

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01148/2014

Friday, this the 25th day of January, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

- 1. Prasar Bharati Employees Federation,
represented by its President K. Wilson,
Cameraman Grade III, Doordarshan Kendra,
Kudappanakunnu, Thiruvananthapuram – 695 043.
- 2. M. Sritharan, Cameraman Grade III,
Doordarshan Kenda, Kudappanakunnu,
Thiruvananthapuram – 695 043. **Applicants**

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

v e r s u s

- 1. Union of India, represented by its Secretary,
Ministry of Information & Broadcasting,
Government of India, New Delhi – 110 001.
- 2. The Prasar Bharati (Broadcasting Corporation of India),
represented by the Chief Executive Officer, II Floor,
P.T.I. Buildings, Parliament Street, New Delhi – 110 001.
- 3. The Director General, Doordarshan Bhavan, Mandi House,
Copernicus Marg, New Delhi – 110 001.
- 4. The Director General, All India Radio, Aashvani Bhavan,
Parliament Street, New Delhi – 110 001.
- 5. The Deputy Director General, Doordarshan Kendra,
Kudappanakunnu PO, Thiruvananthapuram-
695 043. **Respondents**

(By Advocate Mr. N. Anilkumar, SCGSC)

This Original Application having been heard on 14th January 2019,
the Tribunal on 25th January 2019 delivered the following :

O R D E R

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The 1st applicant is the Prasar Bharati Employees Federation, which is an association of permanent Prasar Bharti employees working in All India Radio and Doordarshan as Cameraman Grade-III, Makeup Assistant, Production Assistant, Lighting Assistant, Stenographers Grade-III, II and I, Research Assistant Grade I & II, Library and Information Assistant, Private Secretaries, etc.. The 2nd applicant is a Cameraman Grade-III. They are seeking grant of higher pay scales as has been granted in Annexure A-1. It is submitted that subsequent to the 5th Pay Commission the Government have made selective upgradation of pay scales in certain categories like Translator, Programme Executive, Assistant Engineer, Floor Managers, Transmission Executives, Production Assistants, Editor (Scripts) and Property/Wardrobe Assistants, but no such revision had been made to categories of Cameraman Grade-III, Makeup Assistant, Production Assistant, Lighting Assistant, Stenographers Grade-III, II and I, Research Assistant Grade I & II, Library and Information Assistant, Private Secretaries, etc. to which the applicants belong. It is submitted that pay scales of all these categories were same during the 3rd Pay Commission, the 4th Pay Commission and the 5th Pay Commission. The applicants filed representations claiming that they should be treated similarly and benefit of upgradation of pay scale should be granted to all categories rather than undertake selective upgradation of pay scales. No action was taken by the respondents. Aggrieved they have filed this O.A seeking the following reliefs :

“i) Direct the respondents to grant upgradation of pay scales as granted in Annexure A1 & A1(a) to all left out categories of employees in Doordarshan and All India Radio.

ii) Direct the respondents to consider Annexure A11 representation while implementing the direction at Annexure A7.

iii) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice;

iv) Award the cost of these proceedings to the applicant.”

2. The respondents in their reply statement submitted that as per Ministry of Information and Broadcasting order dated 25.2.1999, as an incentive 11 identified categories of employees which were benefited of higher pay scale belonged to Subordinate Engineering and Programme Cadres to be identified as Prasar Bharati Corporation employees and the applicants were not part of the said categories. The said order dated 25.2.1999 was brought pursuant to promulgation of Prasar Bharati (Broadcasting Corporation of India) Act, 1990, which came into force on 15.9.1997 in respect of certain categories of employees to be transferred to Prasar Bharati (Broadcasting Corporation of India) as per Section 11 of the Act. There were other categories of employees who were left out from the benefit of the said order dated 25.2.1999. It is submitted that pursuant to the directions of this Tribunal in O.A.No.298/2010 the matter was considered by Committee of Joint Secretaries which recommended for withdrawal of order dated 25.2.1999 observing that the employees were not entitled to the upgraded pay scales in the event of their not getting absorbed in Prasar Bharati. The said recommendations lost its sanctity because of non consideration by the Group of Ministers set up by the outgoing

Government, and because of scrapping of concept of Group of Ministers by the present Government. Further, as per order dated 25.2.1999 the upgraded scales will be allowed not as Government employees *per se* but as Government employees currently in service of Prasar Bharati. 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 scale. They will also have to refund all benefits availed of by them as a result of the grant of higher scales of pay and will be liable for recovery. Further as per Section 11 of Prasar Bharati Act, all officers and employees recruited during the period on or before 5.10.2007 shall be on deemed deputation to the Corporation till their retirement. They shall be entitled to the pay and all other benefits as admissible to an employee of the Central Government without any deputation allowance. Therefore all those who have entered into Government service on or before 5.10.2007 shall be governed by Government pay scales. Further by virtue of amendment to Section 11 of Prasar Bharati Act, they have now become Central Government employees and they would be governed on the basis of recommendations of Central Pay Commission in the matter of pay scales. Moreover, the applicants of Doordarshan Core Professional cannot be assumed as similarly placed with that of applicants in OANo. 1742/1743 of 2004 for the purpose of extending them the benefit of higher pay scale. The applicants are also similarly placed with that of Federation of Doordarshan Care Professionals.

