

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1798/2001

New Delhi this the 26th day of April, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.K. AGRAWAL, MEMBER (ADMNV)

1. All India Graphic Artists Association (Doordarshan), Office: RZ 57/284, Gali No.1, Geetanjali Park, West Sagarpur, New Delhi
2. Debu Chatterjee S/o Sh. N.C. Chatterjee, C-527, Chitrangan Park, New Delhi.
3. Subhash Rai s/o Late Sh. Sadananda Rai, D-1/82, Janak Puri, New Delhi.
4. Smt. Rama Sharma D/o Ramesh Chandra Sharma, 23/8, Lodhi Road Complex, New Delhi.
5. Smt. Meena Kumari Singh, D/o Sh. H.R. Kaler, H.NO. 213-B,, Munirka Village, P.O. JNU Behind Munirka Enclave, New Delhi-110067.
6. Chandra Bhan Harit, S/o Sh. Jawahar Lal Harit, C-68, LIG Flat, East Loni Road, Shahadra, Delhi-110093.

(By Advocate Shri Yogesh Sharma)

~VERSUS~

1. Union of India through the Secretary, Ministry of Information and Broadcasting, Govt. of India, New Delhi.
2. The Director, Directorate General of Doordarsan, Doordarshan Bhawan, Copernicus Marg, New Delhi.
3. Dy. Director (Admn.), Directorate General of Doordarsan, Doordarsan Bhawan, Copernicus Marg, New Delhi.
4. The Prashar Bharti (BCI), through the Chief Executive, Mandi House, New Delhi.

(By Advocate Shri Mohar Singh)

ORDER

By Mr. Shanker Raju, Member (J):

Applicants have impugned the decision of the Government dated 1.6.2001 wherein though by a letter dated 25.2.99 few categories have been allowed upgraded scale but



the claim of the Graphic Artists has been denied. Applicants have sought quashing of this order and declaration that they are entitled for upgradation of their pay scale at par with Production Assistants (Animation) with all consequential benefits by extending the benefit of the notification dated 25.2.99.

2. On the recommendations of the 5th Central Pay Commission Graphic Artists have been placed in the pay scale of Rs.5000-8000. Govt. of India by an office order dated 25.2.99 upgraded the pay scale of more than 17,000 employees over and above the recommendations of the 5th CPC in two categories, i.e., Engineering and Programme. This has been done as one time measure and this benefit has been made available only to existing incumbents and as far as new direct recruits joining after this order are concerned they shall not be entitled to the pay scale recommended by the 5th CPC. This has been arrived at on the basis of agitation of employees belonging to different cadres in All India Radio and Doordarshan on consideration by the Govt. their pay scales have been upgraded. Transmission Executives appearing in Annexure-I of the OM dated 25.2.99, inter alia, include certain posts decided through their OM dated 10.3.99, which includes Production Assistants (Animation) but this does not include Graphic Artists in para 2 of the notification dated 25.2.99. Applicants have raised their grievance and by a letter dated 25.5.99 addressed to the Director General by the Director CPC, Doordarshan, the category of Graphic Artists and Production Assistants have been observed to be one carrying the same pay scale, the method of recruitment, educational and other qualifications and it has been recommended that they should

also be given the same pay scale of Rs.6500-105000 given to other categories. Another letter written by the Deputy Director (Admn.) re-iterates the same position. The upgradation of pay scale of Graphic Artists was under consideration as intimated by letter dated 14.10.99. Applicants preferred OA-739/2001 wherein by an order passed on 22.3.2001 respondents have been directed to consider the representation of the applicants and to dispose of the same within a period of three months.

3. By an order passed on 1.6.2001, impugned herein, respondents have considered the claim of the Graphic Artists and rejected the same, by observing that the Graphic Artists is a distinct category with specific nature of duties and responsibilities cannot be equated to other categories to claim equal pay for equal work.

4. The learned counsel of the applicants at the outset stated that nowhere in the memorandum issued on 25.2.99 where the upgradation of certain categories of employees have been revised assigned reasons for taking such an action. It is also stated that the pay scales have been upgraded as one time measure available to existing incumbents and for direct recruits the pay scales recommended by the 5th CPC are to be allowed. In this backdrop it is stated that when all other categories have been included there is no question of comparing the conditions of service of two categories to deprive the applicants the upgradation which is violative of Articles 14 and 16 of the Constitution of India. It is also stated that despite a policy matter the same should not be malafide or arbitrary. By referring to the recruitment

(4)

rules prior to 1.1.87 it is contended that Graphic Artists and Production Assistants (Animation) formed one cadre and the method of recruitment, qualifications and the promotional avenues were the same. In this view of the matter mere bifurcation of the two categories and the introduction of new recruitment rules in the year 1987 has not altered the position and the duties and responsibilities discharged by them remain the same. As such, being equals they cannot be treated unequally for grant of upgradation of pay scale. By placing reliance on a decision of the Apex Court in Randhir Singh v. Union of India, 1982 (3) SCR 298 it is contended that principle of equal pay for equal work is deducible from Articles 14, 16 and 39 (d) of the Constitution of India and mere an irrational classification cannot be countenanced. It is also stated that by including Production Assistants and excluding the Graphic Artists the respondents have acted arbitrarily without application of mind and the directions of the court earlier to dispose of the representation in the light of the observation made therein has not been meticulously complied with and the representation has been rejected on flimsy ground.

