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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.131 of 1988

Date of decision

:

31.1.1989

1. Laxmidhar Sahoo, son of Late Radhamohan Sahoo,
Aged about 46 years,
presently working as Announcer(Sr.Grade)
in All India Radio, Jeypore, Dist.Koraput.

2. Chalapati Rao,
son of Satyanarayan Murthy,
Aged about 44 years,
presently working as Transmission Executive,
in All India Radio, Jeypore, Dist. Koraput.

... Applicants

Vs.

1. Union of India represented by the Secretary,
Ministry of Information & Broadcasting, New Delhi.

2. The Director General, All India Radio,
Akashvani Bhawan, New Delhi-110 001.

3. The Station Engineer, All India Radio,
Jeypore-764 001, Dist. Koraput.

... Respondents

M/s. B.L.N Swamy & B.V Das,
Advocates

.. For Applicants

Mr Ganeswar Rath, Addl.Standing
Counsel(Central)

.. For Respondents

C O R A M

THE HON'BLE MR.B.R PATEL, VICE CHAIRMAN

1. Whether reporters of local papers may be permitted to see
the judgment ? Yes.

2. To be referred to the Reporters or not? *By No*


3. Whether His Lordship wishes to see the fair copy
of the judgment ? Yes.

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J U D G M E N T

B. R PATEL, VICE-CHAIRMAN The two applicants in this case are employees of the Jeypore Station (Koraput) of the All India Radio. One of them Shri Laxmidhar Sahoo is an Announcer (Sr. Grade) and the other Shri Chalapati Rao is working presently as Transmission Executive. They were getting project allowance which was sanctioned from time to time till 5.6.1987, when the Director General, All India Radio, New Delhi instructed the Station Engineer, A.I.R., Jeypore by his letter No. 3/1/77-A&G dated 5.6.1987 to recover the amount paid to the staff on account of project allowance with effect from 1.8.1982, vide Annexure-15. Thereupon the Administrative Officer issued orders dated 20.4.1988 for recovery of the project allowance paid to the staff and staff artists from March 1981 to February, 1987 vide Annexure-16. The applicants have sought orders quashing Annexures -15 and 16.

2. The respondents in their counter affidavit have maintained that the applicants are not entitled to both project allowance and house rent allowance as per the Office Memorandum No. 20011/5/73-E IV(B) dated 17.1.1975 (Annexure-1) and since they were paid both with effect from 1.3.1981, the project allowance which was less than the house rent allowance was ordered to be recovered by monthly instalments as indicated in the statement attached to Annexure-16.

3. I have heard Mr. B.L.N. Swamy, learned counsel for the applicants and Mr. Ganeswar Rath, learned Addl. Standing Counsel for the Central Government and have gone through the records. Mr. Swamy has argued that the applicants



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were given project allowance like the staff of Dandakaranya Development Authority('DDA'). The staff of the DDA still continue to get project allowance and to deny the staff of the A.I.R, Jeypore station the project allowance would be discriminatory . He has also cited the cases of the staff of Kolab Irrigation Power Project located at Koraput and Jeypore who are getting project allowance. Mr.Rath has countered this argument by referred to the order of the Ministry of Finance dated 17.1.1975(Annexure-1) which lays down conditions for grant of project allowance. Para VIII specifically prohibits grant of project allowance where compensatory city allowance and/or house rent allowance('H.R.A for short) or any other special compensatory allowance are admissible.

