

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR. JUSTICE A.M.BABU

FRIDAY ,THE 31ST DAY OF AUGUST 2018 / 9TH BHADRA, 1940

OP (CAT).No. 143 of 2015

AGAINST THE ORDER/JUDGMENT IN OA 430/2012 of CENTRAL ADMINISTRATIVE  
TRIBUNAL,ERNAKULAM BENCH DATED 19-08-2015

PETITIONER/S:

B.SREEKUMAR  
AGED 56 YEARS  
S/O THE LATE BASKARA PILLAI, FLOOR ASSISTANT, DOORDARSHAN  
KENDRA, KUDAPPANAKUNNU, THIRUVANANTHAPURAM-695043, RESIDING AT  
AMBALLOOR VEEDU, KONCHIRAVILA, MANACAUD P.O.,  
THIRUVANANTHAPURAM-695009.

BY ADV. SRI. ANTONY MUKKATH

RESPONDENT/S:

- 1 UNION OF INDIA  
REPRESENTED BY ITS SECRETARY, MINISTRY OF INFORMATION AND BROAD  
CASTING, NEW DELHI-110 001.
- 2 CHIEF EXECUTIVE OFFICER  
PRASAR BHARATHI BROADCASTING CORPORATION OF INDIA, MANDI HOSUE,  
NEW DELHI-110 001.
- 3 DIRECTOR (ADMINISTRATION)  
PRASAR BHARATHI DIRECTORATE GENERAL OF DOORDARSHAN, DOORDARSHAN  
BHAVAN, NEW DELHI-110 001.
- 4 DEPUTY DIRECTOR GENERAL  
PRASAR BHARATI BROADCASTING CORPORATION OF INDIA, DOORDARSHAN  
KENDRA, THIRUVANANTHAPURAM-695043.
- 5 DIRECTOR GENERAL  
DIRECTORATE GENERAL OF DOORDARSHAN, DOORDHARSHAN BHAVAN, NEW  
DELHI -110 001.
- 6 CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH, REPRESENTED BY ITS REGISTRAR, KALOOR,  
ERNAKULAM-682017.

BY ADVS.  
SRI.B.RAMACHANDRAN, CENTRAL GOVERNMENT COUNSEL

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 31.08.2018, THE COURT ON THE  
SAME DAY PASSED THE FOLLOWING:

**JUDGMENT****C.T.RAVIKUMAR,J.**

This Original Petition carries a challenge against the order dated 19.8.2015 passed by the Central Administrative Tribunal, Ernakulam Bench in O.A No.430/2012. The unsuccessful applicant therein is the petitioner herein. He filed the said Original Application seeking the following reliefs:-

1. To direct the respondents not to terminate the applicant from service and not to deny any service benefits to him.
2. To direct the respondents to cancel all the steps initiated by them to terminate the applicant from service and permit him to continue in service with all service benefits.
3. To direct the respondents to withdraw Annexure A15 show cause notice all actions pursuant to the same for the termination of the applicant and permit the applicant to continue in service with all service benefits.

2. The respondents herein resisted the contentions of the petitioner by filing a reply statement. The petitioner filed a rejoinder. The Tribunal had considered all the rival contentions and ultimately dismissed the Original Application as per Annexure P9 judgment dated 19.8.2015.

3. We have heard the learned counsel for the petitioner and also the learned Standing Counsel appearing for the

respondents.

4. Before adverting to the rival contentions, it is only apposite to refer to the relevant facts. The petitioner was engaged on casual basis as per Annexure A2 order dated 24.4.1985 with effect from 22.4.1985. While he was continuing as such certain similarly situated persons filed O.A No.894/90 before the Principal Bench of the Central Administrative Tribunal. The said Original Application was disposed of with a direction to the Director General of Prasar Bharati to frame a scheme for regularisation of temporary appointees who continued for long period in the post of Floor Assistant. Later, the petitioner filed O.A No.535/92 which was disposed of as per Annexure A3 dated 28.5.92 with a direction to the respondents to consider his claim for regularisation. However, no action was taken thereon. That constrained the petitioner to approach the Tribunal again by filing OA No.739/93. The said Original Application was disposed of as per Annexure A4 dated 28.3.94. Evidently, relying on the order in O.A No.1123/92, which was marked as Annexure A7 therein, the Tribunal had directed the respondents to regularise the services of the petitioner. As the said direction in Annexure A4 order was not complied with the