3. A rejoinder has also been filed reiterating the contentions raised in the OA.

4. Heard Shri.Vishnu S. Chempazhanthiyil, learned counsel for the applicant and the learned counsel appearing for the respondents. Perused the records.

5. The Principal Bench had already considered the question of similar pay scales as per OM dated 25.2.1999 which has been claimed by Engineering Assistants in Doordarshan Kendra by filing O.A.No.1742/2004 & O.A.No.1743/2004. The Principal Bench has unequivocally held that *“any unreasonable classification, which is not founded on intelligible differentia and those who are left of the group and also those who are included, if does not show any reasonable nexus with the objects sought to be achieved, the same would be an illegality”*. The Principal Bench goes on to state that a differential treatment, a class legislation and also an unequal treatment meted out to equals is an invidious discrimination, which cannot be sustained in the wake of principles of equality, enshrined under Article 14 of the Constitution of India and the explanation given by the respondents for the same is not reasonable. The Principal Bench vide order date 31.5.2006 disposed of the O.As with the following observations :

10. We have carefully considered the rival contentions of the parties and perused the material on record.

11. It is trite law that a cut off date if causes hardship is no ground to declare it illegal. It is a policy decision of the Government. When such a policy decision does not withstand scrutiny of law in the matter of discrimination under Article 14 of the Constitution of India or is arbitrary in any manner being a policy decision the only scope for interference in a

judicial review is to remand back the matter to Government for reconsideration, as held by the Apex Court in *Union of India v. K.S. Okkuta*, 2002 (10) SCC 226.

12. In the matter of cut off date and discrimination thereof, the Apex court in *D.S. Nakara*, held as follows :

42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalization was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs.8100 p.a. and average emolument to be worked out on 36 months salary while the other will have a ceiling of Rs.12,000 p.a. and average emolument will be computed on the basis of last 10 months average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalizing the pension scheme. In fact this arbitrary division has not only no nexus to the liberalized pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly vitiated inasmuch as the pension rules being statutory in character, since the specified date, the rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.

43. Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14. The next question is what is the way out?

13. In the matter of application of Article 14 of the Constitution of India the twin test is of relevance, according to which any arbitrary action involves class legislation. Any unreasonable classification, which is not founded on intelligible differentia and those who are left of the group and also those who are included, if does not show any reasonable nexus with the objects sought to be achieved, the same would be an illegality.

14. The relevance to the cut off date now being explained by respondents is on the ground that the cut off date has been fixed with a purpose that those government employees who had switched over to Prasar Bharti from Government were granted the higher pay scale as an incentive. In OA-1743/2004 applicants had also sought to join the Prasar Bharti as direct

recruits the cut off date is incidentally the decision taken by the respondents. These are employees who had been of the batch of 1994-95 though their juniors in the merit of Engineering Assistants having joined earlier are accorded higher pay scale whereas on the technicality of non-completion of formality as to verification etc. without any fault attributable to applicants delayed their joining which has deprived them of the higher pay scale. If as an incentive higher pay scale is accorded on the basis of joining the same cannot be denied by virtue of delayed joining. The cut off date of 25.2.1999 has no reasonable nexus and intelligible differentia with any underlined object or nexus with the object sought to be achieved. Applicants who are equally placed are not considered for grant of higher pay scale merely because they are entrants of 1994-95 batch, the other members of the batch had been accorded the higher pay scale having denied to applicants constitutes a differential treatment and a class legislation and also an unequal treatment meted out to equals is an invidious discrimination, which cannot be sustained in the wake of principles of equality, enshrined under Article 14 of the Constitution of India. However, the relevance of the cut off date now shown and explained by respondents is not reasonable.

15. As regards applicants in other OA, we find that the higher pay scale has been given on the basis of the cut off date to those promotee Assistants under 20% quota who had been promoted as Engineering Assistants and are placed below in the seniority list, yet being juniors they are enjoying the higher pay scale and even on promotion would get higher pay scale and this would be maintained throughout the service career of these Technical Assistants. It is very strange that being junior one is allowed to enjoy higher pay scale. The aforesaid aspect of the matter has not been looked into by the respondents, as representations preferred by applicants have not been responded to.

