

(29)

Central Administrative Tribunal
Principal Bench

O.A. No. 3348/2002

New Delhi this the 8th January, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri Sarveshwar Jha, Member (A)

1. Amar Singh
s/o Shri Janardhan
R/o 115, Akash Dashan
Ajit MV Phase - I
Delhi
2. Madhu Sudan Gupta
S/o Shri Ramesh Gupta
R/o B-8/15, Sadatpur Colony
Delhi.
3. Kailash Chander Papnai
s/o Shri Chintamani Papnai
R/o 4/319, Khichripur Colony
Delhi.
4. Veer Singh
D/o Late Shri Raghuvir Singh
R/o B-37/3, Kondli
Delhi.
5. Geeta Mathur
D/o Late Shri Dina Nath
r/o 29 Schedule B
President Estate
Rashtrapati Bhavan
New Delhi.
6. Bhuvan Giri Goswami
s/o Shri Ram Giri
R/o C-5/10, Yamuna Vihar,
Delhi-53.

7. Sunil Kumar Sharma
s/o Shri Kailash Nath Sharma
R/o 127/B, Pocket- F
Mayur Vihar, Phase-II
Delhi - 110091.
8. Usha Kiran Jaiswal
D/o Shri S.K. Jaiswal
Production Assistant
Doordarshan Kendra
Delhi
9. Krishan Mohan
s/o Late Shri G.P. Srivastava
Sayeed Nagloi
Paschim Vihar
New Delhi
10. Asha Bagat
w/o Shri Hans Raj
Doordarshan Kendra
New Delhi.
11. Devender Kumar Saini
Production Assistant Doordarshan Kendra
Delhi.
12. Atul Pathak s/o Shri T.P. Pathak
R/o C-4,
H/56 Janakpuri
Delhi-58.
13. Kanchan Saxena d/o Shri R.S. Saxena
R/o AN, 25C,
Shalimar Bagh
Delhi - 52.
14. Deepshikha Sharma
D/o Shri H.R. Sharma
R/o H-195,
Kali Bari Marg
New Delhi-1.

15. Pradeep Kumar
s/o Banwari Lal
Production Assistant
Doordarshan Kendra
Delhi
16. Vijay Lakshmi Chopra
W/o Narendra Chopra
R/o I-1, Parvana Vihar
Sector-9, Near D.C. Chowk
Rohini, New Delhi.
17. Yogendra Bahadur
s/o Late Shri Jang Bahadur Lal
R/o 206 A
Lahore Shastri Nagar
Delhi-31.
18. Veena Sehgal
w/o Shri Satish Sehgal
R/o D-I/A/118, Janakpuri
New Delhi
19. G.C.Khurana
S/o Shri S.R. Khurana
Production Assistant
Doordarshan Kendra
Delhi
20. Usha Goel
w/o Shri Subhash Goel
R/O 16-D, CC Block
Shalimar Bagh
Delhi.
21. Seema Sharma
w/o Shri Rajiv Sharma
Flat No.143, Vidhya Vihar Apartment
Plot No.48, Sector-9
Rohini
New Delhi.
22. Nisha Saxena D/o Shri R.N. Saxena
S/o Shri R.N. Saxena
R/o Pocket F, 40-A MIG Flat

Ground Floor, GTB Enclave
Opp. GTB Hospital,
Delhi,

23. Seema Verma
w/o Shri Sarvajeet Verma
R/o 469, DDA Flats
Lado Sarai, New Delhi-30.
24. Sanjay Kumar Jain
s/o Shri S.K. Jain
R/o 29/23, Shakti Nagar
Delhi - 7.
25. Meenu Dua
w/o Shri Narendra Dua
R/o 257, Dhakka, Near Kingsway Camp
Delhi-9.
26. Sunil Kumar Bhardwaj
61/A, J-Extension, Laxmi Nagar
Delhi.
27. Prashant Kumar Srivastava
S/o Shri Shiv Charan
R/o 4/911, Jharkhandi Marg
Bhola Nath Nagar
Shahdara, Delhi
28. Kamal Kumar Vij
S/o Late Shri H.L. Vij
Flat No.17, Plot No.78
Meena Apartments,
I.P. Estate, Delhi
29. Kawaljit Singh
s/o Late Shri Bal Singh
R/o E-1548, Netaji Nagar
New Delhi.
30. Jitender Singh Chauhan
S/o Shri H.S. Chauhan
70/80, Mam College
New Delhi.