5. On the other hand, the learned counsel for the respondents denied the contentions of the applicants and stated that the 5th CPC recommended a scale of Rs.5000-8000/- for Sound Recordists and Engineering Assistants but on various representations from the Engineering employees the matter was referred to a Fast-Track Committee and on submission of its report the pay scales recommended by the 5th CPC have been prevailed subject to protection of pay scale to the existing



incumbent. In its cabinet meeting on 6.11.97 it has been decided with the consultation of Ministry of Finance and DOP&T to grant ad hoc increments to the Technicians, Engineering Assistants, etc. which has been ultimately decided by the Prasar Bharti Board, which in turn recommended for upgradation of the pay scale of certain categories of employees of All India Radio and Doordarshan and on consideration by the Govt. it has been decided to upgrade the pay scale of certain categories subject to the condition that it is to be granted only to those who opt for service to Prasar Bharti failing which they have to refund the arrears on account of revision of pay scale. It is stated that the applicants in this OA has prayed for upgradation of pay scale at par with Production Assistants (Animation). By referring to amendment in the recruitment rules it is contended that the qualification for the posts of Production Assistant have been changed which requires essential degree from a recognized university as well as knowledge of culture of the area concerned which is different from the earlier set of rules. In this backdrop it is stated that in the matter of equation of posts various factors, which inter alia, include nature of duties of posts, minimum qualification, responsibilities involved. According to the learned counsel the posts of Graphic Artists and Production Assistants (Animation) coming under the category of Transmission Executive is not correct. These are two distinct categories of posts having separate recruitment rules, recruitment qualifications and nature of duties. While Graphic Artists are eligible for promotion as Graphic Supervisors, Production Assistants (Animation) are given promotion as Programme Executives. As such these posts are no more feeder grade for the Graphic Supervisors.

(16)

In this view of the matter it is stated that the revision of pay scale of one particular category does not necessarily mean that the pay scale of categories of posts should be revised. It is further contended that the Graphic Artists have been included from the definition of Artists as such they are not included for revision of pay scale on upgradation. Respondents denied the contention of the applicants that all the categories have been accorded upgradation of posts as few of the categories and same percentage in Diesel Technician as well as Diesel Engine Drivers have also been denied the upgradation. Lastly, it is contended that being a policy matter of the Government the same cannot be interfered with unless found malafide or arbitrary.

6. We have carefully considered the rival contentions of the parties. Before we deal with the contention, the Apex Court in various pronouncements have held that the equation of posts and equation of pay is to be determined on the basis of responsibilities, duties, functions, recruitment, promotions, qualifications as well as experience. Few of the leading cases are as under:

i) S.I. Roop Lal v. Lt. Governor, AIR 2000 SC 594.

ii) State of M.P. v. Pramod Bhartiya, 1993 (1) SC 539.

iii) Union of India & Ors. v. Anil Kumar & Ors., 2000 (2) SLJ 129.

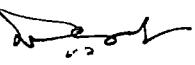
7. If one has regard to the aforesaid ruling the stand taken by the respondents cannot be found fault with. Though earlier the category of posts of Graphic Artists as well as Production Assistants were in the same feeder category but on amendment of the rules these posts have become distinct having different qualifications for recruitment and promotional avenues. Merely because they were in the feeder cadre earlier would not mean that the Graphic Artists are equated with Production Assistants (Animation). The respondents have meticulously gone into the request of the association and after examining the same have come to the conclusion that these two posts are forming to distinct categories. The recommendations made by the Director, CPC which is misconstrued not based on the legal principle is not to legitimise their claim. The decision taken by the Directorate to accord to the Graphic Artists the benefit of recommendation of CPC has been implemented. The principle of equal pay for equal work and equation of work once decided by the expert bodies cannot be gone into by the Tribunal if it is not vitiated by malafide or arbitrariness. Nothing on record has been brought to conclusively establish that the respondents have discriminated the applicants arbitrarily. It does not lie within the jurisdiction of this Tribunal to interfere in the matter of equation of posts or parity of pay scale and is left to the expert bodies like the pay Commission as held by the Apex Court in Union of India v. P.V. Hariharan, 1997 SCC (L&S) 838 as well as in Kshetriya Kishan Grahim Bank v. D.B. Sharma, AIR 2001 SC 168.

(8)

(S)

8. Equation of posts or pay should be left to the Executive Government to be determined by expert bodies who are the best judge to evaluate the nature of duties and responsibilities of the posts. Respondents having evaluated the same in the conspectus of the recruitment rules, we are satisfied that two posts cannot be equated as the factors relevant for determining the equation of two posts are distinct, these posts cannot be compared.

9. In this view of the matter and having regard to the reasons recorded above we do not find any legal infirmity in the action of the respondents. The OA, therefore, fails and is accordingly dismissed. No costs.


(S.K. Agrawal)
Member (A)


(Shanker Raju)
Member (J)