

(CB)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 468/2000

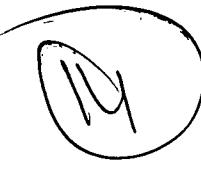
New Delhi this the 11th day of May, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Sh. Lal Chand,
S/o Sh. Janak Chand,
R/o C-1/32 New Ashok Nagar,
Taksal Road, Indira Gandhi Market,
Delhi-26.
2. Sh. Ram Swaroop Sharma,
S/o late Sh. Kewal Ram Sharma,
R/o REM-228-288/2, Raj Nagar
Part-2, Palam Colony,
New Delhi-45.
3. Sh. G.S. Parmar,
S/o late Sh. Sona Bhai Parmar,
R/o B-116, Pragati Vihar Hostel,
Lodhi Road, New Delhi.
4. Sh. Madhukar Sharma,
R/o Type III/91, North West,
Moti Bagh, New Delhi.
5. Sh. Ram Singh, S/o Late Sh. Narain Singh,
R/o 57/24, Gali No. Geetanjli Park,
West Sakarpur,
New Delhi.
6. Sh. Jai Raj, S/o late Sh. Narain Singh,
R/o A-120, Hari Nagar, Ghanta Ghar,
New Delhi.
7. Sh. P.K. Sharma, S/o late Sh. O.P. Sharma,
R/o 80-J, CGH Complex, Vasant Kunj/Vihar,
New Delhi.
8. Sh. P.K. Nigam, R/o 1262 Pahari Gali,
Jama Masjid, Delhi-110006.
9. Sh. Surinder Nath Kaul,
S/o Shri Sham Lal Kaul,
R/o J-139, Sarojini Nagar,
New Delhi-23.
10. Sh. Bhola Reaj Thapa,
S/o Sh. Rattan Behari Thapa,
R/o 754 Pushpak Vihar,
Sector 3 Saket, New Delhi.
11. Shri Om Prakash, R/o 1911/19,
Mall Road, Govindpuri Extension,
Kalkaji, New Delhi.
12. Shri Tulsi Ram, S/o Late Sh. Kokul Chand,
R/o 3404, Gali No.16, Kailash Nagar,
Delhi.

....Applicants

(By Advocate Shri T.C. Aggarwal)



(2)

-Versus-

Union of India, through:

1. Secretary to G/I,
Ministry of Information & Broadcasting,
Shastri Bhavan, New Delhi.
2. The Secretary,
Ministry of Finance,
North Block, Sectt.
New Delhi-1.
3. The Director,
Doordarshan,
Mandi House, New Delhi.
4. Prashar Bharti (BCI),
through Chief Executive,
Mandi House,
New Delhi.

...Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R

By Mr. Shanker Raju, Member (J):

In this OA 12 applicants belonging to different cadres have assailed an order passed by the respondents on 25.2.99 and thereafter on 10.3.99 whereby certain employees belonging to subordinate Engineering and Programme cadre in All India Radio and Doordarshan have been accorded the upgradation of pay scale while working in Prasar Bharti over and above what has been recommended by Fifth Central Pay Commission (for short, 5th CPC).

2. The applicants have also moved an MA for joining together in one application and contended that the counter-parts working in the very organisation have been accorded the pay scales two steps higher than what has been recommended by 5th CPC despite existence of 5th CPC vide Government of India's Resolution dated 30.9.97. The aforesaid accord of upgradation of pay scale led to agitation and strike. It is contended that the applicants are Graphic Supervisors, Make Up Artists, Graphic Artists,

(3)

Sound Recordists, Make Up Assistants, Projectionists, Floor Assistants, Painters, Tailors and Carpenters. It is contended that by letter dated 22.5.99 the pay scale of about 17,000 employees have been upgraded but the applicants have been denied the same. This has been done on the ground that the subordinate Engineering and Programme cadre employees have been agitating for the grant of higher pay scales. Subsequently, few more categories have been added for grant of higher pay scale. It is contended that this has created a disparity and anomaly within the cadre. The applicants allege hostile discrimination under Articles 14 and 16 of the Constitution of India. It is contended that the recommendations of the 5th C.P.C. which is an expert body cannot be interfered with by the respondents. The applicants allege malafide against the respondents. It is contended that the conciliation proceedings have been initiated by the Regional Labour Commissioner suo moto and the respondents are directed therein to keep the impugned order in abeyance, though the advice was initially agreed to by the Management but later on the same was disregarded. It is further contended that the applicants are similarly situated with the other employees and certain categories of employees have found favour with the respondents. The applicants placing reliance on the judgement of this Tribunal in Dr. B.C. Sikri v. Union of India, 2000

(2) AISLJ 480 contended that having accepted the recommendations of the Pay Commission the Government should not discriminate in the matter of pay scale and as per the ratio laid down in V.R. Panchal & Others v. Union of India, 1996 (34) ATC 544, if after acceptance of the recommendations of the Pay Commission there is unjust and

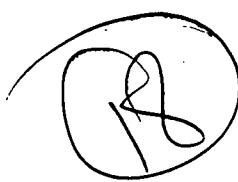
arbitrary treatment by the State resulting in favouritism to some, the Tribunal can interfere by way of judicial review and placing reliance on B.C. Sikoria's case (supra) it is contended that a Committee be directed to set up to look into the grievance of the applicants.

