

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.230/97

Friday this, the 12th day of September, 1997.

CORAM:

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

HON'BLE SHRI S.K.GHOSAL, ADMINISTRATIVE MEMBER

S.R.Raju,
Instrumentalist Grade-I (Retired),
All India Radio,
'Lekshmi',
Thycaud,
Thiruvananthapuram -695 014.

..Applicant

(By Advocate Mr. M.C.Madhavan & Mr.Unnikrishnan)

vs..

1. The Director General, All India Radio,
Government of India, New Delhi.
2. The Pay and Accounts Officer, Ministry
of Information and Broadcasting,
All India Radio,
Madras -600 004.
3. The Station Director,
Government of India,
All India Radio,
Thiruvananthapuram.
4. Union of India represented by Secretary
to the Government, Ministry of Information
and Broadcasting, New Delhi. ..Respondents

(By Advocate Mr.Devy for Mr Mathew J.Nedumpara)

The Application having been heard on 3.9.1997, the Tribunal
on 12.9.97 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant who retired from service on 28.2.1993
is aggrieved by the action of the respondents in denying
him the monetary benefits of retrospective promotion granted
to him with effect from 19.12.1988 as also the revision of
pension consequent on such promotion and fixation of higher
pay. The facts in brief are as follows:

2. The applicant commenced his career as Caretaker of Musical Instruments in the All India Radio, Thiruvananthapuram on 1.3.1963. In March 1974 he was promoted as a regular Mridangist B Higher Grade and in 1976 he was selected as a 'A' Grade Mrindangist by the Music Audition Board. He was later promoted as Instrumentalist Grade II, his promotion as Instrumentalist Grade I was unduly delayed for no reason attributable to him. Long after his superannuation on 28.2.1993 he was along with 90 others by order dated 21.7.1995 (Annexure-A1) promoted as Instrumentalist Grade I with effect from 19.12.1988. The applicant was No.3 in the list attached to the order. In the Annexure-A1 order, there was a note which reads as follows:

" No financial benefit on account of arrears of pay and allowance is admissible to the persons shown against serial No.1 to 51. However their pay/fee may be fixed from the date shown against their names.

Sl.No.1 to 51 in the list attached to Annexure-A1 order were promoted as Instrumentalist Grade-I with effect from 19.12.88. Consequent on the Annexure -A1 order, the 3rd respondent by order dated 2.8.1995(Annexure A2) promoted the applicant alongwith two others as Instrumentalist Grade I. The pay of the applicant was fixed by order dated 11.8.95 issued by the third respondent at Rs. 3100/- with effect from 19.12.88 in the scale of Rs.3000-4500 and at Rs.3500/- with effect from 1.12.92(Annexure -A5). However, prior to this date on 28.2.93, the applicant had retired from service. Though the applicant was promoted with retrospective effect and his pay fixed, the benefits arising from such promotion

and fixation of pay was not given to him. Even his pension was not revised. Therefore, the applicant made a detailed representation on 26.4.96 to the first respondent. But there was no response. He went on making repeated representations, but could not get any favourable response. By the order dated 8.12.95 of the second respondent issued to the third respondent, it was clarified that as the applicant had retired on 28.2.93, he would not get any arrears and that his pension also would not be revised in view of the provisions contained in Note-1 of Rule 33 of CCS Pension Rules(Annexure A3). The applicant received an order dated 29.12.95 of the third respondent(A4)informing him that he was not entitled to any arrears of pay and allowances or even for revision of pension. The applicant has stated that his promotion as Instrumentalist Grade I was unduly delayed for no reason attributable to him, that there was no change in the duties and responsibilities of Instrumentalist Grade II and Instrumentalist Grade I and that there was absolutely no justification in denying him the arrears of pay and allowances as also revision of pension. Since repeated representations made by him have not been considered by the respondents, the applicant claims that he is entitled to get the arrears of pay and allowances as also revised of pension with interest at 18% per annum till the date of payment. Therefore, the applicant has filed this application under Section 19 of the Administrative Tribunals Act for a declaration that the orders at Annexures -A1,A2 , A3 and A4 are illegal, unreasonable and arbitrary to the extent to which the applicant is denied the monetary benefits flowing out of his promotion as Instrumentalist Grade I with effect from

19.12.1988 and for a direction to the respondents to pay the applicant the arrears of pay and pension with interest at 18% per annum.

