

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/859/2011

Cuttack this the 24th day of December, 2018

CORAM:

HON'BLE SHRI G.C.PATI, MEMBER(A)
HON'BLE SHRI S.K.MISHRA, MEMBER(J)

Sri Syantanu Kumar Rath, aged about 55 years, S/o. Late Sarat Chandra Rath of Vill-Dhananjaya Pur, PO-Kulada, PS-Tarasingi, Dist-Ganjam – presently working as Assistant Station Director, All India Radio, Cuttack, At/PO/PS/Dist-Cuttack

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India in the Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi.
2. Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi-110 001

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER

S.K.MISHRA, MEMBER(J):

Applicant presently working as Assistant Station Director, All India Radio, Cuttack has filed this Original Application under Section 19 of the A.T.Act, 1985, seeking for the following reliefs:

- i) The Original Application may be allowed.
- ii) To quash the office order dated 07.04.2015(Annex.A/20) and communication dated 21/28.04.2015(Anne.A/21) holding the same are illegal and inapplicable to the case of the applicant.
- iii) The respondents may be directed to step up the pay of the applicant similar to that of Sri P.K.Srichandan and then to clear up the arrear differential amount within a time to be stipulated by this Tribunal.

- iv) And such other order(s)/direction(s) may be issued giving complete relief to the applicant.

2. Brief facts leading to filing this Original Application are thus: Applicant was appointed as a Direct Recruit Programme Executive (in short PEX) in the All India Radio and having held various responsible posts has gone up to the rank of Assistant Station Director. Respondent No.2 issued a circular dated 20.08.2004(A/1) to all Heads of AIR Stations with a view to removing pay anomaly of Senior DR PEXs, vis-a-vis Junior promote PEXs and in this respect, while making available consolidated pay statement drawn as on 1.1.1996 as per 5th CPC and as per pay upgradation order dated 25.2.999, it was indicated that in case of pay anomaly, the concerned employees may make representation to the Directorate for consideration. In response to this, the applicant submitted a representation dated 14.10.2004 (A/2) to the Director General, AIR, New Delhi (Res.No.2) requesting stepping up pay at par with one D.P. Banerjee, PEX. In response to this, it was intimated vide A/3 dated 24.03.2005 that the claim of the applicant for stepping up his pay at par with one D.P. Banerjee (PEX-ad hoc) is not justified inasmuch as the said Shri Banerjee had been promoted as PEX in the year 1999. While the matter stood thus, in pursuance of direction issued by the Ministry of Information & Broadcasting's I.D.Note No.45013/38/2003-BA (P) dated 21.05.2004 the claim of the applicant regarding stepping up pay was examined and it was found that the said Shri D.P.Banerjee, PEX had been drawing more pay than the applicant with effect from 01.01.1996 when his pay was refixed in terms of of the Ministry's Order No.310/173/97-B (D) dated 25.02.1999. It was indicated therein that the pay of Shri D.P.Banerjee was fixed at Rs.9000/- w.e.f. 1.1.1996 whereas the pay of Shri S.K.Rath (applicant) was refixed at

Rs.8250/-. This being the position, it was decided by the competent authority vide office order dated 12.07.2006 (A/4) that the pay of the applicant may be stepped up at par with that of his junior Shri D.P.Banerjee at Rs.9000/- with effect from 01.01.1996 and accordingly, the pay of the applicant was stepped up at par with Shri D.P.Banerjee.

3. Grievance of the applicant is that after the applicant's pay was stepped up at par with Shri D.P.Banerjee, he could come to know that pay of Smt.Kusum Sankar, PEX, AIR Rohatak (Sl.No.73 in the list circulated by the Directorate) who is junior to him, has been fixed at Rs.9250/- with effect from 01.01.1996 whereas his pay has been fixed at Rs.9000/- and therefore, there has been an anomaly in the matter of fixation of pay. In the above backdrop, applicant submitted a representation dated 21.01.2009 requesting for stepping up pay at par with Smt. Kusum Sankar. Since there was no response, applicant submitted further representations dated 10.05.2010(A/8) and dated 17.06.2010(A/9) respectively, reiterating the same request. However, during pendency of this O.A., vide communication dated 28.4.2016(A/21) the request of the applicant for stepping up pay at par with Shri P.K.Srichandan was turned down.

4. In the counter filed by the respondents, it has been submitted that a three Members Committee was constituted to investigate the alleged wrong stepping up pay of Direct Recruit Programme Executives vis-a-vis Promotee Programme Executives. As per the findings of the Committee, under F.R. 22 GID (10), the stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:

- i) Both the junior and senior officer should belong to the same cadre and the posts in which they have been

promoted or appointed should be identical and in the same cadre;

- ii) The scale of pay of the lower and higher posts in which they are entitled to draw should be identical;
- iii) The anomaly should be directly as a result of the application of FR 22-C, for example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above will not be invoked to step up the pay of the senior officer.

