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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.469/2003

This the 21st day of January, 2004

HON'BLE SHRI V.K.MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Akashvani & Doordarshan Administrative Staff Association through its General Secretary, Office of Director, Transcript and Programme Exchange Unit, AIR, 4th Floor, Akashvani Bhawan, Parliament Street, New Delhi-110001.

2. R. S. Bhandari S/O G.S.Bhandari, Working as Head Clerk, O/o National Channer, AIR New Delhi R/O A-305 Motibagh-I, New Delhi-110021.

3. Smt. Gayathri Raghottaman W/O S. Raghottaman, Working as Accountant, O/o Director, Doordarshan Kendra, New Delhi R/O Block 48/3C, Sector-2, DIZ Area, Gole Market, New Delhi.

... Applicants

(By Shri A. K. Behera, Advocate)

-versus-

1. Union of India through Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi-110001.

2. Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi-110001.

3. Chief Executive Officer, Prasar Bharati (Broadcasting Corporation of India), PTI Building, Parliament Street, New Delhi-110001.

4. Secretary, Ministry of Finance, Department of Expenditure, North Block, New Delhi-110001.

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5. Joint Secretary,
Ministry of Finance
(Implementation Cell),
North Block, New Delhi-110001. ... Respondents
(By Shri K.R.Sachdeva, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, V.C.(A) :

While applicant No.1 is the Akashvani & Doordarshan Administrative Staff Association, applicants 2 and 3 are members of this Association and are working as Head Clerk and Accountant respectively.

2. Annexures A-1 and A-2 dated 8.2.2001 and 9.4.2001 have been assailed by applicants whereby the proposal regarding upgradation of the pay scales of Head Clerks etc. in All India Radio and Doordarshan from Rs.5000-8000 to Rs.5500-9000 has been rejected.

3. The learned counsel of applicants submitted that while the Fifth Central Pay Commission (5th CPC) in its Report had recommended the pay scale of Rs.1640-2900 (Rs.5500-9000) to posts supervisory in nature and the administrative ministry and the cadre controlling authority of applicants had certified applicants' posts as supervisory, and while the claimed upgradation had been granted to similar posts in other departments, applicants' claims have been rejected meting out a discriminatory treatment to them.

4. The learned counsel of the applicants brought to our attention order dated 28.8.2000 passed by Madras Bench in OA No.440/1999 : V. Chandramouli & Ors. v.

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Union of India & Anr. It was directed therein that the respondents should dispose of the matter by taking a decision in accordance with law giving proper reasons. The learned counsel stated that the impugned orders have been passed without application of mind and giving any reasons for rejection of the claims of applicants.

5. The learned counsel further drew our attention to paragraph 46.11 of the recommendations of the 5th CPC stating that as the applicants were holding supervisory posts, they have to be placed in the scale of Rs.1640-2900 (Rs.5500-9000). He stated that applicants as Head Clerk/Accountant/Senior Store Keeper were degree holders as per recruitment rules Annexure A-7 and held supervisory posts as per Annexure A-5 which is AIR Manual. He also referred to Annexure A-8 which is form for confidential report for Head Clerk/Accountant/Senior Store Keeper, particularly, column 9 thereof, which is described as "Supervision of work and division of duties among his subordinates and capacity to train, help, advise and handle them". He also referred to Annexure A-10 which are recruitment rules in which Head Clerk is stated to be a member of the departmental promotion committee in respect of the post of Peon. The learned counsel stated that as the applicants are holding supervisory posts and had been recommended by the administrative Ministry which is the cadre controlling authority for the applicants for allocation of the higher pay scale, the Finance Ministry could not have rejected the claim of applicants without application of mind by an order reasons for which were not detailed.

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6. On the other hand, the learned counsel of respondents contended that the 5th CPC had recommended the higher pay scale for the posts of Head Clerk/ Accountant/Senior Store Keeper in All India Radio and Doordarshan. He further stated that it is settled law that Tribunals should not interfere in the matters relating to pay scales as it is the function of the Government to take decision on the recommendations of the Pay Commissions, which are expert bodies. The learned counsel further contended that the applicants in All India Radio/Doordarshan are performing routine duties which are basically not supervisory in nature, and as such, the claimed higher scale could not have been accorded to them. In this view, he stated that the Government have been in the right to deny the claims of these applicants.