3. The case of the respondents is that the promotion of the applicant was delayed not on account of any administrative lapse, but because a Special Leave Petition was pending before the Apex Court, on the question whether the Staff Artists hold civil posts or not and that when the matter became clear on the recommendation of the review Departmental Promotion Committee, the applicant has been promoted with retrospective effect from 19.12.88. Though the applicant has been promoted with effect from 19.12.88 as Instrumentalist Grade I, in accordance with the provisions contained in Note-1 of Rule 33 of the CCS Pension Rules, the applicant was not entitled to get the benefits of arrears of pay and allowances as the applicant had already retired from service before the order of promotion was issued. The case of the applicant that he has been discriminated against, is refuted in the reply statement. The delay in promotion being bonafide and for justifiable reasons, the applicant has to gracefully suffer the loss and he is not entitled to claim the arrears of pay and allowances and the interest thereof, contend the respondents. As the promotion as Instrumentalist Grade I is not automatic, but only on completion of a tenure of 8 years as Instrumentalist Grade II and attaining excellence in the performance, the applicant is not entitled to the arrears of pay and allowances, though he has been promoted with retrospective effect, contend the respondents. However, the respondents have indicated in the reply that the pension of the applicant has been decided to be revised by orders dated 9th May, 1997 on the notional pay with effect from 19.12.88, but making it clear that no arrears of pay and allowances or on account of

revision of pension upto 20.7.95 would be given to him. A copy of this order of the Director General of All India Radio has been appended to the reply statement as Annexure R-1.

4. The applicant in the rejoinder has reiterated his case put forth in the Original Application and has contended that the non-promotion of the applicant was not for any justifiable reason and that he had made representations even prior to his retirement claiming the promotion. The contention in the reply statement that Note-1 under Rule 33 of the CCS (Pension) Rules stands in the way of monetary benefit being given to the applicant, according to him, is meaningless and unsustainable.

5. As the pleadings in this case are complete, the issue involved is simple and as the counsel on either side agreed, the matter was heard for a final disposal on 3.9.97.

6. Though the applicant alongwith 91 others were promoted as Instrumentalist Grade I in the scale of Rs.3000-4500 with effect from 19.12.88, the Note below the list of officials promoted stipulated that arrears of pay and allowances would not be admissible to serial No.1 to 51. though it was made clear that their pay would be fixed from the date shown against their names. No reason is given as to why the pay and allowances were denied to them. In the reply statement, the respondents contend that the reason was that serial No.1 to 51 including the applicant had either retired or ceased to be in service. We do not find any justification for the decision contained in Annexure -A3 of the Pay and Accounts Officer, that the applicant who retired on 28.2.93, would not be entitled to any arrears and there would not be any revision of his pension also in view of Note-

1 of Rule 33 of CCS Pension Rules. Note-1 of Rule 33 of CCS Pension Rules reads as follows:

" If a Government servant immediately before his retirement or death while in service had been absent from duty on leave for which leave salary is payable or having been suspended had been reinstated without forfeiture of service, the emoluments which he would have drawn had he not been absent from duty or suspended shall be the emoluments for the purposes of this rule:

Provided that any increase in pay (other than the increment referred to in Note 4) which is not actually drawn shall not form part of his emoluments."

7. We are at a loss to understand how this provision would stand in the way of the monetary benefit of the promotion being granted to the applicant or his pension being revised on the basis of the refixed pay on promotion. The stand taken by the respondents that this provision of the CCS Pension Rules does not entitle the applicant for the arrears of pay and allowances and revision of pension on account of retrospective promotion and refixation of pay is totally baseless and untenable.

8. The only ground on which the respondents can possibly resist the claim of the applicant for arrears of pay is that the applicant has not shouldered higher responsibilities of the post on account of his retirement before he was promoted. If the post of Instrumentalist Grade I involved higher duties and responsibilities and if the promotion was not delayed owing to administrative lapses in the case of the applicant, this contention is not available to the respondents because

the promotion as Instrumentalist Grade I is only a grade promotion involving no higher duties and responsibilities, but merely basing on length of service in the lower grade of 8 years and attaining excellence in the performance as an Instrumentalist. The respondents themselves have decided that the applicant was eligible to be promoted as Instrumentalist Grade I with effect from 19.12.88, that itself is evidence of the fact that the applicant had not only completed 8 years of service in the grade of Instrumentalist Grade II but had also attained higher efficiency in performance even on 19.12.88. The quality of performance of an Artist does not depend upon the grade of pay he gets, but on the level of his proficiency. A performing Artist like the applicant while performing, get completely involved in the performance, whether he is given a higher pay or lower pay. Therefore, it is meaningless to contend that the applicant did not perform the duties of Instrumentalist Grade I because he was not actually promoted in the year 1988 itself. There is absolutely no justification, therefore, in denying to the applicant arrears of pay and allowances consequent on his retrospective promotion. Though the respondents have contended that there is a Special Leave Petition pending before the Supreme Court, there is no case for the respondents that there was any stay in promoting the officials who were otherwise eligible for being promoted in the year 1988 itself. The non-promotion of the applicant at the relevant time was not on account of any reason attributable to the applicant, but

apparently on account of inaction on the part of the respondents. The action of the respondents in denying to the applicant the arrears of pay and allowances as also the revision of pension is, totally unjust and obstinate unsustainable. The stand taken by the respondents even after filing this Orginal Application is reflected in Annexure R-1 wherein it was held that the applicant may not be allowed any arrears on account of revision of pension even upto 20.7.1995, while there cannot be any justification for taking such a stand.

