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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2293/2001

New Delhi, this the 5th day of December, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

1. Programme Staff Association of All India Radio & Doordarshan, through its General Secretary, Shri D.P. Banerjee, Room No.406, Akashvani Bhavan, Parliament Street, New Delhi-110 001
2. Shri Mohinder Kholi, S/o Shri S.D. Kohli, R/o 1-4, Parwan Vihar, Sector 9, Rohini, Delhi - 110 085
3. Shri Alok Kumar Singh, S/o Shri S.S. Shashi, R/o C4/25, East of Kailash, New Delhi-110 065
4. Shri Ashok Karam, S/o Shri J.J. Karan, R/o 42/6, East Patel Nagar, New Delhi-110 008

.... Applicants

(By Advocate : Shri S.Y. Khan with Shri T.C. Agarwal)

Versus

UNION OF INDIA, Through

1. The Secretary to G/I, Ministry of Information & Broadcasting, Shastri Bhavan, Dr. Rajendra Prasad Marg, New Delhi - 110 001
2. Chief Executive Officer, Prasar Bharati, Akashvani Bhawan, Parliament Street, New Delhi - 110 001

.... Respondents

(By Advocate : Shri M.K. Bhardwaj, proxy counsel for Shri A.K. Bhardwaj)

O R D E R

BY S.A.T. RIZVI, MEMBER (A) :

By an order passed in this OA on 08.03.2002 another OA, being OA No.322/2001 was linked up with it for disposal by a common order. However, on re-consideration, we find

that it will be convenient to pass separate orders in the two OAs. We procced accordingly.

2. Programme Staff Association of All India Radio & Doordarshan through its General Secretary and three other individual applicants have filed the present OA seeking a direction to the respondents to hold a meeting of the Screening Committee to consider their claim for the grant of first and second financial upgradations on completion of 12 and 24 years of service in accordance with the ACP Scheme. Their claim has been rejected by the respondents in a letter dated 28.05.2001 (A-1) issued to the President of the aforesaid Association. Hence the grievance and the present OA.

3. We have heard the learned counsel on either side at some length and have perused the material placed on record.

4. It appears that though the OA has been filed on behalf of the aforesaid Association of which a number of categories of staff are members, the grievance herein relates only to the category of Programme Executives in the AIR and Doordarshan.

5. A perusal of the impugned letter (A-1) shows that the aforesaid applicants' claim has been rejected essentially on the ground that they had opted for the upgraded pay scales granted vide Ministry of Information & Broadcasting OM dated 25.02.1999 which itself is a Scheme providing for the grant of upgraded pay scales. In accordance with the said OM, the upgraded pay scales have

been allowed to the applicants (Programme Executives) not qua Government employees but in their capacity as Government employees currently serving the Prasar Bharati. It is also stated in the said OM that if the applicants at the appropriate time chose not to exercise their option for joining the Prasar Bharati, ^{they} will revert back as Government servants and thereafter they will no longer be entitled to the aforesaid upgraded pay scale. It has been made clear that the aforesaid upgraded pay scale is applicable only to the employees of the Prasar Bharati which is an autonomous organisation, whereas the ACP Scheme, according to which the financial upgradation is sought, finds application only in the case of Government servants. On this basis the applicants' claim for financial upgradation under the ACP has been rejected by saying that it has not been found feasible to extend the benefit of the ACP Scheme to them.

6. The learned counsel appearing on behalf of the applicants has submitted that the benefit of the ACP Scheme could well be extended to those who are serving the Prasar Bharati. The aforesaid benefit, according to the learned counsel, has already been extended to Floor Assistants by respondents' order of 10.04.2000 (A-7) even though the said Floor Assistants happen to be working in the Prasar Bharati. As a matter of fact, the aforesaid order (A-7) has been issued by the Prasar Bharati themselves. A similar order has been passed by the Prasar Bharati on 17.08.2000 (page 44 of the paper book) in the case of officials included in Group 'C' Programme Staff. In the circumstances, it is not open to the respondents to assert that those working in the Prasar Bharati cannot be
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considered for the grant of benefit under the ACP Scheme. We agree.

