

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NOs. 150/2008 & 151/2008

Dated this the 24th day of July, 2009

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HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

O.A. 150/08

K.M. Narendran s/o V. Balakrishna Variar
Programme Executive, All India Radio, Manjeri
residing at Thiruvonam, Lake View Apartments,
St. Vincent Colony Road, Calicut-6

...Applicant

By Advocate Mr. P.K. Ibrahim

Vs

1 The Director General
All India Radio, Akashvani Bhavan
Parliament Street, New Delhi-1

2 The Station Director,
All India Radio, Calicut. .Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O.A. 151/2008

D. Pradeep Kumar s/o K. Damodaran
Programme Executive
All India Radio, Calicut.
Residing at Krishna Geetha
East Hill, Calicut.
By Advocate Mr. P.K. Ibrahim

..Applicant

Vs.

1 The Director General
All India Radio, Akasavani Bhavan
Parliament Street, New Delhi-1

2 The Station Director,
All India Radio, Calicut. ..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

These Applications having been heard on 15.6.2009 the
Tribunal delivered the following-

ORDER

HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

As similar facts and common question of law are involved in these two OAs, they were heard together and are being disposed of by this common order.

2 The applicants challenge the rejection of their representations for stepping up of their pay at par with their juniors.

O.A.No. 150/08

3 The applicant in OA No. 150/08 is working as Programme Executive in the All India Radio w.e.f. 26.9.1988 having been recruited directly through UPSC. As there was anomaly in the revision of pay scale consequent on the implementation of the Recommendations of the Vth Pay Commission, he submitted representation to cure the anomaly in the fixation of his pay vis-a-vis Junior Programme Executive Smt. Jhansi K.V. Kumari. The 1st respondent stepped up his pay at par with one D.P. Banerji who is junior to the applicant (Annexure A-2).

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Applicant submitted representation for fixation of pay at par with Smt. Jhansi K.V. Kumari (Annexure A-3) as no action has been taken by the respondents, the applicant sent reminder by Annexure A-5, which was also not responded to. Hence he filed O.A. 436/07, which was disposed of by Annexure A-6 order dated 03.7.2007 with a direction to the 1st respondent to dispose of Annexure A-3 and A-5 representations. Pursuant to the direction of the Tribunal the first respondent issued Annexure A-7 order dated 13.12.2007 rejecting the representations. Hence this Application to quash Annexure A-7 order and for a declaration that the applicant is entitled to get his pay anomaly cured with reference to his juniors Smt. Jhansi K.V. Kumari, Mr. S. Ramanuja Charyulu and K.F.J. Vidyalankar and to fix the basic pay of the applicant at Rs. 9250/- as on 1.1.1996, and pay arrears with 15% interest.

4 The main grounds raised by the applicant are (i) consequent on the implementation of the Vth Pay Commission, the pay of the applicant was fixed at Rs. 7500/- and the pay of Smt. Jhansi K.V. Kumari who is junior to the applicant was fixed at Rs. 7100/- However, on upgradation of the pay, the pay of Smt. Jhansi K.V. Kumari was fixed at Rs. 9250/- w.e.f. 01.01.96 vide order dated 25.2.1999 but the pay of the applicant was fixed at Rs. 9000/- as on 01.01.96; (ii) The second ground is that the pay of Smt. Indira who was junior to the applicant was also stepped up on par with Smt. Jhansi K.V. Kumari to Rs. 9250/- ; and (iii) The request of the applicant to step up his pay on par with his junior Smt. Jhansi K.V. Kumari was not considered.

5 The respondents have opposed the O.A. by filing reply statement. They submitted that the Smt. Jhansi K.V. Kumari had been

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drawing more pay than the applicant by virtue of her joining as TREX on 1982 whereas the applicant joined PEX only on 26.9.1988. The claim of the applicant for stepping up of pay at par with his junior has already been considered and his pay was stepped up with juniors and that the benefit of stepping up of pay should be allowed only once with reference to the pay of the first junior and that it could be allowed for second time provided the anomaly has arisen with reference to whom the pay of the senior was stepped up in the first instance.

