

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.540/2000

Monday, this the 10th day of September, 2001.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.Prabhakar,
19/192, "Devikripa"
Poothole, Thrissur-4,
last employed as Programme Executive,
All India Radio, Thrissur. - Applicant

By Advocate Mr Asok M Cherian

Vs

1. Union of India represented by the Secretary to the Ministry of Information & Broadcasting, Government of India, 'A' Wing, Shastri Bhavan, New Delhi-110 001.
2. The Director General, All India Radio, Akashavani Bhavan, Parliament Street, New Delhi.
3. The Station Director, All India Radio, Thrissur.
4. The Station Engineer, All India Radio, Thrissur. - Respondents

By Advocate Mr PMM Najeebkhan, ACGSC

The application having been heard on 10.9.2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant who retired on superannuation on 30.4.96 after working as Programme Executive in All India Radio, has

filed this application under Section 19 of the Administrative Tribunals Act, praying that it may be declared that Paragraph 2(i) of the circular dated 25.2.99(A-1) is hit by Articles 14 and 16 of the Constitution of India and is ab initio void, that the applicant is entitled to get his pay refixed in the manner prescribed in A-1 and to get pension re-assessed consequently, ignoring the rider in Paragraph 2(i) in A-1 and for a direction to the respondents to refix the applicant's pay in the manner in A-1 ignoring the rider in para 2(i) therein and refix the retirement benefits accordingly.

2. The respondents in their reply statement have contended that the applicant who had retired on 30.4.96 not having been in service on 25.2.99 is not entitled to the benefit of the impugned order and there is no discrimination between the applicant and others because even the existing employees who do not opt for becoming the employees of Prasar Bharati would not be entitled for the upgraded pay scale and would have to refund all the benefits availed of by them with effect from 1.1.96 on the basis of the upgraded scales.

3. We have heard the learned counsel on either side. Learned counsel for the respondents invited our attention to a decision of the Principal Bench of the Tribunal in O.A.2579/99 turning down the identical relief as sought in this application. The Bench has observed:

"5. We have carefully considered the matter and we observe that the issue with regard to the revision of

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pay and allowances of employees of All India Radio/Doordarshan (Engineering and Programme cadres) has been settled by the letter/Circular dated 310/173/97-B(D) dated 25.2.1999 which deals with the upgradation of the pay scales for certain categories of employees working in Prasar Bharati Corporation. The relevant portion of the OM as indicated in para 7 are as below:

2(i) : The upgraded scales will be allowed not as Government employees per se but as Government employees currently in service of Prasar Bharati (Boardcasting 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 these upgraded scales in this condition only.

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ii) Upgraded pay scales would be effective from 1.1.1996 but payment of salary to employees as per upgraded scales of pay will be made with effect from 1st March, 1999.

(emphasis added)

6. While it is directed that the upgraded pay scales would be effective from 1.1.1996 the payment of salaries of the employees as per the upgraded pay scales will come into force only from 1.3.1999. This, however, is subject to the first condition that it would be for those currently in service and not to others. Though the applicant had retired on superannuation only on 30.4.1996 i.e. after the date on which the adopted recommendations of the 5th Pay Commission were given effect to he was not in service on 25.2.1999 when the Circular was issued specifically limiting the benefits to those who are still serving. That being the case he would be entitled only to have his emoluments correctly worked out at the time of his retirement in the replacement scale of the scale in which he was drawing his pay under the 4th Pay Commission's level and not at the newly upgraded scale of Rs.7500-12000 which he is now claiming. The said scale along with the conditions for entitlement to get the same were not at all in force when the applicant was still in service. He cannot therefore, in law claim this. In other words, the benefit of the

replaced/upgraded scales would be subject to the fulfilment of the conditions prescribed by the Circular of 25.2.1999 and as he does not fulfil the same he cannot avail himself of its benefits. The case of the applicant falls outside the purview of the circular which has been correctly issued and we adhere to the same. In the circumstances the application has to fail."

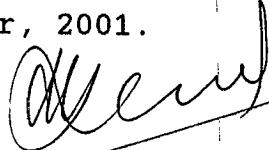
The situation in this case is exactly identical to the facts of the case in O.A.2579/99. We are in respectful agreement with the view taken by the Principal Bench of the Tribunal in that case. Learned counsel for the applicant tried to distinguish this case from the order in O.A.2579/99 on the ground that though the constitutional validity of the provision in the circular was challenged in O.A.2579/99, the said question had not been considered and decided and therefore, the ruling is not applicable to this case. Hostile discrimination can be pleaded if there is discrimination among similarly situated persons. Here the distinction between the applicant and those who are entitled to the benefit is that the applicant was not in the service of the Government or of the Prasar Bharati Corporation as on 25.2.99 when the upgraded pay scale was introduced and the benefit was given to those who are in service and have opted to work in Prasar Bharati Corporation. The applicant does not belong to a homogenous class with those who have been granted the benefit. Therefore, the plea that the impugned provision is unconstitutional has only to be rejected.

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4. In the light of what is stated above, finding no merit the application is dismissed, leaving the parties to bear their own costs.

Dated, the 10th September, 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

trs.

APPENDIX

1. Annexure A1 : True copy of the order No.310/173/97 B(D) dated 25-2-1999.
2. Annexure A2 : True copy of the letter No.14/25/99-S.IV(A) dated 5.8.1999.
3. Annexure A3 : True copy of the representation dated 5-7-1999 filed by the applicant before the 4th respondent.
4. Annexure A4 : True copy of the letter of the 4th respondent dated 20.7.1999.
5. Annexure A5 : True copy of the letter No. of the 4th respondent dated 9.9.99 forwarding Annexure A2.

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