

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2773/2004
MA No.2300/2004

2 Nov
New Delhi, this the 2 October, 2006

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)
Hon'ble Mr.N.D.Dayal, Member (A)

1. Shri R.N. Banerjee,
S/o Late Shri H.C. Banerjee,
864, Laxmibai Nagar,
New Delhi – 110 023.
2. Shri Harjit Singh,
S/o Shri Narinder Singh,
B/13. DDA MIG Flat, Maya Puri,
New Delhi.
3. Shri Mehar Chand,
Late Shri Kanthu Ram,
14/498, Sector-I, DIZ Area,
New Delhi – 110 001.
4. Shri P.K.Manra,
S/o late Shri N.R.Manra,
I-11, Akash Bharati Appts.,
Delhi – 110 092.
5. Shri S.C.Verma,
S/o Late Shri Mool Chandra Verma,
B-4/75, UDAP, Nehru Nagar,
New Delhi.
6. Shri M.P.Balan,
S/o Late Shri Moorthattil Pundu,
J-2, Akash Bharati Apartments,
Delhi – 110 092.

All Applicants are working as
Reporter (Monitoring), Monitoring Unit,
News Services Division,
All India Radio, New Delhi-1

...Applicant.

(By advocate: Shri Munish Kumar)

Versus

1. The Union of India,
Through the Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi – 110 001.
2. The Prasar Bharati Board,
Through The Chief Executive Officer,
PTI Building,
Parliament Street,
New Delhi – 110-001.

3. The Director General,
All India Radio,
Akashwani Bhawan,
Parliament Street,
New Delhi – 110 001.

4. The Director General (News),
News Services Division,
All India Radio,
New Delhi – 110 001.

5. The Secretary,
Ministry of Finance,
Department of Expenditure,
North Block, New Delhi-110 001.

6. The Joint Secretary,
Ministry of Finance,
(Implementation Cell),
North Block,
New Delhi – 110 001.

...Respondents.

(By Advocate: Shri S.M. Arif)

ORDER

By Mr. N.D. Dayal:

The applicants, who are working as Reporter (Monitoring) in the Monitoring Unit of News Services Division, All India Radio, have prayed for the following relief:

- i) allow the instant OA by direction to the Respondents to grant higher replacement scale of Rs.7,500 -12000 w.e.f. 1.1.1996 to the Applicants as has been accepted by Respondents in a number of communications and in a Counter Affidavit filed in OA No.2624/2002 before this Hon'ble Court;
- ii) direct the Respondent No.3 to pay to Applicants difference of pay & allowance w.e.f. 1.1.1996 till date along with the arrears and the interest @ 24% and all other consequential benefits;
- iii) quash the order dated 19.4.2004;
- iv) declare that the Reporter (M) is a separate cadre created by merging Stenographers and News Editor/Assistant News Editors and that the Sr.PA (redesignated as Private Secretary) is a feeder cadre for filing in the vacancies of Reporter (M);
- v) allow cost of the petition;
- vi) grant any other relief or orders which this Hon'ble Court may deem fit in the facts and circumstances of the case.

2. The applicants had earlier filed OA 2624/2002 seeking similar relief which was decided on 26.8.2002 with the following directions:

"Respondents 1, 2 and 3 shall consider the demand of applicants for grant of replacement/higher scale of Rs.2500-4000 w.e.f. 1.1.1996 for the post of Reporter (Monitoring), News Services Division, All India Radio keeping in view the functional

2/6

considerations and nature of duties and responsibilities of the post of Reporter (Monitoring) vis-à-vis those of the feeder cadre, i.e., Senior P.A. (since re-designated as Private Secretary)."

The respondents have passed the impugned order dated 19.4.2004 stating that the matter was duly considered / examined by the Ministry of I & B in consultation with the Ministry of Finance who have rejected the demands of Reporter (M) for upgradation of their pay scale from 6500-10500/- to 7500-12000/- w.e.f. 01.01.1996.

3. The learned counsel for the applicants has drawn our attention to the contents of the order passed by the Tribunal in OA 2624/2002 to submit that the 5th CPC had merged the pay scales of Senior PA (2000-3200/-) and Reporter (M) (2000-3500/-) in the subordinate offices of AIR and Doordarshan and the new pay scale for both posts was fixed as Rs. 6500-10500/. The Senior PAs were also redesignated as Private Secretary. The applicants had claimed that the nature of job and responsibilities as Reporters (M) was higher than those of Senior PA and that the 5th CPC created a higher pre-revised scale of Rs. 2500-4000 (Revised Rs. 7500-1200) in Group 'B' which should be extended to them. The recommendations of 5th CPC were that scale of Rs. 7500-12000/- be given to posts where the two pay scales had been merged into the new scale of Rs.6500-10500/- if the functional considerations of the promotional posts in grade of Rs.2000-3500/- so require. The Prasar Bharti Board recommended the matter to the Anomalies Committee but it did not exist any longer and a view was taken in the News Services Division to place the proposal before DG AIR which was done recommending that the posts of Reporter (M) were created with higher pay scale and they have to discharge higher level responsibilities in view of the nature of their work and there was a need to keep the feeder and promotional grades separate by rectifying the anomaly and granting the higher pay scale of Rs.2500-4000/- (pre-revised) to Reporter (M) as per the 5th CPC recommendations. It is submitted that the Tribunal having appreciated the submissions made before it and keeping in view the stand taken by the respondents passed the above directions in OA 2624/2002 which have, however,



been rejected by a non-speaking and cryptic order disregarding the observations made by the Tribunal and thereby failing to comply with the same.

