

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(22)

O.A No. 1867/1998
T.A No.

Date of Decision 4-1-2001

Doordarshan Engineering
Employees Welfare Assn. & Ors. Petitioner

Sh. G.D. Gupta

.. Advocate for the Petitioner(s)

Versus

UOI & Ors

.. Respondents

Sh. R.P. Aggarwal

.. Advocate for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not? Yes ✓

2. Whether it needs to be circulated to
other Benches of the Tribunal? No

(Govindan S. Tampi)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 1867/1998

New Delhi this the 4th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Sh. Govindan S. Tampi, Member (A)

(23)

1. Doordarshan Engineering Employees Welfare Association, through its General Secretary, Sh. M. S. Sreekumar, C. P. C. Doordarshan, Siri Fort, New Delhi-49
2. Shri Raj Kumar Sharma son of Shri Diwan Chand Sharma, House No. 113, Prem Nagar, Ambala City-134003.
3. Shri Yogender Singh Pawar son of Shri Kailash Singh Pawar, Scheme No. 51, I. D. A. Sangam Nagar, Indore, M.P.
4. Shri Shaileendra Kumar Mishra son of Shri Hari Chand Mishra, Village & Post Office Narwa, Pitamgarh Pur, District Faizabad (UP).
5. Sh. Sanjeev Jamwal son of Sh. Suram Singh 28, Katan Nagar, Jammu (Tawi), J&K 180001.
6. Sh. Prashant Shyngle son of Sh. B. C. Shyngle, C-2/15, D. D. U. Complex, Hari Ngr., New Delhi-110064
7. Sh. Anil Kumar Sharma son of late Shri Atma Ram Sharma, 129, Devi Nagar, S. K. Road, Meerut (UP).
8. Sh. Mahesh Chand Sharma, son of Sh. N. L. Sharma, 406-F, Pocket-II, Phase-I, Mayur Vihar, Delhi-110091.
9. Sh. Ram Chandra Sati son of Shri K. D. Sati, F-10/177, Ward No. 2, Mehrauli, New Delhi.
10. Sh. M. S. Sreekumar son of Mr. R. Sivasankara Pillai Sreenivas, P.O. Chettikulangara, Mavelikara, Kerala-690106.
11. Sh. Kailash Chand Sharma son of Shri Ram Kishan Sharma, M-9, Laxmi Ngr., New Delhi.
12. Sh. Ajay Verma son of Sh. Ramesh Chand Verma, RZ-226, X-Block, New Roshanpura, Najafgarh, New Delhi-110043.
13. Smt. Narinder Kaur Sandhu, daughter of Sh. Vishwanath, Police Colony, Dar Line H. No. 126, Gulbarga-585145 Karnataka.

24

15. Ms. Sangeeta Prasad daughter of
Dr. D. Prasad, Flat No. 192 B,
Sector-37, NOIDA (UP)

.. Applicants

(By Advocate Sh. G. D. Gupta)

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi.
2. The Director General, Doordarshan, Doordarshan Bhawan, Mandi House, New Delhi.
3. The Director General, All India Radio, Akashwani Bhawan, Parliament Street, New Delhi.
4. The Chairman, Prasar Bharti, Broadcasting Corporation of India, Doordarshan Bhawan, Mandi House, New Delhi-110001

.. Respondents

(By Advocate Shri R. P. Aggarwal)

O R D E R (ORAL)

Hon'ble Shri Govindan S. Tampli, Member (A)

This application is filed by Doordarshan Engineering Employees Welfare Association through its General Secretary and 14 others seeking a direction that the respondents be restrained from reducing the scale of pay of the applicants from Rs. 2000-3200 to Rs. 1600-2660 with the replacement scale of Rs. 5000-8000/- and that they be paid the correct replacement scale of Rs. 6500-10500/- w.e.f. 1.1.1996 with increments in the correct replacement scale.

2. The brief facts of the case, are that the applicants, 2 to 15, are employed as Engineering Assistants (EAs) in the Department of Doordarshan under the Ministry of Information and Broadcasting and presently on deputation to Prasar Bharti

25

Broadcasting Corporation of India, constituted under the
Prasar Bharti Broadcasting Act, 1990 which came into force
with effect from 15.9.1997. All of them have been appointed
as direct recruit EAs, through open competition and have
joined duties on various dates during the period July 1988
to December, 1994.

