

**Central Administrative Tribunal
Principal Bench**

MA No.2610/2016
MA No. 2388/2014
CP No. 0452/2012
OA No.2324/2004

Order Reserved on : 20.03.2017

Pronounced on: 24.03.3017

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Song and Drama Division Employees
Association & Ors. through General Secretary,
Jagarnath Singh, Serving as Senior Instrumentalists,
S/o Shri Uma Shankar Singh,
R/o 154, Devli Village, New Delhi-110062.
2. Narayan Telang S/o Shri Ram Chandra Telang,
R/o House No.7, Madangiri Village, New Delhi-110062.
3. Prasanjit Mitra S/o Shri Laxmi Narayan
R/o F-136, Laxmi Nagar,
New Delhi.

-Applicants

(By Advocate Shri Raja Chatterjee, Ms. Runa Bhuyan, Shri Piyush Sachdev and Ms. Mariya Mumtaz Hashmi)

-Versus-

Union of India & Ors. through,

1. Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi.
2. The Secretary,
Ministry of Finance,
(Deptt. of Expenditure)
North Block,
New Delhi.

3. Director,
 Song & Dram Division,
 (Ministry of I&B),
 Soochna Bhawan, CGO Complex,
 Lodhi Road,
 New Delhi.

-Respondents

(By Advocate Shri B.K. Berera)

ORDER

Mr. K.N. Shrivastava, Member (A):

Applicant No.1 is Song and Drama Division (SD&D) Employees' Association whereas applicants No. 2 & 3 are its members. The SD&D comes under the administrative control of Ministry of Information & Broadcasting (I&B), Govt. of India (R-1).

2. These applicants came before this Tribunal in OA No.2324/2004, which was disposed of on 07.07.2006. The brief facts of the case in the OA, as extracted from the order dated 07.07.2006, were as under:-

“By virtue of this OA Song and Drama Division Employees Association, which is consisted of Instrumentalists, seek quashing of order dated 15.6.2005, whereby junior and senior Instrumentalists have been merged into one cadre and also a direction to respondents to create promotional avenues w.e.f. 1.1.1996.

2. The V Central Pay Commission in its recommendation contained in paragraph 73.85 though recommended promotional avenues in the cadre of Instrumentalists by recommending 4-tier structure, the cadre review committee when constituted in its recommendation as to the Instrumentalists firstly recommended merger of junior and senior Instrumentalists and secondly for want of promotional avenues 4-tier time bound structure for promotion to remove stagnation. The respondents vide their

letter dated 15.6.2005 though merged junior and senior Instrumentalists but had not considered the recommendation of the V Central Pay Commission and of cadre review committee.”

3. The Tribunal vide order dated 07.07.2006 disposed of the said OA by issuing the following directions:-

“Though merger of junior and seniors Instrumentalists into one cadre cannot be found fault with, as the same was in accordance with the recommendation of the V CPC and cadre review committee but the second part of recommendation of the cadre review committee regarding the fact that this cadre of Instrumentalists after merger has no promotional avenue and also the recommendation of the V CPC regarding 4-tier structure have not at all been considered.

8. In the result, for the foregoing reasons, OA is disposed of with a direction to the respondents to re-consider this aspect of this matter by considering the recommendation of the V CPC regarding promotional avenues of applicants, which would be in consonance with the cadre review committees recommendation as well. Thereupon, if respondents decide to implement the avenues of promotion, applicants shall also be entitled to all consequential benefits. The aforesaid directions shall be complied with within a period of six months from the date of receipt of a copy of this order. ”

4. As the order dated 07.07.2006 of the Tribunal was not being implemented by the respondents, the applicants first filed CP No.154/2007 which was dismissed vide order dated 12.09.2007 observing therein that the respondents have taken appropriate steps to implement the order.

