

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2592/89 198
T.A. No.

DATE OF DECISION 20.4.1990.

Smt. R.C. Asrani Applicant (s)

Applicant in person Advocate for the Applicant (s)

Versus Respondent (s)

Union of India through

Secretary, Ministry of
Information & Broadcasting

Shri P.P. Khurana Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. P.C. Jain, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? /W
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicant, who retired from the All India Radio and is presently aged 69 years, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed to fully implement the judgement of this Tribunal dated 12.11.1987 in TA-341/85 (Mrs. R.C. Asrani Vs. Union of India).

2. The applicant, while working as Editor in the News Service Division of All India Radio, had moved the Delhi High Court with a writ petition in 1977 praying that the notice dated 29.8.1977 that her contract of service will not be extended beyond 30th September, 1977, the Memorandum dated 24.9.1977 terminating her services

w.e.f. 30.9.1977 and the Memorandum dated 6th October, 1977 extending her contract for further six months from 28.9.1977, should be set aside. She had also prayed that the respondents should be directed to retain her in service till she attained the age of 60 years. Her further prayer was to quash the letters communicating the adverse remarks and rejecting her representations as also for rectification of her date of birth in the service records. The writ petition stood transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985. After hearing the applicant in person and the learned counsel for the respondents, the Tribunal delivered its judgement dated 12.11.1987, the operative part of which reads as under:-

"In the result, we allow the application in part as follows:-

- a) We set aside the notice dated 29.8.1977 (Annexure 'G') the memo dated 24.9.77 terminating her service with effect from 30.9.77 (Annexure 'T') and the memorandum dated 6th of October, 1977 (Annexure 'W') and direct that the petitioner should be deemed to have continued in service till she attained the age of 60 years on 28.9.1979 with all consequential benefits of pay and allowances and terminal benefits admissible to her in accordance with the contract of her employment and the rules, instructions and orders applicable to her category of Staff Artists in the All India Radio.
- b) The impugned adverse remarks communicated to her for the year 1976 through the memo of 11.7.1977 (Annexure 'D') should stand expunged.
- c) There will be no change in the date of birth recorded in her service records.
- d) The arrears of pay and allowances and other monetary benefits should be made good to the petitioner with 10% rate of interest within 3 months of the date of communication of this order.

There will be no order as to costs."

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3. Thereafter, the petitioner had filed Civil Miscellaneous Petitions and contempt petitions against the respondents for not complying with the aforesaid judgement. The present application has been filed on the ground that the respondents have not complied with the Tribunal's judgement dated 12.11.1987 and the orders passed in CCP-27/88 on 6.4.1988, in MP-1156/88 on 22.5.89 and 5.7.89, in CCP-195/85 on 25.10.1989 and in MP-2624/89 on 28.11.1989. Her grievance relates to non-payment of pay and allowances, terminal benefits, Contributory Provident Fund, and Gratuity, as per her case and non-settlement of L.T.C. claims. She has also alleged excess recovery from her dues on account of licence fee.

4. In the counter-affidavit filed by the respondents, they have stated that the following amounts have been paid to the applicant in full and final settlement of her dues in accordance with the judgement of this Tribunal dated 12.11.1987:-

(a) A sum of Rs.22,441/- has been paid to her in April, 1988 towards pay and allowances as worked out below:-

Pay & Allowances: 41,098.00

Leave Salary for 157 days: 7,902.00
(terminal leave)

Interest on pay & allowances: 31,243.00

Total: 80,243.00

Licence fee recovery of
Dte. of Estates :(-) 57,802.00

Balance: 22,441.00

(b) Terminal benefits

(i) C.P.F.: She did not subscribe towards C.P.F. from 1966 to January, 1971. The amount of Rs.36,879.00 for the remaining period has been paid to her together with 10% interest on 5.7.1989.

(ii) Gratuity: She did not opt for gratuity and is not entitled to the same.

(iii) Leave Pay: She has already ^{been a} paid leave salary for 157 days along with arrears of pay and allowances as indicated above.

(iv) L.T.C.: LTC is availed when a Government servant is in service and actually performs the journey and submits the claim. She had availed L.T.C. for self and her husband for the block year 1974-77.

5. The respondents have also furnished detailed particulars of calculations in the Annexures to the counter-affidavit filed by them.