3. One Shri Rajasekaran, Senior Engineering Assistant
Doordarshan, Bangalore filed an Original application(OA 654/89)
before the Madras Bench of this Tribunal for the fixation/
revision of the pay scale of the EAs employed with Doordarshan
on the basis of the judgement of the Hon'ble Supreme Court
in the case of Y.K.Mehta Vs. UOI (JT 1988(3)SC 466). His case
was that his scale, should be revised from Rs.425-750 to
Rs.550-900 w.e.f. 1.1.1978, the date on which the Hon'ble
Supreme Court had allowed the same scale to the Sound Recordists
of the Doordarshan. Replacement scale for Rs.550-900/-w.e.f.
1.1.1986 was Rs.2000-3200/-. Rajasekharan, who joined as
Engineering Assistant(EA) in April,1981 and became a Sr.
Engineering Asstt.(SEA) in May, 1986, stated that both the EAs
and Sound Recordists of Doordarshan were drawing the same scale
of pay i.e. Rs.425-700 w.e.f. 1.1.1973 on the basis of the
Third Pay Commisssion recommendations which has altered by
the Ministry of Information and Broadcasting, who gave the
pay scale of Rs.550-900 to the Sound Recordists in the Film
Division. On the Sound Recordists of the Doordarshan approaching

(26)

the Supreme Court, seeking parity with their counterparts in the Films Division, another wing of the same Ministry, the Hon'ble Supreme Court in Y.K.Mehta's case, accepted their plea and held that they should also be given the scale as was granted to the Sound Recordists in the Films Division as both were performing similar duties. Accordingly, the Govt. allowed the scale of Rs.550-900 to the Sound Recordists of Doordarshan w.e.f. 1.1.1978 by order dated 21.12.1988. Rajasekharan's plea for being treated similarly as Sound Recordists was accepted by the Madras Bench of the Tribunal on 29.6.1990, wherein it has been held that the nature of duties and responsibilities of the EAs being the same as those of the Sound Recordists. Hence the benefit of the order passed by the Ministry of Information and Broadcasting vide letter dated 21.12.1998 should be extended to the EAs as well. Special Leave Petition filed by the respondents before the Hon'ble Supreme Court against the judgement of the Madras Bench dated 29.6.1990 was dismissed on merits by order dated 7.1.1991. Review Application filed before the Supreme Court was dismissed by the Court on 16.7.1991 thereby the matter attaining its finality. Interestingly thereafter, a review petition was filed by the respondents before the Madras Bench of the Tribunal which was allowed on 10.6.1992, rescinding their earlier decision dated 29.6.1990. This was challenged by Rajasekharan and five others in SLP(Civil) No.15206-7/92

27

and SLP(Civil) No.4307-8/93, which were granted by the Hon'ble Supreme Court by a common judgement on 25.11.1994, holding that the Tribunal could not have sat in judgement on the Supreme Courts order and that with the dismissal of the earlier SLP. Tribunals order dated 29.6.90 had reached finality. Following the above, Ministry of Information and Broadcasting, vide their letter dated 15.5.1995, conveyed the revision of the pay scale of the Engineering Assistants to Rs.550-900 with effect from 1.1.1978 and Rs.2000-3200 with effect from 1.1.1986. It was also directed that the officials who held and were holding the post of EAs during the respective period would be entitled to the benefit of arrears of pay as a result of the said decision and refixation with effect from the dates as mentioned. Consequently orders granting the revised scale of Rs.2000-3200/- to the EAs including the applicants were issued. They were also given the arrears of pay worked out accordingly. Thus though in terms of the Third Pay Commission recommendations, the pay scale of the EA stood at Rs.425-700/- (for which the replacement scale after the Fourth Pay Commission came to Rs.1400-2600/-) on account of their being equated with Sound Recordists of Films Division and Doordarshan drawing the pay in the scale of Rs.550-900/- they were also granted the said scale of Rs.550-900/- and the replacement scale of Rs.2000-3200/- w.e.f. 1.1.1986.