7. Record shows that the Programme Executives were placed by the 5th CPC in two different pay scales, namely, Rs.6500-10500/- and 7500-12000/-. Subsequently, however, the Government took a decision to place all the Programme Executives in the single pay scale of Rs.7500-12000/- w.e.f. 1996. The next higher post in the hierarchy is that of Assistant Station Director which is a Junior Time Scale post of IBPS. Further up, the JTS Officers of the IBPS are entitled to promotion to the Senior Time Scale of the IBPS (Rs.10000-15200), and so on. Thus, the Programme Executives are entitled to promotion to the pay grade of Rs.8000-13500/- (JTS of IBPS). According to the applicants, it is this pay grade (Rs.8000-13500) to which they are entitled by way of financial upgradation. In this context, they have also drawn our attention to the provisions available in the conditions for the grant of benefit under the ACP Scheme attached to the OM dated 09.08.1999 (A-3) which lays down the terms and conditions of the ACP Scheme. It is clearly provided in the aforesaid conditions that financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts. The post of Assistant Station Director being the post next higher to the post of Programme Executives carries the pay scale of Rs.8000-13500/- and accordingly, the applicants are entitled to be placed in the same pay grade by way of financial upgradation. The respondents have not placed before us any rule or instruction contrary to the aforesaid

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provision clearly made in the aforesaid conditions. In the circumstances, we are inclined to agree with the plea raised on behalf of the applicants.

8. While dealing with another OA, namely, OA No.322/2001, we have noticed that where an incumbent has completed 24 years of service without getting any promotion, he would be entitled to the grant of both the financial upgradations at one go, and this would apply even where the incumbents were found to be working in the Prasar Bharati.

9. In order to assail the applicants' plea, the respondents have next proceeded to rely on the condition No.13 annexed to the aforesaid OM of 09.08.1999. The same provides as follows:

"13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department - not the employees - shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc.) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;"

In the light of the aforesaid provision, the respondents have argued that once an incumbent is covered under a time bound promotion scheme including the in-situ promotion

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scheme, he cannot avail of the benefit under the ACP scheme. In other words, the ACP Scheme shall have to be adopted in its totality. The respondents' contention is that their OM dated 25.02.1999 by which the applicants have been placed in the upgraded pay scale itself lays down a scheme of the kind envisaged in the aforesaid condition No.13 and, therefore, the benefit of the ACP Scheme cannot be extended to them at any rate until they are working in the Prasar Bharati. We do not agree. Firstly, the scheme envisaged in the respondents' OM of 25.02.1999 is by no means an existing time bound promotion scheme nor is it an in-situ promotion scheme. Accordingly, the aforesaid condition No.13 cannot be said to find application in the circumstances of the present case. Moreover, we have already seen that even those working in the Prasar Bharati are and have been considered for the grant of benefit under the ACP Scheme.

10. The applicants' assertion that the 5th CPC's recommendations for placing some posts of the Programme Executive out of the total in the higher pay grade of Rs.7500-12000/- with the remaining posts in a lower pay grade was not accepted by the Government and that it was finally decided to place all the Programme Executives in the aforesaid pay grade of Rs.7500-12000/- has not been categorically denied by the respondents. For this reason, we find that as argued by the applicants, they have been placed in the pay grade of Rs.7500-12000/- on the basis of Government's decision taken after considering the 5th CPC's recommendations. That being so, the applicants will be entitled, without any doubt, to the higher pay grade of Rs.8000-13500/- applicable to the next higher post of

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Assistant Station Director by way of first financial upgradation, and such of them as have completed 24 years of service would be entitled to the grade next higher by way of second financial upgradation.

11. The applicants' case incidentally find support in the clarification No.35 issued by the respondents in their OM dated 18.07.2000. The same provides as follows:

"Where all the posts are placed in a higher scale of pay, with or without a change in the designation, without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not to be treated as promotion/upgradation. xxxx"

12. In the light of the foregoing, we find merit and substance in the OA which is allowed. The respondents are directed to hold a meeting of the Screening Committee to consider the claim of the applicants for the grant of first and second financial upgradations in accordance with the ACP Scheme expeditiously and in any event within a period of three months from the date of receipt of a copy of this order. We direct accordingly. We further direct that after the Screening Committee has cleared the cases of the applicants, necessary orders placing them in the higher pay grades will be issued within a period of 15 days after the meeting of the Screening Committee.

13. The present OA is disposed of in the aforesated terms. No costs. *d*

S.A.T.R.

(S.A.T.RIZVI)
Member(A)

Kuldip Singh
(KULDIP SINGH)
Member (J)

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