

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 165/97

New Delhi this the 13th day of September, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mr. Govindan S. Tampi, Member (Admnv)Association of Radio &
TV Engineering Employees ... Applicant

(By Advocate Mrs. Minu Maine)

-Versus-

Union of India & Others ... Respondents

(By Shri R.P. Aggarwal)

1. To be referred to the Reporter or not? YES/~~NO~~2. To be circulated to other Benches of
the Tribunal? YES/NO(V. Rajagopala Reddy)
Vice-Chairman (J)

(19)

Central Administrative Tribunal, Principal Bench

OA No.165/97

New Delhi this the 13th day of September, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

Association of Radio &
Television Engineering
Employees, Post Box No.422,
New Delhi represented by:

1. Sh. P.N. Kohli,
President C-9,
Radio Colony,
Delhi-9.
2. Sh. M.K. Magazine,
General Secretary,
22-B, Dhruwa Apartment,
Sector-13, Rohini,
Delhi-85.
3. Sh. Ram Shanker,
Treasurer,
Z-11, Chitragupta Road,
New Delhi.
4. Sh. M.J. Dhar,
Assistant Engineer,
Doordarshan Kendra,
New Delhi.
5. Sh. Rana Samsher Singh,
Sr. Engg. Assistant,
Doordarshan Kendra,
Delhi.

...Applicants

(By Advocate Mrs. Minu Mainee)

-Versus-

Union of India through:

1. The Secretary,
Ministry of Information
and Broadcasting,
Shastri Bhawan,
New Delhi.
2. The Director General,
All India Radio,
Parliament Street,
New Delhi.
3. The Director General,
Doordarshan,
Doordarshan Kendra,
New Delhi.

4. The Chief Controller of Accounts,
Ministry of Information
& Broadcasting,
New Delhi.

...Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R

By Justice V. Rajagopala Reddy:

The Association of Engineering staff working in All India Radio and Doordarshan, represented by its President and other office bearers, which is a registered body, are the applicants in this OA. The OA is filed seeking the benefit of the increment under FR 22 (I) (a) (1) as their promotion, from the posts of Engineering Assistant to Senior Engineering Assistant. The facts leading to filing of the OA are stated as under:

2. The pay scale of Engineering Assistants was Rs.425-750 prior to 1.1.86 and the replacement scale is Rs.1400-2600 after the implementation of the Fourth Central Pay Commission. In 1989 Sh. A. Rajasekharan, Senior Engineering Assistant and others filed OA No.654/89 before the Madras Bench of the Central Administrative Tribunal, seeking the revised pay scale of the Engineering Assistants from Rs.425-700 to Rs.550-900 w.e.f. 1.1.1978 and to the corresponding time scale of Rs.2000-3200 w.e.f. 1.1.86, at par with the revision allowed by the Supreme Court in the pay scale of Sound Recordists. The Bench allowed the OA, directing that the pay should be accordingly allowed. The Ministry filed SLP but it was dismissed. The review petition filed before the Madras Bench of the Tribunal was, however, allowed. But the Supreme Court set aside the order of the Tribunal and the initial order of the Bench was confirmed. The Ministry by its order dated 15.5.95 implemented the judgement of the Tribunal and revised the

(3)

pay scale of the Senior Engineering Assistants from Rs.425-700 to Rs.550-900 w.e.f. 1.1.78 and from Rs.1400-2600 to Rs.2000-3200 w.e.f. 1.1.86. Thus, the revised pay scale of the Engineering Assistants not only became equal to the pay scale of Engineering Assistants i.e. Rs.550-900 w.e.f. 1.1.78 but it also exceeded the pay scale of Senior Engineering Assistants w.e.f. 1.1.86 onwards, as the pay scale of Senior Engineering Assistants was only Rs.1640-2900 w.e.f. 1.1.86. Hence, it has been decided to allow this pay scale to the Senior Engineering Assistants also who have been Engineering Assistants on or after 1.1.78 "as personal to them on provisional basis" by order dated 3.8.95.

3. But the benefit of FR 22 (I) (a) (1), was not allowed to Engineering Assistants while fixing the pay on promotion from the post of Engineering Assistants to Senior Engineering Assistants in the scale of Rs.2000-3200. On the basis of the recommendation made by the Association and the recommendations made by the Department itself stating that the provisions of FR 22 were applicable in the present case, the respondents had fixed the pay of Senior Engineering Assistants in the grade of Rs.2000-3200, giving the benefit of FR 22 in the year 1995 itself and they have also paid the arrears to some of the members of the Association. However, in the impugned order it was decided that the pay should be fixed in the upgraded scale, without giving the benefit of FR 22 and the recovery of the amount already paid was, however, deferred and the impugned order dated 11.12.96 was accordingly issued. Hence, the present OA.

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4. We have heard the learned counsel for the applicants and the respondents and also considered the written submissions made by the applicants.

