

OA.No.170/00356/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00356/2017

DATED THIS THE 18th DAY OF DECEMBER, 2018

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

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

L.Shivashankar
 S/o.Late.Govindappa
 Aged about 54 years
 Working as Film/Video Editor
 Doordarshan Kendra
 J.C.Nagar
 Bengaluru-560 006.
 R/o.No.2042, 7th Main
 2nd Stage, 'D' Block
 Rajajinagar
 Bengaluru-560 010.

....Applicant

(By Advocate Shri N.Obalappa)

Vs.

1. Union of India
 Rep. by its Secretary
 Ministry of Information and Broadcasting
 Shastry Bhavan
 Dr.Rajendra Prasad Road
 New delhi-110001.

2. The Chief Executive Officer
 Prasara Bharathi
 Broadcasting Corporation of India
 2nd Floor, P.T.I.Building
 Sansad Marg
 New Delhi-110001.

3. The Director General
 (Doordarshan)
 Doordarshan Bhavan
 Copernicus Marg
 Mandi House
 New Delhi-110001.

4. The Deputy Director General
 Doordarshan Kendra
 J.C.Nagar
 Bengaluru-560 006.

...Respondents

(By Advocate Sri M.Vasudeva Rao)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) *To set aside the Office Memorandum bearing No.22/1/2016-S1/517 dtd.11.8.2016 issued by the 2nd respondent and order dtd.24.8.2016 No.BNG/DDK/14(5)2016-A issued by respondent No.3 vide Annexure-A6 and A7 respectively, so far as it relates to absorption of the service of the applicant as Film and Video Editor with prospective effect from 24.8.2016.*
- b) *To direct the respondents to treat the applicant as Film and Video Editor w.e.f. 29.6.2000 from the date on which the Prasara Bharathi Broad Casting Corporation, 1st respondent herein issued Memorandum dtd.29.6.2000 and grant all consequential benefits arised out of the OM dtd.29.6.2000 bearing No.18/1/2000-S.I(A) as per Annexure-A1.*

2. The applicant submits that he joined the service in Doordarshan Kendra Bengaluru as Film Projectionist in the pay scale of Rs.1200-30-1440-EB-30-1800 in the year 1990 with basic pay of Rs.1200/-. It is submitted that since the post of Film Projectionist and Film Processors in the pay scale of Rs.4000-6000 was abolished in the year 2000, the applicant and several other Film Projectionist and Film Processors were declared surplus and were sent to surplus cell. Based on the recommendation of the High Power Committee headed by Sri U.C.Agarwal, retired Secretary, DOPT, the services of Film Projectionist and Film Processors were decided to be absorbed in Doordarshan Kendra against the available vacancies as Film/Video Editors and accordingly, an OM dtd.29.6.2000(Annexure-A1) was issued to that effect. On the date of issuance of the said OM, there were 35 Film Projectionists and 10 Film Processors whose services were supposed to be absorbed against the post of Film/Video Editors. But actual vacancy

OA.No.170/00356/2017/CAT/Bangalore Bench availability of Film/Video Editors was 24 in Doordarshan. Hence 24 Film Projectionist and Film Processors were immediately decided to be adjusted against 24 film/video editors in the ratio of 2:1 and the rest of the incumbent of these posts will be adjusted as and when vacancies in the grade of film/video editors arise. It was further decided after adjusting 24 vacancies of film/video editors, that the remaining surplus Film Projectionist and Film Processors had been deemed to be appointed to the post of film/video editors on transfer basis in public interest to Doordarshan. In other words, the services of the applicant were deemed to have been transferred as film/video editor to Doordarshan Kendra, Bengaluru in the year 2000. The applicant submits that the post of film/video editor at the relevant point of time was carrying the pay scale of Rs.5000-8000. Accordingly, the 24 Film Projectionist and Film Processors who were adjusted against the available vacancies were sanctioned with pay scale of Rs.5000-8000 but the remaining 21 Film Projectionist and Film Processors were erroneously granted the pay scale of Rs.4000-6000 instead of Rs.5000-8000, though all the Film Projectionist and Film Processors were deemed to have been appointed and transferred to Doordarshan to the post of film/video editors on transfer basis. It is submitted that since the competent authority had decided not to give financial upgradation to the absorbed/transferred film/video editors in the pay scale of Rs.5000-8000 under the ACP scheme, the applicant and other similarly situated employees have submitted several representations. Thereafter vide order dtd.27.8.2010(Annexure-A2), the competent authority granted 1st financial upgradation under ACP scheme on completion of 12 years of service w.e.f. 15.2.2002 in the pay scale of Rs.4500-7000 in the Grade Pay of Rs.2800 and the 2nd financial upgradation under MACP scheme w.e.f. 15.2.2010 in pay band of Rs.9300-34800 with GP Rs.4200 and accordingly

