

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2390/2010
With
OA 3974/2010
MA 2998/2010

New Delhi, this the 15th day of November, 2016

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. P.K. Basu, Member (A)

OA 2390/2010

1. Zakir H. Pathan
S/o Shri Haroon Rashid Pathan
Working as Production Assistant
Doordarshan Kendra, Jagalpur (C.G.)
 2. Roshan Somkuwar
S/o Shri Bapu Rao
Working as Production Assistant
Doordarshan Kendra, Nagpur (M.S.)
 3. Niranjana Pathak
S/o Shri Arvind
Working as Production Assistant
Doordarshan Kendra, Nagpur (M.S.)
 4. Umakant Waratkar
S/o Shri Waman Rao
Working as Production Assistant
Doordarshan Kendra, Nagpur (M.S.)
-Applicants

(Through Mr. Yogesh Sharma, Advocate)

Versus

1. Union of India through the Secretary
Ministry of Information and Broadcasting
Shastri Bhawan, New Delhi
 2. The Director General
Doordarshan, Doordarshan Bhawan
Copernicus Marg, New Delhi
- ... Respondents

(Through Ms. Vertika Sharma, Advocate)

OA 3974/2010

1. Isubhai Adambhai Desai
S/o Shri Adambhai Isabhai Desai
Working as Production Assistant
DDK Ahmedabad
2. Himanshu Azadkumar Mehta
S/o Shri Azad Kumar Mukundrai Mehta
Working as Production Assistant
DDK Ahmedabad
3. Rakesh Natvarlal Shah
S/o Shri Natvarlal Govindbhai Shah
Working as Production Assistant
DDK Ahmedabad
4. Prashant Kedar Jadav
S/o Shri Kedar Kastur Jadav
Working as Production Assistant
DDK Ahmedabad
5. Ramesh Chandra Mohandas Sadhu
S/o Shri Mohandas Laxmidas Sadhu
Working as Production Assistant
DDK Ahmedabad
6. Sunil Kumar Rajnikant Oza
S/o Shri Rajnikant Chandulal Oza
Working as Production Assistant
DDK Rajkot
7. Kum Tejal Rameshbhai Shah
S/o Shri Rameshbhai Bechardas Shah
Working as Production Assistant
DDK Ahmedabad
8. Chandrakant Chaturdas Dudhareja
S/o Shri Chaturdas Medhidas Dudhareja
Working as Production Assistant
DDK Ahmedabad
9. Rajnikant Ashwinbhai Thakar
S/o Shri Ashwinbhai Narottamdas Thakar
Working as Production Assistant
DDK Ahmedabad
10. Ketan Chainubhai Limbachia
S/o Shri Chinubhai Ratilal Laimbachia
Working as Production Assistant
DDK Ahmedabad
11. Milan Mangubhai Patel
S/o Shri Mangubhai Ramdas Patel

Working as Production Assistant
DDK Ahmedabad

12. Girish Ankushrao Kumbhare
S/o Shri Ankushrao Vithobaji Kumbhare
Working as Production Assistant
DDK Ahmedabad
 13. Devendra Purshottamdas Vaishyak
S/o Shri Purushottamdas Chhaganlal Vashyak
Working as Production Assistant
DDK Ahmedabad
 14. Rupin Chandrakant Shah
S/o Shri Chandrakant Ambalal Shah
Working as Production Assistant
DDK Ahmedabad
 15. Arun Mohan Lal Rajya Guru
S/o Shri Mohan Lal Nanjibhai Rajya Guru
Working as Production Assistant
DDK Ahmedabad
 16. Natvar Lal Rangajibhai Damor
S/o Shri Rangajibhai Sakarabhi Damor
Working as Production Assistant
DDK Ahmedabad
 17. Narendra Gamanlal Patel
S/o Shri Gamanlal Chhannabhai Patel
Working as Production Assistant
DDK Ahmedabad
 18. Pankajkumar Bhagvandas Chauhan
S/o Shri Bhagvandas Amarsidas Chauhan
Working as Production Assistant
DDK Ahmedabad
 19. Dr. Shailesh Premshankar Tevani
S/o Shri Premshankar Bhimji Tevani
Working as Production Assistant
DDK Rajkot
 20. Jaykar Shambhulal Solanki
S/o Shri Shambhu Lal Mahijibhai Solanki
Working as Production Assistant
DDK Ahmedabad
-Applicants

