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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 942/89.

DATE OF DECISION: 12.12.1991.

Mahendra Sharma & anr.

... Applicants.

Versus

U.O.I.

... Respondent.

CCRAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A).

For the Applicants.

... Shri T.C. Agarwal,
Counsel.

For the Respondents.

... Shri D.K. Sinha, prox
for Shri K.C. Mittal,
Counsel.

(Judgement of the Bench delivered
by Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The two applicants in this Application, joined as Tanpura Player in the years 1973 and 1968, respectively, in the All India Radio. There are three scales of pay depending upon their gradation, which gradation is required to be accorded by Music Audition Board. The case of the applicants is that both of them have been graded as B-High, and were accorded the pay scale of Rs. 550-900. According to them, they have subsequently been graded as 'A' Grade by the Music Audition Board. They have, therefore, claimed that they are entitled to the next higher scale described as senior scale of Rs.650-1200. We are now informed that the original scale of Rs.550-900 has been revised to Rs.1640-2900 and the scale of Rs.650-1200 has been revised to the scale of Rs.2000-3500.

This they have claimed having regard to the fact that they have secured their gradation as 'A' Grade, though there are no clear averments in the Application as to in respect of what higher gradation 'A' has been given, Learned counsel for the applicants, on instructions from the applicants, submitted that they have secured 'A' Grade as Vocalist. It is, on the basis of this, they claim that they are entitled to higher scale of pay of Rs.2000-3500 corresponding to the old scale of pay of Rs.650-1200. The applicants have placed before us an order of the Government described as Rationalisation of Fee Structure of Staff Artists of AIR. Annexure-V to the said order under the title Musicians and Instrumentalists Group reads:

MUSICIANS AND INSTRUMENTALISTS GROUP

Categories of posts	Existing Fee Scales	Revised Scales
1 and 2. x x x		
3. Instrumentalists and Vocalists	Junior Scale Rs.110-7-145-10-295 Intermediate Scale Rs.133-7-175-10- 265-15-340.	Junior Scale Rs.210-10-290- 15-470. Intermediate Scale Rs325-15-475-20- 575.
	Senior Scale Rs.215-10-245- 15-380-20-540.	Senior Scale Rs350-25-590-30- 800.

(2) Instrumentalists and Vocalists: Fee scales of the existing incumbents in these categories will be fixed in the revised scales indicated in column 3 on the basis of their grading, orders in regard to which are being issued separately. It is, however, expected that all present incumbents will benefit

substantially as a result of the revision of fee scales. Even those at present in the Junior Scale and who may be below the minimum grading fixed by the Government will benefit as they will be given a special fee of Rs.170-10-260-15-335. Further promotion will be automatic on the basis of improvements in their grading".

This was followed by the memorandum issued by the Director of Programmes dated 26th August, 1972 (Annexure A-3 to the D.A.). Paragraph 3 of the said memorandum which is relevant and which was relied upon by the learned counsel for the applicant, is extracted below:

"3. Other Tanpura artists who are not graded musicians or who have not been approved by the Music Audition Board with gradings in classical vocal or instrumental music will be placed in the special fee scale of Rs.170-10-260-15-335. They will however be entitled to extra payment at the rate of 50% of the normal fee payable to casual artist of equal grade and standing as and when they are booked in their normal turn for performance as a vocalist or on instrument for which they are approved".

Paragraph 2 of the said memorandum reads:

"In continuation of the instructions contained in this Directorate circular referred to above, it is clarified that Tanpura players who are approved and graded by the Music Audition Board as Vocalists or Instrumentalists will be given the revised fee scale in accordance with the gradings obtained by them from the Music Audition Board in classical, vocal or instrumental music. The Tanpura artists who are graded musicians will thus be entitled to the fee scale as given in para 3 of this Directorate circular dated 16.6.72 referred to above. Such Tanpura artists will however not be eligible for additional remuneration for performing as a vocalist or instrumentalists ^{as} the case may be, as and when

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they are required to perform as Vocalist or on the instrument for which they are approved"

If things rested with these two orders the applicants would possibly have claimed the higher scale on their being assigned 'A' Grade by the Music Audition Board. But then something else happened which has been relied upon by the respondents, ^{for} denying the claim of the applicants for the higher scale of pay. The order relied upon in the counter affidavit is Annexure R-1, which was also issued by the Director of Programmes ^{under the direction of} /the Director General, on 16.12.1977.