31. Sunil Kumar Bhatt,
S/o Sh. B.D. Bhatt,
R/o E-1548, Netaji Nagar,
New Delhi.
32. Mahesh Chand Joshi,
S/o Sh. Rupender Joshi,
18-B, Kutab Enclave, Phase-II,
DDA Flats, New Delhi.
33. Sanjay Kumar,
S/o Sh. Om Prakash,
A-2/8, Rana Pratap Bagh,
Delhi-110007.
34. Pradeep Kumar Satija,
S/o Sh. D.N. Satija,
67-F, Pocket A-1, Phase-III,
Mayur Vihar, Delhi.

...Applicants.

Versus

- Union of India & Others,
1. Secretary,
Ministry of I.B.,
New Delhi
 2. Director General,
Doordarshan, Mandi House,
New Delhi.
 3. Director,
Delhi Doordarshan Kendra,
Sansad Marg, New Delhi.
 4. Director,
Central Production Centre,
Siri Fort, Asiad Village,
New Delhi.

...Respondents

By Shri M.K. Bhardwaj, Advocate) (Applicants)
By Shri S.M. Arif, Advocate) (Respondents)

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J)

Applicants who were Production Assistants (P.As) Doordarshan have assailed a show cause notice dated 28.6.2002 as well as OM dated 8.11.2002 wherein it has been decided by the respondents to recover salary and allowances paid to them.

2. By an order dated 24.12.2002 further recovery has been stayed.

3. Applicants' juniors who had been working on casual basis were regularised on 21.3.94 as Production Assistants in the pay scale of Rs.1400-2600 with all consequential benefits. Applicants 27 to 34 filed OA-699/94 which was disposed of on 29.11.95 with a direction to respondents to consider the case of applicants for regularisation as P.As in the same manner in which juniors had been regularised.

4. Contempt No.106/96 in OA-699/94 filed for non-implementation was rendered infructuous as the directions had been complied with. Applicants 1 to 27 filed OA-1187/98 for grant of pay scale as accorded to their juniors with all consequential benefits w.e.f. 21.3.94.

5. By an order dated 29.5.2000, respondents' action in regularising the junior persons from earlier date and not regularising the applicants were held to be discriminatory and arbitrary. Accordingly, applicants have been granted benefit by order dated

9.10.96 by antedating the regularisation as PAs from 21.3.94 in the pay scale of Rs.1400-2600 with fixation of seniority.

6. Vide O.M. dated 8.11.2002, applicants have been given only notional fixation without grant of actual benefits of pay and allowances and a recovery has been ordered giving rise to filing of C.P-529/2002 in OA-1187/98. By an order dated 19.12.2002 as the issue of grant of pay scale with allowances from 21.3.94 was found contentious, liberty was accorded. Hence the present OA.

7. Learned counsel for applicants Shri M.K. Bhardwaj states that grant of pay and allowances to the juniors and earlier grant of the same to the applicants and thereafter recovery is hit by Articles 14 and 16 of the Constitution of India being discriminatory. It is contended that the juniors had been allowed arrears of pay and it is none of the fault of the applicants to have worked on regular basis as PAs as the claim of seniors had been ignored by the respondents for regularisation and what prevented the applicants from performing the duties of PAs and regular appointment is an illegal act of the respondents. As an alternative argument, it is contended that the pay and allowances have been paid to the applicant by the respondents without any misrepresentation or fraud and as such the over payment cannot be recovered.

8. On the other hand, learned counsel for respondents contends that in earlier OA 1187/98 applicants had not prayed for pay and allowances.

9. Referring to the order passed in contempt (supra), it is contended that the claim of the applicants was not found justifiable. Moreover, it is stated that having failed to seek relief for pay and allowances, the present OA is barred by constructive res judicata. Moreover, on merits, it is stated that one who had not worked on the post is not entitled for back wages and pay and allowances in the light of the decision of the Apex Court in **P. Ramakrishnaiah Vs. Union of India** (AIR 1990 SC 166).