5. The respondents challenged the order dated 07.07.2006 in W.P. (C) No. 815/2008 before the Hon’ble High Court of Delhi which

was dismissed vide order dated 21.10.2008. Consequently the respondents were obliged to implement the Tribunal's order dated 07.07.2006. Since the order was not getting implemented, the applicants filed CP No.452/2012. During the pendency of the *ibid* CP, another development had taken place. Applicant No.1 had filed OA No.669/2005 before the Tribunal, which was disposed of on 10.03.2006 with the following observations:-

“we are of the considered view that the respondents in spite of having considered and decided to implement the recommendations of 5th CPC have not implemented the same with regard to the promotional avenues of the applicants, who are Staff Artists in Song and Drama Division. Accordingly, respondents are directed to re-consider this aspect of the matter whereby they despite accepting the recommendations of 5th CPC, had not accepted that part which deals with the promotional avenues of the applicants in their category. Thereupon, if the respondents decide to implement the avenues of promotion, the applicants would be entitled to all consequential benefits. The aforesaid order shall be complied with within a period of six months from the date of receipt of a copy of the order. No costs.”

6. Later on, some MA, RA and CP were filed in regard to the said order, which were disposed of by the Tribunal vide orders dated 12.09.2007 and 27.11.2007. The applicant in OA-669/2005, who was also an applicant in OA 2324/2004, challenged the orders dated 12.09.2007 and 27.11.2007 passed by the Tribunal in MA No.1163/2007 in OA No. 669/2005 and RA No.231/2007 respectively in the same OA, before the Hon'ble High Court of Delhi in WP (C) No.815/2008. The said Writ Petition was allowed and the

impugned orders dated 12.09.2007 and 27.11.2007 were set aside vide order dated 21.10.2008. The operative part of the Hon'ble High Court's order dated 21.10.2008 reads as under:-

“16. Accordingly, we set aside the impugned orders dated 12th September, 2007 and 27th November, 2007 passed by the CAT and direct the respondents to implement the order dated 10th March, 2006 passed by the CAT and in the light of this judgment within a period of four weeks from today. The said decision will be communicated to each of the petitioners within a further period of two weeks thereafter. With the above directions, the petition is allowed with costs of Rs.20,000 which will be paid by respondent Union of India to the petitioner association within a period of four weeks from today.”

7. The order of the Hon'ble High Court dated 21.10.2008 was challenged by the respondents therein before the Hon'ble Supreme Court in SLP (C) No.1629/2009. The SD&D and Ministry of I&B, who were petitioners in the said SLP informed the Hon'ble Apex Court that they have worked out an understanding with the petitioners.

8. The SD&D and Ministry of I&B, during the course of hearing of the SLP on 02.05.2014, submitted a proposal dated 09.04.2014 before the Hon'ble Supreme Court proposing therein 4-Tier promotional avenues for the Staff Artists of SD&D. Taking cognizance of the said proposal, the Hon'ble Apex Court was satisfied that the dispute between the parties stood resolved and

accordingly SLP was disposed of. The Order of the Hon'ble Apex Court is reproduced below:

“Mr. K. Radhakrishnan, learned senior counsel for the petitioners and Mr. Jaideep Gupta, learned senior counsel for the respondent No. 1 are ad idem that in view of the proposal dated 9.4.2014 by the Song & Drama Division, Ministry of Information & Broadcasting which is placed on record, the dispute between the parties is resolved and nothing remains to be decided by this Court in the matter.

Special leave petition is disposed of in view of resolution of dispute amicably between the parties.”

9. The details of the 4-Tier promotional avenues for the Staff Artists is at pages 309-322 of the paper-book. The proposal envisaged that the Senior Instrumentalists would be taken into the grade of Artist Grade-III w.e.f. 01.01.1996. The relevant part of the justification given for it in the proposal is extracted below:-

“In accordance with Para 73.86 of 5th CPC, there recommendation contained clearly hold an object to recruitment of Performing Artiste, Stage Assistant to the lowest grade, who would gradually rise to higher grade while retaining their specific skills.

The Senior Instrumentalist in the AIR/Doordarshan has entry scale of Rs.6500-10500 where as in the Song and Drama Division the entry scale of Sr. Inst. Is Rs.4500-7000 without allotment of pay scale attached to this scale. Whereas the 5th CPC in its report has recommended in Para 168.3 is As under:

“In the event of any Central Govt. posts being left out without allotment of revised pay scale in the report it should be given the commensurate revised scale of pay as applicable for the post with similar entry qualifications, duties and responsibilities duly retaining the horizontal and vertical relativities in the organization.”

