

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No.180/00058/2015

Tuesday, the 12th day of February, 2019

CORAM

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

T.N.Vanajakumar
S/o.Late Sri.T.N Nair, aged 48 years
Engineering Assistant, All India Radio
Thrissur, residing at Thayyiluthri House
P.O Chittilappally, Trissur – 680 551 Applicant

(By Advocate:Mr.M.R.Hariraj)

Versus

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|----|--|-----------------|
| 1. | Union of India, represented by the Secretary to Government of India, Ministry of Information & Broadcasting, New Delhi-110 001 | |
| 2. | The Prasar Bharthi Corporation of India Ltd., Represented by its Chairman and Managing Director New Delhi – 110 001 | |
| 3. | Pay & Accounts Officer, All India Radio Chennai- 600 004 | |
| 4. | Deputy Director (Engineering) All India Radio, Chennai – 600 004 | |
| 5. | Director General, All India Radio New Delhi – 110 001 | ... Respondents |

(By Advocate: Mr.N.Anilkumar,SCGSC)

This application having been taken up on 4th February, 2019, this Tribunal delivered the following order on 12.2.2019.

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ORDER

Per: **MR.ASHISH KALIA, JUDICIAL MEMBER**

The reliefs sought by the applicant are as follows:-

- “i. To call for the records leading to Annexure A1 and A2 and quash the same.
- ii. To declare that the applicant is entitled to be granted fixation of pay with effect from 1.1.2006, reckoning his existing basic pay as Rs.7450/- in the scale Rs.7450-11500 as has been done in Annexure A6, and to direct the respondents to grant the applicant such pay fixation with all consequential benefits including arrears of pay and allowances, with interest @ 18% per annum on delayed payment.
- iii. To direct the respondents to refund the amounts recovered as per the impugned orders from the applicant with interest @ 18% per annum from the date on which the recovery was effected till date of payment.
- iv. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and
- v. Grant the costs of this Original Application. ”

2. The brief facts of the case are as under:

Applicant while working as Senior Technician in the pay scale 5000-8000, was promoted as Engineering Assistant in the scale 6500-200-10500. His pay was fixed at Rs.6500/- under FR 22(I)(a)(i). The next promotion post of the applicant is that of Senior Engineering Assistant, which was in the pay scale of Rs.7450-11500 (pre-revised). After drawing due increments, the applicant was having pay of Rs.6700/- as on 1.1.2006. As per 6th Central Pay Commission recommendations, the pay scales were revised. Revised pay scale was made applicable to the applicant. Under Part B Section 1 of the 1st Schedule of CCS (Revised) Pay Rules, 2008 it is provided:

“ On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the pay commission are included Section II of Part B. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and 5500-9000 should be merged with the posts in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB II ie, to the grade pay of Rs.4600/- corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exist in the scale of Rs.7450-11500, the post being graded from the scale of Rs.6500-10500, should be merged with the post in the scale of Rs.7450-11500.”

3. Since the post of Senior Technician and Engineering Assistant cannot be merged, on functioning considerations, the scale of pay of Rs.6500-10500 ought to have been upgraded and merged with that of the payscale of Rs.7450-11500, applicable to Senior Engineering Assistant. In such circumstances, when revision of pay was made, the applicant ought to have been placed in the scale of Rs.7450-11500 and granted appropriate revised pay fixation thereon. However, revision of the pay was made for the employees of the 2nd respondent the pay of the applicant was fixed reckoning his existing pay as Rs.6700, thus refusing him the benefit of upgradation to the scale of Rs.7450-11500. This matter was taken up with the 2nd respondent by various service organisations.