petitioner was constrained to file CP(C) 220/1994. During its pendency, the third respondent issued Annexure A8 letter dated 6.6.1995. Virtually, it is a communication intimating the petitioner that he is eligible for regularisation and he would be appointed on occurrence of a vacancy. Later, as per Annexure A9 dated 27.10.95 the petitioner was appointed as Floor Assistant. Annexure A9 order was subsequently modified as per Annexure A11 dated 7.2.96. Taking note of the fact that the appointment under Annexure A9 he was not put on probation, the said mistake was mended as per Annexure A11 and he was put on probation for a period of two years with effect from 16.10.95. Taking note of Annexure A9, the contempt petition was closed. Later, the probation of the petitioner declared as per Annexure A12 dated 30.3.2010 with effect from 16.10.97. In the meanwhile, as per Annexure A13 dated 29.5.2008 the petitioner was granted the first financial upgradation under the Assured Career Probation Scheme, on completion of 12 years of service. Later, he was also included in Annexure A14 seniority list. It is only thereafter that he was served with Annexure A15, which is in fact a show cause notice dated 20.4.12. As per the same he was required to show cause why his services should

not be terminated. On its receipt the petitioner submitted Annexure A17 reply. Immediately, thereafter he moved the Tribunal by filing the above mentioned Original Application which culminated in order impugned in this Original Petition. It is to be noted that the Tribunal had earlier granted an interim order staying the operation and implementation of Annexure A15 and on its strength the petitioner continued in service. But, subsequently, as per the impugned order dated 19.8.2015, the Tribunal found no merits in the claims and contentions of the petitioner and consequently dismissed his Original Application.

5. We have carefully gone through the impugned order. A bare perusal of the same would reveal that the Tribunal has mainly focused on the question whether the petitioner herein was entitled to be regularised in service in the light of the scheme for regularisation framed pursuant to the order in O.A 894/90 by the Principal Bench of the Central Administrative Tribunal. Evidently, the Tribunal had also considered the question whether in the light of the decision of the Apex Court in **Director, Doordarshan Kendra vs S.Kuttan Pillai & Ors** reported in **(1998 (8) SCC 736)** the regularisation of the service of the petitioner was legal. Holding that in the light of

the said decision the petitioner ought not have been regularised in service, the Tribunal upheld Annexure A15 and found that it calls for no interference. As a necessary consequence the Original Application was dismissed.

6. We have already narrated the chronology of the events which would reveal that pending consideration of the contempt petition viz., CP(C) 220/94, the third respondent issued Annexure A8 communication dated 6.6.95. As per the same the official respondents found the petitioner eligible for and entitled to be considered for regularisation. It is discernible from Annexure A8 that, but for the non-availability of the vacancy in the post of Floor Assistant he would have been given appointment earlier. Evidently, after the issuance of Annexure A8, on occurrence of a vacancy in the post of Floor Assistant the petitioner was issued with order of appointment Annexure A9 and on its strength he joined the regular service. It is also to be noted that an error crept in Annexure A9 order was subsequently found out that on fresh appointment the petitioner was not put on probation. The said mistake crept in Annexure A9 order was corrected as per Annexure A11 order whereby and whereunder he was put on probation for two years

with effect from 16.10.1995. Above all, it is also to be noted that on successful completion of the period of probation it was declared on 30.3.2010 with effect from 16.10.97 as per Annexure A12. Annexure A15 order dated 20.4.2012 was issued more than two years since declaration of his probation. It is worthwhile to refer to Annexure A16 in the contextual situation. It is an order dated 30.1.2010 passed by the Deputy Director of Administration of Prasar Bharati. The following recital in the said order assume relevance and it reads thus:-

Sri.B.Sreekumar (the petitioner herein) was also not eligible but as per the direction of the Hon'ble CAT, Ernakulam Bench, order in CP(C) 220/94 in O.A No.739/1994, his case had been reconsidered in this Directorate as per regularization scheme 1992 and 1994. After giving age relaxation to Sri.B.Sreekumar in term of regularization scheme of 17.3.1994, he was declared as eligible and was considered for regularization.