Paragraph 2 of the said memorandum which is relevant for our purpose may be extracted:

"2. In supersession of earlier instructions in regard to engagement of Tanpura Players at AIR Stations it has been decided that:

- (i) Future recruitment of Tanpura Players will be made only from graded musicians not below 'B' category, and that Tanpura Players will be appointed in the fee scale of Rs.425-750 which is offered to 'B' Grade Artists irrespective of their higher grading;
- (ii) The existing Tanpura Players who are in the fee scale of Rs.425-750, Rs.550-900 or Rs.650-1200 will be frozen in their existing fee scales and their fee scales will not be revised if they obtain higher grading in other musical instruments or as vocalists"

It is not disputed that the applicants were able to secure 'A' Grade in Vocalist Music, long after the issuance of Annexure R-1. It is on the strength of Annexure R-1 ^{the}
that the respondents have taken/stand that the applicants are

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not entitled to the higher scale of Rs.2000-3500 corresponding to the old scale of Rs.650-1200 on the applicants' securing 'IA' Grade as Vocalist. Para 2 (ii) of Annexure R-1 supports the case of the respondents in this behalf for it says that the pay-scales of the existing Tanpura players stand frozen from the date of issue of this memo and that their fee scales will not be revised if they obtain higher grading in other musical instruments or as Vocalists. The applicants having obtained higher grading as Vocalist come within the teeth of para 2(ii) of Annexure R-1. On the basis of this Memo, the respondents, therefore, will be justified in saying that the applicants cannot claim the benefit of higher pay scale. It is in this background that the applicants have taken the stand that Annexure R-1, in so far as, it provides the benefit of higher scale to the Tanpura players on their securing higher grade in other musical instruments or as Vocalists, is illegal and invalid. We have, therefore, come to a question as to whether the substance of para 2(ii) of Annexure R-1 is illegal for any reason.

One of the contentions of the learned counsel for the applicants is that the Director of Programmes had no competence to issue any order which is inconsistent with the order issued by the Government. The stand taken by the learned counsel for

the applicants is that the rationalisation of fee scales of Staff Artists of All India Radio is one issued by the Government and that, therefore, the Director, who is a Subordinate authority had no competence to make any order inconsistent with the order of Government. When the Director chose to issue Annexure R-1, he did not purport to make any order inconsistent with the order of rationalisation of Staff Artists of 1972. The thrust of Annexure R-1 is to supersede the earlier memo (Annexure A-3) issued on 26.8.1972 by the Director. It was then contended by the learned counsel for the applicants that the Director had no competence to alter the conditions of service of the applicants after they joined the service. Firstly, it is necessary to point out that the conditions of service are regulated by the Staff Regulations of A.I.R., 1972. Annexure A-3 is only an instruction which has the effect of understanding the rationalisation of fee scale of Artists in a particular manner. Though the Director had no competence to modify or amend the main order, he was entitled to construe or understand the effect of the Government order. The Director understood the Government order in a particular manner at a particular time. It was open to him to revise his understanding at a later point of time. It is also well established principle that no Government servant has any vested right in the scheme for promotion. It is also undisputed that the scheme is one for giving promotion to higher grade to the employee of the A.I.R. Administration on his acquiring a higher proficiency in

a particular field. We have, therefore, no hesitation in taking the view that there is no abridgement of any of the enforceable conditions of service of the applicants.

If we look at Annexure A-3 what becomes clear is that Staff Artists are sought to be given a particular fee scale which did not logically flow from proper construction of the order of rationalisation of fee structure of Staff Artists of All India Radio 1972. It provides for three different scales for Instrumentalists and Vocalists. It further provides that promotion from one lower scale to the higher scale depends on the improvement in the grading. In this context, it is obvious that the Instrumentalist or Vocalist would be entitled to a higher scale on improvement of his grading in respect of the post held by the person concerned. If a particular person is appointed to play on a particular instrument, he has to acquire higher proficiency in playing that instrument if he has to earn a higher scale. If he is a Vocalist, he has to secure a higher grade as Vocalist. That is implicit in the language employed in para 2 of Annexure A-5. Paragraphs 4(8) and 4(9) also make the position clear. It is stated that the Tanpura player can be given higher fee scale only if he acquires higher gradation as the Instrumentalist other than Tanpura or as Vocalist only when he gets absorbed or appointed to play that instrument or as Vocalist. This is also made clear in para 4(9) of the counter affidavit. The applicants have not secured higher gradation in Tanpura. They have not been absorbed as Vocalists in which they have obtained higher gradation. Hence, they are not entitled to

claim higher scale of pay even though they obtained 'A' Grade in Vocal Music. As Annexure R-1 does not affect any service condition of the applicants, the same is not liable to be quashed.

For the reasons stated above, this Application is dismissed. No costs.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER(A)
12.12.1991.

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN
12.12.1991

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