28

4. In the meantime, the 5th Central Pay Commission's report was given in January, 1997, in which the scale of pay of Rs. 1600-2660/- was indicated for Sound Recordists of Film Division and Doordarshan as well as for EAs on the ground of maintaining the existing parity between these two categories. Perusal of the recommendations would make it clear that the Pay Commission had given the pay scale keeping in mind the qualifications of graduate in Science with three years' experience in Sound Recording and that similar jobs had been recommended the grade of Rs. 1600-2600/-. The same was recommended for EAs on the ground of parity. There was no rational explanation for this and the Commission had ignored the history of the revision of pay for EAs and the decision of the Apex Court. Further, this also meant a reduction in the case of EAs from the pay scale of Rs. 2000-3200/- to Rs. 1600-2660/- which was not acceptable. Following the adoption of the Fifth Pay Commission recommendation a Committee was set up to deal with exceptional cases arising in the context which included the case of the EAs. It was also evident from the annexures to the Central Civil Services (Revised pay) Rules, 1997, specifically indicating that the issue regarding the pay-scales of EAs has been referred to Committee of Secretaries and that separate orders thereon will issue. Still DG, Doordarshan directed by his OM dated 9.10.1997,

(29)

that the case of revision of pay scale of EAs may be held back. With the ~~same~~^{sole} purpose of denying them the correct replacement scale. Following this Broadcasting Corporation of India on 8.12.1997 circulated a copy of the Information and Broadcasting Ministry's letter dated 5.12.1997, communicating the ^{terms of} agreement between the Govt. and the Sanyukt Sangharsh Samiti of ARTEE and TEA indicating the pattern of fixation for EAs. The applicants protested against the same, but their pay was fixed in accordance with the same in the grade of Rs. 5000-8000/- following the option, ^{which} under protest they had filed, reserving their right to get the proper replacement scale of Rs. 6500-10500 (for 2000-3200/-) w.e.f. 1.1.1996 in view of the decision of the Hon'ble Supreme Court on 25.11.1994. Hence this application.

5. Reliefs sought by the applicants include (i) quashing the recommendations of the 5th Pay Commission and Govt. decision thereon which had the effect of reducing the applicants pre-revised pay scale from Rs. 2000-3200/- to Rs. 1600-2660/- and granting them the replacement scale of Rs. 5000-8000/- instead of Rs. 6500-10,500/-

(ii) declaring them ^{to be} correctly eligible for the pay scale of Rs. 2000-3200/- w.e.f. 1.1.1986 or from the date of their appointment as EAs and giving them the replacement scale of Rs. 6500-10,500/- w.e.f. 1.1.1996.

(iii) restraining the respondents from reducing their scale of pay.

(30)

(iv) considering them for promotion to the post of Sr.EAs from the dates they have become due for the same etc.

6. The respondents have in their written pleas submitted on 6.7.1999 indicated that they had taken necessary action in terms of the recommendation of the 5th Central Pay Commission and the decision of the Govt. taken in this regard and duly communicated to all concerned. There was nothing improper or malafide on their part and the applicants, have been treated fairly and reasonably. They have no ground or reason for any grievance, plead the respondents.

7. We have heard both the counsel for the applicants and the respondents. Forcefully reiterating the plea of the applicants raised in their written pleadings, Sh.G.D.Gupta, the learned counsel for the applicants, argues that the applicants have been dealt with in a discriminatory manner taking away from the benefit of the scale of Rs.2000-3200/- which they had sought and achieved at the hands of the Supreme Court. This would have to be restored, irrespective of the observations of the 5th Pay Commission and the decisions of the Govt. following their adoption in the interest of justice.

8. Shri R.P.Agarwal, the learned counsel for the respondents contest the pleas of the applicants and states

(b1)

that with the steps taken the Govt. vide Information and Broadcasting Ministry OM No.310/173/97-B(D) dated 5.12.1997 relating to the ad hoc, increase in salaries of some grades of Subordinate Engineering Service of AIR/Doordarshan and their letter of same number dated 25.2.1999 relating to the upgradation of pay scales of certain categories of employees working in Prasar Bharati, nothing remained to be done from the respondents side. To a specific query from the the Counsel Shri Aggarwal also indicated that the upgraded scales are available to the individuals who opt for the Prasar Bharati and those who do not opt would not only be denied the revised scale but would also be liable to refund all the benefits of higher scale. In view of the above, it is for the applicants to abide by the decision instead of continuing to agitate against it. Shri Aggarwal also points out that the scale of Rs.2000-3200 was granted to the EAs, who get the benefit of the Courts decision only as a personal pay and that it would be wrong to terms the scale of Rs.6500-10,500/- as a replacement scale, as claimed.