O.A. 151/2008

6 The applicant in OA 151/08 a Programme Executive in All India Radio recruited through UPSC joined service w.e.f. 8.5.1992. In response to 1st respondents order dated 20.8.2004, the applicant submitted representation for curing pay anomaly vis-a-vis, Shri M. Rajeev Kumar promotee Programme Executive who was promoted on 29.10.1997 (A1). However, his pay was refixed at par with K. Dakshinamurthy at Rs. 8500/- whereas Shri M. Rajeev Kumar is drawing basic pay of Rs. 9000/-. The applicant submitted another representation pointing out that one Shri T.T. Prabhakaran another Direct Recruit Programme Executive was granted stepping up of pay at par with Shri S. Gopal who was a promotee Programme Executive. Hence he filed this O.A. challenging Annexure A-6 order on similar grounds as in O.A. 150/2008, the name of juniors being the only difference.

7 The respondents have filed reply statement more or less on the same lines as the reply in O.A. 150/2008, stating that Shri Rajeev

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Kumar had been drawing more pay than the applicant in the pay scale of Rs. 2000-3500 and that the applicant's pay having been stepped up once stepping up will be allowed for second time, only if the anomaly has arisen with reference to whom the pay of the senior was stepped for the first time.

8 The applicant filed rejoinder alongwith Annexure A-7 information on the pay drawn by S/Shri Rajeev Kumar, Smt. Jhansi K.V. Kumari, D. Pradeep Kumar and K.M. Narendran obtained under the Right to Information Act. According to the applicant, out of the names of three employees, namely, Smt. Jhansi KV Kumari, S Ramanuja Charyulu and KFJ Vidyalankar, who entered as Programme Executive on 22.6.91, 22.7.91 and 28.6.91 respectively as against the date of 26.8.88 of the applicant in OA No.150/08. They were drawing the basic pay of Rs.9,250/- whereas the applicant's basic pay was fixed at Rs.9000/- only.

9 We have heard learned counsels for the parties and perused the records carefully.

10 For convenience, we are discussing O.A. 150/2008. The applicant seeks stepping up of his pay at par with his juniors Smt. Jhansi K.V. Kumari, S. Ramanuja Charyulu and K.F.J. Vidyalankar. The applicant entered service as Programme Executive on 25.9.1988, in the scale of pay of Rs. 2000-3500. Smt. Jhansi K.V. Kumari entered service as TREX on 1.10.1974 and promoted to the post of Programme Executive on 22.6.1991. On promotion her pay was fixed at Rs. 7100/- (as per Vth Pay Commission) and later at Rs. 9250/- as per the pay

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upgradation vide order dated 25.2.1999. While the pay of the applicant on implementation of the Vth Pay Commission scales was fixed at 8000/-, it was later stepped up at par with that of his junior Shri D.P. Banerjee at Rs. 9000/-. The grievance of the applicant is that Smt. K.R. Indira, a directly recruited Programme Executive like the applicant and junior to him is drawing a pay of Rs. 9250/- whereas he is drawing only Rs. 9000/-.

11 From Annexure A-4(3) it is seen that Smt. K.R. Indira, who admittedly joined the post of Programme Executive later than the applicant and who was drawing the pay of Rs. 8,000/- as the applicant on implementation of the Vth Pay Commission was granted a higher pay of Rs. 9250/- whereas the applicant was granted only Rs. 9,000/- Having heard the counsel on either side and after perusal of the documents we are of the view that the applicant is entitled to stepping up of pay at par with his junior in the Direct Recruit Programme Executive cadre.

