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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 378 of 1990

Date of Decision ... 09. 08.1991

Nadia Bihari Mohanty ... Applicant

Versus

Union of India & others ... Respondents

For the applicant ... M/s.Dr.S.C.Das,
B.K.Patnaik,
R.C.Rout, and
R.C.Mohanty,
Advocates

For the respondents ... -

C O R A M

HON'BLE MR. K.P. ACHARYA, VICE-CHAIRMAN

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1. Whether the reporters of newspapers may be allowed to see the judgment ? Yes
2. To be referred to the reporters or not ? Yes
3. Whether Their Lordships wish to see the fair copy of the Judgment ? Yes

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JUDGMENT

K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section - 19

of the Administrative Tribunals Act, 1985, the petitioner prays that a declaration be made entitling the petitioner to pension, gratuity and all other pensionary benefits according to rules after a particular Government Servant retires on superannuation.

2. Shortly stated the case of the petitioner is that he was appointed as a Staff Artist in September, 1958 being attached to the All India Radio, Cuttack. The petitioner retired on 30.11.1989 after attaining 58 years. According to the petitioner, at a particular time though he had given option to be regularised as a Government Servant and the same was rejected yet, in view of the changed circumstances both on questions of fact and law the petitioner is entitled to be taken as a regular Government Servant and hence he is also entitled to the pensionary benefits etc. which being denied to him, has compelled him to file this application and seek direction from the Court.

3. A counter has been filed by one Mr. Lutfur Rehaman (O.P. No. 3) who is said to be the Station Director in the All India Radio, Cuttack. He has no doubt signed the verification which has not been attested by a lawyer and the counter has not been signed by any lawyer. Even though such is the defect in the counter which does not entitle the Court to reject the same from taking notice yet I would, on the basis of the counter state the case of the opposite party no. 3. Mr. Lutfur Rehaman, Station

Director who submits in his counter that no doubt the Supreme Court has held in a judgment reported in AIR 1987 Supreme Court 1526 that all the Staff Artists of All India Radio are holding civil posts and they are governed by Article 311(2) of the Constitution, but this matter was referred to a High Power Committee and the entire matter along with the recommendations of the High Power Committee is under examination by the Government.

Ultimately it is submitted in the counter that the case deserves no merit and is liable to be dismissed. No counter has been filed on behalf of the other opposite parties.

4. Even though counter has been filed on behalf of the said opposite party as stated above, there is no representation made by any counsel appearing on behalf of the opposite parties and O.P.No.3 has not appeared to-day. Hence I have heard Dr. Sriram Chandra Das, learned counsel appearing for the petitioner and I have perused the relevant documents. Dr. Das submitted that the Hon'ble Supreme Court in the case reported in AIR 1987 Supreme Court 1526 (Union of India vrs. M.A. Chaudhury) has held that Staff Artists are holding civil posts under the Government and they having been absorbed and such /view having been later confirmed in the judgment reported in AIR 1988 Supreme Court 1970 (Y.K. Meheta and others vrs. Union of India & thereto others) and in pursuant of Annexure-4 having been issued by the Director General of All India Radio, it is no longer open to opposite party No.3 to contest this matter

and state that the case is devoid of merit. There is no opposition from the side of O.P. No. 1 and 2.

5. I have given my anxious consideration to the arguments advanced by Dr. Das. At the outset I would say that the pertinent point which requires determination is whether the dictum laid down by Their Lordships in both the judgments mentioned above have any application to the facts of the present case. Their Lordships ultimately held in the case of Y.K. Meheta which runs thus:

"We have gone through the averments in the writ petition and those made in the counter affidavits filed by the Director General of Doer Darsan and we have no hesitation in holding that the petitioner performed the same duties as those performed by their counter parts in the film division. When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay".

Further Their Lordships held that there will be clear violation of Articles 14 and 16 of the Constitution and then Their Lordships finally held that the petitioners are entitled to same scale of pay as their counterparts in the film division.

6. Before proceeding further it is worthwhile to mention the nature of the case and the prayer of the petitioners in the case of Y.K. Meheta. In para one of the judgment it is stated as follows :

"In these writ petitions, three categories of Staff Artists of Doer Darsan under the Ministry of Information & Broadcasting, viz. Camera Man, Gr. II, Sound Recordist & Lighting Assistant/Lighting Man have claimed that

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they should be declared as Government Servants and should be given the same pay scales as given to their respective counterparts in the film division under the same Ministry".