9. Replying on behalf of the respondents, Shri Gupta states that the only position acceptable to them, on account of the legitimacy genuineness of their plea is the grant of benefit as mentioned in para 1(iii) of Information and Broadcasting Ministry's OM dated 5.12.1997 with full payment in the correctly revised scale w.e.f. 1.1.1996 and not from 1.11.1997 and not subject to any adjustment as indicated in para 1(v)ibid.

(32)

10. We have given careful consideration to the rival contentions and perused the records placed before us. It is a matter brought on record that Engineering Assistants of Doordarshan had obtained the pay scale of Rs.2000-3200/- following the decisions of the Hon'ble Supreme Court in Rajasekaran case, finally settled on 25.11.1994. Naturally therefore, they would be entitled for the grant of pay in lieu thereof in the replacement scale, adopted by the Fifth Central Pay Commission w.e.f. 1.1.1996. This cannot be deviated from, as it has obtained the finality of law, with the Apex Court setting its seal of approval thereof.

There is no way ^{it} can be reduced by any subsequent event or recommendation and that exactly ^{is} in the plea of the applicant. This plea has considerable force and merits acceptance ^{is} fully. principle. After some procrastination Govt. also appears to have veered around this view as would appear from the O.M. No. 310/173/97-B(D) dated 5.12.1997 and the letter also of the same number dated 25.2.1999. Relevant portions of the OM dated 5.12.1997, dealing with ad hoc increase in salaries of some grades of Subordinate Engineering Service of AIR/ Doordarshan on the basis of agreement between the Govt. and the Sanyukt Sangharsh Samiti reads as below:-

"(iii) The pay of Engineering Assistant will be fixed in the scale corresponding to the scale of Rs.1600-2660 i.e. Rs.5000-8000 with effect from 1.1.1996, in accordance with the procedure laid down in para 7 of the Central Civil Services (Revised Pay) Rules, 1997 notified

23

by the Ministry of Finance on 30th September, 1997. While so fixing the pay, the pay of incumbent EAs, who were drawing pay scale of Rs.2000-3200 will be protected as recommended by the Vth Pay Commission. Arrears of pay from 1.1.1996 to 31.10.1997 calculated on the above basis will be paid. Pay will also be notionally calculated in the scale corresponding to the scale of Rs.2000-3200 i.e. Rs.6500-10,500/- in the case of existing incumbents only with reference to 1.11.1997. A sum equal to 90 per cent of the difference between the emoluments so calculated will be paid as an ad-hoc amount in addition with effect from 1.11.1997. However, new recruits to the post of Engineering Assistant will be appointed in the pay scale of Rs.5000-8000 i.e. the pay scale recommended by the Vth Central Pay Commission.

(iv) The pay of Senior Engineering Assistant will be fixed in the scale corresponding to the scale of Rs. 1640-2900 i.e. Rs.5500-9000 with effect from 1.1.1996 in accordance with the procedure laid down in para 7 of the Central Civil Services (Revised Pay) Rules, 1997 notified by the Ministry of Finance on 30th September, 1997. While so fixing the pay, pay of incumbents Sr. EAs who were drawing pay-scale of Rs.2000-3200 as personal to them, will also be protected. Arrears of pay from 1.1.1996 to 31.10.1997 calculated on the above basis will be paid. The pay will also be notionally calculated in the scale corresponding to the scale of Rs.2000-3200 i.e. Rs.6500-10,500/- in the case of existing incumbents only with reference to 1.11.1997. A sum equal to 90% of the difference between the emoluments so calculated will be paid as an ad-hoc amount in addition with effect from 1.11.1997.

(v) The question relating to either payment of balance 10% or adjustment of ad-hoc payment shall be settled depending upon the decisions of the Prasar Bharati."