7. These crucial aspects were not at all taken into consideration by the Tribunal. As noticed hereinbefore that the Tribunal had proceeded with the case as if it was considering

the claim for regularization made by the petitioner in the Original Application. There can be no doubt consideration of the claim for regularisation is one thing and consideration of cancellation of appointment, that too, after declaration of probation is another thing. In short, a bare perusal of the impugned order would reveal that the Tribunal had virtually considered the question whether the petitioner herein was entitled to be regularized in view of the scheme. In short, the Tribunal had lost sight of the fact that what was impugned before the Tribunal is the proposed action on the part of the respondents therein, to terminate the services of the petitioner after about 17 years since his appointment on regular basis. True that, the reason assigned for such proposal was that going by the scheme for regularization he was overaged. It is also a fact that at the time of issuance of Annexure A9 order the applicant crossed the age limit by one month and 29 days. The tenor of contentions as can be seen from the pleadings of the respondents is that this fact was omitted to be taken note of. According to them, it had occurred due to the incorrect information furnished by an officer of the Prasar Bharati and that led to the issuance of Annexure A9 order. But at the same



time, it is pertinent to note that there is absolutely no case for the respondents that the petitioner incorrectly furnished his date of birth or attempted to mislead the respondents. It is to be noted that as per Annexure A9 the petitioner was appointed as Floor Assistant on regular basis. The omission crept in Annexure A9 to mention that he was put on probation for a period of two years was subsequently corrected by issuing Annexure A11. It is also to be noted that even at that point of time the respondents did not have a case that the petitioner was not entitled to be regularised/to be given regular appointment based on the past casual service. That apart, it is an undisputed fact that on 30.3.2010 his probation was declared with effect from 16.10.1997 as per Annexure A12. It is also a fact that as per Annexure A13 dated 29.5.2008 the petitioner was granted the first financial upgradation under the ACP Scheme on completion of 12 years of service. Thus, it is evident that the respondents had occasions to consider the service particulars of the petitioner for the purpose of granting different benefits. At no point of time the fact that the petitioner was not entitled to get regularization was taken note of and upon his regular appointment and on completion of the

period of probation it was declared. As noticed earlier, he was also granted the benefit of the first financial upgradation under the ACP Scheme. It is long later that the respondents have issued Annexure A15 notice requiring the petitioner to show cause why the services should not be terminated assigning the reason that at the time of issuance of Annexure A9, he was overaged as on 9.6.1992 by one month and 29 days and therefore he was actually ineligible to be regularized. It is to be noted that the petitioner was engaged by the respondents as per Annexure A3. It was reckoning his casual service that he was granted regular appointment as per Annexure A9. Even under Annexure A11 what was corrected is only a mistake crept in Annexure A9. Annexure A9 and Annexure A11 were issued in the year 1995 and 1996 respectively. Annexure A16 would reveal that the petitioner's claim for regularisation was reconsidered and it only after giving age relaxation that he was considered for regularisation. It is long later that Annexure A15 was issued on 20.4.2012. Evidently, based on the interim order passed by the Tribunal as per Ext P2 the petitioner had continued in service till the disposal of the Original Application. It is also relevant to note that at the time of admitting this

Original Petition this Court passed an interim order and on its strength the petitioner is still continuing his service and he is due to retire from service in April, 2019.

8. In the context of the reason assigned for proposing termination of the petitioner, it is worthwhile to refer to Ext P12 dated 5.8.2013. It would reveal that in the case of two persons namely, S.Kuttan Pillai and K.P.Mohanakumaran Nair, the respondents had granted relaxation of age to the extent they were over-aged for the purpose of regularizing their services in the post of Floor Assistant. The specific case of the petitioner, which remains uncontroverted, is that in the case of S.Kuttan Pillai, on the relevant date he was overaged by three years and ten months and in the case of Mohanakumaran Nair, it was 6 years and 24 days. The shortage of the requisite period in the case of the petitioner, as noticed hereinbefore was only one month and 29 days. Taking note of the fact that the petitioner was granted regular appointment in the year 1995 and the proposal to terminate his service was made only after about 17 years thereafter and also in the light of Ext P12, we are of the view that the respondents ought not have taken a decision to show the door to the petitioner especially after having exploited