7. Therefore the ratio of both the decisions Their Lordships is that the petitioners before Their Lordships should be taken as regular Government Servants and should be given the same facilities as that of a regular Government Servants including retiral benefits etc. Finally Their Lordships allowed the petitions which eventually means (in view of the observations quoted) that the petitioners ^{before} Their Lordships were taken as regular Government Servants and were made entitled to Pensionary benefits.

8. In pursuant to the said judgments order bearing No.10/9/85-S-VII(Vol.IV) dated 8.8.1989 was issued by the Director General of All India Radio, contained in Annexure-4 which runs thus: -

"Consequent on conversion of Staff Artists into temporary Government Servants vide order No.10/9/85-SVII(2) 10/9/85-SVII(3), dated 10.11.1986, 10/9/85-SVII, dated 26.12.1988 the contract entered into with them as Staff Artists stands terminated and all the existing rules/regulations including pensionary benefits, the age of retirement etc., as applicable to the regular civil Govt. servants will be applicable to them in lieu of the existing conditions of service as Staff Artists.

The posts of staff artists held by them stands converted into civil posts with effect from 6.3.1982."

Curiously one would find that Opposite Party No. 3 has not at all challenged Annexure-4. Not a single word

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has been stated in the counter anything regarding Annexure-4 and therefore it is presumed that the contents of Annexure-4 is admitted to be true and correct. The statement made by O.P.No.3 that the recommendations made by the High Power Committee is under the consideration of the Government deserves no merit because opinion of the Committee or the Government cannot go beyond the dictum laid down by Their Lordships of the Supreme Court. In view of the observations made by Their Lordships of Supreme Court and in view of the order passed by the Director General of All India Radio contained in Annexure-4, it no longer remains open to opposite party no.3 to contend that the present case does not deserve merit and is liable to be dismissed and equally it is not open to him to deny pensionary benefits to the petitioner in this case who is definitely entitled to such benefit. Therefore it is directed that the concerned authority namely opposite party No.3 may calculate the pension, gratuity and other retirement benefits to which the petitioner is entitled as per rules and the same be paid to the petitioner within 120 days from the date of receipt of a copy of this judgment.

Thus the petition stands allowed leaving the parties to bear their respective costs.

Lagan 9.8.91
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 9th August, 91/BKSahoo

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 CENTRAL ADMINISTRATIVE TRIBUNAL
 CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 378 OF 1990.

Date of decision: December 24, 1991.

Nadia Bihari Mohanty Applicant
 -Versus-
 Union of India and others Respondents

 For the applicant : M/s.Dr.S.C.Das,
 B.K.Patnaik,

For the Respondents : Mr.Ashok Mohanty,
 Standing Counsel
 (Central)

 C O R A M :

THE HONOURABLE MR .K.P .ACHRYA, VICE CHAIRMAN

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

2. To be referred to the reporters or not? *Yes*

3. Whether His lordship's wish to see the fair copy of the Judgment? Yes.

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JUDGMENT

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays that a delcaration be made entitling him to Pension, Gratuity and all other pensionary benefits according to Rules which ordinarily a Government servant is entitled to after retirement on superannuation.

2. Shortly stated, the case of the Petitioner is that he was appointed as a Staff Artist in September, 1958 being attached to the All India Radio, Cuttack. The Petitioner retired on 30-11-1989 after attaining 58 years. According to the Petitioner, at a particular time, though he had given option to be regularised as a Government servant and the same was rejected yet, in view of the changed circumstances both in questions of fact and law, the Petitioner is entitled to be taken as a regular Government servant and hence he is also entitled to the pensionary benefits etc. which being denied to him, has compelled him to file this application and seek direction from the Court.

3. Prior to 9th August, 1991, a counter had been filed by Mr. Lutfur Rehman (opposite Party No.3), Station Director, All India Radio, Cuttack.

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Other Opposite Parties did not file any counter. The case was heard on merits on 9th August, 1991 and soon after closer of the case judgment was dictated and pronounced in the open court allowing the application.