3. The respondents in their reply have taken a preliminary objection that applicants No.1,2 and 10 have separately filed a petition with the Labour Commissioner raising the dispute of revision of pay same. The same is pending as the applicants had suppressed this fact. It is further contended that the application for joining together cannot be allowed as the applicants have no identical cause of action and relief sought and further the OA is barred by Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 as plural remedies have been prayed for in one OA. On merits it is contended that since certain categories of employees had been agitating for grant of higher scale than what is recommended by the 5th C.P.C. the matter was considered by the respondents and the upgradation of pay scale was made as for the categories to which the applicants belong it was not considered necessary to upgrade the pay scales due to financial requirements. It is further contended that in the matter of policy decision the Tribunal has no jurisdiction to interfere as well as in the matter of parity of pay scale the expert body like the Pay Commission etc. are competent to take decision and it is not to be interfered by the Tribunal. Placing reliance on a judgment of the Tribunal in Raj Shekharan v. Union of India OA No.654/89 (CAT Madras) it is contended that the pay scale of Sound Recordists of Doordarshan was revised. The Apex Court has also passed an

order on 26.8.98 and the benefit of higher scale was extended to Engineering Assistants also. In a Cabinet Meeting with the concurrence of the Ministry of Finance and DOP&T Hon'ble Minister of Information and Broadcasting took a decision to grant an ad hoc increase in the pay to Technicians, Senior Technicians, Engineering Assistants and Senior Engineering Assistants on a condition that they opt for service under Prasar Bharti otherwise the amount should be refunded, including the arrears. It is further contended that the decision to upgrade the pay scale has been with the consideration and approval of the competent authority and the recommendations of the Pay Commission can be agreed or disagreed. It is lastly contended that there is no arbitrariness in the matter of according pay scale to certain categories and denying the same to the applicants.

4. The applicants in their rejoinder reiterated the pleas taken by them in their OA.

5. The objection of the learned counsel for the respondents that the present application is barred by Rule 4 (5) (a) and 10 of the C.A.T. (Procedure) Rules, 1987, as the applicants have no common interest in the matter of seeking plural remedies as they belong to different categories and claiming revision of pay scales given to the Engineering and Programme staff by the respondents is concerned, we do not agree with the same. As per Rule 4 (5)(1) ibid we find that the applicants have same cause of action and the relief prayed for and have common interest in the matter as the other categories e.g. Engineering Programme Staff have been accorded revision of pay scale to two stages over and above what has been recommended by the



(6)

5th C.P.C. and implemented and agreed to by the respondents. We also find that the applicants have not sought any plural remedies but are claiming the benefit of the pay scale as accorded to the other categories, ignoring their claim. The M.A. for joining together in one application is, therefore, allowed.

6. The other preliminary objection that the applicants No.1, 2 and 10 have filed a separate petition before the Additional Labour Commissioner seeking revision of pay and the same is pending as such the OA is likely to be dismissed as this fact has been suppressed from the Tribunal is concerned, we find that the reference to the Labour Court is accord of appropriate pay scale vis-a-vis Staff Artists as earlier appointed in the same scale introduced w.e.f. 1.10.64 as such this has nothing to do with the present case.

7. As on merits we find that the applicants are seeking accord of similar treatment as extended to the Engineering and Programme staff and various other categories by the respondents vide their impugned order dated 25.2.99 and 10.3.99 by upgrading the scale of pay to two stages and the same has been denied to the applicants. We find from the record that the aforesaid pay scale has been revised on the basis of agitation by the subordinate Engineering Programme cadre the matter had been duly considered by the Government as a policy decision it has been decided with the concurrence of the Minister of Information and Broadcasting and in consultation with the Ministry of Finance and DOPT to accord ad hoc increment in the pay to certain categories and grades the same was

(7)

proposed by the Prasar Bharti Board and ultimately the Government had decided to upgrade the pay scale of certain categories who had opted for service under Prasar Bharti. As the decision taken by the respondents in their wisdom and is a policy decision on the basis of the recommendations of the Fast Track Committee the same is not to be interfered with, as it does not smack of any discrimination or arbitrariness. The policy decision of the Government cannot be interfered by the Tribunal unless it is found that the same is either arbitrary or malafide.

