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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO:111 OF 2000
Cuttack, this the 14th day of October, 2004.

GOPABANDHU CHOUDHURY & Ors....

APPLICANTS.

:VRS:

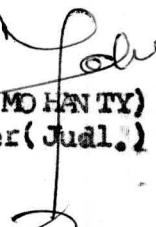
UNION OF INDIA & Others.

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(B.N. SOM)
Vice-Chairman


(M.R. MOHANTY)
Member (Jud.)

14.10.2004

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 111 of 2000
Cuttack, this the 14th day of October, 2004.

CORAM:-

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.)

....

1. Sri Gopabandhu Choudhury,
S/o Late Chaturbhuj Choudhury,
Aged about 67 years,
Vill. Swarga Brahmapur,
P.O. Sadeipur,
Via. Raghunathpur,
Dist. Jagatsinghpur,
Retired as Transmission Executive,
All India Radio,
CUTTACK.

2. Shri Brajamohan Mohanty,
S/o Late Bhagaban Mohanty,
Aged about 61 years,
Mahatab Road,
Kalinga Lane,
Cuttack,
retired as Program Executive,
All India Radio, CUTTACK

APPLICANTS.

By legal practitioner: Mr. D. P. DHALSAMANTA, Advocate.

-Versus-

1. Union of India represented through
its Secretary, Ministry of Information and
Broadcasting, Sastri Bhawan 'A' Wing,
New Delhi-110 001.

2. Prasar Bharati Broadcasting Corporation of India,
through its Director General, Sastri Bhawan,
New Delhi-110 001.

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

4. Station Director, All India Radio,
Cuttack-753 001.

RESPONDENTS.

By legal practitioner: Mr. A. K. Bese, Senior Standing Counsel.

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O R D E RMR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):-

Applicant No.1, Gopabandhu Choudhury was working as Transmission Executive and Applicant No.2 was working as Program Executive of All India Radio, Cuttack. Both of them superannuated from Government service w.e.f. 31.3.1991 and 28.2.1997 respectively. Much after their retirement, the Government of India issued a circular disclosing a policy decision under Annexure-3 dated 25.02.1999 enhancing the scales of pay of certain categories of staff of All India Radio and Doordarshan. In the said circular in clause 2(iv) it was provided as under:-

"2.(iv) In addition, the pay of these employees of All India Radio and Doordarshan who had been working as Transmission Executives as on 1-1-1978 or afterwards would be notionally fixed in the pay scale of Rs.550-900/-w.e.f. 1-1-1978 and in the pay scale of Rs.2000-3200/-w.e.f. 1-1-1986 before fixing their pay in the upgraded pay scales as on 1-1-1996. But as per their agreement with the Govt. this will not entitle them to any payment of arrears for the period prior to 1-1-1996 and will be limited to fixation of their current pay as on 1-1-1996".

Further in clause-4 of the said circular it had been provided as under:-

"4. The benefit of the upgraded pay scales will be available to existing incumbents only and those new direct recruits who join after issuance of these orders will not be entitled to these scales but will be governed by pay scales recommended by Vth Pay Commission. However, all promotions

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of existing incumbents shall be made in upgraded scales only".

Since there was no clear-cut instruction with regard to the retired employees; by the time the Circular came into existence, being aggrieved, the Applicants made representations under Annexures-5 & 6 for extension of the said retrospective revision of the scales of pay in the grade of Applicants and that since no reply was received on their representation and only a general circular was issued on 5th August, 1999 (under Annexure-6) debarring them to get the benefits, out of the Circular under Annexure-3, the Applicants (by filing the present Original Application under section 19 of the Administrative Tribunals Act, 1985) have prayed for quashing of the order under Annexure-6 and for a direction to the Respondents to extend the revised scales of pay which has been made retrospectively; moreso, when the Applicants were very much in service/post, when it was made effective.

2. Basically, the Respondents through their counter have apprised the Tribunal that since the Applicants were not in service of All India Radio/ Doordarshan, on the date of issuance of the order i.e. 25.2.1999, the Applicants cannot be asked either to opt for becoming Prasar Bharati employees or to submit the required undertaking for availing the higher pay scales which is/was a precondition. In



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otherwords, it is the case of the Respondents that the benefits of the order can only be given to those employees who were in service as on 25-02-1999 and who exercised their option to remain with Prasar Bharati and that the order can not be made applicable to the employees, who did not exercise their option to become employees of Prasar Bharati and that they will continue to get the normal revised pay scale recommended for Government servants by the Vth Pay Commission. It is also the case of the Respondents that the matter has been examined in consultation with the Department of Personnel and Training (DOP&T) and as per their advice, it was decided not to extend the benefits of the Office Memorandum in question, to the employees who were not in service of AIR/DOORDARSHAN on the date of issuance of the order and, therefore, the Applicants are not entitled to claim any right to get the said scales of pay.

3. Applicants having filed their rejoinder, a reply to the rejoinder has also been filed by the Respondents; which were taken note of, while we heard the learned Counsel for both sides and perused the materials placed on record.

