

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 567 OF 2006

Thursday, this, the day of 27th March, 2008.

CORAM :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

Usha Vijaya Kumar
Instrumentalist (Gottuvadyam)
All India Radio, Calicut
Residing at : Ushus, 1/4562-B,
Bilathi Kulam, PO Eranhipalam
Calicut - 673 006

Applicant

(By Advocate Mr. K.P.Dandapani)

vs.

1. Union of India represented by the Secretary
Ministry of Information & Broadcasting
New Delhi - 110 001
2. The Director General
Prasar Bharati (Broadcasting Corporation of India)
Mandi House, Copernicus Marginalized
New Delhi - 110 001
3. The Station Director
Prasar Bharati (Broadcasting Corporation of India)
Calicut - 673 001
4. The Station Director
Prasar Bharati (Broadcasting Corporation of India)
Trivandrum

Respondents

(By Advocate Mr.Saidu Muhammed, ACGSC)

The application having been heard on 13.03.2008, the Tribunal on 27- 03.2008, delivered the following :

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant has challenged the following two orders:-

(a) Annexure A-9 Order dated 27-09-2004 issued by the 2nd respondent;


(b) Annexure A-8 order dated 27-01-2005 issued by the 4th Respondent.

2. The short question involved in this case is whether the applicant is entitled to the benefit of ACP by virtue of his being a Central Government employee working as Instrumental Artist in Gottuvadyam. The respondents have rejected the claim of the applicant vide Annexure A-8 on the ground that the applicant has not upgraded her skill from 'BH' to 'A' Grade through All India Radio.

3. Briefly stated the applicant was initially appointed as Staff Artist in August 1977 (Annexure A-1). She was later on upgraded as B High Grade Instrumentalist with effect from 09.03.1979 vide Annexure A-2. Later on a decision was taken to treat all the Staff Artists as Government Servants and accordingly as per Annexure A-2(a) order dated 11.01.1993, the applicant has been held to be a regular Civilian Central Government employee with effect from 06.03.1982.

4. As per Annexure A-3 Recruitment Rules, Instrumentalist grade 2, 3 & 4 are to be filled up through interview and no promotion is provided for. For each grade a specific standard of efficiency has also been provided for.

5. The Assured Career Progression Scheme was introduced by the Government with effect from 09.08.1999 to mitigate the hardship in case of acute stagnation either in isolated post or in promotional posts. In respect of cadre post the benefit will be attached to the promotional post could be available after completion of 12 years service and similarly the pay scale attached to the next promotional post would be available after completion of 24 years of service. In respect of isolated post also, after such service of 12/24 years, ACP benefit is available but the pay scale shall be according to Annexure A-2 attached to the said O.M. Dated 09.08.1999.



6. The applicant came across Annexure A-6 order dated 21.02.2002 whereby some his junior colleagues who did not pass Grade 'A' test had been given financial upgradation vide Sl.No.s. 11,12,13 and 14 of Annexure A-6. He had therefore sought for the said benefits at par with his colleagues. The applicant was given a reply that such a benefit would be available to her for upgraded pay scale only after acquiring higher grade in her skill granted by MAB. The applicant penned Annexure A-10 representation dated 25.08.2005 and the respondents have referred to order dated 27.09.2004 (Annexure A-9) and rejected her claim vide impugned order dated 27.01.2005 (Annexure A-8). It is against the said Annexures A-8 & A-9 orders that the applicant has preferred, this OA seeking inter-alia a relief to direct the 2nd respondent to grant financial upgradation as envisaged in Annexure A-4 and to declare that the applicant is entitled to two financial upgradations on 09.08.1999 and 20.03.2003 respectively. The applicant has claimed the following relief:

- (a) Call for the records leading to issue of Annexure A-8 rejection letter dated 27.01.2005 and Annexure A-9 Officer Memorandum dated 27.09.2004 and quash them
- (b) Direct the second respondent to grant periodical financial upgradation as envisages in Annexure A-4 Assured Career Progression Scheme to the applicant taking in to account of her service as Staff Artist from 19.08.1977.
- (c) Declare that the applicant is entitled for two financial upgradations under Advanced career Progression Scheme on 09.08.1999 and 20.03.2003.

7. Respondents have contested the OA. According to them, the applicant is not entitled to the benefit of ACP.


8. Counsel for applicant submitted that the post of Instrumentalist is an isolated post. He had taken the Tribunal through the relevant portion in the Assured Career Progression Scheme. It is also been submitted by him that the post is filled up by direct recruitment and not by promotion. Thus, according to the applicant, the post is to be treated as isolated post and the ACP benefit

should be accordingly granted to him without insisting that the applicant should qualify as Grade 'A' Artist.

9. Counsel for respondents submitted that the post even if isolated, by virtue of three upgradations being there, in a way is a promotional post. As regards other similarly situated having been granted ACP, it has been stated that in case the same is held to be inadmissible recovery shall be effected from the individuals concerned.

10. Counsel for the applicant submitted that the conditions stipulated for grant of ACP are all fulfilled by the applicant. The Recruitment Rules are specific that the posts are filled up by direct recruitment vide serial No. 7 and 8 of Annexure A-3 Rules. Thus, each of the post i.e. Staff Artist Grade B, Grade B High and Grade A are to be treated as isolated posts and consequently, benefit of ACP as given in Annexure to order dated 9th August, 1999 should be made available to the applicant, without any condition that the applicant should qualify in the MAB test for Grade A. This condition as contained in Annexure A-9 which is an executive order cannot overreach the stipulations in the statutory recruitment Rules. Again, it has been contended by the applicant that similarly situated individuals were granted the ACP benefit, while the same has been denied to the applicant and that would amount to hostile discrimination.

