



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A.350/01272/2014

Date of order : 15/07/2016

Present :

**The Hon'ble Mrs. Bidisha Banerjee, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member**

NITYA GOPAL KUNDU & ORS

Vs.

**UNION OF INDIA & OTHERS
(DDK)**

For the applicant : Mr. P.Bajpayee, counsel

For the respondents : Mr. M.S.Banerjee, Counsel

ORDER

PER MS. JAYA DAS GUPTA, A.M.

The three applicants namely S/Shri Nitya Gopal Kundu, Ajit Kumar Dey and Jannyavi Biswas, have approached this Tribunal in the present Original Application filed U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"i) To issue mandate upon the respondents and each of them to extend the benefit of the scale of pay of Rs. 6, 500-10,500/- forthwith to the applicants with effect from 21.2.2005 being the financial u gradation under 1st ACP Scheme as has been extended to the similarly placed Floor Assistants;

ii) To issue mandate upon the respondents and each of them to pay arrears payments upon appropriate fixation of pay in the revised scale of pay forthwith;

✓W7

iii) To issue mandate upon the respondents and each of them to pay interest on the total amount of pay at the prevailing bank rate with effect from 21.2.2005.

iv) To pass such other order or orders as Your Lordship's may deem fit and proper;

v) Leave may be granted to file this application jointly under Rule 4 (5) (a) of CAT Procedure Rule, 1987."

(extracted as such)

2. Heard both and perused the records.

3. It is the contention of the Applicants that they are the holders of the isolated posts in the DDK, Kolkata in the post of Carpenter/Painter. Applicant Nos. 1 & 2 retired in 2006 and Applicant No.3 retired in 2013. It is contended that during 5th CPC they were enjoying the pay scale of Rs. 4000-6000/- A policy decision was taken to equate their salary to that of Floor Assistants who were in a hierarchical cadre (the next higher post being Floor Manager) to the extent of enjoying the next higher scale of Rs. 6500-10500/- and this up gradation was made effective from 21.2.2005. The Floor Assistants were entitled to hold the pay scale of Floor Manager in the scale of Rs. 6500-10500/- on grant of ACP benefit. However, such up gradation though made effective from 21.2.2005 was denied to the Applicants as a result of which they retired in the pay scale of Rs. 4000-6000/-. Hence, they have sought their grievance to be redressed by way of extending the next higher scale of pay of Rs. 6500-10500/- (5th CPC) w.e.f. 21.2.2005.

DW

4. The Respondents filed their reply in which, at one breast it has been stated that the applicants in pursuance of the order dated 16.1.2013, are not entitled to get any up gradation benefit to the scale of pay of Rs. 6500-10500/- whci is the scale of pay of Floor Manager and on the other hand, it has been stated as under:

"10.Deponent further states that due to non availability of documents required for their consideration by Screening Committee of the Directorate, some Carpenters and Painters were left out for consideration of their case under order dated 16th January, 2013."

5. However, from the reply it appears that an OM was issued on 01.02.2012, full text of which is extracted below:

"No. 35/20/99-S.I
 Praśar Bharasti Broadcasting Corporation of India
 Directorate General: Doordarshan
 (Doordarshan Bhawan, Copernicus Marg, New Delhi)
 Dated: 01.02.2012

OFFICE MEMROANDUM

Directorate General: Doodarshan have received a number of references from the members of Carpenter, Painter and Tailor Cadres and from various Doordarshan Kendras seeking clarification regarding grant of pay to incumbents in the grade of Carpenter/ Painter/ Tailor consequent upon acceptance of CGIT Award dated 26.06.2007 with effect from 21.2.2005 by the competent authority.

2. The matter has been considered and it has been transpired as under:

(i) As per recommendations of 5th Central Pay Commission, the post of Painter/ Carpenter/Tailor was placed in the pay scale of Rs.

CWA

4000-6000/- (pre revised). These are isolated posts because that neither there is a feeder grade for these posts nor it is a feeder grade of any post;

(ii) As per clarification issued DOP&T vide its OM dated 10.02.2000, the scale of pay for ACPS shall be the same for isolated posts as those applicable for similar posts in the same Ministry/Department/Cadre;

(iii) The posts of Floor Assistant are in the same Department i.e. Doordarshan and carry the same pay scale of Rs. 4000-6000/- (pre revised) which is equivalent to the pay scale of Painter/Carpenter/Tailor. Moreover, the CGIT has also ordered to treat them equal to the Floor Assistant for the purpose of grant of pay as on 21.02.2005.