6. We have carefully gone through the records of the case and have heard the applicant in person and the learned counsel for the respondents. In our opinion, the respondents have complied with the directions of the Tribunal as regards the payment of pay and allowances and terminal benefits to her together with interest upto 28.9.1979, when she would have attained the age of 60 years, had she continued in service.

7. The applicant cannot make a grievance of non-payment of the amount towards C.P.F. for the period from 1966 to January, 1971, when she did not subscribe to the same. There is nothing on record to indicate that she subscribed to C.P.F. during this period. Similarly, we are also of the opinion that she would not be entitled to any gratuity as she did not opt for the same in accordance with the relevant instructions issued by the respondents on 1.12.1975 (Vide Annexure-A-4 to the Counter-affidavit). It is not as if a Staff Artist working in the All India

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Radio is entitled to gratuity as a matter of course. According to the instructions issued by the respondents in their letter No.12(88)/72-B(A) dated 1.12.1975, the Staff Artists were given the benefit of gratuity subject to certain conditions which include the following:-

- (i) The option to be exercised is to choose between the C.P.F. benefits admissible and C.P.F. with full gratuity. Those who opt for the existing benefits of C.P.F., will be allowed to keep their outside earnings, but those who opt for the C.P.F. with full gratuity, will be subject to the provisions of SR-12 which is applicable to full-time Government servants and which requires that 1/3 of their outside earnings should be credited to Government; and
- (ii) the option should be exercised within three months from 1.12.1975.

8. The applicant did not exercise her option for C.P.F. with full gratuity. Had she exercised the option for C.P.F. with full gratuity, she would have been under an obligation to credit 1/3 of her outside earnings to the Government. There is nothing on record to indicate that she had credited any of her outside earnings to the Government so as to entitle her to claim full gratuity in addition to C.P.F. In the circumstances, the necessary inference to be drawn is that she chose for obtaining the C.P.F. benefits admissible to Staff Artists without the benefit of gratuity.

9. As regards L.T.C. claims, we are of the opinion that the applicant is not entitled to the same and the stand taken by the respondents is valid.

10. The position is slightly different as regards the contentions of both the parties on the question of recoveries made by the respondents on account of Licence Fee from the amounts payable to her. From Annexure-1 to the counter-affidavit filed by the respondents, it is seen that the Licence Fee to the tune of Rs.57,802.00 has been recovered as per the Directorate of Estates' letter dated 30.3.1988. It is not clear whether the said sum of Rs.57,802/- represents the damages payable by the applicant in respect of the Government accommodation for the period from 28.3.1978 to 28.9.1979. The applicant has stated that she received no pay after 7th February, 1978 and that the respondents informed her that her pay from March, 1978 along with her leave pay of 112 days amounting to over Rs.5,100/- had been handed over to the Directorate of Estates. It is not clear whether credit was given to this recovery while the Directorate of Estates instructed the respondents vide their letter dated 30.3.1988 to recover a sum of Rs.57,802/- from her dues. In case, they have not taken this amount into account, she would be entitled to the refund of the recovery made from her pay after 7th February, 1978 and her leave pay amounting to Rs.5,100/- which had been handed over to the Directorate of Estates. The respondents shall verify the same and if the statement made by her is correct, make good the amount of Rs.7,802/- as claimed by her or the correct amount of double recovery on this account within a period of three months from the date of communication of this order.

11. The applicant has argued that the Civil Court had passed a decree in favour of the respondents for payment

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of Rs.70,390.10 for the period from 28th May, 1978 to 30th May, 1985. According to the judgement of this Tribunal dated 12.11.1987, she would be deemed to have continued in service till she attained the age of 60 years on 28.9.1979. The stay of the applicant in Government accommodation from 28.3.1978 to 28.9.1979, cannot, therefore, be said to be unauthorised in view of the directions contained in our judgement. For the said period, she would be required to pay only normal Licence Fee and not damages at the rate of Rs.850/- per month. Therefore, recovery of damages at the rate of Rs.850/- per month for the period from 28.5.1978 to 28.9.1979 is not legally justified. The excess recovery made for the period from 28.5.1978 to 28.8.1979 (one year and three months), should be refunded to the applicant together with 12 per cent interest within three months from the date of communication of this order. The Ministry of Information & Broadcasting is directed to make the refund to her and in turn, they may debit it to the Directorate of Estates if they so choose.

12. The application is disposed of with the above directions. The parties will bear their own costs.

(P.C. Jain)
28/4/90
Administrative Member

20/6/90
20/6/90
(P.K. Kartha)
Vice-Chairman (Judl.)