

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1489/1999
WITH
O.A. 728/1999

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New Delhi this the 27th day of September, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

O.A. 1489/99.

1. Dr. G.R. Syed,
S/o Shri S.M. Ali,
R/o U-303, Taj Enclave,
Geeta Colony,
Delhi-31.
2. Shri Jose Jude Mathew,
S/o Shri Antony Moraes,
R/o 512, Minto Road Hostel,
Minto Road, New Delhi.
3. Shri Amlanjyoti Majumdar,
S/o Shri Kalyan Majumdar,
R/o 102-N, Sector IV,
Pushp Vihar, New Delhi.
4. Shri S.C. Bhatia,
S/o Shri G.C. Bhatia,
R/o C-18, Soami Nagar,
New Delhi-17.
5. Shri Gaurb Gangopadhyay,
S/o late Shri S.K. Gangopadhyay,
R/o H-3/125-B, Mahavir Enclave,
New Delhi-45.
6. Ms. Sunita,
D/o late Shri Shiv Narain,
R/o J-618, Mandir Marg,
Opp. Kali Bari,
New Delhi.
7. Dr. Arvind Tripathi,
S/o Shri Vachaspati Tripathi,
R/o 4, Safdarjung Lane,
New Delhi-11.

... Applicants.

(By Advocate Ms. Geetanjali Goel)

Versus

1. Union of India,
Ministry of Information and
Broadcasting,
Shastri Bhavan, New Delhi
Through its Secretary.

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2. The Director General,
All India Road,
Akashwani Bhawan,
Sansad Marg, New Delhi.

3. The Director General,
Doordarshan, Mandi House,
New Delhi.

... Respondents.

(By Advocate Shri R.P. Aggarwal)

O.A. 728/99.

Mr. Pramod Kumar,
Alias Pramod Mehta,
S/o Shri Krishan Kumar,
R/o 321, Jaahaj Apartment,
Peeraagai, Inder Enclave,
Delhi.

... Applicant.

(By Advocate Shri Balvinder Singh, proxy
counsel for Shri Jog Singh with applicant)

Versus

1. Union of India
Through its Secretary,
Ministry of Information and
Broadcasting,
New Delhi.

2. Director General,
AIR & CEO Prasar Bharti,
Akashwani Bhawan,
Sansad Marg,
New Delhi.

... Respondents.

(By Advocate Shri R.P. Aggarwal)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J).

The above two O.As have been heard together. Shri Balvinder Singh, learned proxy counsel for the applicant in OA 728/99 has submitted that he adopts the arguments of Ms. Geetanjali Goel, learned counsel for the applicants in OA 1489/99 and in addition the applicant has also been heard in that O.A. As the issues raised in the two applications are the same, they are being disposed of by a common order.

Vs/



For the sake of convenience, Ms. Geetanjali Goel, learned counsel has referred to the pleadings in O.A. 1489/99.

2. The applicants have impugned the validity of the order issued by the respondents dated 25.2.1999 and the amendment dated 10.3.1999 which, during the course of hearing, learned counsel had submitted was ^{not} very relevant to the issues raised in the present O.A. The applicants are direct recruit Programme Executives (PEXs) and are aggrieved by the fixation of their pay after the recommendations of the 5th Central Pay Commission. According to them, the respondents ought to have fixed their pay in the revised pay scale of Rs.7500-12000 without calling them to give an undertaking annexed to the impugned letter. The applicants have also submitted written submissions which have been relied upon by the learned counsel during oral submissions. In paragraph 3 of the written submissions filed on 11.4.2002, the applicants have submitted that the respondents have disturbed the pay parity between Transmission Executives (TREXs) and PEXs by giving TREXs the pay scale of Rs.6500-10500. Learned counsel has submitted that all along from the 3rd Pay Commission, the PEXs have been placed in the higher pay scales than the TREXs as set out in paragraph 5 of the written submissions. She has contended that TREX is the feeder category for promotion to the post of PEX. The thrust of the arguments is that when the pay scales for TREXs have been revised by the respondents, the revision has not been carried out for PEXs, thereby obliterating the difference maintained in their pay scales all along i.e.