The same is not open to judicial review as held by the Apex Court in Director, Lift Irrigation Corporation Limited and Others v. P.K. Mohanty 1991(1) SCALE 399. As the decision taken by the respondents vide their letters dated 25.2.99 according revision of pay scale to certain categories and further, inter alia, incorporating certain other categories by letter dated 10.3.99 is on the basis of the judgement of the Hon'ble Supreme Court dated 26.8.88, whereby in pursuance the pay scale of Engineering Assistants was revised to Rs.2000-3200 w.e.f. 1.1.86 and recommendations of pay scale of Rs.5000-8000 for both Engineering Assistant etc. the matter was referred to Fast Track Committee on the basis of representations and on its report it has been decided that the pay scale recommended by 5th C.P.C. shall prevail subject to protection of pay instead of pay scale as recommended by the 5th C.C. shall have to be given to the existing incumbents. Another view of this matter is that the Pay Commission admittedly is a recommendatory body and the Government is not bound by its recommendations and it can disagree partially or fully with its recommendations. The upgradation of pay scale of certain categories is not either found discriminatory or

arbitrary and the applicants have been denied the same on the ground of financial requirement. As the decision taken by the Government is with the approval of the competent authority, it cannot be interfered with by the Tribunal in a judicial review.

8. As regards the contention of the applicants that having accepted the recommendations of the Pay Commission the Government should not discriminate in allotment of pay scales and placing reliance on the decision of V.R. Panchal's case (supra) the contention that the subsequent State action resulting in favouritism to a particular class the Court has jurisdiction to interfere in a judicial review is concerned, we are of the view that the mere parity of pay scales prior to 5th C.P.C. with respect to Engineering and Programme cadre of the respondents would not bestow a right to the applicants to claim the same pay scale revised to other categories. In order to get the equivalent pay scale and upgradation thereof the various factors are to be considered like duties and responsibilities to the post the qualifications and various other factors. Merely because the 5th C.P.C. has accorded a pay scale to these categories would not mean that the same is not liable to be interfered by the Government in its own wisdom on the basis of a conscious decision taken on the basis of expert committee like Fast Track Committee in the present case. In order to apply Articles 14 and 16 of the Constitution of India this is to be established that the persons with whom the alleged discrimination has been made are situated equally with the person alleging discrimination. Unequals cannot be treated equally. The contention of the applicants that the

recommendations of the 5th C.P.C. is on the basis of an expert committee after going through different criteria to be accorded a particular pay scale to a particular category the same could not have been interfered by the Government by issuing favouritism to one category and denying the same to the other. This contention of the applicants does not hold any water as the question of discrimination arises only when the action of the Government is either arbitrary or unfair. In the present case on the persistent demand of particular cadre and on the basis of the conscious decision by the Government the recommendations of the Pay Commission have not been adhered to and rather it has been decided to accord higher pay scale to these categories which is within the domain of the Government and cannot be interfered unless it is shown that the same is arbitrary or malafide. The applicants have failed to prove the same as such accord of upgraded pay scale to a particular cadre cannot be found fault with. Apart from it, in the matter of pay scale the Tribunal is precluded from exercising the power of judicial review or interfering with the same unless the action is arbitrary and discriminatory. Interference with the prescribed pay scale is not to be taken up lightly. In this view of ours we are fortified by the ratio laid down in Union of India v. P.V. Hariharan and Anr., 1997 SCC (L&S) 838.

9.. As regards the plea of the applicants that the Government has created an anomaly and discriminated the applicants and their categories and the interference with the pay scale accorded by the Pay Commission and upgrading the same would amount to hostile discrimination and for this their cases should also be directed to be considered

92
(10)

by forming an expert body and for this they rely upon the ratio of B.C. Sikkoria's case (supra). We find that the facts of that case are distinguishable from the facts of the present case and as we find no discrimination and unjust treatment by the Government the ratio would not be applicable and the constitution of the expert committee is not warranted. As regards the allegation that the Government has adopted a pick and choose policy by according upgradation to particular categories and denying the same to the applicants, the same is not legally tenable. The decision by the Government is on the basis of an expert committee report which has been acceded to by the Ministry of Finance and DOP&T and the proposal was accepted by the Government and the competent authority. Having failed to establish any arbitrariness in the decision of the Government and the failure of the applicants to establish that they have been placed equally to the persons who have been upgraded, the plea of the learned counsel of the applicants is not legally tenable.

10. In the result, having regard to the discussion made above, we find no merit in the present application and the same is dismissed, but without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)

'San.'

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