

ORDER**By Hon'ble Mr. P.K. Basu**

The applicant was appointed as Exhibition Assistant and joined the post on 01.12.1976 in Directorate of Advertising and Visual Publicity (DAVP). He was promoted to officiate as Field Exhibition Officer on ad hoc basis w.e.f. 13.02.1985, which was a promotional post for Exhibition Assistant. Subsequently, the post of Exhibition Assistants, Field Exhibition Officers and Inspectors of Exhibition were merged into the existing Grade IV, Grade III and Grade II, respectively, of Indian Information Service (IIS) (then Central Information Service)(CIS) w.e.f. 28.11.1986 and the incumbents were placed en-bloc junior to those officers who were already holding the posts in the respective grades of IIS.

2. Due to the above merger, a number of officials including the applicant, who were holding the post of Field Exhibition Officer on ad hoc basis, were reverted to the post of Exhibition Officer vide order dated 28.02.1989. This was challenged by the applicant and others in O.A. No.537/1989. The Tribunal stayed the operation of order dated 28.02.1989 vide order dated 16.03.1989. During the pendency of O.A. No.537/1989, the applicant was promoted alongwith other officials to the post of Filed Exhibition Officer on

regular basis w.e.f. 21.01.1993. O.A. No.537/1989 was dismissed on merits on 18.01.1995.

3. One Shri Data Ram, who was put under suspension for the period from 26.04.1991 to 25.02.2002 for being tried on a criminal charge but later on exonerated, was also granted promotion to the post of Field Exhibition Officer retrospectively w.e.f. 21.01.1993 i.e. the date when the applicant was promoted. Subsequent to his promotion, the said Shri Data Ram filed an O.A. No.2480/2006 and challenged that his pay has been fixed at a lower stage than his junior, i.e. the applicant. Shri Data Ram in O.A. No.2480/2006 also impleaded the applicant as respondent but he did not file any reply in the matter. The Tribunal vide order dated 18.12.2007 disposed of the O.A. and directed the respondents to affect necessary recoveries from the salary of the applicant as per reply filed by the respondents. As per the aforesaid direction of the Tribunal, the pay of the applicant was re-fixed vide order dated 16.10.2009 and recoveries were affected accordingly.

4. The applicant made a representation against the aforesaid order dated 16.10.2009 and brought the matter regarding earlier O.A. No.537/1989 filed by him and stay granted therein but being very old matter, the file could not be located in the office of the respondents. Therefore, pay protection was allowed to the applicant as his ad hoc promotion was followed by regular promotion and,

accordingly, the recovery from his pay was stopped. O.A. No. 2480/2006 was finally disposed of vide order dated 27.09.2012 with a direction to either grant stepping up of pay to Shri Data Ram vis-à-vis Shri Bhola Nath Sharma (applicant herein) and, if not, then pass a reasoned and speaking order.

5. The respondents filed MA seeking modification of the earlier judgment dated 27.09.2012 passed by the Hon'ble Tribunal in OA No.2480/2006 which was dismissed on technical grounds. Thereafter, a review petition was filed seeking review of aforesaid judgment dated 27.09.2012 passed by the Tribunal in O.A. No.2480/2006 on the ground that Shri Data Ram is not entitled to stepping up as higher pay drawn by the applicant was due to longer period of ad hoc officiation on the post of Field Exhibition Officer in pursuance of stay order dated 16.03.1989 passed in O.A. No.537/1989. Thereafter, the matter was further reconsidered in consultation with DoPT and the DoPT advised that the applicant is not entitled to protection of pay for the period of ad hoc appointment as it was not as per rules and as such Shri Data Ram is also not entitled to stepping up of pay vis-à-vis Shri B.N. Sharma, the applicant herein. It was, therefore, decided to withdraw the review petition and implement the earlier order dated 16.10.2009. The respondents issued order dated 11.09.2012 for effecting recoveries in terms of earlier orders.