16. In the result, for the foregoing reasons, we dispose of these OAs, with a direction to respondents to re-examine the claim of applicants for grant of higher pay scale of Rs.6500-10,500/- as Engineer Assistants, in the light of the observations made above and disposed of the same by passing a detailed and speaking order, within a period of three months from the date of receipt of a copy of this order. In the event it is decided to grant higher pay scale to applicants, consequences would follow. No costs.

6. We are in total agreement with the aforesaid order passed by the Principal Bench of this Tribunal and holds that the aforesaid order squarely covers the case of the applicants in this O.A since they are equally placed as that of Engineering Assistants therein. We therefore dispose of this O.A directing the respondents to consider the claim of the applicants for grant higher pay scales with effect from 1.1.1996 in the light of the observations made hereinabove and dispose of the same by passing a detailed and speaking order, within a period of three months from the date of receipt of a copy of this order. In the event it is decided to grant higher pay scale to

applicants, consequences would follow. No order to costs.

(Dated this the 25th day of January 2019)

**ASHISH KALIA
JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

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List of Annexures in Original Application No.180/01148/2014

1. Annexure A-1 - True copy of order No.310/173/97-A(B) dated 25.2.1999 issued by the Ministry of I&B.
2. Annexure A-1(a) - True copy of the Office Memorandum No. F. No. 310/173/97-B(D) dated 10.3.1999 issued by the Ministry of I&B.
3. Annexure A-2 - True copy of the order dated 20.7.2006 in OA No. 388/2006 of this Hon'ble Tribunal.
4. Annexure A-3 - True copy of the communication No. PB.DG.DD I.D. Note No. 2/5/2006-SI(A) dated 5.12.2006 issued by the Directorate General, Doordarshan, New Delhi.
5. Annexure A-4 - True copy of communication dated 30.4.2007 issued by the Directorate General, Doordarshan, New Delhi.
6. Annexure A-5 - True copy of the communication No. Misc-1/119/2007-PPC dated 28.6.2007 from Prasar Bharati Secretariat.
7. Annexure A-6 - True copy of the communication No. F. No. 2/5/2006-SI(A)/Pt.1, dated 30.1.2010 issued by the Directorate General, Doordarshan, New Delhi.
8. Annexure A-6(a) - True copy of the detailed proposal covering all aspects in the matter of pay parity of members of All India Radio and Doordarshan Administrative Staff with Engineering and Programme cadre.
9. Annexure A-7 - True copy of the order dated 25.10.2011 in OA No. 298/2010 of this Hon'ble Tribunal.
10. Annexure A-8 - True copy of the representation dated 28.8.2014 submitted by the 1st applicant.
11. Annexure A-9 - True copy of the communication No. A-10/127/2006-PPC(Vol.IV) dated 14.8.2014 issued by the Deputy Director General, Prasar Bharati Secretariat.
12. Annexure A-10 - True copy of the communication No. 154/2005-DP&L/BAP-vol.VI dated 14.8.2014 from the Ministry of the Prasar Bharati Secretariat.
13. Annexure A-11 - True copy of the representation dated 28.8.2014 to the Director General, Doordarshan.
14. Annexure A-12 - True copy of communication DO No. 15/4/2005-BP&L/BAP-Vol.VI dated 19.3.2016 from the Ministry of Information and Broadcasting to the Prasar Bharati Secretariat.

15. Annexure A-13 - True copy of the communication DO No. 15/4/2005-BP&L/BAP-Vol.VI dated 6.1.2015 from the Ministry of Information and Broadcasting to the prasar Bharati Secretariat.
16. Annexure A-14 - True copy of the communication DO No. 15/4/2005-BP&L/BAP-Vol.VI dated 15.12.2012 issued by the 1st respondent.
17. Annexure A-15 - True copy of the communication No. A-10/127/2006-PPC(Vol-IV) dated 15.12.2014 addressed to the DG, AIR and DG, DDK.
18. Annexure A-16 - True copy of the communication DO No. A-10/127/2006-PPC(Vol.IV) dated 26.11.2014 issued by the Ministry of Information and Broadcasting.
19. Annexure A-17 - True copy of the communication F. No. 15/4/2005-BP&L(BAP) dated 25.11.2014 issued by the Ministry of Information and Broadcasting.
20. Annexure A-18 - True copy of the communication NO. A-10/127/2006/PPC(Vol.-IV) dated 30.10.2014 from Prasar Bharati Secretariat to the office of the 1st respondent.
21. Annexure A-19 - True copy of the communication No. A-10/127/2006/PPC(Vol-IV) dated 13.10.2014 from Prasar Bharati Secretariat to the office of the 1st respondent.
22. Annexure A-20 - True copy of the communication No. A-10/127/2006/PPC (Vol-IV) dated 29.10.2014 from Prasar Bharati Secretariat to the office of the 1st respondent.
23. Annexure A-21 - True copy of the order dated 9.1.2017 in OA No. 691/2013 of the Madras Bench of the Hon'ble Tribunal.