10. It is further stated that the applicants though accorded regularisation from 21.3.94 but having joined the post of Production Assistants on regular basis on 1.11.94 and earlier having worked only for 10 days a month, are not entitled for salary of the month, and as such as, there was an erroneous decision of the Government to grant them benefits of pay and allowances, the same can be recovered.

11. In the rejoinder, pleas taken in the OA are reiterated.

12. We have carefully considered the rival contentions of the parties and perused the material on record.

13. It is not disputed that the juniors had been regularised from 21.3.94 who had earlier worked on casual basis. The claim of applicants was ignored and they had been discriminated in violation of Articles 14 and 16 of the Constitution of India. Accordingly, though specifically it has not been prayed for pay and allowances in OA-1187/98 yet one of the relief granted was declaration to the effect that by not regularising the applicants and regularising the juniors, respondents have acted arbitrarily discriminating the applicants. In this conspectus, pay scale of Rs.1400-2600 was accorded to the applicants w.e.f 21.3.94 on antedating the regularisation. This has been construed rightly by the respondents and accorded pay and allowances to the applicants from 21.3.94. Their subsequent decision in the guise of an erroneous decision by issuing a show cause notice and proposing recovery of the amount paid from 21.3.94 till actual joining of the applicants as Production Assistants, cannot be countenanced.

14. If it has been established and held by the court that the respondents had acted arbitrarily and discriminated the applicants vis-a-vis their juniors for regularisation to which they had been entitled from 21.3.94. Principle of equality mandates meeting out same treatment to the applicants who are admittedly senior as well. If the pay scale is granted and there is no indication in the Tribunal's orders to restrict it notionally, the principle of no work no pay would not be applicable. In fact, what compel the applicant not to have actually worked on regular basis as Production Assistants is an illegal

and arbitrary act of the respondents. Full Bench of the Tribunal in **Devi Lal Vs. Union of India** 2002 (1) ATJ 485 accorded actual benefits of pay and allowances on finding that denial of work was erroneous. More over in **Pushpa Bhinde Vs. Union of India** ATR 1989 (1) CAT 397, it has been held that when the benefit would have been given by mistake, no recovery can be made.

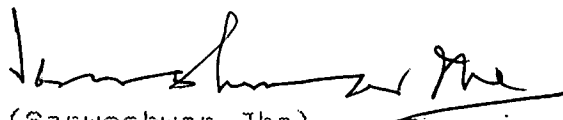
15. Apex Court in **SI Roop Lal Vs. Lt. Governor** a three judges Bench decision reported in 2000(1) SCC 644 held that Government has to play a pivotal role and to act as an amicus curiae. Once the matter is judicially decided Government should not compel further agitation in the matter. Once the benefit is accorded to the juniors with actual benefits, the same should have been meted out as was rightly done by the respondents. Subsequent withdrawal of benefit is not fair and is opposed to the public policy as well. Being a model employer they should not deprive the applicants of the benefit flowing out and consequential of their antedating regularisation on the basis of having not worked. As the non-working is attributable to the respondents who had the relevant time by not regularising the applicants and rather regularising the juniors in a manner prevented them from working on actual basis.

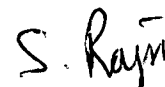
16. In so far as constructive res judicata is concerned, we do not find its applicability in the present case and having found the matter contentious, liberty was accorded to the applicants.

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17. Another aspect of the matter which requires consideration is that having regard to the pay and allowances having been paid to the juniors, respondents having taken a decision to accord pay and allowances to the applicants w.e.f. 21.3.94 without any fault of theirs and without any fraud played by them, they are estopped from recovering the same. This observation is forefeited by the Apex Court decision in **Shyam Babu Vs. Union of India** 1994 (2)SCC 521.

18. In the result for the foregoing reasons after meticulously considering the rival contentions, OA is allowed. Impugned orders are quashed and set aside. Respondents are directed not to recover the salary and allowances already paid to the applicants.


(Sarweshwar Jha)
Member (A)


(Shanker Raju)
Member (J)

cc.