pay of the applicant was revised and re-fixed.

3. The applicant further submits that in the year 2005, the Carpenters and Painters Employees Association, Aakashavani and Doordarshan Kendra raised an industrial dispute before CGIT, New Delhi in Dispute No.I.D.No.21/2005 claiming higher pay scale of Rs.6500 on the ground that they are discharging the same duties and responsibilities to that of Floor Assistants who were drawing the pay scale of Rs.6500-10500 and their qualification is also equivalent to that of Floor Assistants. Then the CGIT, New Delhi vide its order dtd.26.6.2007 declared that the carpenters and painters are entitled to the same pay scale applicable to the floor assistants w.e.f. 21.2.2005 with all consequential benefits. The Director General, Doordarshan accepted the above order passed by the CGIT, New Delhi and granted higher pay scale of Rs.6500 to all carpenters and painters vide order dtd.21.7.2011(Annexure-A3) and subsequently extended to tailors also vide OM dtd.1.2.2012(Annexure-A4). According to the applicant, the posts like carpenter, painter, tailor etc. were equivalent to the post of Film Projectionist/Film Processors and hence he made representation dtd.19.12.2011(Annexure-A5) and reminders to extend the same benefit and fix his pay in the pay scale of Rs.6500 or alternatively to grant the pay attached to the post of Film/Video Editors. But the respondents failed to take any decision on the same. The applicant on deemed transfer to Doordarshan is working as film/video editor till date and in spite of which, the respondents are continuing to pay the salary to the applicant attached to the erstwhile Film Projectionist though there is no such post in Doordarshan or Prasar Bharathi. It is submitted that the 2nd respondent issued an OM dtd.11.8.2016(Annexure-A6) conveying the approval for absorption/adjustment of the service of the

OA.No.170/00356/2017/CAT/Bangalore Bench applicant as Film Projectionist in the grade of Film/Video Editor and posting him at DDK, Bengaluru. In terms of the order dtd.11.8.2016 issued by the 2nd respondent, the 3rd respondent vide order dtd.24.8.2016(Annexure-A7) appointed the applicant as film/video editor w.e.f. 24.8.2016 in the pay scale of Rs.9300-34800 + GP Rs.4200 purely on temporary basis and he is placed on probation for a period of 2 years w.e.f. 24.8.2016. According to the applicant, both the orders dtd.11.8.2016 and 24.8.2016 absorbing the service of the applicant as film/video editor with prospective effect from 24.8.2018 is totally contrary to the OM dtd.29.6.2000 particularly sub-clause-2 issued by the Prasar Bharathi Broadcasting Corporation of India. The respondents ought to have treated the applicant as film/video editor w.e.f. 2000 the year in which the OM dtd.29.6.2000 is issued as per which all the Film Projectionists are deemed to be on deputation to Prasar Bharathi as film/video editor till they are adjusted against the available vacancies of film/video editors of Prasar Bharathi. The respondents wrongly interpreted the OM dtd.29.6.2000 and posted the applicant as film/video editor w.e.f. 24.8.2016. The respondents are not granting the pay scale of Rs.6500 attached to the post of film/video editor even though the applicant is discharging the duties and responsibilities of that post but instead they are granting the pay scale of Film Projectionist, a post which is not at all existing by virtue of the order dtd.20.6.2000. It is settled position of law that the person who is working in a post is entitled to the pay scale attached to the said post. Aggrieved by the action of the respondents, the applicant has filed the present OA praying for the relief as stated above.