In the case of Instrumentalists, there were two categories-Junior Instrumentalist and Senior Instrumentalist with separate Recruitment Rules and advertisement issued for the purpose of

recruitment. Hence, in the existing Senior Instrumentalist, it is recommended to take them into the grade of Artiste Grade-III w.e.f. 1.1.1996 as it would be legitimate to keep them in this grade.”

10. The SD&D issued a corrigendum dated 06.11.2015 (Annexure-E) to the proposal dated 09.04.2014. The corrigendum has attempted to clarify that only Senior Instrumentalists are recommended to be taken into the grade of Artists Grade-II w.e.f. 01.01.1996 and not the Junior Instrumentalists. For clarity, the corrigendum is reproduced below:

“No.A-32016/1/2015-Admn.II
 Song and Drama Division
 Ministry of Information and Broadcasting
 Soचना Bhavan, CGO Complex,
 Lodhi Road, New Delhi-110003

Dated, the 6th November,2015

CORRIDENDUM

The undersigned is directed to refer to Song and Drama Division's Order of even number dated 12.10.15 issued in pursuance of order dated 02.05.14,10.10.14, 03.08.15 and 24.09.15 of Hon'ble Supreme Court in Contempt Petition (Civil) No.90/2015 in SLP (Civil) No.1629/2009 and Ministry of Information and Broadcasting communication no.M-27014/5/2015-FS(Pt.i) dated 09.10.15.

In line with the proposal dated 09.04.14 of Song and Drama Division placed before the Hon'ble Supreme Court, the entry “21 Posts-Senior Instrumentalist” in note relating to Performing Artistes Grade-III in the Order of even number dated 12.10.15 may be read as under:-

“21 Posts- Senior Instrumentalist (Existing)

Note: In the case of instrumentalists, there were two categories- Junior Instrumentalists and Senior Instrumentalist with separate recruitment rules and advertisement issued for the purpose of recruitment. Hence, in the existing Senior Instrumentalist, it is

recommended to take them into the grade of Artiste Grade-III w.e.f. 01.01.96 as it would be legitimate to keep them in this grade.

Sd/-
(S.S.Bedi)
Deputy Director (Admn)”

11. After the receipt of the notices in CP-452/2012, the respondents produced an order of the Hon’ble Apex Court in SLP No.1629/2009, staying the contempt proceedings in the Hon’ble High Court of Delhi in regard to non-compliance of the High Court’s judgment dated 21.10.2008 in WP (C) No.815/2008. In consideration of the stay order issued by the Hon’ble Apex Court, the Tribunal closed CP-452/2012 with liberty to the petitioners to revive the same after the disposal of the SLP No.1629/2009, vide order dated 03.10.2012 (Annexure M-8).

12. The applicants, through the medium of MA-2388/2014 have prayed for revival of CP-452/2012 in OA-2324/2004 since the respondents have failed to implement their proposal/assurance dated 09.04.2014 given to the Hon’ble Apex Court despite their representations dated 30.06.2014 (Annexure M-12), 10.07.2014 (Annexure M-13) and 27.05.2014 (Annexure M-14) to the respondents.

13. In MA-2610/2016 the applicants have prayed for a direction to the respondents to implement their corrigendum dated 06.11.2015 to the proposal/assurance dated 09.04.2014 given to the Hon'ble Apex Court with immediate effect for grant of entry grade-III to Senior Instrumentalists w.e.f. 1.1.1996 in terms of the 4-Tier promotional avenues.

14. Arguments of the learned counsel for the parties were heard on 20.03.2017. The learned counsel for the applicants submitted that availing the liberty granted by the Tribunal vide order dated 03.10.2012 whereby the CP-452/2012 was closed by the Tribunal, the applicants have approached the Tribunal for revival of the CP-452/2012 since SLP-1296/2009 had been disposed of by the Hon'ble Apex Court and the respondents have failed to implement their proposal/assurance dated 09.04.2014 given to the Hon'ble Apex Court. He thus prayed for the revival of CP-452/2012. He also prayed for the implementation of the proposal/assurance dated 09.04.2014 given by the respondents to Hon'ble Supreme Court.