4. On 10th October, 1991, two applications came up for consideration forming subject matter of M.A. 329 of 1991 and M.A. 330 of 1991. In M.A. 330 of 1991, prayer was made on behalf of the Opposite Parties in O.A. 378 of 1990 to cancel the ex parte judgment and to rehear the case on merit and in M.A. 329 of 1991, prayer was made for condonation of delay in filing M.A. 330 of 1991. After hearing the counsel for both sides, delay was condoned; and prayer of the Petitioner in M.A. 330 of 1991 was allowed and in consequence thereof the judgment was cancelled and the case was reheard on merits after counter was filed on behalf of all the Opposite Parties.

5. In their counter, the Opposite Parties, maintained that according to the verdict of the Hon'ble Supreme Court finding place in A.I.R. 1987 SC 1526 that all the Staff Artists of All India Radio have been ordered to be holding Civil Posts only for the limited purposes of attracting the provisions contained under Article 311(2) of the Constitution and it was further maintained that in pursuance to the judgment passed by the Hon'ble Supreme Court in writ Petition No.

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No. 13636 of 1983, a High Power Committee has been constituted to look into the grievance of the ^{Member of the} Union including grant of Pensionary benefits to the Staff Artists and the High Power Committee has since submitted its report to the Government which is under consideration of the Government. It is further maintained that though the option exercised by the Petitioner to be treated as a regular Government servant was placed before the screening Committee, he was found to be unfit and therefore, he was allowed to continue as Staff Artist. In such circumstances, the prayer of the Petitioner to be treated as a regular Government servant cannot be allowed and the case is devoid of merit and is liable to be dismissed.

6. I have heard Dr. S.C. Dash, learned Counsel appearing for the Petitioner and Mr. Ashok Mohanty learned Standing Counsel (Central) for the Central Government at a considerable length. Dr. Das repeated the same argument as on the previous occasion (namely before the delivery of the judgment of O.A. 378 of 1990). It would be dealt at the appropriate stage. Before expressing opinion ~~on the~~ submissions of Dr. Dash, it would be worth while and convenient to mention ^{or} the arguments advanced by Mr. Mohanty learned Standing Counsel. It was submitted by Mr. Mohanty that by virtue of the dictum laid down by

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Their Lordship of Hon'ble Supreme Court in A.I.R. 1987 SC 1526, it cannot be said that staff Artists are holding civil posts for all purposes. According to Mr.Mohanty it is only for the limited purpose of attracting Article 311(2) of the Constitution and it was further submitted by Mr.Mohanty that in pursuance to the Directions given by Hon'ble Supreme Court in Writ Petition No. 13636 of 1983 a High Power Committee was constituted and it was already submitted its report and it is under the active consideration of the Government and it is likely to be finalised very soon. It was further submitted by Mr.Mohanty that no opinion should be expressed by this Bench till the report of the Committee is either accepted/modified by the Government. At this stage it is relevant and important to deal with contentions of Dr.Dash. It was submitted on behalf of the Petitioner that in view of the dictum laid down by Their Lordships in the judgments reported in AIR 1987 SC 1526(supra) and AIR 1988 SC 1970(Y.K.Meheta and others Vs. Union of India and others), the Petitioner is bound to be treated as a regular Government Servant being entitled to all the retiral benefits like that of a regular Government servant. In the case of Y.K.Mehera Their Lordships observed as follows:

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" We have gone through the averments in the writ petition and those made in the counter affidavits filed by the Director General of Doordarshan and we have no hesitation in holding that the Petitioner performed the same duties as those performed by their counter parts in the film division. When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay".

Further Their Lordships held that there will be clear violation of Articles 14 and 16 of the Constitution and then Their Lordships finally held that the Petitioners are entitled to same scale of pay as their counterparts in the Film Division.

7. Before proceeding further it is worthwhile to mention the nature of the case and the prayer of the Petitioners in the case of Y.K. Mehera. In para-1 of the judgment it is stated as follows:

" In these writ petitions, three categories of Staff Artists of Doordarshan under the Ministry of Information and Broadcasting, namely; Camera Man, Grade-II, Sound Recordist and Lighting Assistant/Lighting Man have claimed that they should be declared as Government Servants and should be given the same pay scales as given to their respective counterparts in the Film Division under the same Ministry".

8. The ratio of both the decisions, is that the Petitioners before Their Lordships should be taken as a regular Government servants and should be given

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the same facilities as that of ~~a~~ regular Government Servants including retiral benefits etc. Finally Their Lordships allowed the Petitions which eventually means (in view of the observations quoted) that the Petitioners before Their Lordships were taken as regular Government Servants and were made entitled to Pensionary benefits.

