

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00472/2017

DATED THIS THE 17TH DAY OF SEPTEMBER, 2018

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

HON'BLE SHRI CV. SANKAR, MEMBER (A)

BV.Mohan,
Announcer Retd.,
Aged about 62 years,
No.92, 4th Cross, 1st Stage,
Okalipuram,
Bangalore 21.Applicant

(By Advocate Shri 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, II Floor,
PTI Building, Parliament Street.
New Delhi - 110 001

3.The Director General,
All India Radio,
Akashavani Bhavan,
Parliament Street,
New Delhi. 110 001

4.The Station Director,
All India Radio,
Raj Bhavan Road,
Bangalore 560001.

5.The Pay & Accounts Officer,

All India Radio, Kamarajar Salai,
Mylapore, Chennai- 4.

...Respondents

(By Shri V.N.Holla ... Sr. Panel Counsel)

ORDER (ORAL)

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

1. Heard. The matter relates to ACP benefit to be granted to an employee who was actually employed on contract basis w.e.f. 1974 and allegedly got enhanced benefit from 1981 before being confirmed in government service in 1982. Shri VN.Holla would submit that it to be termed as promotion and the benefit under the ACP should be modulated accordingly. However, exactly in a similar matter in OA.No.555/2011 at Principal Bench, CAT, New Delhi dated 8.11.2012, we quote from it in its entirety .

“ (Through Shri S.M. Arif and Shri D.S. Mahendru, Advocates) Order Mrs. Manjulika Gautam, Member (A)

The present OA has been filed by the applicant seeking the following reliefs:

i) Direct the Respondents to rectify and correct the impugned order dated 9.11.2010 and release the financial upgradation benefits of 1st ACP in terms of the recommendations of 5th CPC to the Applicant with effect from the operational date 09.8.1999 as the Applicant had become eligible for the same on completion of 12 years of regular Government servant on 20.08.1994.

- ii) Direct the Respondents to grant the 2nd ACP benefit from 20.08.2006 when the Applicant had completed 24 years of regular Government service.
- iii) Direct the Respondents to fix the pay of the Applicant accordingly and pay all consequential benefits like fixation of pay and arrears etc with effect from 09.08.1999 i.e. the day the 1st ACP financial upgradation became operational and with effect from 20.08.2006 when 2nd ACP benefits of the Applicant became due in terms of DOP&T office Memo dated 9.8.1999 and 12.9.2003.
- iv) Direct the Respondents to re-calculate and pay all the pensionary benefits of the Applicant including pension, leave salary, gratuity, GPF etc in accordance with the new pay fixation after grant of the aforesaid benefits of two ACP Schemes as prayed for in paras 8 (i), 8(ii) and 8 (iii).

Direct the Respondents to pay interest @ 12% per annum from the date when the amount was due till the date of actual payment.

- vi) Allow the case with all consequential benefits and AWARD any other or further relief which this Hon#ble Tribunal may deem fit and proper on the facts and in the circumstances of the case.

2. A brief background to the case is that the applicant was a contractual employee as Staff Artist in External

Services Division (ESD) of All India Radio. He joined initially vide order dated 2.04.1971 as Staff Artist, Assistant Pushtu in the Pushtu Division of ESD, All India Radio, New Delhi. Subsequently, vide orders dated 30.11.1972, he was selected for the post of Translator-cum-Announcer (Pushtu) also on contractual basis. Vide orders dated 20.08.1982, the applicant was offered the post of Supervisor (Pushtu) with effect from 20.08.1982. As per policy decision of the Government circulated vide Ministry of I&B letter dated 3.05.1982, the applicant was declared a regular Government servant with effect from 20.08.1982. He was not encadred into the Indian Broadcasting (Programme) Service and is litigating on this issue in separate OAs. The present OA is only with regard to first and second ACP benefits.

3. The applicant filed OA No.3461/2009 seeking direction to the respondents to consider his case for grant of 1st and 2nd ACP benefits with effect from August, 1994 and August, 2006 respectively when he completed 12 and 24 years of regular service. The said OA was disposed of vide orders dated 1.12.2009 directing the respondents to consider the OA as a supplementary representation and take a decision within a period of four weeks from the date of receipt of a copy of the order. On 7.01.2010, the respondents passed an order giving the applicant promotion to the next higher scale from the date when he was superannuating.

4. During the course of hearing on 26.03.2010, the respondents counsel had stated that a meeting of the Screening Committee for considering the applicant for 1st and 2nd upgradation under ACP Scheme would be held within three weeks. Contempt Petition was decided vide orders dated 11.08.2010 and respondents were directed to ensure that ACP benefits are accorded to the applicant within a period of two weeks and if there was delay beyond two weeks, they were liable to pay interest @ 12% per annum on the amount due. The Contempt Petition was accordingly closed. In response, the respondents have issued the impugned orders dated 9.11.2010 releasing the benefit of 2nd ACP to the applicant with effect from 9.08.1999 and no benefit of 1st ACP. Aggrieved by this, the present OA has been filed. It is also seen that the applicant has retired on 31.12.2009.

5. In the counter affidavit filed by the respondents, it has been stated that the applicant had been working on contractual basis and was declared a Government servant with effect from 20.08.1982. The applicant had also been given promotion on personal basis to the post of Supervisor (FL) (Selection Grade) in the Pay Band of Rs.15600-39100 and Grade Pay of Rs.7600/- with effect from 31.12.2009. It is stated by the respondents that the applicant joined service of All India Radio on 20.02.1971 on contractual basis and became a Government servant with effect from 20.08.1982. He was not given the first ACP because he did not stagnate on the same post and within twelve

years got promotion from the post of Translator-cum-Announcer to the post of Supervisor and, therefore, he was given the second financial upgradation with effect from 9.08.1999 vide the impugned orders. The respondents have also stated that the applicant had been duly informed that since he had got upgraded pay scale on his promotion to the post of Supervisor, he was not entitled for 1st ACP.