7. We have considered the rival contentions.

8. For adjudicating the controversy before us, it is necessary to take into consideration the following recommendations of the 5th CPC relating to office staff in non-secretariat organisations :

"46.4. Ministerial posts next above the level of UDCs are known by different designations - Assistant, Head Clerk, Office Superintendent level II etc. and placed either in the pay scale of Rs.1400-2300 or Rs.1400-2600. Different designations and pay scales have been adopted by different departments as per their functional requirements. The designations of Head Clerk and Office Superintendent level II suggest that they may be supervisory posts but we have been informed that the nature of duties and responsibilities of these employees are generally non-supervisory in nature and even

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if some supervisory duties are assigned, these are of a very routine type."

"46.10. The posts of Head Clerk (Rs.1400-2300) and Office Superintendent Level II (Rs.1400-2300/Rs.1400-2600) also exist in all the Non-Secretariat organisations. It is felt that none of these posts has any supervisory functions worth the name. It will be appropriate if the two grades are merged with the cadre of Assistant. Their pay scales and designations will also be modified accordingly."

"46.11. The posts of Office Superintendent Level I (Rs.1600-2600) or Office Superintendent in the pay scale of Rs.1600-2660/Rs.1640-2900 are supervisory posts in the real sense. The incumbents of these posts supervise the work of Assistants, head Clerks and other clerical staff in the Offices. They should, therefore, be designated uniformly as Office Superintendent and placed in the pay scale of Rs.1640-2900."

9. In para 46.4 of their Report, the 5th CPC has only stated that they had been informed that duties and responsibilities of the posts of Head Clerk and Office Superintendent are generally non-supervisory in nature and even if some supervisory duties are assigned, these are of a "very routine type". In this view of the matter, respondents have gone by recommendations made in paragraph 46.10 ibid stating that these posts do not have any supervisory functions worth the name.

10. It has been contended on behalf of the respondents that the Tribunal should not interfere in matters of according pay scales etc. as it is the function of the Government which normally acts on recommendations of the Pay Commission. Thus, question before us is whether the 5th CPC had gone into the nature of duties and responsibilities of these posts and thereupon what recommendations were made by the

Commission in this behalf. Further that whether and how the respondents have acted upon the recommendations of the Pay Commission. If the CPC as an expert body has not considered the duties and responsibilities of the posts in question in depth and if the CPC has considered these aspects in depth but such recommendations have not been accepted by the Government with reasons, in the interest of justice, the Courts have powers to look into such aspects. The issues raised in the present case do warrant consideration of these aspects by the Court and as such hearing the learned counsel of both sides on these aspects, the matter has been looked into by us.

11. Paragraph 46.4 ibid relating to the Head Clerks etc. of the office staff in the non-secretariat organisations indicates that the 5th CPC had been informed that the nature of duties and responsibilities of these employees is generally non-supervisory in nature, and, if at all, these duties and responsibilities are of a very routine type. These observations of the Commission do not indicate that any indepth study of the duties and responsibilities of such staff had been undertaken. On mere information supplied by the Government, the CPC seems to have observed that duties of such staff are non-supervisory involving routine type of supervision. Thus, vide paragraph 46.10 the posts of Head Clerks and Superintendent Level-II were placed in lower scale than the pay scale of Rs.1640-2900 recommended for the post of Office Superintendent Level-I as recommended in paragraph 46.11 ibid.

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12. Annexure A-5 which is part of the AIR Manual delineates the duties and responsibilities of the Head Clerk/Accountant/Senior Store Keeper. As regards Head Clerks, it is stated therein, "He is the first Supervisory member of the staff who functions as Sectional head in the Sections dealing with personnel and general administration..... He will be responsible for all administrative matters other than Accounts, such as service books and leave account of non-gazetted Government Servants..... maintenance of Statistical Registers and books, Inventories etc". AIR Manual also states that the Senior Store Keeper will supervise the work of Junior Store Keeper. Annexure A-6 dated 9.10.199 is an office memorandum relating to review of staffing norms of DDKs by SIU. SIU has recommended therein that keeping the span of control and the size of operations in view, one Head Clerk/Accountant should supervise ten clerks. Annexure A-8 which is the form for confidential reports on Head Clerk/Accountant/Senior Store Keeper in the All India Radio/Doordarshan has also prescribed a column for supervision of work and division of duties among his subordinates and capacity to train, help, advise and handle them. Annexure A-10 indicates that Head Clerk/AO is a member of the DPC in the case of Peons. All these documents indicate that the posts of Head Clerk/Accountant etc. do have supervisory duties and responsibilities which are not of routine type. The 5th CPC Report does not indicate that all these aspects had been taken into consideration by them. Respondents in their counter reply have admitted that "the posts of Head Clerk/Accountant/Senior Storekeeper in all India