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between the PEXs and TREXs and the PEX being a promotional post having higher responsibilities the respondents ought to have revised the pay scales of the PEXs also. She has submitted that the Hon'ble Supreme Court in SLP No.4663 of 1998 filed against the Tribunal's order in Vishnu Prasad Sinha and Anr. Vs. Union of India & Ors. (OA 307 of 1995 - Patna Bench), has disposed of the petition with the directions that "in the event of the Vth Pay Commission finding that the posts of Transmission Executive are equivalent to the post of Engineering Assistant, the Central Government may consider giving the benefit of revision of pay scales to the petitioners with retrospective effect as claimed by them". They have submitted that by the impugned order dated 25.2.1999, the pay scales of TREXs have been revised to Rs.6500-10500 but nothing has been done by way of ~~the~~ pay revision with regard to the PEXs. Learned counsel has contended that the PEXs have always been two steps higher than the TREXs under the 3rd, 4th and 5th Pay Commissions as given in the table in Paragraph 5 of the written submissions. Para 43.5 of the report of the 5th Pay Commission reads as follows:

"These are identical scales but for difference in span. In many offices, persons were being promoted from Rs.2000-3200 (Group 'C' scale) to Rs.2000-3500 (Group 'B' scale). This was an illusory promotion".

(Emphasis added)

Learned counsel for the applicants has urged that if the revised pay scales are given to the TREXs, the PEXs scale of pay can no longer be regarded as the promotional post, despite their having higher qualifications and responsibility. For this proposition, learned counsel has relied on a number of judgements of the Hon'ble Supreme Court referred to in the same written submissions. She has, therefore, submitted

that there is an anomaly in the manner in which the respondents have gone about the fixation of the pay scales of these two posts by the impugned order. A number of individual cases have also been referred to ^{to} show how an officer appointed as PEX is drawing lower pay than an officer appointed as TREX and then promoted. She has relied on the order passed by the Tribunal dated 4.7.2001, in which it has been directed that the respondents' counsel should apprise the court of the steps proposed to be taken by the respondents to remove anomalies consequent to the implementation of Para-2 (iv) of respondents order dated 25.2.1999 in regard to the TREXs who will draw higher pay than the PREXs.

3. Learned counsel for the respondents has submitted that there is, in fact, no anomaly in the impugned order. He has submitted that in pursuance of Tribunal's order dated 2.5.2002, an additional affidavit has been filed on behalf of the respondents dated 20.8.2002. He has submitted that the details of 32 PEXs have been given in Annexure R-1. He has submitted that in case any PEX is aggrieved, he may claim for stepping up of his pay which shall be considered by the respondents in accordance with the relevant rules and instructions. He has also submitted that in Kailash Chand Sharma Vs. Union of India and Anr. (OA 2579/99- Principal Bench), the Tribunal has upheld the conditions laid down in the impugned letter dated 25.2.1999. He has referred to paragraph 4.2 of the counter affidavit filed by the respondents dated 6.8.1999 in OA 728/99. In this paragraph, it has been mentioned that "The pay scale of Rs.7500-12000 has been recommended by the Vth Pay

Commission for only 500 posts in the grade of Programme Executive and that too from a prospective date subject to fulfilment of certain pre-requisites/conditions which were to be fulfilled before the scale would have been applied and for the remaining posts it was recommended as Rs.6500-10500. However, the respondent's order dated 25.2.99 has extended the pay scale of Rs.7500-12000 to all the existing incumbents in the grade of Programme Executive retrospectively i.e. w.e.f. 1.1.1996 subject to their opting to become Prasad Bharati employees on a future date". Learned counsel has submitted that on an analysis done by the respondents of the concerned officers in TREX and PEX and their pay scales, there cannot be more than ^a few promoted PEX who had joined as TREXs later than the direct PEXs who get more pay on promotion as on 1.1.1996 because of their long association in the feeder cadre. In the circumstances, learned counsel has submitted that there is no anomaly in the impugned order and O.As may be dismissed.

