into force of voluntary retirement.

20. In the instant case by virtue of provisions of Prasar Bharati Act, 1990

on accepting the post of CEO, Prasar Bharati the applicant was deemed to have been retired from the IAS cadre. There is a pre condition regarding the appointment of the applicant in the said post that he has to submit voluntary retirement with effect from the date of his appointment to the said post and accordingly he submitted his voluntary retirement. The competent authority also granted waiver of three months notice for acceptance. Therefore, the question as to when his voluntary retirement actually was accepted by the competent authority becomes wholly irrelevant and the voluntary retirement of the applicant becomes effective from the date on which he joined the post of CEO, Prasar Bharati.

21. In **(2003) 5 SCC 163 { A.K.Bindal and another Vs. Union of India and others }** the Hon'ble Supreme Court held that once employees opt to retire under VRS and accept the benefits there under their rights as employees come to an end and thereafter they cannot again assert their rights and reagitate their claim for pay revision for pre-retirement period.

22. The above stated principles laid down by the Hon'ble Supreme Court will squarely apply to the facts of the present case. In the instant case the applicant after having fully understood the service conditions of CEO, Prasar Bharati, accepted to voluntarily resign for the post in the IAS cadre and joined as CEO, Prasar Bharati. By joining the said post he was benefited by the extended



age of superannuation. By the date of accepting the post, he was getting the pay scale of Additional Secretary to the Government of India, but on the date of joining the new post his pay scale was equivalent to the Secretary to the Government of India. Being an IAS Officer, having consciously accepted the post of CEO, Prasar Bharati and the consequences of accepting the said post together with the conditions of service, cannot now re-agitate that for the purpose of pensionary benefits his pay scale shall be fixed in the scale of Secretary to Government of India. By accepting the post of CEO, Prasar Bharati, the applicant severed all his relations in the IAS cadre and he became the officer of Prasar Bharati Corporation by virtue of his submitting voluntary retirement as mandated under Prasar Bharati Act, 1990. There is no provision for payment of pension towards the service rendered in the Prasar Bharati Board under the provisions of Prasar Bharati Act 1990 and the Rules made hereunder. Since the applicant submitted his voluntary resignation in the cadre of Additional Secretary to the Government of India his pay scale for the purpose of pensionary benefits shall be that of the Additional Secretary only and cannot be the pay scale of the Secretary to the Government of India as claimed by him in the OA.

23. In view of what all stated herein above, we do not see any merit in this OA and accordingly dismiss the same without any order as to costs.

***(MINNIE MATHEW)***  
***MEMBER (ADMN.)***

***(JUSTICE R.KANTHA RAO)***  
***MEMBER (JUDL.)***

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