4. The matter was considered and it was clarified, referring to note 2A of Rule 7 of the CCS (Revised) Pay rules, 2008. The wrong reference to illustration 4B in Annexure A3 was corrected as 4A by corrigendum

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no.14/18/2011-SIV(A) 165 dated 12.4.2012 (Annexure A4). Based on Annexures A3&A4, the applicant made representation praying for re-fixation of pay and applicant's pay was re-fixed as per Annexure A-6. Subsequently Annexure A1 was issued which demands fixation of the pay of the applicant without upgradation to the scale of Rs.7450-11500. On this re-fixation, his pay has been substantially reduced to Rs.6900/- as per O.M dated 19.3.2012. However, fixation to Rs.7450/- is not granted. Aggrieved the applicant submitted a representation vide Annexure A-7. Without considering Annexure A-7, applicant was asked to submit option regarding instalments in regard to the recovery of pay. Accordingly, the applicant submitted the same. Feeling aggrieved by the action of the respondents, he has approached this Tribunal for redressal of his grievances.

5. Notices were issued and respondents put appearance through their counsel and filed a detailed reply statement. It is submitted by respondent no.3 that the applicant has been erroneously allowed the pre-revised higher pay scale of Rs.6500-10500 as against the Government sanctioned pay scale of Rs.5000-8000 and got his pay fixed @ Rs.13860/- with a grade pay of Rs.4600/- with effect from 1.1.2006 as per 6th CPC, in gross violation of rules as set out by the Director General, All India Radio.

6. The wrong fixation and incorrect grant of pay to the applicant touching the pay to Rs.7450/- has been unearthed by respondent PAO during the conduct of salary audit, under instruction from the 4th respondent. However, the 5th respondent has been requested by the 1st respondent, vide

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letter No.508/06/2012-B&E dated 28.6.2013, to clarify whether it has taken any decision to place the existing Engineering Assistant in the grade of Rs.7450-11500 and also to grant the minimum basic pay of Rs.7450/- to those Engineering Assistant, whose basic pay has not touched Rs.7450/- in the grade of Rs.6500-10500. The 5th respondent Director General has not issued any specific instructions to allow the benefit of pay of Rs.7450/- to those Engineering Assistants who have not reached the pay of Rs.7450/-. Hence the averments of the applicant regarding the eligibility criteria for the fixation of pay are false. It is further submitted that as per Annexure A-4 the pay scale of Rs.6500-10500, itself is an upgraded pay scale with reference to sanctioned government pay scale of Rs.5000-8000. Therefore, the averments raised by the applicant are unwarranted and lacks merit.

7. The applicant was drawing a pay of Rs.6700/- as on 1.1.2006 i.e, prior to implementation of 6th CPC. He has been placed in the pay band II @ Rs.9300-34800 with grade pay of Rs.4600. The 5th respondent has never merged the pre-revised pay scale of Rs.7450-11500. The fact is that the Engineering Assistant is the feeder grade of Senior Engineering Assistant where the Engineering Assistant having been granted Prasar Bharati pay scale in the higher and the upgraded pay scale of Rs.6500-10500, but the scale of Senior Engineering Assistant of Prasar Bharati to which Engineering Assistant is feeder scale of Rs.7450-11500.

8. Therefore, the scale of Engineering Assistant has never been upgraded to Rs.7450-11500. So, the 5th respondent has not approved so far,

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to fix the pay of that Engineering Assistant who has not reached the basic pay of Rs.7450/- with reference to the upgraded pay scale of Rs.5000-8000 granted to Engineering Assistant as per 5th CPC and that of Rs.5500-9000 granted to Senior Engineering Assistant as Government pay scale cannot be merged with the pre-revised pay scale of Rs.6500-10500, as per Department of Expenditure O.A No.1/1/2008-I dated 13.11.2009 because of functional disturbance on account of Engineering Assistant being feeder post to Senior Engineering Assistant for promotion purpose. The respondents in the reply statement contended that the applicant has not touched the pay scale of Rs.7450/- as on 1.1.2006 and that can only be granted after taking approval of the Ministry and they cannot grant the same suo-moto. Thus they prayed for dismissal of the Original Application.