4. The respondents have filed their reply statement wherein they submit that due to the abolition of the post of Film Projectionist which cannot be equated with other posts like Carpenter, Painter, Tailor etc., the applicant who joined in that

post was declared surplus. As per the OM dtd.29.6.2000, it was decided to adjust the surplus staff to the extent of available vacant posts of film/video editor and subsequently as and when vacancies arise in future in that grade. The OM inter alia said that the surplus staff were governed by CCS(Redeployment of Surplus Staff) Rules, 1990. The OM specifically lays down that the absorption/adjustment would be in accordance with the provisions of CCS(Redeployment of Surplus Staff) Rules 1990. Since the available vacancies existing at that point of time were only 24 in number, it was decided to adjust 24 film projectionists and film processors in the ratio of 2:1 as the total number of incumbents in that grade was 45. It is further relevant to point out that as per point 6.2 in the chapter of Rules for Redeployment of Surplus employees, it has been categorically laid down that, the surplus employees will continue to receive pay and allowances in their previous scales, till they are relieved either to join another post or on their retirement, resignation etc. whichever is earlier. Now in the present case, only 24 number of film projectionist and film processor were adjusted in the ratio of 2:1, the remaining continued to receive the same pay scale of their previous pay scale. Hence, the averment of the applicant that his services were deemed to have been transferred as Film/Video Editor to DDK, Bangalore in the year 2000, stands falsified. The film projectionists or film processors who were adjusted against the post of film/video editor in the higher scale of Rs.5000-8000 were not entitled for financial upgradation under ACP as per para 2(vi) of DG:DDn's OM dtd.29.6.2000, on account of them being accorded a higher scale than their previous scale of Rs.4000-6000. And hence granting of pay scale of Rs.6500-10500 does not arise. The applicant having been declared surplus staff who was yet to be adjusted against any vacant post of film/video editor was governed by the guidelines on CCS(Redeployment of

OA.No.170/00356/2017/CAT/Bangalore Bench surplus staff) Rules, 1990 and hence the previous scale of Rs.4000-6000 was applicable to him. The fact that he was granted 1st ACP on 15.2.2002 in the upgraded pay scale of Rs.4500-7000 and 2nd MACP on 15.2.2010 in PB-2 Rs.9300-34800 + GP Rs.4200 as per rules reveals that he was never transferred on deemed deputation as film/video editor.

5. The respondents further submit that the order dtd.26.6.2007 of CGIT, New Delhi was applicable to the parties in dispute and not a judgment *in rem*. It was not applicable for Film Projectionist, a post which was abolished way back in 2000, in fact much before the judgment was passed. The upgradation of pay scale of painter, carpenter, tailor etc., on account of order of CGIT was applicable to the parties in dispute. The absorption/adjustments of Film Projectionist and Film Processor in the grade of Film/Video Editor was issued vide OM dtd.16.5.2012 wherein the applicant was to be absorbed at DDK, Delhi. But he did not proceed to join. Again another OM dtd.11.8.2016 was issued and the applicant was adjusted against the vacant post of Film/Video Editor at DDK, Bangalore. He joined the said post on 24.8.2016 after accepting the offer of appointment issued to him on 23.8.2016. Guidelines under CCS(Redeployment of Surplus staff) Rules, 1990 says that 'a surplus employee may, while awaiting redeployment be given by his head of Department/organisation or other superior authority, alternative duties or charge of work, which- though not necessarily related to his earlier area of work- he can be expected to perform conveniently. It also says that 'on transfer to the Surplus Staff Establishment the surplus employees will continue to receive pay and allowance in their previous scale, till they are relieved either to join another post or on their retirement, resignation, etc., whichever is earlier. The orders dtd.11.8.2016 and 24.8.2016 passed are perfectly in line with the OM dtd.29.6.2000 issued by the respondent No.3 with

the approval of respondent No.2. It has nowhere been mentioned that the absorption of any surplus employees would be having a retrospective effect. And hence the above orders are correct and just and need not be interfered with.