Similarly, letter No.310/173/97-B(D) dated 25.2.1999

3A

of the Ministry referring to upgradation of Pay Scales of certain categories of employees working in Prasar Bharati has the following to say

" The employees belonging to certain cadres in All India Radio and Doordarshan (particularly, subordinate engineering and programmee cadres), had been agitating for grant of higher scales of pay than those recommended by the Vth Central Pay Commission and accepted vide Government of India Resolution of 30th September, 1997. The matter has been carefully considered by the Government and it has been decided to further upgrade the scales of pay of the categories of employees of All India Radio and Doordarshan of Prasar Bharati (Broadcasting Corporation of India) as indicated against each category in Annexure-I.

The grant of revised pay scales as mentioned in para 1 will be subject to the following conditions:

- (i) The upgraded scales will be allowed not as Govt. employees per se but as Government employees currently in service of Prasar Bharati (Broadcasting Corporation of India). As and when the employees, presently working in All India Radio and Doordarshan are asked to exercise their option, those employees who do not opt for Prasar Bharati will revert as Government servants and will no longer be entitled to above scales. They will also have to refund all benefits availed of by them as a result of the grant of higher scales of pay. They will be liable to recovery of all such benefits. An undertaking, in the Proforma given at Annexure-II to this effect has to be submitted by each and every employee concerned before availing the benefit of upgraded scales of pay. This is in accordance with their agreement with the Government to avail these upgraded scales on this condition only.

35

(ii) Upgraded pay scales would be effective from 1.1.1996 but payment of salary to employees as per upgraded scales of pay will be made with effect from Ist March, 1999.

(iii) The employees concerned will be entitled to arrears with effect from Ist January, 1996 and these arrears will be paid in instalments. The first instalment of arrears pertaining to the period from November, 1997 till February, 1999 will be paid by April, 1999. The second instalment pertaining to remainder of the arrears (i.e. arrears from 1.1.1996 to October, 97) will be paid by April, 2000. The payment of arrears shall be made after adjustment of the amount already paid to the categories of Technicians, Senior Technicians, Engineering Assistants and Senior Engineering Assistants ~~on~~ the basis of this Ministry's Office Memorandum No.310/173/97-B(D) dated 5.12.1997."

11. Govt. has recognised the fact that while EAs could be fixed in the ~~or~~stwhile grade of 1600-2660/- and granted the replacement scale of Rs.5000-8000/- the pay of the incumbent EAs, who were drawing the pay of Rs.2000-3200/- had to be protected by grant of corresponding scale of Rs.6500-10,500/- but with effect from 1.11.1997 and that a sum equal to 90% of the difference will be given as ad-hoc and adjustment thereof would be subject to the decision of Prasar Bharati. This is not a correct proposition as Prasar Bharati which had come into force w.e.f. September, 1997, cannot be left to decide upon the scale of pay which has come into effect from 1.1.1996, following the adoption of the recommendations of the

(36)

Fifth Pay Commission. Likewise, providing for the upgradation of scales, subject to the employees opting for Prasar Bharati and directing that those who do not opt would forfeit the right of the upgraded scale and would be liable to refund the benefits of the grant of higher scales of pay are also not correct and not justifiable in law. The proper course would be for granting the incumbents the benefit of pay in the scale of Rs.2000-3200/-w.e.f. 1.1.1986 or their dates of their joining and the "corresponding scale" of Rs.6500-10,500/-w.e.f. 1.1.1996 with consequential benefits, but as personal to them. Balance of 10% of the difference held back can also be paid to them. There cannot be any dispute with the decision of the Govt. that the new recruits to the post of EAs will be appointed in the pay scale of Rs.5000-8000/- as recommended by the Vth Central Pay Commission.

12. In view of the above, the application succeeds and is allowed. The respondents are directed to fix the pay of the applicants- incumbent EAs - in the scale of Rs.2000-3200/-w.e.f.1-1-1986 or from the date of their joining and grant them the corresponding scale of Rs.6500-10,500/-w.e.f. 1.1.1996 with all consequential benefits, but as personal pay to them.

The applicants shall also be paid the balance 10% of the differential amount paid earlier as ad-hoc, within two months from the date of receipt of this order. No costs.

(Govindan S. Tampli)

Member (A)

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Lakshmi Swaminathan

Vice Chairman (J)