12 Stepping up of pay of a senior for removal of anomaly arises only when on promotion he happens to be drawing less pay than his junior. To get the pay fixed, the following conditions are to be satisfied under FR 22:

Instruction (22): Removal of anomaly by stepping up of a senior on promotion drawing less pay than his junior-(a) As a result of application of FR 22-(I)(a)(1)- In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 12.4.1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided

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that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

13 We find that, in view of O.A. filed by Shri Pramod Mehta and others to remove the pay anomaly between DR and DP PEXs if any, the Department issued Annexure A-1 circular No. 6(13)99-SI(B)/Vol.II dated 20.8.2004 to all Heads of AIR Stations, DDK asking Direct Recruit Programme Executives to make representation for removal of pay anomaly vis-a-vis their Junior Promotee Programme Executives identified by them on the basis of the enclosed statement. According to us, Direct Recruit and Junior Promotee Programme Executives form different cadres. The Promotee PEXs might have been drawing a different pay scale in the feeder category and by virtue of their drawing higher pay in the feeder category, on promotion to the post of Programme Executive they might draw higher pay under FR 22 pay fixation. Therefore, the pay of a Promotee Programme Executive may

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be lower or higher than the pay of a DR. However, representations from Direct Recruit Programme Executives for the alleged anomaly in the pay, vis-a-vis, the promotees on the basis of an OA filed by Shri Pramod Mehta and others were called for by the Department. The order in that O.A. was not produced before us.

14 In the representation dated 28.9.2004 which was submitted with reference to DG Circular dated 20.8.04, the applicant requested for stepping up of pay with Smt. Jhansy K.V. Kumari, SI No. 45 S. Ramanuja Charyulu at Serial No.46 and and K.F.J. Vidyalankar at SI. No. 126. From Annexure A-2 it is seen that the pay of the applicant was stepped up at par with that of his junior Shri D.P. Banerjee at Rs. 9000/- w.e.f. 1.1.1996, when there was no such request from the applicant.

15 The issue which comes up for consideration before us is stepping up of pay of applicants who are Direct Recruit Programme Executives at par with their junior promotee Programme Executives on the basis of the orders at Annexure A-1. The combined seniority list of Programme Executives (Direct Recruit Programme Executives and Promotee Programme Executives) is not produced and, therefore, we are not in a position to ascertain the seniority position of the applicants vis-a-vis their juniors. The respondents should have produced a consolidated statement showing the details of date of joining, the pay etc. of Direct Recruit Programme Executives as has been done and circulated by them in Annexure A-1 in the case of Promotee Programme Executives.

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16 We notice that as per GI Department of Personnel & Training OM NO. 5/1/95-CS-I dated 31st July, 1995 (Govt. of India Orders No. 25) there is a decision for stepping up of pay of directly recruited Section Officers recruited through Civil Services Examination to the level of pay of their junior departmental Section Officers in cases where a senior direct recruit Section Officer is drawing less pay than a promotee Section Officer who is appointed from the same or later date by virtue of the pay of the promotee Section Officer having been fixed at the guaranteed minimum by granting two increments. Similar stepping up of the pay of seniors is possible provided there is a Government of India order. However, in view of the decision taken by the Department to remove the pay anomaly between DR and Promotee PEXs, the combined seniority list of DR and Promotee PEXs is necessary for stepping up of pay of seniors vis-a-vis juniors. In this view of the matter we are of the view that the interest of justice will be met if we dispose of the O.As. with the following direction/declaration:

- (i) The respondents are directed to publish the combined seniority list of Programme Executives (direct recruits vis-a-vis promotees) as on 1.1.1996.
- (ii) Fix the pay of Direct Recruit Programme Executives like the applicant in O.A. 150/08 at par with his juniors like Mrs. K.R. Indira and the applicant in O.A. 151/08 at par with his juniors like Mr. M. Rajeev Kumar. While doing so, it should be ensured that the senior DR shall not draw pay less than the junior in the DR.

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17 The above directions shall be implemented within four months from the date of receipt of this order and the arrears, if any, paid. No costs.

Dated 24th July, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


K.B.S. RAJAN
JUDICIAL MEMBER

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