(iv) The incumbents in the grade of Floor Assistant were granted the financial up gradation under ACP Scheme equivalent to the pay scale drawn by them in the Promotional Hierarchy i.e. Floor Manager who were carrying the pay scale of Rs. 6500-10500/- in terms of Ministry of I & B's order dated 25.02.1999. The said financial up gradation to the Floor Assistants has been given subject to the following conditions:

That they shall get the higher pay scale of Rs. 6500-10500/- so long as they are working in Prasar Bharasti;

If they opt for not becoming employees of Prasar Bharasti they will revert to the pay scale of Rs. 5000-8000/-;

The benefits of 2nd Financial up gradation under ACP Scheme would be absorbed in the first up gradation itself;

3. For implementation of the CGIT Award dated 26.06.2007, it has been decided by the competent authority for grant of financial up gradation to the incumbents in the post of Painter/Carpenter/Tailor at par with Floor Assistant as on 21.02.2005.

4. It has also been decided that since the grant of financial up gradation to the incumbents of Floor Assistant is conditional, the incumbents in the posts of Painter/Carpenter/Tailor is to be considered for grant of financial up gradation under ACPO

✓W

Scheme at par with Floor Assistant after seeking undertakings from them that –

(i) They will opt to remain in Prasar Bharati whenever they are asked to exercise such an option and in the event they do not opt to become employee of Prasar Bharati, they will refund all payments including arrears received by them on account of this financial up gradation and they will be liable to be reverted to the pay scale of Rs. 4500-7000/- in lieu of 1st up gradation and Rs. 5000-8000/- in lieu of 2nd up gradation under ACP Scheme, as the case may be.

(ii) They will not claim for grant of 2nd financial up gradation under ACP/MACP Schemes as the benefits of 2nd Financial up gradation under ACP/MACP Schemes would be absorbed in the first up gradation itself, as has been decided in the case of Floor Assistant;

(iii) They will be entitled for 3rd financial up gradation under MACPO Scheme on completion of 30 years of regular service subject to fulfillment of other laid down eligibility criteria.

5. The financial up gradation(s) already received by them prior to 21.02.2005 will be treated as null and void and they will be considered for financial up gradation under ACP Scheme afresh in terms of above terms and conditions from the date they are found eligible for first financial up gradation under ACP Scheme i.e. 12 years of regular service. However, they will be entitled for arrears of pay in lieu of fresh financial up gradation with effect from 21.02.2005 only and prior to this date their pay will be fixed on notional basis.

6. Consequent upon the grant of fresh financial up gradation in terms of above terms and conditions, the arrear of pay so drawn by them in lieu of already granted financial up gradations will be absorbed in the arrear of pay to be drawn by them after grant of fresh financial up gradation in terms of provisions/ terms & conditions mentioned in para 4 above.

7. In view above, all the heads of Doordarshan Kendra are requested to kindly obtain an explicit undertaking from the individuals in the grade of Carpenter/Painter/Tailor who have completed 12 years of regular service as on 21.02.2005 in the form of

257

Notarized Affidavit with respect to the conditions mentioned in para 4,5&6 above and place the same in their Service Book.

8. It is also requested to submit the following document/information in respect of eligible individuals in the grade of Carpenter/Painter/Tailor:

- (i) ACR dossiers including "No Report Certificate(s)"
- (ii) Service certificate verified from Service Book.
- (iii) Vigilance Clearance as on 21.02.2005 and as on date.
- (iv) Information regarding penalties, break in service, dies non, if any.
- (v) Certificate that the necessary affidavit has been obtained from all the eligible individuals.

Sd/- (N.P.Mandal)
Deputy Director (Admn)
Tele:-23387696"

6. On perusal, the above OM shows that the very relief sought by the Applicants would be addressed if this OM dated 01.02.2012 is implemented in their favour. The deponent cannot take the excuse of non availability of records for which cases of some Carpenters and Painters were left out of consideration under order dated 16th January, 2013.

7. Hence, it is directed that the stipulations of the OM dated 01.02.2012 shall be applied strictly in case of the applicants. Accordingly, the cases of the applicants shall be considered through the Screening Committee and, if they are found eligible in all respect, extend them the scale of pay of Rs. 6500-10,500/- (5th CPC) and pay them all the consequential financial benefits with effect from

S.M.

21.02.2005, within a period of three months of getting the certified copy of this order.

8. This OA is accordingly disposed of. No costs.

JDG
(Jaya Das Gupta)
Administrative Member

B.Banerjee
(Bidisha Banerjee)
Judicial Member

km