6. The present O.A. is fall out of the earlier O.A. No.2480/2006 filed by Shri Data Ram, Ex-Field Exhibition Officer, DAVP for stepping up of pay vis-à-vis the applicant herein. In the aforementioned O.A., the respondents in consultation with the DoPT, which is the nodal department for pay related issues, had taken a stand that the pay of the applicant was not fixed correctly in 1993 and that his pay will be re-fixed and recoveries will be effected from him and Shri Data Ram is, therefore, not entitled for stepping up of pay. Accordingly, it has been decided to re-fix the pay of the applicant and effect recoveries from his salary.

7. The applicant being aggrieved by the order dated 11.09.2012 has filed this O.A. seeking the following relief(s):

- “1. That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to withdraw all the orders issued to PAO, IRLA to refix the pay of the applicant and affect recoveries and to restore the pay of the applicant drawn by him prior to the refixation order issued by the PAO, IRLA at the behest of the respondent and refund the entire amount recovered from him on this account.
2. That the Hon’ble Tribunal may also graciously pass an order directing the respondents to refix the seniority of the applicant in accordance with the directions of the Hon’ble High Court of Madras in the Petition No.3620/1998 of Mr. Md. Meeran Pillai v/s Union of India and others.
3. Any other relief which the Hon’ble Tribunal deems fit and proper may also be granted to the applicant.”

8. The grounds cited by the applicant are as follows:

- (i) that 22 similarly placed incumbents who continued to officiate against Grade-III post after the issue of stay order against their reversion order by the Tribunal and subsequently regularised and enjoyed pay protection and only applicant has been singled out for re-fixation of his pay and recoveries made whereas none other than the applicant has been touched even and allowed to superannuate on higher pay;
- (ii) because a number of juniors of the applicant in the seniority list of 1984 still continue to draw higher pay;
- (iii) because the applicant is entitled to fixation of his seniority in Grade-IV of IIS from the date of his appointment as Exhibition Assistant w.e.f. 01.12.1976 and not from the date of induction of the post as has been ordered by the Hon'ble High Court of Madras in Writ Petition No.3620/1998 filed by Shri Mohd. Meeran Pillai v/s Union of India, a similarly placed person;
- (iv) because the Hon'ble Supreme Court of India also endorsed the above judgment while rejecting SLP dated 10.08.2001 and review SLP dated 16.10.2001 filed by the respondent challenging the judgment of the Hon'ble High Court of Madras in Writ Petition No.3620/1998; and

(v) because Ministry of Law, Justice and Company Affairs, Department of Legal Affairs vide their note (Dy. No.33850/2001) also advised the respondents that benefits extended to Mohd. Meeran Pillai consequent upon the implementation of the court's order should also be extended to other similarly situated employees as according to them the same has been ordered by the Apex Court in Para No.5 of the judgment in **Inderpal Yadav and other v/s Union of India and others**, reported in 1985 (2) SLP 248 SC. It further says that the Hon'ble Court has held that in some matter when few employees approached the court and got relief but some employees failed to knock the door of justice, such employees who could not come to the court need not to be at comparative disadvantage to those who rushed to the court. Those who could not come to the court are also entitled to equal treatment, if they are similarly situated. Again in **Vinod Kumar and others v/s State of Punjab and others**, reported in 1987 (1) SLR 256 in para 6, the Hon'ble High Court of Punjab and Haryana held that those who could not approach the court should not be deprived of what is due to them according to law.

9. The applicant's main claim seems to rest on the case of Mohd. Meeran Pillai. He has also filed the order dated 29.07.2009 passed by Madras Bench of this Tribunal in O.A. No.596/2007 has been filed alongwith his rejoinder dated 31.03.2015, which only has a

direction to the respondents to pass a fresh order taking into account the service rendered by Shri K.K. Nayagam, the applicant therein, as Exhibition Assistant in DAVP from 5.8.1976 to 21.11.1986.