9. Respondent nos.1 & 2 has also taken similar stand in their reply statement. It is submitted that on the basis of audit report, applicant's pay was fixed at Rs.12,840/- + 4600/- GP as on 1.1.2006. Hence started recovery of excess payments in easy installments. However, on the strength of an interim order, recovery has been stopped. It is further submitted that the Engineering Assistant has not been upgraded as per Part B or Part C of First Schedule of CCS (RP) Rules. Ministry of I&B has vide letter dated 7.5.2012 has clarified that the Grade Pay granted to Engineering Assistants and Senior Engineering Assistants is not the Grade Pay of the Post. The Grade Pay of Rs.4600/- which corresponds to the pre-revised pay scale of Rs.6500-10500/- has been given to certain Engineering Assistants & Senior Engineering Assistants who were in the service of Prasar Bharati as on

25.2.1999 subject to certain conditions. Respondents relied upon judgment passed by the Hon'ble Apex Court in **High Court of Punjab & Haryana v. Jagdev Singh** in support of their contention.

10. Heard Mr.M.R.Hariraj, learned counsel for the applicant and Mr.N.Anilkumar,SCGSC, learned counsel for the respondents. Perused the records.

11. The basic contention raised by the respondents in the reply statement is that the applicant has not touched the pay scale of Rs.7450-11500. Thus he is not entitled for this pay scale with effect from 1.1.2006. It is submitted by the respondents that the applicant's pay scale was earlier revised vide 4th Central Pay Commission in the pay scale of Rs.1320-2040 and by virtue of 5th CPC, it was further revised to Rs.5000-8000. Thereafter, the applicant was promoted as Engineering Assistant in the upgraded pre-revised pay scale of Rs.6500-10500 as against the Government sanctioned pay scale of Rs.5000-8000. But it was erroneously given to the applicant. The next promotion post i.e, Senior Engineering Assistant should have been in the pay scale of Rs.6500-10500.

12. Whereas the applicant has claimed in this Original Application that he was promoted as Engineering Assistant in the scale of pay of Rs.6500-10500. It is already upgraded scale with reference to sanctioned government pay scale of Rs.5000-8000. Thus, there cannot be a 2nd upgradation to the pay scale of Rs.7450-11500 (pre-revised) with effect from 1.1.2006. It is

seen that the applicant's pay was fixed at Rs.6500-11500 erroneously from the pay scale of Rs.5000-8000 whereas the scale of pay of Senior Engineering Assistant was 5500-9000/-. In Prasar Bharati pay scale of Rs.6500-11500 has been granted to Engineering Assistant, there being a feeder post of Rs.7450-11500. By 5th CPC the respondent nos.3 to 5 have allowed pay scale of Rs.5500-9000 to Senior Engineering Assistant. The contention of Shri.M.R.Hariraj, learned counsel for the applicant is that the pay scale of Rs.5000-8000 and 5500-9000 have merged and the scale of Rs.6500-10500 and scale of pay Rs.6500-10500 is to be upgraded to the next higher grade in pay band PB II i.e, to the grade pay of Rs.4600/- corresponding to the pre-revised pay scale of Rs.7450-11500. Where as the applicant was already given one more jump directly from Rs.5000-8000 to Rs.6500-10500 by escaping the in between pay scale of Rs.5500-9000. The respondent no.5 has never granted the said pay scale to the post Senior Engineering Assistant as claimed by the applicant. So we are not in agreement with contention raised by the learned counsel Shri.M.R.Hariraj that applicant is entitled for pay scale of Rs.7450-11500 on merger of 2 pay scales. Learned counsel for the applicant has referred CCS Revised Pay Rules 2008 Chapter 4 , First Schedule, Part B, Section I (ii) whereas this Tribunal has taken (i) to (v). It reads thus:

“(i) The revised pay structure mentioned in Columns (5) and (6) of this part of the Notification for the posts mentioned in Column (2) have been approved by the Government. The initial fixation as on 1.1.2006 will be done in accordance with Note 2 below Rule 7 of this Notification.

