

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION No. 170/00252/2017

TODAY, THIS THE 20th DAY OF JULY, 2018

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER**

1. K.T. Desai,
S/o Tammana Rao,
Aged 58 years,
Working as Cameraman Grade-1,
Doordarshan Kendra, J.C. Nagar,
Bengaluru – 560 006

2. G. Suresh,
S/o Late S. Gurumurthy,
Aged 54 years,
Working as Cameraman Grade-II,
Doordarshan Kendra, J.C. Nagar,
Bengaluru – 560 006

3. V. Anil Kumar,
S/o S. Vasudeva Murthy,
Aged 49 years,
Working as Cameraman Grade-II,
Doordarshan Kendra,
J.C. Nagar,
Bengaluru – 560 006

4. B.V. Hariprasad,
S/o T.S. Venkatesh,
Aged 47 years,
Working as Cameraman Grade-II,
Doordarshan Kendra,
J.C. Nagar,
Bengaluru – 560 006

5. Smt. Nirmala M,
W/o C. Shivappa,
Aged 49 years,
Working as Cameraman Grade-II,
Doordarshan Kendra,
J.C. Nagar,
Bengaluru – 560 006

6. S. Suresh,
S/o Late M. Shanmugham,
Aged 51 years,
Working as Cameraman Grade-II,
Doordarshan Kendra, J.C. Nagar,
Bengaluru – 560 006

.... Applicants.

(By Advocate Shri A.R. Holla)

v e r s u s

1. Union of India,
By Secretary,
Ministry of Information
and Broadcasting,
Shastri Bhavan,
Dr. R.P. Road,
New Delhi – 110 001.

2. The Chief Executive Officer,
Prasara Bharati Broadcasting Corporation of India
P.T.I. Buildings,
Parliament Street,
New Delhi – 110 001.

3. The Director General (Doordarshan),
Prasara Bharati Broadcasting Corporation of India
Mandi House,
Copernicus Marg,
New Delhi – 110 001.

4. The Officer in-charge,
Doordarshan Kendra,
J.C. Nagar,
Bangalore – 560 006

.... Respondents

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

O R D E R

Hon'ble Shri Dinesh Sharma, Administrative Member

The applicant's case, in brief, is that by order of the respondent No.3 dated 07.06.2016, they are being asked to refund the benefits received under the 2nd MACP on completion of 20 years of service by which their pay was fixed in the Pay Band – 3 with Grade Pay of Rs. 6600/-.

2. The respondents in their reply have explained that the earlier order granting the 2nd MACP was revised since it was erroneous. The respondents have claimed that the 6th Pay Commission had bifurcated the pay scale of Rs. 8000-13500 (Group-A) into two grades with PB-3 and PB-2 as under :-

Pre-Revised	Revised		
Pay Scale	Pay Band	Corresponding Pay Bands	Grade Pay
Rs. 8000-13500	PB – 2	9300-34800	5400
Rs. 8000-13500 Group-A Entry	PB-3	15600-39100	5400

They have further alleged that the posts which was promotional was put in PB-2 while direct recruitment posts were put in PB-3. Since the applicants' case related to the post of Cameraman Grade-I, which is only a promotional post, they were entitled to Pay Band-2 and Grade Pay of Rs. 5400/- and, therefore, the earlier order granting them financial upgradation under MACP Scheme and granting next higher Grade Grade Pay of Rs. 6600/- was revised by the impugned order which is now being challenged by the applicants.

3. The case was heard. The applicants have cited the order of this Tribunal in O.A. Nos. 1553 to 1562 of 2013 (**R. Venkatesh and Others vs. Union of India and Others**) decided on 30.06.2015 and the judgement of the Hon'ble Supreme Court in the case of **Kamlakar and Others vs. Union of India and Others**, 1999 AIR (SC) 2300. These cases have been cited as an example to support the principle that the direct recruits and promotees cannot be kept on different footings once they reached the same level in the cadre.