4. We have carefully considered the pleadings and the submissions made by learned counsel for the parties.

5. We find force in the contentions of Ms. Geetanjali Goel, learned counsel that there is some anomaly in the action taken by the respondents while issuing the impugned letter dated 25.2.1999. Admittedly, this letter has been issued because of some agitation by certain employees who were agitating for grant of higher scales of pay i.e. more than what has been recommended by the 5th Central Pay Commission and accepted by the respondents vide resolution dated 30.9.1997. After consideration, it has been stated that the respondents have decided to further

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upgrade the scales of pay of certain categories of employees of All India Radio and Doordarshan. With regard to the TRES, the following has been stated in paragraph 2 (iv) of the impugned order:

"In addition, the pay of those employees of All India Radio and Doordarshan who had been working as Transmission Executives as on 1.1.1978 or afterwards would be notionally fixed in the pay scale of Rs.550-900 with effect from 1.1.1978 and in the pay scale of Rs.2000-3200 with effect from 1.1.1978 and in the pay scale of Rs.2000-3200 with effect from 1.1.1986 before fixing their pay in the upgraded pay scale as on 1.1.1996. But as per their agreement with the Government, this will not entitle them to any payment of arrears for the period prior to 1.1.1996 and will be limited to fixation of their current pay as on 1.1.1996".

6. It is noted from the above that while upgrading the pay scales of TRES, which is admittedly a feeder category post for promotion to PEX, the pay scale of the promotion post and the relevant recommendations of the 5th Pay Commission with regard to these two posts have not been fully taken into account by the respondents. The reliance placed on the recommendations of the 5th Pay Commission in paragraph 43.5. by Ms. Geetanjali Goel, learned counsel, is also relevant. The observation of the 5th Pay Commission that the promotion from the pay scale of Rs.2000-3200 to scale of Rs.2000-3500 will be an illusory promotion is very relevant. The Tribunal by orders dated 4.7.2001 and 2.5.2002 had given directions to the respondents to apprise the Court as to what steps have been taken by them to remove the anomalies consequent to the implementation of Para 2 (iv) of the respondents' order dated 25.2.1999. In the circumstances, the contention of learned counsel for the respondents that the matter can be dealt with on the principle of stepping up of pay of the senior to that being received by the junior, would not appear to be applicable

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to the facts of the case. The applicants have also submitted that they had made representations to the respondents for consideration of their grievance but nothing has been done and hence, they have filed the two O.As. In such matters of pay revisions, the Hon'ble Supreme Court has held that it is primarily in the realm of the Pay Commissions and the Executive. It has been contended by learned counsel ^{for applicants} that it is only by disturbing ^{5th} the recommendations of the Pay Commission that an anomaly has been created by the ^{subsequent} action of the respondents. In the present case, we find force in the submissions made by learned counsel for the applicants that an anomaly has been created by upgrading the pay-scales of TREX to that of Engineering Assistant while no similar consideration has been given to keep the relativities vis-a-vis TREX and PEX. It is not disputed that the TREX is feeder category for promotion to the post of PEX.

7. In the above facts and circumstances of the case, the claim of the applicants to quash and set aside the letter dated 25.2.1999 is uncalled for and is accordingly rejected. In fact, their main claim for upward revision of the pay scale, is based on the grounds that the respondents have revised the pay scale of TREXs but have not kept in view the relativities of their pay scales, or that the PEXs have better qualifications and shoulder higher duties and responsibilities or that they have all along since the 3rd Central Pay Commission been placed two pay scales above TREXs. According to them, this was also the recommendations of the 5th Central Pay Commission accepted by the Government of India. We find from the aforesaid documents on record and the observations of the

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Tribunal in the orders dated 4.7.2001 and 2.5.2002 that an anomalous situation has been created by the respondents in issuing the impugned letter altering the pay scale of a few employees as they had agitated. Besides, it also appears that the applicant's representations have not been fully considered by them.

8. In view of the discussion above, the O.As partly succeed and are disposed of with the following directions:

(i) The respondents shall constitute an Anomalies Committee of senior level officers, not below the rank of Joint Secretaries of the concerned Ministries/Departments, including Ministry of Finance, to consider the claim of the applicants for revision of their pay scale vis-a-vis revised pay scale of TREXs in accordance with law and rules taking into account also the above observations;

(ii) The applicants in the two O.As (supra) may nominate one person to represent them before the above Committee;

(iii) The Committee shall grant a reasonable opportunity of hearing to the nominee of the applicants before taking a decision in the matter;

(iv) The Committee shall submit its recommendations/report within four months from the date of receipt of a copy of this order and in case

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the applicants claim for revision of pay scale w.e.f. 1.1.1996 is rejected, they shall give a detail and speaking order. This shall also be intimated to the applicants.

No order as to costs.

9. Let a copy of this order be placed in OA 728/1999.

V. K. Majotra
(V.K. Majotra)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

"SRD"