his service initially on contract basis and then on regular basis for more than 3¼ decades when he is due to retire in April, 2009. Upon scanning the impugned order passed by the Tribunal we have no hesitation to say that these crucial aspects were not given due consideration by the Tribunal. As noticed hereinbefore the Tribunal had proceeded to consider the matter as if it was considering the entitlement of the petitioner for regularization. For the reasons specifically mentioned hereinbefore, we are of the considered view that the respondents ought not have taken such a decision to terminate the service of the petitioner especially in the light of Ext P12 and also taking into account the fact that they have given him regular appointment as per Annexure A9 and declared his probation as per Annexure A13 and had also granted him the first financial upgradation. Having granted the petitioner all such benefits after about 17 years the respondents were not justified in taking a decision to terminate his service. There cannot be any doubt with respect to the position that if relevant facts were not taken into consideration or irrelevant facts were taken into consideration an order could be said to be perverse. If an order is perverse certainly this Court would be within its

power to judicially review the same. In the said circumstances, we are of the considered view that this is an eminently fit case where this Court should exercise the power of judicial review to overturn the findings of the Tribunal. In the result, the impugned judgment passed by the Tribunal dated 19.8.2015 in O.A 430/2012 is set aside. Annexure A15, though it is only a show cause notice, in the circumstances explicitly explained above, it is set aside. Needless to say that in the said circumstances the petitioner is entitled to continue in service subject to the conditions of service.

The Original Petition is disposed of as above.

Sd/-

**C . T . RAVIKUMAR**

**Judge**

Sd/-

**A . M . BABU**

**Judge**

Sks/3.9.2018

APPENDIXPETITIONER'S/S' EXHIBITS:

EXHIBIT P1: PHOTOCOPY OF THE ORIGINAL APPLICATION NO.430/2012 ALONG WITH ANEXURES 1 TO 17 FILED BY THE PETITIONER.

EXHIBIT P2: PHOTOCOPY OF THE INTERIM ORDER DATED 31.5.2012 IN O.A.NO.430/2012 OF THE 6TH RESPONDENT.

EXHIBIT P3: PHOTOCOPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS DATED 29.10.2012 WITH ANNEXURES R1 TO R7.

EXHIBIT P4: PHOTOCOPY OF THE REJOINDER STATEMENT IN O.A.NO.430/2012 DATED 25.11.2012 WITH ANNEXURES A18 To A33.

EXHIBIT P5: PHOTOCOPY OF THE STATEMENT IN OA NO.430/2012.

EXHIBIT P6: PHOTOCOPY OF THE ADDITIONAL REJOINDER STATEMENT IN OA NO.430/2012 DATED 10.2.2013 WITH ANNEXURE A34.

EXHIBIT P7: PHOTOCOPY OF THE REPLY TO THE ADDITIONAL REJOINDER STATEMENT IN OA 430/2012.

EXHIBIT P8: PHOTOCOPY OF THE 2ND ADDITIONAL REJOINDER STATEMENT DATED 20.5.2013 IN OA 430/2012.

EXHIBIT P9: PHOTOCOPY OF THE ORDER DATED 19.8.2015 IN OA NO.430 OF 2012 OF THE 6TH RESPONDENT.

EXHIBIT P10: PHOTOCOPY OF THE AFFIDAVIT DATED 20.11.2012 IN CP(C) NO.129/12 IN OA 940/2010.

EXHIBIT P11: PHOTOCOPY OF THE ORDER DATED 21.10.2011 IN OA NO.940 OF 2010 ALONG WITH ORDER DATED 12.4.2012 IN R.A.NO.62/11 IN OA NO.940 OF 2010 OF THE 6TH RESPONDENT.

EXHIBIT P12: PHOTOCOPY OF THE MEMO NO.LC/PRASAR BHARATI/COURT CASE 2/2012 DATED 5.8.2013 OF THE DEPUTY DIRECTOR (PERSONNEL), PRASAR BHARATI, NEW DELHI.

EXHIBIT P13: PHOTOCOPY OF THE ORDER NO.12(1)/2013/A1/DKT(KW) DATED 28.8.2013 OF THE SENIOR ADMINISTRATIVE OFFICER FOR ADDITIONAL DIRECTOR (I/C) PRASAR BHARATI, THIRUVANANTHAPURAM.