4. A perusal of the order passed in the earlier OA reveals that the Tribunal had taken note of the recommendations of the D.G. News, Services Division, AIR which were placed before the D.G. AIR wherein it was stated that the posts of Reporter (M) were created in higher pay scale than any stenographic post and carried higher duties and responsibilities and as such they should be given the higher pay scale of Rs.2500-4000/- (pre-revised) in consonance with the 5th CPC guidelines since it was the promotion post from Senior PA. Subsequently, a Committee of officers in the News Services Division, AIR had acknowledged that the Reporters (M) have to discharge a higher level of responsibility and therefore the cadre needs to be restructured to keep the feeder and promotion grades separate. Keeping this in view the Tribunal has recorded that admittedly the posts of Reporter (M) have higher duties and responsibilities than stenographic cadre and there is an anomaly which is required to be removed keeping in view the guidelines of the Ministry of Finance and DoP&T.

5. The counsel for the applicants has relied upon a judgement of the High Court of Delhi dated 25.9.2002 in CWP No. 3610 of 2002 in the case of Akashvani & Doordarshan Administrative Staff & Anr. Vs. Union of India & Ors. to contend that the Court had emphasized the importance of the view that is taken by a Cadre Controlling Authority and if a functional requirement was found necessary for the posts, that could not be interfered with. It is stated that administrative ipse dixit cannot infiltrate on to an arena which stands covered by judicial orders as per Anil Ratan Sarkar & Ors vs. State of W.B. and ors (2001) 5 SCC 327. Having regard to the recommendations of the 5th CPC, the Ministry of Finance could not be said to be the ultimate authority provided the acceptance of the Central Government is available.

6. The counsel for the applicants has referred to the recruitment rules dated 21.11.86 for Reporter (Monitoring) (Rs,2000-3500) at pages 156-157 which indicate the method of recruitment by promotion from Stenographers Grade-I of AIR/ Doordarshan with 3 years regular service failing which with combined

regular service of 8 years in posts of Stenographer Grade I and Stenographer Grade-II. With regard to the recruitment rules at pages 158-160 in respect of Senior PA (Rs.2000-3200) the method of recruitment is also by promotion failing which by transfer on deputation. A Note recorded therein is as under:

"Note: The suitability of the regular holders of the posts of Stenographer Gr.I and Stenographer Gr.II in the scale of Rs.1640-2900 and Rs.1400-2300 respectively prior to the upgradation of these posts in the scale of Rs.2000-3200 possessing the eligibility service prescribed under Col.12 will be initially assessed by the Departmental promotion Committee for appointment to the upgraded post. If assessed suitable, they shall be deemed to have been appointed to the posts at the initial constitution. Such of the officers as are assessed 'Not Suitable' for appointment to the upgraded scale of pay shall continue to be in the scale of pay of Rs.1640-2900 or Rs.1400-2300 as the case may be and their cases would be reviewed every year."

As such the post is upgraded and if suitable the Steno Gr.I & II are deemed to have been appointed to the posts in scale of Sr. PA. There is no period of probation prescribed for Stenographer Grade I but 2 years for promotees from the level of Stenographer Grade II. In this conspectus the counsel has argued that Stenographer Grade I has been provided in the recruitment rules as feeder grade for Reporter (M) and the upgraded scale of Stenographer Grade I was Rs.2000-3200/- which is also the pay scale of Senior PA and as such it is evident that Stenographer Grade I in the upgraded scale was redesignated as Senior PA.

7. The applicants have filed an affidavit to introduce an additional document to which a response has also been filed in additional affidavit by the respondents. The counsel for the applicants drew our attention to their affidavit wherein it is stated that Stenographers Grade I (Rs.1640-2900/-) who were working with officers of Senior Administrative Grade or equivalent were upgraded to Rs.2000-3200/-. A formal order was also issued in AIR/Doordarshan on 11.1.88 upgrading the 18 posts of Stenographer Grade I. It is further stated that Stenographers Grade I were upgraded as Senior PA by a DPC. In the result, such upgraded Senior PAs are being promoted to Reporter (M). But it is conceded that the recruitment rules of Reporter (M) were not changed to introduce the redesignated Senior PA / PS. Therefore, it is asserted that the Senior PA is the feeder grade for Reporter (M) which are functional posts and as

such the higher pay scale of Rs.2500-4000/- revised to Rs.7500-12000/- should be extended to Reporter (M).