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India through the Secretary
Ministry of Information and Broadcasting

Shastri Bhawan, New Delhi

2. The Director General
Doordarshan, Doordarshan Bhawan
Copernicus Marg, New Delhi
 3. The Deputy Director (Admn)
Doordarshan, Doordarshan Bhawan,
Copernicus Marg, New Delhi
 4. Director
Doordarshan Kendra, Thaltej
Ahmedabad
 5. Director,
Doordarshan Kendra, Aji Darn Road
Rajkot
-Respondents

(Through Ms. Radhalaxmi for Shri Rajeev Sharma, Advocate)

ORDER (Oral)

Mr. P.K. Basu, Member (A)

OA 2390/2010 and OA 3974/2010 were heard together as they relate to the same issue.

2. The 24 applicants, who have filed these OAs, are working as Production Assistants in the Office of respondents in the pay scale of Rs.6500-10500. Their common prayer is as follows:

- (i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned orders dated 17.02.2010 (colly), declaring to the effect that the whole action of the respondents not extending the benefits of the judgment dated 7.05.2002 in OA 1191/2001 and judgment dated 18.01.2008 in OA 1653/2007 to the applicants is illegal, unjust, arbitrary and discriminatory and consequently pass an

order directing the respondents to extend the benefit of the judgment dated 7.05.2002 in OA No.1191/2001 to the applicants by way of directing the respondents to fix the pay of the applicants at par with their juniors with all the consequential benefits from retrospective date with the arrears of difference of pay and allowance as granted to the similarly situated persons.

3. By the impugned order, the claim of the applicants for stepping up of pay at par with Ms. Sunita Raju was rejected. The impugned order was passed in pursuance of the directions of the Tribunal in OA 2533/2008 and CP (C) No.653/2009. OA 2533/2008 was filed by the applicants seeking benefit of decision in **Nagendra Kumar Rai and others Vs. Union of India and others** (OA 1653/2007) decided on 18.01.2008, which stood implemented by the respondents, as well as decisions appended in this OA, including the decision in **Sunita Raju and others Vs. Union of India and others** (OA-1191/2001) decided on 7.05.2002. The OA was disposed of with a direction to treat the OA as a representation and dispose of their claim for stepping up of pay in the light of the decided cases mentioned in the order. Subsequently, in the Contempt Petition No.653/2009, noting that the respondents have passed an order dated 17.02.2010, the CP was disposed of with liberty to the applicants to assail the order in an appropriate proceeding.

4. In a similar matter of one Shri G.C. Debral, the department had filed a Writ Petition No.254/2010, which was disposed of by the Hon'ble High Court vide order dated 20.01.2010 directing the respondents to pass a speaking order treating the petition of Shri G.C. Debral as a representation. Thereafter, the respondents passed the impugned order dated 17.02.2010 rejecting the request of stepping up of pay, as stated earlier.