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Radio/ Doordarshan are supervisory posts and accordingly DG:AIR had taken up the matter with the Vth CPC through Ministry of I&B for granting the pay scale of Rs.2000-3200/- (pre-revised) to these posts". The respondents have merely stated that the proposal for grant of the scale Rs.1640-2900 (PR) as recommended by respondent No.2 was turned down by respondent No.4. It means that while the administrative Ministry, i.e., DG, AIR and Ministry of Information and Broadcasting had admitted that the duties and responsibilities of the posts in question are of supervisory nature and they should be accorded the higher pay scale of Rs.1640-2900, the proposal was turned down by respondent No.4, i.e., the Department of Expenditure. The impugned orders Annexures A-1 and A-2 are sketchy orders in which it has not been stated how the recommendations of the 5th CPC have been considered and implemented by them. These are non-speaking and non-reasoned orders.

13. Similar issues regarding posts of Senior Administrative Officers in Akashvani and Doordarshan Administrative Staff Association & Anr. v. Union of India & Anr. (OA No.974/2002) in which it was held that the 5th CPC had recommended that if the functional considerations so required, the pay grade could be upgraded. Respondents had examined the matter and recommended upgradation but their recommendation was turned down by the Ministry of Finance and the OA was dismissed in limine. This matter was carried to the Delhi High Court through CWP No.3610/2002. The High Court had held as follows :

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"16. We, having regard to the facts and circumstances of the case, are *prima facie* of the opinion that the submissions made by the learned counsel appearing on behalf of the petitioner appear to be correct.

If the Cadre Controlling Authority found that there was functional requirement for the post of S.A.O., there was no question of merger of the said posts. Furthermore, if grant of such scale of pay leads to an anomaly, the same could have been referred to the Anomaly Removal Committee, but once the Cadre Controlling Authority found that there existed a functional requirement, it was not open to the Ministry to take recourse to the second part of the said recommendations. Such a methodology could be taken recourse to only if the first part of the recommendations of the said Commission cannot be given effect to which contingency will arise only when the Cadre Controlling Authority finds that there is no functional requirement of the post of Senior Administrative Officer. The respondents herein had not considered the matter from this angle.

We, therefore, cannot uphold the impugned judgment and/or decision of the Central Government rendered in this behalf. They are set aside accordingly and the matter is remitted to the appropriate authority of the Central Government for consideration of the matter afresh in the light of the observations made hereinbefore.

This writ petition is allowed accordingly....."

14. The ratio of this judgment is applicable to the present case as well. The administrative Ministry being the cadre controlling authority, their recommendations should not be interfered with by the Ministry of Finance. In any case, an adverse view cannot be taken by the Ministry of Finance without giving reasons therefor.

15. Having regard to the reasons stated and discussion made above, impugned orders Annexure A-1 and Annexure A-2 are quashed and set aside and respondents

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are directed to re-consider the claims of applicants by constituting a committee headed by Additional Secretary, Department of Expenditure with Joint Secretaries of Department of Personnel & Training and Ministry of Information & Broadcasting as members. This committee should afford an opportunity of hearing to the applicants and consider the claims of the applicants on the basis of relevant recommendations of the 5th CPC and duties and responsibilities of the posts in question, as also the observations made above. On receipt of recommendations of this committee, respondents shall pass speaking and reasoned orders on the claims of the applicants.

16. The respondents are further directed to pass fresh orders expeditiously and preferably within a period of four months from the date of communication of these orders.

17. The OA is disposed of as above with no order as to costs.

S. Raju
(Shanker Raju)

Member (J)

V.K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

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