8. The learned counsel for the respondents, at the outset, vehemently argued that the recruitment rules cannot be said to be defunct or outdated so long as they exist. If they provide the feeder cadre as Stenographer Grade I for promotion as Reporter (M), it cannot be argued that the feeder category are Senior PAs. It has been made amply clear in the counter reply and additional affidavit that Senior PA is not the feeder post for Reporter (M) since Stenographer Grade I are the feeder cadre. Therefore it follows that the feeder posts /promotional posts are not in the same pay scale. In fact Stenographer Grade I is the feeder post for Senior PA as is evident from the Recruitment Rules of Senior PA. It was further submitted that the orders of the Tribunal in OA 2624/2002 do not alter this position since they only directed consideration by the respondents of the applicants demand for the higher pay scale of Rs.2500-4000/- from 1.1.96. Simply because the pay scale of Reporter (M) was higher before the recommendations of 5th CPC, it does not mean that it is the promotional post for Senior PA and such a claim cannot succeed unless decided upon by the competent authority.

9. A copy of the order No.26/2002-SVI dated 28.11.2002 issued by DG AIR has been produced on behalf of the applicants which shows that certain Private Secretaries / Stenographer Grade I were appointed as Reporter (M) English in the pay scale of Rs.6500-10500/- at News Services Division, AIR. The counsel for the respondents however points out para-2 of the order which shows that the Private Secretaries on being appointed as Reporter (M) will continue to draw pay in their existing pay scales and will not be granted benefit under provisions governing fixation of pay. Hence it is contended that this makes it clear that it was not promotion but merely an appointment as Reporter (M). We find that no fresh pay fixation would have been called for if scale of Rs.6500-10500/- was the same for both, but as held by a coordinate bench of the Tribunal in Jayed Ahmed v. UOI and anr., OA.859/^{OS} decided on 08.08.2006, on which Hon'ble Vice-

Chairman and I were members, merely because the pay scale is the same it would not follow that there could be no promotion.

10. The counsel for the applicants submitted that the Recruitment Rules (RR) have been produced by the respondents for the first time and it is not the fault of the applicants if the RR of Reporter (M) was not corrected by introducing the designation of Senior PA thereby allowing the designation of the feeder cadre as Stenographer to continue. In further support of their claim, our attention has been drawn to Para-8 of the orders passed by the Tribunal in OA 2624 of 2002 which would be useful to reproduce here:

"8. The learned counsel of respondents could not deny that the post of Reporter (M) has higher duties and responsibilities than stenographic posts, as admitted by respondents in various documents in the OA. He fairly submitted that if directed Government would have no objection to consider the demand of scale of Rs.2500-4000/- for the post of Reporter (M) which has been promotion post to the feeder cadre post of Senior PA (re-designated as Private Secretary) by evaluating the functional considerations related to the post of Reporter (M).

It is vehemently argued that the respondents cannot be allowed to approbate and reprobate at the same time by raising a fresh plea in the present OA that Senior PA is not the feeder cadre for Reporter (M).

11. As pointed out by the applicants the impugned letter dated 19.4.2004 is a non-speaking one which does not reveal the reasons on the basis of which the case of the applicant was turned down which render it unsustainable in law. The Hon'ble Supreme Court in State of Punjab vs. Bhag Singh 2004 1 SCC 547 has emphasized the importance of a reasoned order after application of mind as under: -

" 6. Even in respect of administrative orders, Lord Denning, M.R. in Breen v. Amalgamated Engg. Union observed: "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree It was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. "Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can

know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance." 43

12. Although the Tribunal in OA 2624/2002 had examined the issue on merits and having noted the relevant aspects and the submissions made by both the parties directed that the respondents shall consider the demand of the applicants keeping in view the functional considerations and nature of duties and responsibilities of the post of Reporter (M) vis-à-vis that of the feeder cadre i.e. Senior PA, the impugned order passed does not reveal that the authorities have applied their mind to consider and decide the matter in the light of the findings and observations of the Tribunal, which is contrary to decision in this regard contained in the judgement of the Apex Court in APSRTC and Others v. G.Srinivas Reddy and others reported in (2006) 3 SCC 674.

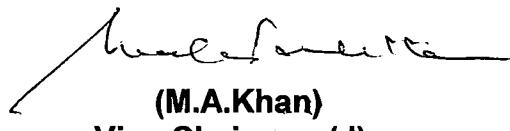
13. In the aforesaid situation, we are of the view that the directions of the Tribunal passed in OA2624/2002 have been disregarded. The impugned order dated 19.4.2004 which cannot be upheld in law is set aside. The respondents are directed to consider the demand of the applicants for grant of the higher replacement scale of Rs.7500-12000/- w.e.f. 1.1.96 for the post of Reporter (M), News Services Division, All India Radio keeping in view the findings and observations of the Tribunal in OA 2624/2004 as well as our observations above, and inform the applicants by a reasoned and speaking order within a period of three months from the date of receipt of this order.

14. The OA and MA are disposed of as above. No costs.



(N.D.Dayal)
Member (A)

/kdr/



(M.A.Khan)
Vice-Chairman (J)