9. My views in regard to this issue stand fortified by the order bearing No.10/9/85-S.VII (vol.IV) dated 8.3.89 issued by the Director General of All India Radio contained in Annexure-4 which runs thus:-

"Consequent on conversion of Staff Artists into temporary Government Servants vide order No.10/9/85-S.VII(2)dated 10th November, 1986 and 26.12.1988 the contract entered into with them as Staff Artists stands terminated and all the existing rules/regulations including pensionary benefits, the age of retirement etc., as applicable to the regular Civil Government Servants will be applicable to them in lieu of the existing conditions of service as Staff Artists.

The posts of staff artists held by them stands converted into Civil Posts with effect from 6.3.1982".

10. Curiously one would find that the Opposite Parties have not at all challenged Annexure-4. Therefore, the contents of Annexure-4 is admitted to be true and correct. In such circumstances, the contention of the learned Standing Counsel Mr. Mohanty that by virtue of the judgment of the Hon'ble Supreme Court reported in AIR 1987/1526
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the Staff Artists could be holder of Civil Posts only for the purpose of attractive Article 311 Clause -2 of the Constitution is completely devoid of merit especially inview of the fact that following the judgments of the Hon'ble Supreme Court, the Director General of All India Radio has issued termination of contract with the Staff Artists and has further directed that they will be treated as regular Civil Government Servants and the Rules and regulations including the pensionary benefits, age and retirement etc. as applicable to the regular Civil Government Servants would be applicable to the Staff Artists. In view of the aforesaid facts and circumstances, there is no escape from the conclusion that the contract with the Staff Artists having been terminated, and they are to be treated as regular Government servants being entitled to retiral benefits etc.

11. Mr.Mohanty next relied upon the judgment of the Hon'ble Supreme Court passed in Civil Writ Petition No.13636 of 1983 and contended that in pursuant to the judgment of the Hon'ble Supreme Court a High Power Committee has been setup fo finalise the scheme in regard to the nature of duties performed by each of the categories of Staff Artists. and it was further more submitted that the High Power Committee has submitted its report to the Government and it would be finalised very soon.

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Incidentally, it may be mentioned that in the judgment of the said case, Their Lordships have been pleased to observe as follows:

"Though the scheme has been styled as a draft scheme, its contents indicate that it has been implemented".

12. In paragraph-4(i) of the scheme quoted in the judgment of Their Lordships, it is to be found as follows:

" All Staff Artists/Artists working in All India Radio and Doordarshan(except foreign Nationals) will be deemed as Government Servants holding civil posts on prescribed Central Government scales of Pay"

13. In paragraph 4(ii) of the same scheme, it stated as follows:

" All such Staff Artists/Artists working in All India Radio and Doordarshan will be entitled to pensionary and other benefits on the same terms and conditions as are applicable to other Government servants holding Civil Posts. xx xx ".

It is also worth-while to mention that vide order dated 29th October, 1990, Their Lordships passed an interlocutory order observing as follows:

" Time is extended till the end of November 1991, as a special case, taking into account the statement of Mr. Mahajan and on the explicit direction of ours that it shall not be further extended. No plea for further extension shall be entertained".

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14. In view of the above quoted peremptory orders passed by Their Lordships, it is presumed that the analysis of the scheme by the High Power Committee and its report must have been finalised by November, 1991 and as yet there is no further submission made on behalf of the Opposite Parties that the recommendation of the High Power Committee has not been accepted by the Government. Hence it can be safely presumed that the scheme envisaging conversion of the Artists to be holding Civil Posts, like that of a regular Government Servants being entitled to the retiral benefits has been finalised and accepted by the Government.

15. Therefore, keeping inview of the observations by Their Lordships, quoted above, and in view of the order passed by the Director General, All India Radio (quoted above) and the peremptory order passed by the Hon'ble Supreme Court (quoted above), it cannot but be held that the Petitioner is a holder of a Civil Post like that of a regular Government servant being entitled to all the retiral benefits. Therefore, it is directed that the concerned namely Opposite Party No. 3 (Station Director of All India Radio) may calculate the Pension, Cratuity and other retirement benefits to which the Petitioner is entitled as per rules and the same be paid to the Petitioner
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within 90(ninety) days from the date of receipt of a copy of this judgment.

16. Thus, the application stands allowed leaving the parties to bear their own costs.

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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.
December 24, 1991.