11. Counsel for the respondents invited our attention to para 4(g) wherein it has been stated that there is no separate set of recruitment rules for each grade. Selection for appointment to these grades is made by way of direct recruitment through circulation among approved casual artists of AIR stations in the region and appointment is made in the appropriate grade of instrumentalist corresponding to their MAB grading. Whereas it is admitted that Instrumentalists Grade IV and Grade III do not have promotional avenues, the in built scheme of financial upgradation on the basis of upgradation of skill upto Grade II, serves



the purpose of promotion and due to availability of the in built scheme of upgradation, these three categories of posts cannot be said to be isolated. As regards similarly situated individuals having been provided with ACP, the counsel invited the attention of the Tribunal to para 5D of the reply, which reads as under:-

"That the benefit of financial upgradation under the ACP Scheme was granted to some Instrumentalist of AIR who did not fulfill the eligibility criteria i.e fulfillment of the condition regarding upgradation of skill through MAB of AIR prescribed by DOPT , as mentioned in the circular dated 27.09.2004. In order to remove this anomaly, Respondent No.2 has already moved a proposal requesting DOPT through Ministry of I&B to remove/relax the condition regarding upgradation of skill through MAB of AIR for considering grant of ACP benefit to Instrumentalists of AIR failing which the Respondent No.2 may be allowed to cancel the order dated 21/22.02.2002 as far as it relates to grant of ACP benefit to the non-eligible instrumentalists. The applicant can be granted the benefit of 2nd financial upgradation of skill through MAB of AIR if the competent authority agrees to remove the condition. Otherwise action will be initiated for withdrawing the benefit already granted to the non-eligible instrumentalists. "

12. Counsel has also invited the attention to Annexure to the recruitment Rules (Annexure R-2) to hammer home the point that for appointment as Artists minimum B High Grade is required.

13. Arguments have been heard and documents perused. Initially the engagement of the applicant was only a casual artist. It was from 6th March, 1982 that the status of the applicant was recognized as Government servant, vide Annexure A-2. At that time, the applicant was holding the post of instrumentalist, which she holds even now, i.e. without any promotion. Thus the first condition that there should not be any promotion for 12/24 years to derive the benefit of ACP is fulfilled. As regards the pay scale, if the post is a promotional post, then the scale attached to the higher scale would be granted. If it is an isolated post, then the higher pay scale would be as per Annexure II to Order dated 9-8-99 (vide Annexure A-9). For promotional posts, the pre-requisite is that the individual should have fulfilled the requisite conditions for

promotion, as for example, for Grade A instrumentalists, the requirement is pass in MAB of that standard. However, if it is an isolated post, this condition is not stipulated.

14. The respondents have no doubt stated that the post is not promotional one but the upgradation facility would make the same near promotional post and from that point of view, the post is not isolated.

15. That the post is not promotional one nor does it form a feeder grade to any other post is evident from the Recruitment Rules. The term isolated post is explained in the clarification given by the DOPT and the same is as under:-

<i>Point of Doubt</i>	<i>Clarification</i>
31. What is an isolated post for the purpose of the ACP scheme?	Isolated post is a stand alone post, having neither feeder grade nor promotional grade. As such a post having no promotional grade but having a feeder grade and vice versa shall not be treated as isolated post for the purpose of ACPs.

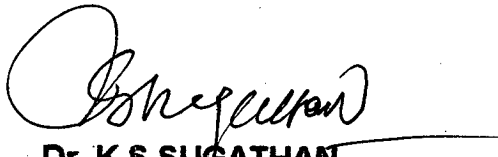
Once the post is isolated, then there cannot be any condition that could be fastened such as passing in the MAB test etc., All that is required is that the minimum number of years of completion of service should be fulfilled and there shall be no pending proceedings or no penalty should be under currency. The applicant thus fulfills the conditions for grant of ACP.

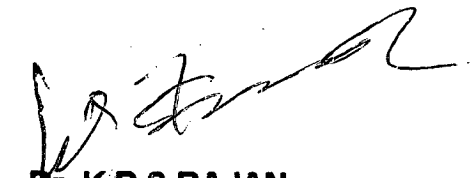
16. Respondents have stated that as regards similarly situated persons, some others have been given the benefits, but in case they are not eligible, recovery would be effected. If so, all that the applicant demands is parity and whatever is the recovery that may be ordered may be effected from the applicant too.

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17. Viewed from any angle, it is found that the applicant is entitled to the grant of ACPs. As she has the government service from 6th March, 1982, she would be entitled to grant of 1st ACP in the grade of Rs. 6,500-10,500 w.e.f. 9-8-99 and 2nd ACP from 5th March, 2006 i.e. on completion of 24 years of Government service. The OA is thus allowed. Respondents are directed to pass suitable orders for consideration of grant of ACP to the applicant as stated above. Arrears of pay and allowances shall be made available within a period of two months from the date of communication of this order. No cost.

Dated, the 27th March, 2008.


Dr. K.S.SUGATHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S.RAJAN
JUDICIAL MEMBER

vs