5. The Committee took note of the provision of FR 22 GID(23) (2)(e) which states that where a person is promoted from lower to a higher post, his pay is fixed with reference to the pay drawn by him in the lower post under FR 22-C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. For example, a UDC on promotion to the post of Assistant gets his pay fixed under FR-22-C with reference to the pay drawn in the post of UDC whereas the pay of Assistant (DR) is fixed normally at the minimum under FR-22 B(w). In such cases, the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up.

6. The Committee came to a finding that the claim of pay parity of Direct Recruit Programme Executives with junior Promotee Programme Executives are not in order as per rule and cannot be accepted at all.

7. It is the case of the respondents that the above report of the Committee was examined by the Competent Authority and accordingly, order No.23/S.I(B)/2015 dated 07.04.2015 was issued by the Directorate General, All India Radio with the direction to All India Radio Stations to re-fix the pay of all Direct Recruit PEXs whose pay had been stepped up wrongly with the junior promote PEXs and recoveries are to be made from them. According to respondents, the pay of the applicant who is a direct recruit PEX was wrongly

stepped up with a promote PEX Shri D.P.Banerjee. The pay of Shri P.K.Srichandan, Direct Recruit PEX was also wrongly stepped up with a promote PEX Smt.Kusum Shankar. As the stepping up pay of Direct Recruit Programme Executives vis-a-vis Promotee Programme Executives is not in order as conveyed vide Directorate's order dated 7.4.2015, applicant's claim for stepping up pay is not tenable. Hence, the respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

8. We have heard the learned counsels for both the sides and perused the pleadings of the parties. We have also gone through the additional affidavit filed by the applicant.

9. Before deciding the matter, we would like to make a mention the peculiarity involved in this case. Initially, the applicant had claimed stepping up pay at par with his junior one Shri D.P.Banerjee which however was allowed by the Respondents. Subsequently, he came across that another junior colleague Smt.Kusum Sankar is drawing higher pay and therefore, he went on filing representation after representation for further stepping up at par with Smt. Kusum Sankar. In the O.A. the applicant has claimed stepping up pay at par with Shri P.K.Srichandan perhaps having come to know that Smt.Kusum Sankar is not a direct recruit PEX and this is the reason for which the respondents have passed order dated 28.4.2016(A/21) whereby the request of the applicant for stepping up at par with Shri P.K.Srichandan has not been acceded to. Be that as it may, it has been brought to the notice of the Tribunal that taking note of the report of the Committee, the Competent Authority has issued an order No.23/S.I(B)/2015 dated 07.04.2015 with the direction to All India Ratio Stations to re-fix the pay of all Direct Recruit PEXs, whose pay have been

stepped up wrongly with the junior promotes PEXs and recoveries are to be made from them. It is the submission of the respondents that the applicant being a Direct Recruit PEX his pay has also been wrongly stepped up with Shri D.P.Banerjee, who is a promote PEX. Similarly, the pay of Shri P.K.Srichandan, Direct Recruit PEX has also been wrongly stepped up at par with Smt.Kusum Shankar, who is a promotee PEX. Since order dated 07.04.2015 issued by the Directorate General, AIR directing refixation of pay of all Direct Recruit PEXs whose pay has been wrongly stepped up with the junior promotee PEXs and consequently, to effect recovery and the undisputed fact being that the claim of the applicant for stepping up his pay at par with Shri P.K.Srichandan whose pay has been wrongly fixed at par with Smt.Kusum Sankar, who is a promote PEX, it would not be proper on the part of the Tribunal to rush to a conclusion based on the conjecture and surmises that the pay of the applicant should be stepped up at par with Shri P.K.Srichandan. In other words, since the pay of Shri P.K.Srichandan has been wrongly stepped up at par with Smt.Kusum Sankar, at this juncture the Tribunal is not inclined to issue any direction to step up pay of the applicant at par with Shri P.K.Srichandan.

10. In view of the discussions held above, we remit this matter back to the respondents with a direction to examine the matter regarding stepping up pay of the applicant at par with Shri P.K.Srichandan keeping in view the order dated 07.04.2015 issued by the Directorate General, AIR for refixation of pay of those persons, whose pay have been wrongly stepped up at par with Direct Recruit PEX and Promotee PEX and in such eventuality, they shall communicate the decision by passing a reasoned order to the applicant within

a period of 120 (one hundred & twenty) days from the date of receipt of copy of this order.

11. With the above observation and direction, this O.A. is disposed of with no order as to costs.

(S.K.MISHRA)
MEMBER(J)

(G.C.PATI)
MEMBER(A)

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