4. Para VIII of the aforesaid Office Memorandum reads as follows:-

" If the project is located at a place where compensatory city allowance and/or house rent allowance or any other special compensatory allowance are admissible, no project allowance will be admissible. Where, however, the project is situated in the proximity of such a place, a project allowance may be sanctioned if justified, but the ceiling for the project allowance for such cases would be limited to 50% of the ceiling mentioned below. In such a case, the individuals will have an option to draw either the project allowance or C.C.A/H.R.A., as may be admissible. In cases where rent free accommodation or H.R.A in lieu is given to employees as a condition of service or as a project concession, the project allowance will be reduced by 25%. "

In view of this, it is not possible for me to accept the contention of Mr.Swamy that the payment of compensatory

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allowance to the applicants has been justified even though they were given house rent allowance at the prescribed rate. There is no doubt whatsoever that in terms of the Office Memorandum of the Finance Ministry dated 17.1.1975 the staff are entitled to either the project allowance or the house rent allowance. It is, however, surprising that the applicants continued to be paid project allowance even after the sanction of H.R.A. In this connection Mr. Rath has drawn my attention to para -13 of the counter which reads as follows:-

" That in reply to sub-para xxiii of para 6, it is submitted that the employees of AIR, Jeypore were not asked to exercise their option in 1982 probably because of oversight. The project allowance was being drawn right from 1975 and HRA was sanctioned only in 1982. Therefore because of passage of time the authority failed to link up HRA with project allowance and to ask for option. In this case, however, the orders of the Government were not probably implemented, but failure to implement the orders in time does not necessarily make the orders retrospective ".

It is, however, strange that it has taken six years for the Director General of A.I.R to detect the double payment. It is noticed that all the sanction orders vide Annexures 4, 6, 9 and 11 stipulate that the grant of project allowance will also be subject to the fulfilment of other conditions stipulated in the Ministry of Finance O.M No.20011/5/73-IV(B) dated 17.1.1975. The oversight has occurred at the operational level, i.e, at the level of the Station Engineer. In other words, the applicants have been given project allowance in violation of the instructions issued by the Finance Ministry in the aforesaid Office Memorandum and as Head of the Department, it is the duty of the Director

Rath

General, AIR to take remedial measure when the irregularities came to his notice in 1987. He has done it by issuing the instructions to the Station Engineer, vide his letter dated 5.6.1987 (Annexure-15). After quoting paragraph VIII of the Ministry of Finance O.M No.20011/5/73-R-IV(B) dated 17.1.1975 he has stated in his letter as follows:-

" This condition has not been fulfilled by the Station. Even then with effect from 1.8.1982 project allowance and HRA have been simultaneously drawn. Therefore, drawal of both HRA and project allowance has been irregular and unauthorised. However, the staff of AIR, Jeypore have an option to draw either the Project Allowance or HRA/CCA as may be admissible with effect from 1st August 1982. "

The order at Annexure -16 however makes the recovery effective from March 1981 (vide Annexure-16). In this connection Mr. Rath drew my attention to para-20 of the counter which is as follows:-

" That in reply to sub-para xxix of para-6 it is submitted that as per the Ministry of Finance O.M dt. 10.3.87, the President sanction that the classification and reclassification of the cities on the basis of population figures of 1981 census shall be effective from 1.3.81 instead of 1.8.1982 and, therefore, as the arrears of HRA from 1.3.1981 to 1.8.82 have also been paid to the staff of AIR, Jeypore the recovery of the HRA and the Project Allowance whichever is less has been given effect from 1.3.81 and not from 1.8.82. "

5. Mr Swamy, learned counsel for the applicants very strenuously argued that benefits once granted should not be taken away. To substantiate his point, he drew my attention to para 7 of the judgment of the Hon'ble High Court of Orissa in O.J.C No.808 of 1971 decided on 12.7.1973

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which has been reported in 1973 C.L.T 801 and 1973(2) S.L.R 499(Banchhanidhi Das vs. State of Orissa and ors.). In that case the petitioner was a Lower Division Clerk under the Notified Area Council('NAC'), Bhubaneswar and was later promoted to the rank of Upper Division Clerk. Under Rule 427 of the Municipal Rules under the Orissa Municipal Act, the minimum educational qualification required for the post of Lower Division Clerk was matriculation. On the recommendation of NAC, the State Government waived of the requirement of educational qualification and on his promotion, the Government also exempted the petitioner from the requirement of passing the preliminary accounts test. Much later on 27.10.1970 (The petitioner had been working prior to 30.9.1952), while the petitioner was continuing in the promotional post, the State Government withdrew the previous orders exempting the petitioner from being a matriculate and passing the accounts test. This was done because one P.C Nanda who was a Head Clerk was reverted to the post of Lower Division Clerk on ground of unsatisfactory work and the Government withdrew the exemption orders with a view to treating the said Shri Nanda equally with the petitioner. The learned Advocate for the petitioner made a plea of estoppel amongst other grounds on which he based his argument and this plea has been considered by the Hon'ble High Court in paragraph 7 of the judgment quoted above. After analysing the various judgments including the judgments of the Hon'ble Supreme Court, the High Court