5. The order in OA 2533/2008 referred to orders passed by the Tribunal in two earlier OAs namely OA No.383/2008 and OA No.1191/2001 and the Tribunal had directed the respondents to dispose of the representation of the applicants for stepping up of pay in the light of the decision in aforementioned two cases. OA 1191/2001 was filed by Sunita Raju and others. Their grievance was that the representation filed for removing the anomaly in the basic pay of the applicants viz-a-viz their juniors and colleagues had been rejected by the respondents. The OA was disposed of with the following order:

"14. Thus this administrative action on the part of the respondents fixing the salary of those appointees at a higher stage definitely discriminate the petitioners as equals have been treated in an unequal manner. Thus there is clear violation of fundamental rights as enshrined in Articles 14 and 16 of the Constitution of India so we have no hesitation to allow the OA. Accordingly, we allow the OA and direct the respondents to re-examine the case of the applicants and those applicants who had been appointed prior to 6.1.1994 their pay should be fixed at par with their juniors and whatever criteria had been adopted to give increments to those applicants that may be applied to all the applicants. This may

be done within a period of 3 months from the date of receipt of a copy of this order. No costs."

6. OA 1653/2007 was filed by one Shri Nagendra Kumar Rai and four others and the OA was disposed of with the following directions:

"Accordingly, OA is partly allowed. Impugned order is set aside. Respondents are directed to reexamine the case of the applicants in the light of decision in Sunita Raju's case (supra). In such an event, applicants shall be entitled to all the repercussions of the order. No costs."

7. The case of the applicants is that Sunita Raju was given the benefit in accordance with the order passed by the Tribunal in OA 1191/2001 (supra) decided on 7.05.2002. In OA 1653/2007 (supra), the Tribunal had directed the case of similarly placed persons to be decided as per Sunita Raju's case. In Sunita Raju's case, the Tribunal had noted the earlier order of the Tribunal in OA 1441/1988 decided on 5.11.1993. That OA was filed by the applicants challenging termination of their services but while the termination order was not interfered with as no stigma was attached to the termination order, the Tribunal, in the end, observed as follows:

"While parting with this case, we will also like to observe that whenever the respondents go in for a fresh selection, they should give a chance to the applicants, even, if need be, by providing relaxation of age."

8. In OA 1191/2001, the Tribunal noted that taking a lenient view, the applicants in OA 1441/1988 were reappointed and the

seniority was fixed taking their past service and given increments and their pay was fixed higher than the applicant Sunita Raju and others. This was held to be discriminatory and the respondents directed to fix the pay of Sunita Raju and others at par with their juniors, as quoted above.

9. Another OA No.1083/2004 was filed by Devendra Singh and others challenging the impugned order dated 24.03.2004, by which show cause notice had been issued to the applicants for withdrawal of the benefit of past service towards pay fixation and recovery of excess payment. The OA was allowed with the following observations:

"No justifiable reason has been given by the respondents either in the written reply or during the course of argument to withdraw the benefit of pay fixation allowed to the applicants. We are also not convinced that the past service benefit was wrongly given to the applicants, as mentioned in the order dated 24.3.2004 (Annexure A/1). On the other hand, their pay was rightly fixed under FR 22. The only reason as advances by the learned counsel for the respondents appears to be that in case the applicants in these OAs are allowed the benefit of pay fixation of the past service, they being juniors, having been appointed afresh vide order dated 6.1.1994, the same benefit of pay fixation will have to be extended to the applicants in OA No.1191/2001 to bring them at par. In our opinion, this cannot be a justifiable reason for withdrawing the benefit already given to the applicants especially when it was given in accordance with the relevant rules. The question of extending this benefit to the applicants in the other OA may be considered by the respondents in accordance with rules."

10. The applicants state that from the history of litigation cited above, it would be evident that they being similarly placed,

should be granted the benefit of the judgment dated 7.05.2002 in the case of Sunita Raju and others (supra).

11. Learned counsel for the respondents had made a statement before us on 6.04.2016 that the pay of Shri Anoop Sharma and others (applicants in OA 1441/1998) on whose analogy the applicants are claiming the benefit, is being refixed and sought time to produce necessary evidence. Thereafter, several adjournments were sought and on 3.10.2016, the following was recorded:

"Additional affidavit has been filed on behalf of respondent No.2 dated 30.09.2016 stating therein that any decision taken whatsoever will be the same for all the 14 appointees, i.e. Anoop Sharma and others. There is nothing in the affidavit to even suggest that the pay of Shri Anoop Sharma and Others, on whose analogy the applicants are claiming the benefit, is being withdrawn. This affidavit is contrary to the statement made by the learned counsel for the respondents on 06.04.2016. Learned counsel, however, submits that she has information that the process for withdrawing the benefits granted to Shri Anoop Sharma and others has been undertaken, but no such record has been produced before us.

