

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00140/2017

DATED THIS THE 25TH DAY OF JULY, 2017

HON'BLE SHRI DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

M. Vijaya Kamath
W/o late C.N. Ramachandra
#35, 9th "D" Main,
Byraveswaranagar,
Bangalore – 560072.

... Applicant

(By Advocate Shri N. Obalappa)

Vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Information and Broadcasting,
'A' Wing, Shastry Bhavan,
New Delhi-110 001.
2. The Chief Executive Officer,
Prasar Bharati, C Wing,
Doordarshan Bhavan,
Mandi House,
New Delhi – 110 001.
3. The Director General,
All India Radio,
Akashvani Bhavan,
Parliament Street,
New Delhi – 110 001.
4. The Director General,
Doordarsan, Doordarshan Bhavan,
Copernicus Marg, Mandi House,
New Delhi -110001.

5. The Deputy Director General (P)
Doordarshan Kendra, J.C. Nagar,
Bangalore – 560 005.
6. The Head of Office,
Doordarshan Kendra,
Swami Sivananda Salai,
Chennai – 110 005.
7. The Pay and Accounts Officer,
Ministry of I & B, IRLA,
'A' Wing, Soochana Bhavan,
Lodhi Road,
New Delhi – 110003.

...Respondents

(By Shri M.V. Rao, Senior Panel Counsel)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. Both counsels agree the facts as shown in OA No. 170/00836/2016 dated 10.02.2017, which we quote below, are exactly similar:

"Heard. The applicant was appointed on 13.01.1983 and on 14.01.1999 he was promoted as Assistant Station Director in the pay scale of Rs.8000-13500/-. Apparently on 25.02.1999 for those of his juniors who had not been promoted and where Programme Executives, they were given an upgradation of scale of Rs.6500-7500/-. Now it is termed as a financial upgradation given to the applicant also, probably on the ground that while applicant was being promoted this was also in consideration. It has no bearing on the issue as by the time 25.02.1999 came, applicant is already drawing Rs.8000-13500/- so he cannot be considered as a Programme Executive any more. This has no bearing on him.

2. Apparently, Programme Executives have filed a case before the Tribunal at Delhi which is now pending before the Hon'ble High Court of Delhi. That has no bearing on the issue because the applicant is no longer Programme Executives as on 14.01.1999 he has already become an Assistant Station Director on a different higher pay scale so the earlier pay scale have no relation whatsoever to him and even otherwise also the Hon'ble Apex Court have held in Central Bank of India Vs. State of Gujarat and Others reported in AIR 1987 SCC 2320 that even if an appeal under Order 41 Rule 5 is there directly on the issue the mere pendency of an appeal will not operate as stay of

proceedings to deprive the decree holder of the benefits. In this case, it has nothing to do with the applicant. Just some other persons who were in the earlier position held by the applicant had filed an OA that has nothing to do with the contention raised by the applicant as at that point of contention, the applicant has already become an Assistant Station Director and therefore his case can be considered only along with other Assistant Station Directors. Therefore, the OA is allowed and regulate his ACP or MACP on the basis that the applicant has obtained a promotion on 14.01.1999 whether it be 2nd ACP or the MACP within 3 months next. The OA is allowed to the limited extent. No order as to costs."

2. It is also pertinent to note that the Prasar Bharati itself had issued Annexure-A10 as No. 05/09/2013-SI(B)/47 dated 08.01.2015 which also we quote below:

"2. The issue regarding applicability of MACP to the employees of 11 categories who have been granted upgraded higher scales vide Ministry of Information and Broadcasting's Order dated 25.02.1999 (copy enclosed) has been examined in Prasar Bharati. In view of the following facts of applicability of ACP & MACP for employees of Prasar Bharati, who have been granted upgraded pay scales vide Ministry's order dated 25.02.1999, are eligible for grant of ACP and consequently MACP and therefore, requested to drop the above audit para:-

- (i) The progress of upgradation of pay scales for certain categories of posts had begun in 1989 itself, i.e. prior to passing of Prasar Bharati Act in 1990 and subsequent creation of Prasar Bharati as an autonomous body in 1997.*
- (ii) Although the upgradation of pay scales was linked to the condition that it would be admissible only to those employees who opt for Prasar Bharati in case such an occasion comes up, the occasion never arose as with an amendment to Section 11 (A) and (B) of the Prasar Bharati Act, all the employees who joined PB upto 05.10.2007 are to be treated as Central Government employees on deemed deputation and thus exercise of option was rendered redundant. Therefore, there is no merit in saying that employees with upgraded pay scales are not eligible for ACP.*
- (iii) Further, no equation should be established between grant of upgradation of pay scales and Assured Career Progression (ACP) in as much as that ACP addresses the structural problem in a cadre resulting in stagnation at various level and upgradation was the recognition of the higher job content of a post.*
- (iv) While, the pay scales were upgraded by Ministry of I&B, vide their order dated 25.02.1999, the orders for ACP were issued by DoPT*

only in May, 1999. Therefore, linking of upgraded pay scales to ACP, for which orders were issued later, may not be fair and just.

- (v) *The conditions as laid down by DoPT for grant of MACP would be applicable in the case of Prasar Bharati only for the employees who are recruited after 05.10.2007 and thus, the question of grant of MACP to PB employees would arise only in 2017.*
- (vi) *Since ACP is applicable to those employees who joined before 05.10.2007, MACP would also be applicable to them automatically as they are treated as Government servants and there is no need for obtaining prior approval of Administrative Ministry/Financial Advisor as laid down in DoPT's order dated 03.08.10 (copy enclosed), as this will be required only for those employees recruited on or after 05.10.2007.*
- (vii) *It may not be out of place to mention here that even in CSS Cadre, the upgraded pay scales have been given to certain categories of employees and they are entitled to ACP according to their upgraded pay scales.*
- (viii) *Attention may also be invited to Clarification No. 35 issued by DoPT vide their O.M No. 35034/1/97-Estt. (D) (Vol. IV) dated 18.07.2001 (copy enclosed) wherein it has been clarified that where all the posts are placed in a higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grades, not specified in the RRs for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not to be treated as promotion/upgradation. As such, the employees granted pay scales vide Ministry's Order dated 25.02.1999 are eligible for grant of ACP and consequently MACP."*

3. Therefore the only objection raised is that the audit party has objected that this may not be correct but the Prasar Bharati itself had explained why logically and legally the applicant and other similarly situated persons are eligible for ACP. Just because there was an upgradation in the scale, it will not constitute a bar against the ACP being granted which was brought in through the intervention of the Hon'ble Apex Court to create a stagnation less field. The mere fact that the case is pending in the Hon'ble High Court of Delhi regarding Programme Executive will not be a bar against the applicant for the very

simple reason that he is not a Programme Executive but Assistant Station Director. Therefore there is no similarity in the case which is now pending in the Hon'ble High Court of Delhi and the case of the applicant. Therefore there will be an order to the respondents to follow Annexure-A14 judgment in Anjanappa's case and grant benefits as aforesaid to the applicant in terms with it within three months.

4. The OA is allowed to this extent. No order as to costs.

(P. K. PRADHAN)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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