6. The issue to be decided in this OA is whether applicant's posting on the post of Supervisor (Pushtu) is to be treated as promotion/upgradation or it is to be treated as a fresh recruitment.

7. We have heard both the learned counsel and perused the record on file.

8. In support of his contention, the applicant has placed on record Annexure RR-3 by which he has sought to prove that it was a fresh recruitment to the post of Supervisor. Memorandum dated 'nil is a notice to the applicant asking him to appear for interview on 7.07.1982 for recruitment to the post of Supervisor (Pushtu). The order dated 20.08.1982 by which he has been offered the post of Supervisor (Pushtu), it is to be treated as a direct recruitment. In support of his claim, he has also placed reliance on Annexure RR-4, which is noting of the Under Secretary in the Department of Personnel and Training, which reads as follows:
Though in some cases, such appointments have also been defined as promotion, strictly speaking,

'promotion of contract employees, who were again appointed on contract basis in a higher post, cannot strictly be called promotion but only appointment on contract basis to another higher post. Therefore, broadly keeping in view the fact that appointment to the post of News readers cum translators Gr. III from different categories of staff artists was essentially a case of limited selection, as described in some of the Rules, all such appointments may be treated similarly irrespective of the rule under which they were appointed. In that case, their regular service for ACPs may be counted from the date of such appointment at NRT/Gr.III and entitlements under ACPs determined with reference to this post ignoring the earlier appointment and earlier service. The DGAIR has also proposed accordingly.

Sd/-

(Vijay Kumar) Under Secretary April 30, 2004

As against this, the respondents have simply contended that when the applicant joined the post of Supervisor, it was a financial upgradation from the post of Translator (Pushtu) and, therefore, he is not entitled to any further upgradation.

9. We are of the opinion that the applicant is to be treated as a Government servant from 20.08.1982. Prior to that, he was working as Staff Artist on contractual basis and it would not be possible in that capacity for him to be given the promotion. Therefore, we feel that when he was posted to the post of Supervisor (Pushtu) from the post of Translator

(Pushtu), there was no doubt that it was financial upgradation but according to the ACP Scheme, the financial upgradation should be during the period of service with the Government. When the applicant joined as a Government servant on 20.08.1982, it will have to be seen whether he got any financial upgradation or promotion from that date onwards. We do not feel that the stand taken by the respondents is the correct one.

10. Therefore, we direct the respondents to give the applicant financial upgradation after twelve years from the beginning of his service as a Government servant with effect from 20.08.1982 and second financial upgradation after twenty four years. Accordingly, all arrears due to him shall be released within a period of two months from the date of receipt of a copy of this order, considering that the applicant has already retired. With the above directions, the OA is disposed of."

As this matter covers the entire gamut as it is. It appears that this was accepted by the respondents and implemented.

2. But, at this point of time a crucial point is raised by Shri VN.Holla that at present, going by the notion that 1974 is his initial date of appointment, the pension has been modulated and that he cannot have both the benefits together. That view is correct. If the applicant considers his date of appointment as 1982, then his pension

will be modulated as 1982 and not in accordance with 1974 as it is allegedly put forth. Therefore, we remit the matter back to the respondents to seek the option of the applicant to adjust the pay and pension in accordance with either the appointment is on 1974 or on 1982 respectively. If the applicant opts that his appointment date to be 1982 then in accordance with the Principal Bench order all the benefits including ACP to be remodulated and that pay to be given within one month without interest, thereafter with interest at the rate of GPF or other wise 1974 as his initial date of appointment, his pension and other benefits will be modulated accordingly and paid to him.

3. OA is disposed off, as above. The respondents to take up the matter after giving option to the applicant within next one month. No order as to costs.
4. MA.546/2017 for deletion of 1st respondent is dismissed.

(CV. SANKAR)
MEMBER(A)

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

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Annexures referred to by the Applicant in OA.No. 472/2017

Annexure A-1: Copy of order dated 1.8.1974.

Annexure A-2: Copy of order dated 25.4.1981.

Annexure A-3: Copy of order dated 19.7.1993.

Annexure A-4: Copy of OM of DOPT dated 9.8.1999.

Annexure A-5: Copy of order dated 16.2.2001

Annexure A-6: Copy of pay fixation dated 22.2.2001

Annexure A-7: Copy of retirement order dated 30.6.2008

Annexure A-8: Copy of PPO dated 5.8.2009

Annexure A-9: Copy of pay fixation dated 3.12.2009

Annexure A-10: Copy of representation dated 19.10.2012

Annexure A-11: Copy of clarification dated 17.1.2013

Annexure A-12: Copy of communication dated 4.9.2013

Annexure A-13: Copy of reminder representation dated 13.12.2016

Annexure A-14: Copy of OM of DOPT dated 12.5.2017.

Annexure A-15: Copy of draft pay fixation dated 2.9.2017

Annexures referred in the rejoinder

Annexure A-21: Copy of judgement in OA.No.555/2011 at Principal Bench, CAT, New Delhi dated 8.11.2012,

Annexure A-22: Copy of M/Finance communication dated 13.11.2009

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