6. The applicant has filed rejoinder reiterating the submission made in the OA and submits that vide his representation dtd.11.3.1991(Annexure-A8) he had requested to consider the pay scale of Projection Room Operator of the film Division, Min. of I&B which is exactly same as of the duties and responsibilities of the post of Film Projectionist at Doordarshan in the same Ministry. The recruitment rules and pay scales of projection room operators issued by the Film & Television Institute of India, Min. of I&B vide letter dtd.25.3.1991(Annexure-A9) is equivalent to Film Projectionist. The Directorate of Advertising and Visual Publicity, Min. of I&B vide their letter dtd.26.03.1991(Annexure-A10) also confirmed the pay scales and the duties of the Film Projectionist at their office which are similar to the Film Projectionist at Doordarshan. The 1st respondent vide communication dtd.15.02.1996(Annexure-A11) conveyed the abolition of Film Projectionist posts and other posts at various Doordarshan Kendras of the Country. Vide order dtd.25.2.1999(Annexure-A12), the respondents have granted the upgraded pay scale to certain categories of AIR & Doordarshan whereas there is no upgraded scale for the post of Film Projectionists. Therefore, the contention of the respondents that the upgraded scale has been granted to the applicant is incorrect. The High Power Expert Committee consisting of Joint Chief Producer Film Division and Additional DG (Admn) Doordarshan and DG, Doordarshan in their report relating to the Film Projectionist have recommended the pay scale of Rs.1350-2200 to the film projectionists on par with the Projection Room Operator of the film division of Min. of I &B.

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Accordingly, the applicant is entitled for the replacement and entry grade pay scale of Rs.4500-7000 from 1.1.1996. The applicant and other film projectionists were assigned the duties of film/video editors as per the office note dtd.8.8.2001, 11.9.2001 4.3.2003 & 5.5.2003 (Annexure-A15) and hence entitled for pay attached to that post viz. Rs.5000-8000.

7. The applicant further submitted that the respondents granted the 1st ACP to the applicant w.e.f. 15.2.2002 in the pay scale of Rs.4500-7000 instead of film & video editor hierarchical promotional pay scale of Rs.5000-8000. The Min. of Finance vide OM dtd.13.11.2009(Annexure-A17) had merged the pay scales of Rs.5000-8000 & 5500-9000 and placed in the pay scale of Rs.6500-10500 w.e.f. 1.1.2006, consequent to which the Grade Pay is also revised to Rs.4600. Since the applicant is entitled for 1st ACP scale of Rs.5000-8000 which is merged, he is entitled for the grade pay of Rs.4600 w.e.f. 1.1.2006. It is submitted that as per para 2 of Gazette Notification dtd.9.1.2012(Annexure-A19) of Prasar Bharati Amendment Act 2011, the employees joined Prasar Bharati up to 5.10.2007 are Govt. servants are on deemed deputation to Prasar Bharati without deputation allowance. Accordingly, the applicant joined Govt. service as on 15.2.1990 is entitled to all the benefits of ACP/MACP on par with other central Govt. servants. The 4th respondent vide order dtd.8.6.2015(Annexure-A20) withheld the regularisation of casual floor assistants/casual painters in pursuance of the Writ Petition No.1002/2015 & 01/2015 pending before the Hon'ble High Court of Jammu & Kashmir. As per the enclosed annexure to the said order, about 23 posts have been proposed regularisation against the posts of Film/Video TV editors at various Doordarshan Kendras and in case the said film & video editors posts are vacant after abolition of the film projectionist posts of 1996, the applicant is entitled for absorption against such vacant posts on priority to such casual