10. The applicant has also filed judgment of the Hon'ble High Court of Madras dated 10.04.2001 in Writ Petition No.3620/1998 in the case of Mohd. Meeran Pillai. The matter basically relates to fixation of seniority in the inducted cadre of IIS (then CIS) by taking into account the service rendered prior to induction. The Writ Petition was allowed and the Hon'ble High Court of Madras decided that the right of petitioner therein to count his service from the date of his regular appointment in the post of Exhibition Assistant in DAVP for fixation of his seniority has got to be taken into consideration while computing his seniority in the IIS cadre. It is further clarified that the said period could be reckoned only for the purpose of seniority and pensionary benefits and he is not entitled to any back wages on the principle of "No Work – No Pay". The applicant, therefore, claimed that as his matter is similar to that of Mohd. Meeran Pillai, therefore, he should also get the similar benefit and his prayer allowed.

11. Per contra, the case of the respondents is that the matter so far it relates to the applicant has already been settled by this

Tribunal in O.A. No.537/1989 vide order dated 18.01.1995. In that O.A., the applicant in the present O.A. viz. Shri Bhola Nath Sharma, was also one of the applicants. The issue raised was that the seniority in the Grade IV had been wrongly fixed w.e.f. 20.11.1986 and that they continued to work on ad hoc basis as Exhibition Assistant in Grade III. The respondents had reverted them to Grade IV. They were also aggrieved by their juniors having been promoted to higher scale. That O.A. was dismissed by the Tribunal and the applicant has not filed any appeal in the matter and, therefore, is deemed to have accepted the decision.

12. We are of the opinion that the fact that the matter was decided against the applicant in O.A. No.537/1989 and that no appeal was filed by him in that case would not come in the way of the applicant getting benefit of the order of High Court of Madras in Writ Petition No.3620/1998 if the High Court's order is in his favour. The Hon'ble High Court went by the law settled on the question of the right of a petitioner to count his service for performance of duty in the transferred department that his seniority in the parent department should be counted and that any rule/regulation or executive instruction, which has the effect of taking away the service rendered by a deputationist in the equivalent cadre in the parent department by counting his service in the deputation post, would be violative of Articles 14 and 16 of the Constitution. In fact,

in their counter reply, the respondents have not replied to the ground of applicability of the judgment of High Court of Madras in Mohd. Meeran Pillai's case. Rather it has been said that in case the applicant intends to claim parity with Mohd. Meeran Pillai, he may make a detailed representation before the appropriate authority in Ministry of Information and Broadcasting clearly bringing out the facts/arguments on the basis of which he is claiming such parity to enable the authority to take a view in the matter.

13. In reply to Ground 'd' of the applicant in which he has stated that a number of his juniors in the seniority list of 1984 are still drawing higher pay, there is no specific contradiction by the respondents in their reply. They have only stated that in case any junior is drawing more pay than the applicant for reasons other than those under consideration, the applicant needs to make a suitable representation before an appropriate authority. We are not persuaded by the reply of the respondents. There should have been a categorical decision taken by the respondents on the issue whether the ratio laid down by the Hon'ble High Court of Madras in Mohd. Meeran Pillai's case applies to the case of the applicant or not. The respondents have rather evaded this issue. Even during the arguments, no light has been thrown by the learned counsel for the respondents on this aspect.

14. However, we have gone through the order of the Hon'ble High Court of Madras dated 10.04.2001 and are of the opinion that ratio of that decision would clearly apply in the case of the applicant as well. We have explained the ratio in some detail above and in the light of that order, the reversion and refixation of pay done by the respondents in the case of the applicant and the order dated 11.09.2012 cannot sustain.

15. The O.A. is, therefore, allowed and the respondents are directed to withdraw all the orders issued to refix the pay of the applicant and affecting recoveries and to restore the pay of the applicant drawn by him prior to re-fixation order. It is needless to say that the amount recovered should be refunded to the applicant. The seniority of the applicant would also be fixed in accordance with the ratio laid down by the Hon'ble High Court of Madras in its judgment dated 10.04.2001 in Writ Petition (C) No.3620/1998. The timeframe for compliance of above directions is fixed at three months from the date of receipt of a copy of this order. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/Jyoti/