4. During the course of hearing, it was argued by the learned Counsel for the Applicant that since the pay scales were revised retrospectively (to be paid notionaly) w.e.f. 1978 and 1986 (and actually w.e.f. 1.1.1996) and the Applicants were

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very much in service as on the said dates (and performed the duties as that of other existing employees) they are entitled to get the benefits of the scale of pay prospectively. It has been argued that denial of such benefits to the Applicants amounts to gross violation of the constitutional mandate as enshrined under Article 39(d) of the Constitution of India. Further it was argued by the learned counsel for the Applicant that had the circular been issued much before, while the Applicants were in service, they could have got such benefits and, similarly, had the pay scales not been directed to be revised retrospectively, the Applicants would not have raised any grievance; but since the pay scales were revised retrospectively (covering the periods when the Applicants had performed the similar duties like that of existing staff) they are entitled to get the benefits of the revised pay. It has further been argued by him that if opportunity would have been given for option, they could have opted. It has been argued that there being no ground or logical explanation offered in the main circular (or to the subsequent clarificatory circular) as to why the retired employees will not get the higher pension amount by virtue of retrospective revision of pay scales, the benefits ought to be extended to them. In the above background learned counsel for the

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Applicant has also relied on the decision of the Hon'ble Apex Court rendered in the case of RANDHIR SINGH vs. UNION OF INDIA AND OTHERS (reported in AIR 1982 SC 879); and Y. K. MEHTA AND OTHERS vs. UNION OF INDIA AND OTHERS (reported in A. T. R. 1988(2)SC 372) and has prayed for directions to the Respondents to pay the differential amount on the event of revision of pay of the Applicants retrospectively and consequential revision of pensionary benefits.

5. On the other hand, learned Counsel appearing for the Respondents have strenuously submitted that before issuing the impugned order dated 25.2.1999, due deliberation and discussions were made with the representatives of various employees' association of the Department and that, such upgradation of scales was approved by the Government with precondition that the employees working on the date of issuance of the order and those who will submit an undertaking (to the effect that they, in the event of their not opting to become employees of Prasar Bharati, would refund all excess benefits received as a result of higher pay and would no longer be entitled to the upgraded scales, can only get the benefits and as such, the Applicants are not entitled to the benefits of the pay scales as provided in the circular under Annexure-3. It has been submitted that the Applicants since do not fulfil the necessary

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conditions envisaged in the Office Memorandum dated 25-2-1999, they are not entitled to the revised scales of pay as revised retrospectively under Annexure-3 and that as the Applicants have already retired from service exercising of any option by them does not arise.

6. We have given our anxious thought to the issues and various submissions made by the respective parties. We have also gone through the decisions referred to by the learned counsel for the Applicants. Crux of the issues lies on the interpretation of the circular dated 25.02.1999; which is the foundation of the claim of the Applicants. This circular dated 25.2.1999 at Paragraph-2 provides as under:-

"2. The grant of revised pay scales as mentioned in para-1 above will be subject to the following conditions:-

(i) The upgraded scales will be allowed not as Govt. employees per se but as Government employees currently in service of Prasar Bharati (Broadcasting Corporation of India). As and when the employees, presently working in All India Radio and Doordarshan are asked to exercise their option, those employees who do not opt for Prasar Bharati will revert as Government servants and will no longer be entitled to above scales. They will also have to refund all benefits availed of by them as a result of the grant of higher scales of pay. They will be liable to recovery of all such benefits. An undertaking in the proforma given at Annexure-II to this effect has to be submitted by each and every employee concerned before availing the benefit of upgraded scales of pay. This is in accordance with their agreement with the Government to avail their upgraded scales on this condition only.

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Again in the copy endorsement portion, it has been stated that the authorities are requested to ensure that salary in the upgraded pay scale in respect of any employee is not drawn unless an undertaking in the preforma given at Annexure-II is received alongwith the pay fixation order. Therefore, it can safely be presumed that the circular/upgraded scales of pay per se is not applicable to all the employees of all India Radio/Doordarshan. There is a pre-condition that only those employees who opt to remain in the Prasar Bharati, the upgraded scale of pay will be applicable to them. This decision was taken by the Government after the same was agreed to by the representatives of the employees' Union. However, revision/upgradation of scales of pay is a policy decision of the Government and no court can interfere on the said policy decision of the Government. Admittedly, the Applicants are the retired employees of All India Radio and as per the stipulation, they are not entitled the scales of pay. Had they been continued in service by the time this circular came into existence, unless options given by them to be in Prasar Bharati, the upgraded scales would not have been extended to them. They have also not opted as per the circulars like the other employees, those who are continuing in service, and are getting the upgraded scales of pay. Therefore, there is no scope for this Tribunal to interfere in the decisions of the Government for directing them to give the applicants the upgraded scales of pay as prayed for by them.

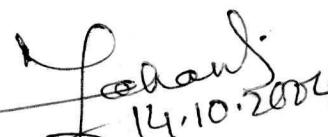
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The decisions relied on by the learned counsel for the Applicants are not applicable to the present context; as these decisions deal with regard to equal pay for equal work.

7. In view of the foregoing discussions, we find no merit in this Original Application which is accordingly dismissed. No costs.



(B.N. SOM)
VICE-CHAIRMAN



14.10.2004
(M.R. MOHANTY)
MEMBER (JUDICIAL)