5. The learned counsel for the applicants Mrs. Minu Maine contends that the impugned order is wholly invalid, as the applicants' pay has been rightly fixed, giving the benefit in terms of FR 22 and that there is no reason to dis-entitle them for the benefit of the said FR as they have been promoted from Engineering Assistants to Senior Engineering Assistants.

6. The learned counsel for the respondents Sh. R.P. Aggarwal, however, submits that the revision of the pay scale of the Senior Engineering Assistants being only personal to those who have been working as Engineering Assistants after 1.1.78 and hence FR 22 (I), has no application in such cases as it cannot be stated that the scale of the Senior Engineering Assistants has been revised from Rs.1640-2900 to Rs.2000-3200, in general to all the incumbents.

7. We have given careful consideration to the issue that is involved in this case. In order to decide whether the FR has application to the applicants, it is necessary to read FR 22 (I) (a) (1), to the extent it is material for our case:

"F.R. 22. (I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a) (1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of

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greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more."

xxx xxx xxx xxx (emphasis supplied).

8. Under the above FR, broadly speaking, when an employee who has been promoted to a post carrying higher responsibilities his pay has to be refixed in the time scale of the higher post by adding an increment at the stage at which his pay in the lower post was accrued. For the purpose of getting this benefit, *prima facie*, two conditions have to be fulfilled, viz., (i) the employee should have been 'promoted' to another post and (ii) the post should carry "duties and responsibilities of greater importance than those attaching to the post held by him". In the instant case it is not in dispute that the post of Senior Engineering Assistant carries greater duties and responsibilities than that of the Engineering Assistants. It is also not in controversy that the Engineering Assistants have been promoted to the posts of Senior Engineering Assistants. It appears that there can be no difficulty in holding that they are entitled for the benefit under FR 22 (I) (a) (1). In fact their pay has been initially fixed giving the benefit of the said increment under FR 22, but now by the impugned order a decision was taken holding that FR was inapplicable. The only contention that has been advanced on behalf of the respondents is that the revision of pay of the Senior Engineering Assistants being personal and provisional, hence the rule has no application. The learned counsel for the respondents places heavy reliance on Union of India and Others v. Ashoke Kumar

(6)

Banerjee, 1998 SCC (L&S) 1277.

9. A perusal of the above judgement appears to clinch the issue. In that case the respondent was working as a Junior Engineer in the CPWD in the senior scale of Rs.1640-2900 and as he had put in 15 years of service as Junior Engineer he was granted the Assistant Engineer's scale of Rs.2000-3500 in terms of the proceedings dated 22.3.91 by applying FR 22 and giving the necessary increment his pay was fixed at Rs.2600/- as on 1.2.91. Later he was promoted as Assistant Engineer. He then filed the CA, seeking the benefit once again under FR 22. On these facts, two issues arose for discussion, (i) the effect of promotion to a post carrying the same scale and (ii) can the benefit of FR be permitted more than once? The Court held on the second question that the benefit of higher scale having already been given to him by virtue of the earlier proceedings there was no possibility of applying FR 22 again to the respondent. It was found on the first question that:

"For the applicability of the FR 22 (1) (a) (i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post."

10. In view of the above law laid down by the Supreme Court, the applicants are not entitled for the benefit of the FR as the scale of the Engineering Assistants as well as Senior Engineering Assistants is the same. The second question is not applicable because the applicants are not asking for the benefit once over. What they want is the benefit under FR has to be recalculated in the higher scale

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of Rs.2000-3500 as they got the same only in the scale of Rs.1640-2900. In the present case the second condition is not satisfied inasmuch as the applicants are not moving from lower scale to higher. The contention that they moved from Rs.1400-2600 to Rs.1640-2900 is incorrect. Their scale was revised and they were getting the scale of Rs.2000-3500 in the posts of Engineering Assistants as well as Senior Engineering Assistants. Hence, they cannot seek the benefit of FR 22. The decision cited by the learned counsel for the applicants in Mrs. Sasikala Solvaraju & Others, OA No.900/90 and OA No.22/91 dated 16.2.2000 will not assist the applicants, as it deals with the revision of the pay scale of Senior Engineering Assistants consequent upon the revision of the pay scale of the Engineering Assistants and the revision of the pay scale of Assistant Engineers. The question of applicability of FR 22 was not under the consideration of the Tribunal.

11. It is now stated in the written submissions that the pay scale of Senior Engineering Assistants was revised to Rs.2375-3500 in 1999, in pursuance of the directions issued by the Bench of the Tribunal. No such case has been put forward in the pleadings and even now it is not clear whether the said higher scale is effective from 1.1.86. On the pleadings of the case, no relief can be granted to the applicants.

12. The OA, therefore, fails and is accordingly dismissed. No costs.

Govindan S. Tampli
Member (Admn.)

'San.'

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)