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came to the following conclusion:-

" If Government and the Notified Area Council were of the view when the Rules came into force with the prescribed qualifications that the petitioner could not continue in employment in view of his not satisfying the requirements of qualifications, the petitioner could have found out some alternate employment. Having continued in service almost two decades by now and having reached in advanced age near about superannuation, if on the plea of lack of qualification which once stood waived, the petitioner is demoted it is certainly to his prejudice. He is made to face a situation where he has no scope for obtaining relief. The principles upon which the plea of estoppel is allowed to be raised are fully satisfied in this case. Government having once rightly or wrongly passed an order of exemption at this belated stage should not be permitted to withdraw the order of exemption and force the petitioner to face the consequences of the situation. It is not a case where Government are being forced by some other agency to withdraw the exemption. The withdrawal order is by them at their own instance. The reason given in the order of withdrawal, namely, placing the petitioner at par with Shri Nanda, the other demoted employee, does not seem to be germane also to the dispute raised over the petitioner's qualification. The third contention of Mr. Rath, therefore, must succeed. "

In the present case the sanction orders issued for the project allowance from time to time have categorically stated that the sanction is subject to the conditions laid down in the Office Memorandum No.20011/5/73-E IV(B) dated 17.1.75, copy of which is at Annexure-1 and the employees are entitled either to a project allowance or house rent allowance and not to both the allowances. In this case, therefore, there is no question of Government withdrawing any concession or benefit given earlier. The employees were in fact not entitled to both HRA and the project allowance. and the applicants will have to exercise

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their option whether they would like to have the project allowance or the house rent allowance. Since they have taken both, they will have to refund one of the allowances. The judgement of the Hon'ble High Court, cited by Mr. Swamy, is therefore, not applicable to the present case.

6. It is not the case of the applicants that they did not get the house rent allowance with effect from 1.3.1981. The recovery will be effective only from the date they got house rent allowance. The Director General of AIR has, however instructed the Station Engineer in his letter referred to above that the staff will have the option either to draw the project allowance or the house rent allowance. Mr. Swamy contended that the applicants were never asked to exercise their option and the action of recovery is unilateral. There is no record available to indicate that the staff were in fact asked to exercise their option whether they would like to have the project allowance or the house rent allowance. The fact that the staff have the right to exercise their option has been conceded by the respondents in para-11 of their counter which says " that the staff may opt for either house rent allowance or project allowance ". Since the staff were getting project allowance for long six years they must have the right to exercise their option. Failure on the part of the Station Engineer to obtain the option of the applicants has vitiated his order for recovery of the project allowance paid vide Annexure-16. The order dated 20.4.1988(Annexure-16) is therefore quashed and Respondent No.3 is directed to ask the



applicants to exercise their option within one month. After considering their options, the Station Engineer should calculate the amount due from each of the applicants and recover the amount by monthly instalments. Each monthly instalment should not exceed the amount each of the applicants has drawn in a month either on account of project allowance or house rent allowance, as the case may be, except when there is not sufficient time to recover the full amount before the retirement of the officer in which case a suitable amount should be fixed to be recovered or order should be passed to recover the balance amount from the death-cum-retirement gratuity. The application is accordingly disposed of. The parties should bear their own costs.



N. J. Joseph
31.1.89
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack

31, January, 1989 /N.J. Joseph, SPA.