2. In the interest of justice, we allow last opportunity of four weeks to the respondents to produce the relevant order for withdrawing the benefit to Shri Anoop Sharma and others, failing which the matter shall be decided on merits.

3. List on 09.11.2016."

12. Even on the day of final hearing i.e. 15.11.2016, learned counsel for the respondents has not been able to produce any order withdrawing the benefits of the juniors to the applicants Ms. Sunita Raju, Anoop Sharma and others. Instead, she has filed copy of order dated 7.07.2015 in OA 3520/2010 with OA

674/2011 filed by Nagendra Kumar Rai and others and Smt. Sunita Raju and others. The challenge was to re-fixation of the pay of the applicants after it had been stepped up to bring it at par with their juniors in compliance of the judgment dated 7.05.2002 in OA 1191/2001. This OA was dismissed. The observations of the Tribunal were as follows:

"8. As far as the contention of the applicants that this amounts to over turning the decision of the Tribunal in OA-1191/2001 (supra), we find this to be without any basis. A perusal of the judgment in the aforesaid case reveals that the applicants had been granted benefit of pay fixation at par with their juniors. During the course of the arguments, learned counsel from both sides had submitted that as far as the applicants were concerned, there was no change in their seniority. There is also no averment in their O.A. that as a result of pay fixation done by the respondents any of their juniors was getting more pay than the applicants. Thus, there was no violation or over turning the judgment of this Tribunal. Hence, this argument of the applicants fails."

13. The contention of the learned counsel for the respondents, therefore, is that in view of the order dated 7.07.2015 by which the Tribunal has rejected the re-fixation of pay of Smt. Sunita Raju, the very basis of the applicants get extinguished. In this regard, she also relies on the judgment in **Gursharan Singh and others etc. etc. Vs. New Delhi Municipal Committee and others**, AIR 1996 SC 1175, where the Hon'ble Supreme Court has held that equality before law is a positive concept and it cannot be enforced in a negative manner. Equality clause cannot be invoked to perpetuate an illegal order.

14. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the orders/ judgments cited.

15. In OA 1191/2001 (supra), the Tribunal gave a direction to refix the pay of the applicants at par with their juniors, the juniors being the applicants in OA 1441/1988. Vide OM dated 20.08.2004, the respondents implemented this order and fixed their pay accordingly. In OA 1653/2007, the Tribunal again allowed the OA partly directing the respondents to examine the case of the applicants in the light of the decision in Smt.Sunita Raju case. In OA 2533/2008, the Tribunal directed the respondents to examine the case with reference to Smt. Sunita Raju case and OA 1653/2007.

16. Learned counsel for the respondents has not been able to produce before us any order by which they have withdrawn the benefits to the applicants in OA 1191/2001 or OA 2533/2008 or OA 1083/2004. None of these orders have been set aside. In view of this, the OAs are allowed, impugned orders dated 17.02.2010 and 15.03.2010 are quashed and the respondents directed to extend the benefit of the judgment dated 7.05.2002 in OA 1191/2001 to the applicants with further direction that the pay of the applicants be fixed at par with their juniors with all consequential benefits from retrospective date with arrears of difference of pay and allowance as granted to the similarly situated persons. In view of the fact, that on the statement of learned counsel for the respondents that they are withdrawing

the benefits granted to Ms. Sunita Raju, Anoop Sharma and others, the matter was adjourned on several dates, yet she has not produced any such order, we impose a cost of Rs.10,000 on the respondents.

(P.K. Basu)
Member (A)

(Justice Permod Kohli)
Chairman

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