staff. Consequent on the abolition of film projectionist posts, the applicant is disentitled to draw the pay in the pay scale of Rs.4000-6000 but entitled to draw the pay scale of Rs.4500-7000 of similarly placed film room projectionist at film division. The applicant and others are continued in the same department after abolition of film projectionist but at the time of referring the matter of isolated posts of carpenter, painter & tailor posts, the post of film projectionist was not referred to CGIT and not considered while reviewing the same vide Annexure-A4 order which is discriminatory and the applicant being similarly placed person is entitled for the upgraded pay scales on par with carpenter, painter & tailor who are granted the pay scale of Rs.6500-10500 w.e.f. 21.2.2005. The High Power Committee has recommended the absorption of the film projectionist at film division of the same Ministry, whereas the DOPT has stated that the Prasar Bharati being an Autonomous organization is not required to send requisitions to the surplus cells under rule 3 of CCS(Redeployment of Surplus Staff) Rules 1990 whereas subsequent to the amendment of Prasar Bharati Act vide Annexure-A19, the employees joined Prasar Bharati up to 5.10.2007 are treated as Govt. servants and on deemed deputation without deputation allowances. The recommendation of the committee is advantageous to 24 film projectionists who were given unintended benefits without DPC and contrary to recruitment rules and denied the similar benefits to the applicant. In case the committee had considered the case of the applicant on pay wise, the applicant's pay would be fixed after drawing 5 increments at Rs.5000 and could have drawn pay on par with other staff upgraded to film/video editors and consequent on retirement/resignation etc. the said posts could have stood abolished or temporary posts could have been created to meet the additional demand for the expansion that took place from 1996 onwards. Thus the applicant was deprived of the benefits on par

with others.

8. The applicant further submits that the contention of the respondents that the applicant was never transferred and on deemed deputation to Prasar Bharati is incorrect as he discharges his duty as film/video editor at Doordarshan Kendra, Bangalore. In view of Gazette Notification dtd.9.1.2012(Annexure-A19), the applicant joined Prasar Bharati before 5.10.2007 and on deemed transfer to Prasar Bharati and is entitled for regularisation on priority to casual floor assistant and entitled for higher pay fixation. As per Annexure-A19, the applicant never transferred to surplus cell and hence the surplus cell terms and conditions are not applicable to the applicant and he is entitled to the 1st ACP w.e.f. 15.2.2002 in the pay scale of Rs.5000-8000 instead of Rs.4500-7000 which was the entry grade pay to the film projectionists as per the recommendation of the High Power Committee. Also the contention of the respondents that they seek to absorb the applicant as film/video editor at DDK, Delhi is incorrect as the said post was shifted to DDK, Bangalore vide DG, Doordarshan OM dtd.27.7.2012(Annexure-A21) and one Shri R.Ravindra Rao was absorbed against that post. The respondents after lapse of 20 years from 1996 to 2016 have issued the absorption order for the entry grade post w.e.f. 24.8.2016 whereas the Jr.Processors and other film projectionists were got unintended higher promotional pay scales w.e.f. 2000 as 24 film/video editors posts in the pay scale of Rs.5000-8000 were made available at the time of abolition of film projectionist to others which is not made available to the applicant which is discriminative. Hence he may be granted 1st ACP in the pay scale of Rs.5000-8000 w.e.f. 15.2.2002 along with pay fixation benefits and 2nd MACP w.e.f. 15.2.2010 with all consequential benefits as he is similarly placed employee with film division of DAVP and on par with carpenter, painter and tailor etc., to whom similar benefits are allowed

by the respondents.

9. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statement. Both the parties have filed their written arguments note highlighting the points already made in the OA, rejoinder and reply statement.
10. We have gone through the main contentions of the applicant and reply of the respondents in detail. The crux of the issue relates to the OM dtd.29.6.2000(Annexure-A1) wherein the Film Projectionists and Film Processors who are declared as surplus have been adjusted against the vacant posts of Film/Video Editors. There were a total 48 such persons in both the categories to be adjusted and since there were only 24 Film/Video Editor vacancies at that time, they were absorbed in the ratio of 2:1 namely two film projectionists/film processors for one film/video editor with the rest being adjusted later based on vacancies. The applicant is in the category of persons who are not adjusted at that time for want of vacancies. From the OM and various rules relating to the absorption of surplus persons in Govt., it is clear that the applicant's case is not strong enough to be considered for adjustment for the year 2000 as requested by him since the vacancies were not available at that time and the applicant has also not brought out any case of malafide adjustment of persons junior to him etc. Therefore, his contention that since they are deemed to have been on deputation to Doordarshan from 2000 onwards, they should be considered for the higher scale as was done for the other film projectionists/film processors who were adjusted against the vacant posts of film/video editors has no merit.
11. The applicant has however brought in two issues which merit consideration.

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One is relating to the OM dtd.1.2.2012 at Annexure-A4 wherein based on acceptance of CGIT award dtd.26.6.2007, Prasar Bharati has granted financial upgradation to the incumbents to the posts of Painters/Carpenters/Tailors on par with Floor Assistants as on 21.2.2005. The post of Film Projectionist is on the same pay scale of Rs.4000-6000(pre-revised) on par with those of the Painters, Carpenters, Tailor posts. The post of Film Projectionists itself having been abolished in 2000, their position can also be considered equivalent to that of these isolated posts of Painters/Carpenters/Tailors. Inasmuch as the persons in the category of the applicant have also been in the same scale of pay, the respondents may consider their case for such beneficial treatment as was extended to the categories of Painters, Carpenters, Tailor etc. considering their services with the organisation since 1990. The applicant has also brought in details of the casual artists who have been regularised against various vacant posts vide Annexure-A20. The background of such regularisation is not presented in this application but the grievance of the applicant in not being considered on similar lines is justified. The respondents are therefore directed to consider the absorption of the applicant on par with similarly placed persons as noted above within a period of three(3) months from the date of receipt of this order.

12. The OA is disposed of with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

/ps/

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

Annexures referred to by the applicant in OA.No.170/00356/2017

- Annexure-A1: Copy of the order dd.29.6.2000
- Annexure-A2: Copy of the order dtd.27.8.2010
- Annexure-A3: Copy of the order dtd.21.7.2011
- Annexure-A4: Copy of the order dtd.1.2.2012

Annexure-A5: Copy of the representation 19.12.2011

Annexure-A6: Copy of the order dtd.11.8.2016

Annexure-A7: Copy of the order dtd.24.8.2016

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

Annexure-A8: Copy of the representation dtd.11.3.1991

Annexure-A9: Copy of the communication dtd.25.3.1991

Annexure-A10: Copy of the communication dtd.26.3.1991

Annexure-A11: Copy of the communication dd.15.2.1996

Annexure-A12: Copy of the upgraded pay scales order dtd.25.2.1999

Annexure-A13: Copy of OM dtd.8.5.1999

Annexure-A14: Copy of the OM dtd.9.8.1999 and clarification OM dtd.10.2.2000

Annexure-A15: Copies of RTI reply dtd.10.5.2018, note dtd.8.8.2001, Memo dtd.11.9.2001, ICM dtd.4.3.2003 & note dtd.5.5.2003

Annexure-A16: Copy of OM dtd.19.5.2009

Annexure-A17: Copy of Min. of Finance OM dtd.13.11.2009

Annexure-A18: Copy of the order dtd.9.9.2010

Annexure-A19: Copy of the Gazette Notification dtd.9.1.2012

Annexure-A20: Copy of the order dtd.3.6.2015

Annexure-A21: Copy of the order dtd.27.7.2012

Annexures with written arguments note filed by the applicant:

-NIL-

Annexures with written arguments note filed by the respondents:

-NIL-

Annexures with additional written arguments note filed by the applicant:

-NIL-