4. After going through the records and hearing both the sides, it is clear that while the applicants are insisting on being treated at par with the scale given to the entry grade of Group-A, the argument of the respondents is that for Cameraman Grade-I, there is no direct recruitment and this is only a promotional post. The distinction and bifurcating of posts only on ground whether it is filled up by promotion or through direct recruitment *prima facie* appears to be violative of the principles laid down by the Apex Court in the case of **Kamlakar and Others vs. Union of India and Others**, 1999 AIR (SC) 2300. Hon'ble Apex Court, in para 12 of that judgement, has observed "...*Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as the equal treatment in the same cadre for payment of the pay scale given. The birth marks have no relevance in this connection....*" Since the respondents have now made the distinction only on this ground, it cannot stand in the light of the judgement cited here. Therefore, it does not appear that the order granting 2nd MACP equating the scale of pay to Pay Band-3 and Grade Pay of Rs. 6600/- was erroneous in any respect. The order dated 07.06.2016 (Annexure A-11) revising this

order is apparently not correct since it violates the principle of treating promotees and direct recruits on an equal footing. We are, therefore, inclined to accept this O.A.

5. In view of the facts and circumstances and the legal position stated above, the O.A. is allowed. Consequently, the Office Memoranda dated 7.6.2016 (Annexure A-11) and dated 11.04.2017 (Annexure A-12) are quashed and set aside, as far as the applicants are concerned. The respondents are directed to extend the benefits in terms of the order dated 28.02.2012 (Annexure A-9) with all consequential benefits. No order as to costs.

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**

**(DR. K.B. SURESH)
JUDICIAL MEMBER**

Cvr.

Annexures filed by the applicants :

Annexure-A1 series: Copies of the appointment orders of the applicants dated 18.04.1985 to 05.10.1989

Annexure-A2: Copy of the order dated 14.09.2000

Annexure-A3: Copy of the order dated 20.09.2000

Annexure-A4 Series: Copy of the order dated 13.11.2000 to 19.11.2004

Annexure-A5: Copy of the order dated 29.08.2008

Annexure-A6: Copy of the order dated 09.04.2009

Annexure-A7: Copy of the order dated 07.07.2011

Annexure-A8: Copy of the order dated 12.01.2012

Annexure-A9: Copy of the order dated 28.02.2012

Annexure-A10: Copy of the order dated 26.06.2013

Annexure-A11: Copy of the order dated 07.06.2016

Annexure-A12: Copy of the order dated 11.04.2017

Annexures with Reply Statement:

Annexure-R1: Copy of the Office Memorandum dated 29.03.1988

Annexure-R2: Copy of the Government of India Ministry of I&B letter dated 14.09.2000

Annexure-R3: Copy of the report of 5th Central Pay Commission

Annexure-R4: Copy of the notification dated 29.08.2008 issued by the Department of Expenditure

Annexure-R5: Copy of the U.O. No. 22(2)/E.III/B/2010 dated 14.01.2016

Annexure-R6: Copy of the letter No. N-10/7/2013-PPC dated 01.04.2016

Annexure-R7: Copy of the Ministry of I & B Order No. 7/2010 dated 14.05.2010

Annexure-R8: Copy of the Ministry of I&B letter dated 24.05.2010

Annexure-R9: Copy of the Office Order dated 07.07.2011

Annexure-R10: Copy of the DOPT OM No. 35034/3/2008-Estt. (D) dated 19.05.2009

Annexure-R11: Copy of the letter No. 33/4/2011-SI(A) dated 12.01.2012

Annexure-R12: Copy of the OM No. 30/29/2015-S1(A) dated 07.06.2016

Annexure-R13: Copy of the Office Order dated 28.02.2012

Annexure-R14: Copy of the OM dated 11.04.2017

Annexure-R15: Copy of the Ministry of I&B letter dated 07.06.2012

Annexure-R16: Copy of the Pay and Accounts Office letter dated 24.05.2012

Annexure-R17: Copy of the DDK, Ahmedabad letter dated 26.10.2012, 16.01.2013 and 05.04.2013

Annexure-R18: Copy of the Directorate letter dated 26.06.2013

Annexure-R19: Copy of the OM No. 30/29/2015-S1(A) Pt – 1 dated 11.04.2017

Annexure-R20: Copy of the DDK, Delhi letter No. 13(1)/2010-DDKD/AI dated 19.03.2012

Annexure-R21: Copy of the reminder letter No. 13(1)/2010-DDKD/AI dated 27.04.2012

Annexure-R22: Copy of the Directorate Endorsement dated 15.07.2005 and 27.07.2005

Annexure-R23: Copy of the Directorate letter No. 33/4/2011-S1(A) dated 15.06.2012

Annexure-R24: Copy of the OM No. 2/10/2017-S1(A) dated 22.09.2017

Annexure-R25: Copy of the OM dated 01.03.2016 issued by DOPT

Annexure-R26: Copy of the OM No. 22034/04/2013-Estt.(D) dated 17.05.2016

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