15. Per contra, the learned counsel for the respondents submitted that the proposal dated 09.04.2014 regarding cadre-restructuring of Staff Artists of SD&D submitted by SD&D before the Hon'ble Apex Court was just a proposal. It required approval of the Ministry of

Finance, owing to the financial implications involved in its implementation, approved by the Ministry of Finance. The proposal dated 09.04.2014 was filed before the Hon'ble Apex Court by the SD&D without obtaining the approval of the Ministry of Finance to it. For this lapse a Show Cause Notice (SCN) has already been issued to the then Director, Shri Rajamannar, vide Ministry of I&B ID No.M-27011/6/2014-FS dated 11.08.2014. Shri Rajamannar had submitted his reply to the SCN on 20.08.2014, which was not found to be satisfactory and consequently he had been repatriated to his parent cadre. It was also submitted that the Ministry of I&B have moved a cadre restructuring proposal for the Staff Artists of SD&D to the Ministry of Finance and the same is likely to be approved/decided shortly. In regard to the prayer made in MA-2610/2016 seeking implementation of the corrigendum dated 06.11.2015, the learned counsel for the respondents submitted that pursuant to the implementation of 5th CPC recommendations, the posts of Senior Instrumentalists and Junior Instrumentalists have got merged w.e.f. 01.01.1996 and placed in the then available pay scale of Rs.4500-125-7000 and the combined post was called "Instrumentalists". In the proposal dated 09.04.2014 submitted before the Hon'ble Apex Court, the pay scale of Instrumentalists was upgraded to Rs.5000-150-8000. Thus, the Instrumentalist

Grade was placed in a higher pay scale in the proposal dated 09.04.2014 in comparison to what was envisaged in the 5th CPC. The contention of the applicants that the proposal dated 09.04.2014 and the corrigendum dated 06.11.2015 envisaged that the Senior Instrumentalists were to be accorded entry grade-III is not correct and is devoid of facts. As a matter of fact, there were two categories of Instrumentalists namely Junior Instrumentalists and Senior Instrumentalists. The recommendation in the proposal dated 09.04.2014 is to take Senior Instrumentalists to Artists Grade-III w.e.f. 01.0.11996 and not the Junior Instrumentalists.

16. We have given our careful consideration to the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Admittedly, the proposal dated 09.04.2014 detailing therein 4-tier promotional avenues for the Staff Artists of SD&D was submitted by the respondents before the Hon'ble Apex Court. Accepting the said proposal, the Hon'ble Apex Court disposed of the SLP No.1629/2009 vide order dated 02.05.2014. The respondents have subsequently amended the proposal dated 09.04.2014 by corrigendum dated 06.11.2015. The applicants are basically seeking implementation of the proposal dated 09.04.2014 together with its corrigendum dated 06.11.2015. In view of the fact that the

proposal dated 09.04.2014 has been accepted by the Hon'ble Apex Court and accordingly SLP No.1629/2009 was disposed of, the said proposal is required to be implemented by the respondents. Pertinent to mention that all orders/judgments of this Tribunal in OA No.2324/2004 and OA-669/2005 and Hon'ble High Court in WP (C) 815/2008 get merged into the order of the Hon'ble Apex Court dated 02.05.2014 in SLP-1629/2009. As stated earlier, the SLP-1629/2009 was disposed of by the Hon'ble Apex Court only after accepting the submission of the proposal dated 09.04.2014 by the respondents. Thus, the proposal dated 09.04.2014 and so also its subsequent corrigendum dated 06.11.2015 have become integral parts of the order of the Hon'ble Apex Court order dated 02.05.2014. If the respondents are not implementing their proposal/assurance given to the Hon'ble Apex Court, the remedy for the applicants lies in filing a contempt petition before the Hon'ble Supreme Court and not before this Tribunal. Hence, we are of the view that both the MAs No.2388/2014 and 2610/2016 have become infructuous. They are accordingly dismissed.

17. Before we part with this order, we would like to observe that it is up to the Hon'ble Supreme Court to take a view with regard to the stand of the respondents that the proposal/assurance dated 09.04.2014 was submitted by the SD&D before the Hon'ble Apex

Court without obtaining its clearance by the Ministry of Finance and that the 4-Tier promotional avenues proposed for the Staff Artists of SD&D in the said proposal is still awaiting the approval of the Ministry of Finance.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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