(ii) On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific

recommendations about some categories of these posts made by the Pay Commission are included Section II of Part B. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged, with the post in the scale of Rs.6500-10,500 being upgraded to the next higher grade in pay band PB-2, i.e, to the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.

(iii) Posts in the scale of Rs.6500-10500 carrying minimum qualification of either Degree in Engineering or a Degree in Law should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600/-.

(iv) Posts of scientific staff in the scale of Rs.6500-10500 carrying minimum qualification of engineering degree or a postgraduate degree should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600/-.

(v) Upgradation as in (ii) above may be done in consultation with Department of Expenditure, Ministry of Finance. Regarding (iii) and (iv) above, upgradation may be done by the Ministries concerned in consultation with their integrated Finance.”

13. It is not clear from the Original Application that the applicant herein falls under which category of Section (i)-(v). Even if he fulfills the criteria, there is no automatic upgradation and the pay scale of Rs.7450-11500 could be granted only in consultation with the Ministry of Finance. Thus, we are not in agreement with the proposition given by learned counsel for the applicant. The respondent has only granted a pay scale of Rs.5500-9000 to post of Senior Engineering Assistant and by no stretch of imagination the 7450-11500 was agreed in the case of applicant by the respondents. However, those who have crossed or touched the level 7450-11500 as on 1.1.2006 are considered for the same. The applicant being in the payscale

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of Rs.6700/- as per fixation under Revised Pay Rules 2008, multiplying by 1.86, it has been calculated to 12,840/- + 4600 G.P and there is nothing wrong in it. Thus the objections are correctly pointed out and the applicant's pay since has not been touched Rs.7450-111500 pay scale. Thus he cannot expect to get the pay scale of Rs.7450-11500.

14. As the applicant's case does not falls in the categories specified in the case of **Rafiq Masih**, applicant cannot claim the benefit of the decision of the Hon'ble Apex Court against the recovery of the dues erroneously paid to him. Respondents are relying on the judgment of the **Jagdev Singh** supra.

15. We are of the view that calculation made as per Annexure A-2 is correct and the pay of the applicant has been correctly fixed as per Annexures A2(1) and A 2(2). We find no merit in the Original Application and the Original Application stands dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

- Annexure A1 - A true copy of Order No.PB/Salary Audit/2013-14/42 dated 16.9.2013, issued for the 2nd respondent and the audit objection.
- Annexure A2 - A true copy of Order No.TRC-10(2)/2013-AC/4611 dated 18.11.2013 issued by the 4th respondent
- Annexure A3 - A true copy of Order No.14/18/2011-SIV(A)41 dated 8/9.2.2012
- Annexure A4 - A true copy of corrigendum no.14/18/2011-SIV(A) 165 dated 12.4.2012
- Annexure A5 - A true copy of representation dated 16.11.2012
- Annexure A6 - A true copy of pay fixation number ERC-10(2)/2012-AC/5698 dated 30.7.2012 issued by the 4th respondent
- Annexure A7 - A true copy of representation dated 16.1.2014
- Annexure A8 - A true copy of order no.TRC-7(2)2014-15/AC 957 dated 2.5.2014
- Annexure A9 - A true copy of option submitted by the applicant on 6.5.2014
- Annexure R1 - Copy of letter No.501/02/2011-(BA)E dated 07.05.2012 by Ministry of I & B.
- Annexure R2 - Applicant's request dated 13.2.2014
- Annexure R3 - Copy of order issued by the Hon'ble Supreme Court in High Court of Punjab & Haryana v. Jagdev Singh in Civil Appeal No.3500/2016
- Annexure R4 - Copy of O.A.No.813/2016 filed by R Vimala Baid & Another v. Union of India and others before the C.A.T, Bangalore Bench on 16.6.2017