9. In the light of what is stated above, we are of the considered view that the respondents should have immediately on fixation of pay of the applicant by Annexure-A5 order made available to him the arrears of pay and allowances and the arrears of revised pension. The payment should have been made at least with effect from a date two months after the fixation of pay by order dated 11.8.95. The inaction on the part of the respondents in doing so resulted in pecuniary loss to the applicant and has also driven him to the painful task of filing this application, finding no response to his repeated representation. We, therefore find that the respondents should be made liable to pay interest on the arrears of pay and allowances and on revised pension with effect from a date two months after 11.8.95.

10. In the result, we declare that the stipulation in Annexures A1, A2 , A3 and A4 orders denying monetary benefits to the applicant is unreasonable and

unsustainable in law and that the applicant is entitled to get arrears of pay and allowances in the post of Instrumentalist Grade I with effect from 19.12.88 till the date of his retirement, i.e. 28.2.93 and arrears of revised pension on the basis of refixation of pay with effect from the date of his retirement. The respondents are directed to pay to the applicant the arrears of pay and allowances on account of his retrospective promotion with effect from 19.12.88 at the rate as shown in order dated 11.8.95(Annexure-A5), to revise the pension of the applicant accordingly and to make available to him the arrears of pension from the date of his retirement within a period of three months from the date of receipt of a copy of this order with interest at 12% per annum on the arrears of pay and pension with effect from 11.10.1995 till the date of payment. There will be no order as to costs.

Dated the 12th September, 1997.


S.K.GHOSAL
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A1: True copy of Office Order No.8/6/92-SVIII/1312 dated 21.7.1995 issued by the first respondent, the Director General, All India Radio, Government of India, New Delhi.
2. Annexure A2: True copy of Order No.TVM-19(3)95-S dated 2.8.1995 issued by the third respondent, the Station Director, Government of India, All India Radio, Thiruvananthapuram.
3. Annexure A3: True copy of letter No.PAD/AIR/MS/PerV/95-96/504 dated 8.12.1995 issued by the Senior Accounts Officer, Pay and Accounts Office, Ministry of Information and Broadcasting, All India Radio, Thiruvananthapuram.
4. Annexure A4: True copy of letter No.TVM: 19(3)95-S(SR) dated 29.12.1995 issued by the Administrative Officer for Station Director, Government of India, All India Radio, Thiruvananthapuram.
5. Annexure A5: True copy of Order No.TVM-19(3)95-S/2532 dated 11.8.1995 issued by the 3rd respondent, the Station Director, Government of India, All India Radio, Thiruvananthapuram.
6. Annexure R-1: True copy of the Order No.PFB/731/74-SVIII/692 dated 9.5.1997 of the 1st respondent.

.....

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P(C) No.24/98 in O.A.230/97

Thursday this the 23rd day of July, 1998.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

S.R.Raju, Instrumentalist Gr.I(retd)
All India Radio, residing at
Lakshmi, Thycaud, Thiruvananthapuram.14.Petitioner

(By Advocate Mr. N.Unnikrishnan)

Vs.

1. Dr.O.P.Kejariwal aged about 55 years,
Director General, All India Radio,
Akashwani Bhavan, Parliament Street,
New Delhi.110001.
2. Shri K.Chandrasekharan,
Pay & Accounts Officer,
All India Radio, Mylapore,
Madras.4.
3. Shri N.S.Issac, aged 52 years,
Station Director,
All India Radio, Govt. of India,
Thiruvananthapuram.
4. Shri C.R.Kamalanathan, IAS
Secretary, Ministry of Information and
Broadcasting, Sashtri Bhavan,
New Delhi.1.Respondents

(By Advocate Mr. Mathews J Nedumpara)

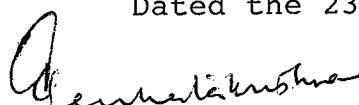
The petition having been heard on 23.7.98, the Tribunal
on the same day delivered the following:

O R D E R

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

When the petition came up for hearing today,
learned counsel on either side submit that the operation
of the orders in O.A.230/97 has been stayed by the
Hon'ble High Court of Kerala. Hence, the Contempt
Petition (Civil) is closed. No costs.

Dated the 23rd day of July, 1998.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN