



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.350/00647/2015

Dated of order: 15.02.2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

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1. Prasanta Kumar Biswas, son of Sri Sambhu Nath Biswas aged about 41 years, residing at Labanya Apartment, 2nd floor, B1, 96, P.K.Guha Lane, PO + PS Dumdum, Kolkata, Pin No. 700028.
2. Sanjib Dey, son of Late Mrityunjoy Dey aged about 45 yrs residing at 1, IGopal Banerjee First Bye Lane, Howrah, Pin No. 711101.
3. Rajat Kamal Chakraborty son of late Subhra Kamal Chakraborty aged about 39 years, residing at 32/1, Gabtala Lane, Behala, Kolkata, Pin No. 700060.

.....Applicants

For the Applicant: Mr.A.Chakraborty, Counsel

-Versus-

1. Union of India through the Secretary, Ministry of Information and Broadcasting, Shastri Bhavan, New Delhi, Pin Code: 110001.
2. Prasar Bharati through Chief Executive Officer (India's Public Service Broadcaster), P.T.I, Building, New Delhi, Pin Code- 110001.
3. The Deputy Director General (P), All India Radio, Kolkata, Akashvani Bhavan, Eden Garden, Kolkata, Pin Code - 700 001.

.....Respondents

For the Respondents: Mr.R.K.Dey, Counsel.

/s/ R.K.Dey

ORDER

MS. JAYA DAS GUPTA, AM:

This OA has been filed seeking the following reliefs:

"(a) An order do issue directing the Respondent to fix the pay of the applicants in the scale of pay of Rs. 4500-7000/- as a Technician with effect from the date of their joining and to grant all the consequential benefits;

(b) Costs and incidentals;

(c) Such further order/orders and/or direction/directions as your lordships deem fit and proper;

(d) Leave may be granted to file this Original Application jointly under Rule 4 (5) (a) of the CAT Procedure Rule, 1987."

(extracted as such)

2. In nut shell, it is the case of the three applicants that they were appointed in the post of Technician in the pay scale of Rs. 4000-6000/- in All India Radio under the Prasar Bharati Broadcasting Corporation of India. Some of the Technicians who were appointed before 01.01.1996 viz; before the recommendation of the 5th CPC, came into effect were placed in the pay scale of Rs. 4500-7000/- whereas those who were appointed as Technician after 01.01.1996, were placed in the lower scale of pay of Rs. 4000-6000/-, *albeit* they were shouldering the same duties and responsibilities as that of the persons appointed before 01.01.1996. Hence, they have prayed for a direction to the Respondent to fix their pay in the scale of pay of Rs. 4500-7000/- with effect from the date of their joining and to grant all the consequential benefits.

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3. Per contra, the Respondents have filed their counter opposing the prayer of the applicants on the ground that they had accepted the conditions stipulated in the offer of appointment (Annexure-R/2) before joining. The applicant No.1 (Prasanta Kumar Biswas) joined the post of Technician on 10.12.2001, Applicant No. 2 (Sanjib Dey) joined the post of Technician on 16.12.1999 and Applicant No.3 (Rajat Kamal Chakraborty) joined the post of Technician on 13.01.2000 all in Prasar Bharati Corporation. They were very much aware that they will be placed in the scale of Rs. 4000-6000/- and they have joined the service with full knowledge of their pay scale and thus, at this later stage, they cannot put forward their demand of being placed in the higher scale of pay of Rs. 4500-7000/- as per the recommendation of 5th CPC. Accordingly, the Respondents have prayed for the dismissal of this OA.

4. The Applicants have also filed rejoinder, more or less reiterating the stand taken in the OA.

5. We have heard the learned counsel for both sides and perused the records.

6. The record would bespeak and betoken that 15.09.1997 is the date when the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 was notified with 23.11.1997 being notified as the appointed date being the date where from the erstwhile Civil Servants under the Union of India in the Ministry of Information & Broadcasting were to be treated as on deputation with Prasar Bharati. In this regard an order

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was issued by the Ministry of Information and Broadcasting on 25.2.1999 (Annexure-R/1), the full text of the order is extracted herein below for ready reference:

"No.310/173/97-B(D)
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION AND BROADCASTING
SHASTRI BHAVAN 'A' WING
NEW DELHI-110 001

Dated : 25.02.99

SUBJECT : UPGRADATION OF PAY SCALES OF CERTAIN CATEGORIES OF EMPLOYEES WORKING IN PRASAR BHARATI.

The employees belonging to certain cadres in All India Radio and Doordarshan (particularly, subordinate engineering and programme cadres) had been agitating for grant of higher scales of pay than those recommended by the Vth Central Pay Commission and accepted vide Government of India resolution of 30th September, 1997. The matter has been carefully considered by the Government and it has been decided to further upgrade the scales of pay of the categories of employees of All India Radio and Doordarshan, of Prasar Bharati (Broadcasting Corporation of India) as indicated against each category in Annexure-I.

2. The grant of revised pay scales as mentioned in para 1 above will be subject to the following conditions:

(i) The upgraded scales will be allowed not as Govt. employees per se but as Government employees currently in service of Prasar Bharati (Broadcasting Corporation of India). As and when the employees, presently working in All India Radio and Doordarshan are asked to exercise their option, those employees who do not opt for Prasar Bharati will revert as Government servants and will no longer be entitled to above scales. They will also have to refund all benefits availed of by them as a result of the grant of higher scales of pay. They will be liable to recovery of all such benefits. An undertaking in the proforma given at Annexure-II to this effect has to be submitted by each and

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every employee concerned before availing the benefit of upgraded scales of pay. This is in accordance with their agreement with the Government to avail these upgraded scales on this condition only.

(ii) Upgraded pay scales would be effective from 1.1.1996 but payment of salary to employees as per upgraded scales of pay will be made with effect from 1st march, 1999.

(iii) The employees concerned will be entitled to arrears with effect from 1st January, 1996 and these arrears will be paid in instalments. The first instalment of the arrears pertaining to the period from November 1997 till February 1999 will be paid by April, 1999. The second instalment pertaining to remainder of the arrears (i.e. arrears from 1.1.1996 to October, 1997) will be paid by April, 2000. The payment of arrears shall be made after adjustment of the amount already paid to the categories of Technicians, Senior Technicians, Engineering Assistants and Senior Engineering Assistants on the basis of this Ministry's office Memorandum No. 310/173/ 97-B(D) dated 5.12.1997.

(iv) In addition, the pay of those employees of All India Radio and Doordarshan who had been working as Transmission Executives as on 1.1.1978 or afterwards would be notionally fixed in the pay scales of Rs. 550-800 with effect from 1.1.1978 and in the pay scale of Rs.2000-3200 with effect from 1.1.1986 before fixing their pay in the upgraded pay scale as on 1.1.1996. But as per their agreement with the Government this will not entitle them to any payment of arrears for the period prior to 1.1.1996 and will be limited to fixation of their current pay as on 1.1.1996.

3. The pay fixation in the upgraded scales of pay shall be done as provided in CCS (RR) Rules, 1997.

4. The benefit of the upgraded pay scales will be available to existing incumbents only and those new direct recruits who join after issuance of these orders will not be entitled to these scales, but will be governed by pay scales recommended by the Vth Pay Commission. However all promotions of existing incumbents shall be made in upgraded scales only.

5. Further, Prasar Bharati (DG:AIR and DG:DD) are also requested to identify the posts in the grades of Helper, Diesel

20/7

Engine Driver, Diesel Technicians and Mast Technicians ,Zone wise, for placing them in the upgraded scales of pay in order of seniority as per the percentage of posts shown against each category in Annexure-I. The number of posts in higher scales of pay shall be with reference to the sanctioned strength indicated in Annexure-I against each post.

6. This issue with approval of Integrated Finance Wing vide their u.o. No.245/99/Fin.I dated 23.2.1999.

(PRAVIN SRIVASTAVA)
DIRECTOR (BP)
TELE : 3384547"

7. It is apparent from the aforesaid order dated 25.2.1999 that the clear demarcation has been made regarding the employees who are enjoying the up graded scale i.e. the existing incumbents who were erstwhile in I & B Ministry in Government of India and the new direct recruits who joined after issuance of the aforesaid order dated 25.02.1999 in Prasar Bharati Broadcasting Corporation. Admittedly, all the three applicants who joined after the date of issuance of the above order have been placed in the scale of pay of Rs. 4000-6000/-, as technicians while similarly situated existing incumbents have been placed earlier in the upgraded scale of pay of Rs. 4500-7000/- though purportedly assigned the same duties as former group. On the above points of discrimination which is in violation of Articles 14 and 16 of the Constitution of India, involving dissimilarity of pay between employees who are performing the same work having same functional responsibilities, the counsel for the applicants has brought to our notice of the decision of the Hon'ble High Court of Delhi dated 07.09.2010 in WP (C) Nos. 2071/07, 2094/07 & 3410/2010 (Union of India & Anr Vs

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Sanjay Kumar & Ors) The full text of the said decision is extracted hereunder for ready reference:

"1. Relevant dates may be noted. 15.9.1997 is the date when the Prasar Bharti (Broadcasting Corporation of India) Act 1990 was notified with 23.11.1997 being notified as the appointed date being the date where from the erstwhile Civil Servants under the Union of India in the Ministry of Information & Broadcasting were to be treated as on deputation with Prasar Bharti. It be noted that activity of broadcasting through the visual and audio media i.e. radio and television which hitherto was with the Union Government was transferred to a statutory corporation. Vide Section 11 of the Act these employees could opt for service under Prasar Bharti failing which they were to be treated as Central Government Employees and on deemed deputation with Prasar Bharti.

2. Issues arose, as they usually do in India, and in particular when the Government tries to corporatize itself. The reason is obvious, as Civil Servants Constitutional Protections are available and as employees of statutory corporations only statutory protections as per the relevant statute are applicable. Besides, the lazy are wary of corporatization for corporatization brings along the corporate culture of work ethics.

3. Thus, the Central Government Employees in the Ministry of Information & Broadcasting did not opt for service under Prasar Bharti and negotiations were held between the Management and the Union to break the impasse. With effect from 25.2.1999 Prasar Bharti decided that employees of the Ministry of Information & Broadcasting working under it, on permanent absorption under Prasar Bhati would be given wages in the scale Rs.6500-10500 as against the scale Rs.5000-8000 which was their entitlement as employees of the Ministry of Information & Broadcasting.

4. As time went by, appointments and recruitments as also crystallization of various rights, the origin whereof is the point of time when television and radio was under the Central Government, gave birth to rights.

5. The respondents in the four captioned petitions can be classified into three distinct groups and their cases

207

considered accordingly. Category-I: Casual workers working for long as employees of the Ministry of Information & Broadcasting whose right for regularization/confirmation as per policy framed by the Central Government matured on various dates after 23.11.1997 i.e. the appointed date after Prasar Bharti Act was promulgated on 15.9.1997. They claimed entitlement to be placed in the same scale of pay in which erstwhile employees of the Central Government working in the Ministry of Information & Broadcasting were placed as employees of Prasar Bharti. Category-II: Employees who were selected as per select list notified prior to 15.9.1997 but were given employment after 23.11.1997 by Prasar Bharti. They claimed entitlement to be placed in the same scale of pay in which persons in the same select list but given appointment prior to 15.9.1997 were placed. Category-III: Employees whose process of employment commenced in January 1999 when Prasar Bharti was constituted and were given appointment thereafter. They claimed pay parity with their counterparts claiming that they should be placed in the same scale of pay as persons holding same posts.

6. Facts which had given birth to the respective claims are that employees of the Central Government working in the Ministry of Information & Broadcasting were not opting for service under Prasar Bharti and probably by way of incentive were given a higher pay scale. Since in all the writ petitions we are concerned with employees appointed to the post of Assistant Engineers, Production Assistants, etc. it may be noted that erstwhile Central Government employees working in the Ministry of Information & Broadcasting and appointed as Assistant Engineers, Production Assistant etc. were placed in the scale Rs.6500-10500 but to others holding similar posts pay scale offered was Rs.5000-8000. The claim of all the respondents has succeeded before the Tribunal. The Tribunal has held that persons holding same posts cannot be discriminated vis-à-vis the scale of pay in which they have to be placed.

7. Let us highlight the factual and legal basis of the claim for parity urged by the three categories of employees.

8. Employees in Category-I i.e. those who were working as casual employees for long under the Ministry of Information & Broadcasting claimed that there was a policy framed by the Central Government to regularize their services in a phased manner and this right enured in their

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favour when Prasar Bharti was constituted on 15.9.1997. Merely because they acquired status as regular employees under Prasar Bharti was no ground to justify they being placed in the scale Rs.5000-8000 and their counterparts who were regular employees under the Ministry of Information & Broadcasting being placed in the pay scale of Rs.6500-10500. To which the answer of the petitioners was that higher scale of pay was given to the erstwhile regular employees of Ministry of Information & Broadcasting as they were on deemed deputation and on being taken as regular employees under Prasar Bharti were paid higher wages. In other words the petitioners urged that erstwhile employees of Ministry of Information & Broadcasting formed a separate category vis-à-vis those who were appointed by Prasar Bharti.

9. Qua employees in Category-II the argument of said employees was that the appointment process commenced when the Ministry of Information & Broadcasting invited applications from eligible candidates and the select list was prepared by the Ministry of Information & Broadcasting. Their names found mention in the select list drawn much prior to 15.9.1997. But for the fortuitous fact that character verification of some was completed prior to 15.9.1997 while for them was completed post 15.9.1997 thereby resulting in some being given letters of appointment by the Ministry of Information & Broadcasting and they by Prasar Bharti would not entitle the petitioners to place the former in the pay scale Rs.6500-10500 and the latter in the pay scale Rs.5000-8000. The response of the petitioners was the same as that to the employees of Category-I i.e. the employees who came to Prasar Bharti from under the Ministry of Information & Broadcasting formed a separate category.

10. Qua employees in Category-III in respect of whom selection process commenced in the year 1999 i.e. much after 23.11.1997 and was completed obviously thereafter, they urged that employees doing similar work and holding similar posts could not be discriminated qua the pay scale in which they had to be placed. The response of the petitioners was the same as that to the employees of Category-I i.e. the employees who came to Prasar Bharti from under the Ministry of Information & Broadcasting formed a separate category.

11. The issue of equal pay for equal work and employees holding same posts under the same employer

227

requiring same pay scales to be applied is no longer res integra. We eschew reference to various authorities where parity is claimed by employees in different departments under the Union, for the reason different issues arise for consideration therein, but note only two decisions where employees in the same department were sought to be placed in different scales of pay, notwithstanding the employees holding identical posts and doing same jobs. In the decision reported as 1987 (1) SCC 582 Telecommunication Research Centre Scientific Officers (Class-I) Association & Ors. vs. UOI & Ors. the employees were sought to be placed in two categories. Category-I was employees directly recruited as officers in the Telecommunication Research Centre, a Department of the Post & Telegraph Wing directly under the control of the Post & Telegraph Board of the Ministry of Communication and the second category being employees who came on transfer in the said department but employed under the Indian Telecommunication Service Group-A and Group-B Posts. Two issues were urged before the Supreme Court by the directly recruited employees vis-à-vis the transferred employees. First pertained to denial of promotional opportunities and the second with respect to a special pay being paid to the transferred employees. Qua the plea of denial of promotional opportunities, the Supreme Court, in the absence of adequate pleadings, declined to answer the question, but on the issue of parity of pay held that for employees holding same post and doing same work and there being no ground to classify the same in two categories, the placement in different scales of pay was arbitrary. It was noted that the technical and educational qualifications required for both group of employees was the same. Thus, it was directed that both groups be paid the same wages.

12. In a somewhat different factual setting, in the decision reported as 1987(1) SCC 592 M.P.Singh vs. UOI & Ors. it was held that where employees enter the cadre from two different sources, if they do the same work and are similarly placed, there can be no discrimination in payment of wages.

13. Of course, employees in the same cadre can certainly be placed in different pay scales but that would be if it is shown that one set of employees has higher technical or education qualifications or performs more onerous duties vis- à-vis the other or the like. But, where there is complete parity it would be highly discriminatory to treat employees

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differently merely on account of the two coming from two different sources.

14. Holding so in favour of the respondents, let us see the plea put up as a justifiable excuse by the petitioners to place the respondents in a lower scale of pay.

15. To the Category-I employees i.e. those working on casual basis under the Central Government but confirmed against regular posts under Prasar Bharti, suffice would it be to state that the claim for regularization pertained to a policy of the Central Government and merely because some got confirmed under the Central Government and some got confirmed under Prasar Bharti would not result in two groups being formed. Thus, apart from the principle that employees holding same posts and doing same duties cannot be discriminated in matters pertaining to wages with reference to the source of appointment, we find no justifiable cause to treat Category-I employees as forming a different and a distinct category.

16. To the Category-II employees, suffice would it be to state that their empanelment was under the Central Government and admittedly some employees under the same panel were inducted by the Central Government and Prasar Bharti placed them in the scale of pay Rs.6500-10500. On the fortuitous circumstance of some empanelled candidates not being able to have character verification completed prior to 27.11.1997 and thereby they being inducted as employees to the same posts directly under Prasar Bharti would not make them a distinct category vis-à-vis their counterparts who were in the same select panel but were appointed by the Central Government.

17. With respect to Category-III employees the principle of law noted by us in paras 11 and 12 above would apply.

18. The writ petitions are found to be without any merit and hence are dismissed. However, since the issue raised was arguable, we refrain from imposing any cost."

8. On examination of the case of the applicants vis-a-vis the decision, (especially the findings recorded in paragraphs 10 and 11) of the Hon'ble High Court of Delhi, absolutely, we have no hesitation to

on 27

hold that the decision of the authorities by way of making a class within a class cannot be sustained. Accordingly, we allow this OA and direct the authorities concerned to allow the applicants the pay scale of Rs. 4500-7000/- with all consequential benefits from the date of their respective appointment under the Prasar Bharati Broadcasting Corporation of India within a period of three months from the date of receipt of a copy of this order.

9. This OA stands allowed to the extent stated above. There shall be no order as to costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C. Gupta)
Member (Judl.)