

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1191 of 2001

New Delhi, this the 7th day of May, 2002

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

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..Applicants

(By Advocate: Shri V.S.R. Krishna)

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VERSUS

1. Union of India
Through
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2. DG/CEO
Prasar Bharti
Broadcasting of India,
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Mandi House,
New Delhi.
3. Director,
Prasar Bharti,
Delhi Doordarshan Kendra,
Akashwani Bhavan,
Sansad Marg,
New Delhi.

-RESPONDENTS

(By Advocate: Shri M.M. Sudan, Senior Counsel)

ORDER

By Hon'ble Mr. Kuldeep Singh, Member (Jud)

This is a joint petition filed by 34 applicants. All of them have a common grievance to the effect that the representation for removing the anomaly in the basic pay of the applicants vis-a-vis their juniors and colleagues had been rejected by the respondents without any valid justification or reason. The applicants also allege that the respondents have treated the applicants in a discriminatory manner and have conferred benefits of pay fixation on certain favoured few and did not extend the same benefits to the applicants though they are similarly placed and are entitled to have their pay fixation at par with their colleagues and juniors and such a treatment meted out to the applicants is violative of their fundamental rights as enshrined under Articles 14 and 16 of the Constitution of India.

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2. The facts, as alleged by the applicants in brief are that all the applicants are working as Production Assistants in the office of the respondents and had been appointed as such from December, 1992 onwards. The applicants further allege that an OA bearing No.1441/1988 was filed by Anoop Sharma and 13 others challenging their dismissal and since they were irregularly appointed but their dismissal was upheld by this Tribunal in its order dated 5.11.1993 in OA 1441/88. However, while dismissing the OA, the Tribunal also observed that when the respondents go in for fresh selection, they should give a chance to the applicants even if need be by providing relaxation of age.

3. The applicants allege that though the OA 1441/88 was dismissed but taking the benefit of the observation made in the OA some persons in the top bureaucracy who were known to the applicants in the OA issued fresh orders of appointment for those applicants in the OA and even in the appointment orders those applicants were treated as fresh appointees from the date of the order, i.e., 6.1.1994 as it is reflected in Annexure A-3, where the respondents while appointing them clearly stated that though the termination of the said applicants was held to be valid by the Tribunal but they are allowed to continue on sympathetic consideration and it was also mentioned that their appointment will be treated as fresh with effect from the date of issue of the order.

4. The applicants further submitted that those fresh appointees were also initially appointed on contract basis like the applicants in the present application and as such are similarly placed like the

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applicants.

5. The applicants further allege that the pay scale of the post of Production Assistants as per the recommendations of the 4th Pay Commission was Rs.1400-2600 and all the Production Assistants were in receipt of the pay as per their entitlement but surprisingly one Shri Jai Chand who was applicant in OA 1441/88 was moved upward in relation to his junior and his pay was fixed at Rs.7300/- vide Annexure A-4 and despite this fact that Shri Jai Chand was to be treated as fresh appointee but his pay was fixed higher than the petitioners so the petitioners made a representation which was rejected vide Annexure A-1.

6. The applicants now allege that all those applicants whose earlier appointment had been held to be illegal and termination order was held to be valid were treated as fresh appointee but taking into consideration the past service, their pay had been fixed at a higher scale which is not permissible in law and the applicants who had been working from 1992 onwards, their pay has been fixed at a lower stage than the fresh appointees who were appointed in 1994. Thus it is submitted that it is clear violation of the fundamental rights as enshrined in Articles 14 and 16 of the Constitution of India since right to equal treatment has been denied to the applicants, so it is prayed that the OA be allowed.

7. Respondents contested the OA. Respondents admitted that a selection of Production Assistants which was made in the year 1984 was found to be wriggled with favouritism, nepotism etc. CBI enquiry was conducted and ultimately the Government decided to terminate their services. The Tribunal also found that the termination

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was a valid one.

8. The respondents further admitted that the applicants thereafter approached the Ministry of Information and Broadcasting for a sympathetic reconsideration of their cases and after taking a sympathetic view, it was decided with the approval of the competent authority to continue to work in Doordarshan by treating them as having been appointed as afresh from 6.1.1994, subject to the condition that they will be given seniority in the post of Production Assistants from the date of issue of fresh appointment order, i.e., from 6.1.1994. Respondents further admit that subsequently their past service were taken into account for the purpose of grant of increments.

9. It is further submitted that out of the 34 applicants in the present OA only first 11 of them were appointed prior to 6.1.1994 who can be said to be senior to them and rest of them (23 of them) were appointed after 6.1.1994 and are thus junior to the applicants in OA 1441/88, so it is submitted that the request of the applicants for stepping up of their pay is not covered under any rule of the Government. Under FR 22 the pay of the senior employee can be stepped up only when the anomaly has arisen as a result of application FR 22-C now FR 22(1)(a)(1) or any other rules or orders regulating pay fixation on promotion in the revised scale so it is submitted that the applicants are not entitled to stepping up of pay.

10. We have heard the learned counsel for the parties and gone through the records of the case.

11. It is an admitted case of the parties that those applicants in OA 1441/88 did not succeed in their

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OA and their termination was held to be valid. Though the Tribunal had directed them that if any fresh selection is made they may be appointed afresh and if need be relaxation in pay be also given. It appears that the respondents did not hold any fresh selection but simply on sympathetic consideration, appointed all those applicants afresh. So still the element of sympathetically weighed more with the appointing authority to appoint those 14 persons whose termination had been held to be invalid for reasons best known to the appointing authority. The Tribunal thus had directed them to be considered in any fresh selection as per rules and not on sympathetic consideration to appoint them again. Anyhow their earlier appointment was held to be regular.

12. It is further surprising that though the appointment letter shows that they were appointed afresh on sympathetic grounds and it was made clear at the time of appointment on 6.1.1994 that their past services will not be taken into consideration for the purpose of seniority still on the basis of their past services subsequent to the appointment those applicants were given increments and their pay was fixed higher than the petitioners in the OA.

13. Further still surprising the respondents had audacity to admit that even out of the present 34 applicants, 11 of them had been appointed prior to 6.1.1994 and can be said to be senior to those appointees who were appointed on sympathetic consideration on 6.1.1994. So by fixing those candidates at higher salary even these 11 applicants have been affected and their salary is fixed at a lower stage then those appointees

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who had not come through proper selection and who had come only on sympathetic consideration.

14. Thus this administrative action on the part of the respondents fixing the salary of those appointees at a higher stage definitely discriminate the petitioners as equals have been treated in an unequal manner. Thus there is clear violation of fundamental rights as enshrined in Articles 14 and 16 of the Constitution of India so we have no hesitation to allow the OA. Accordingly, we allow the OA and direct the respondents to re-examine the case of the applicants and those applicants who had been appointed prior to 6.1.1994 their pay should be fixed at par with their juniors and whatever criteria had been adopted to give increments to those applicants that may be applied to all the applicants. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.

Kuldeep Singh
(KULDIP SINGH)
MEMBER (JUDL)

W.K. Majithia
(W.K. MAJITHIA)
MEMBER (A)

Rakesh