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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

M.A.No.2586/2003 IN
O.A.No.800/2003

this the 10th day of March, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S. A. Singh, Member (A)

1. All India Graphic Artists Association (Doordarshan), Office: R2 57/284, Gali No.1, Geetanjali Park, West Sagarpur, New Delhi through its President Shri S.S.Chandel.
2. Ritu Sharma D/o Shri R.M.Sharma, C-5, Hari Nagar Ghata Ghar, New Delhi-64.
3. Shushma Negi D/o Shri B.S.Bist, A-115, Kidwai Nagar, New Delhi-23.

...Applicants

(By Advocate:Shri Yogesh Sharma)

VS.

1. Union of India through the Secretary, Ministry of Information and Broadcasting, Govt. of India, Shastri Bhawan, New Delhi.
2. The Directorate General of Doordarshan, Doordarshan Bhawan, Coopernicus Marg, New Delhi.
3. Dy. Director (Admn.) S-1, Directorate General of Doordarshan, Doordarshan Bhawan, Coopernicus Marg, New Delhi.
4. The Prashar Bharti (BCI), Through the Chief Executive Officer, P.T.I. Building, IIInd Floor, Sansad Marg, New Delhi.

... Respondents.

(By Advocate: Ms.Anita Pandey)

O R D E R (ORAL)

By Shri Shanker Raju

The applicants a Graphic Artists Association, have assailed the respondents' order dated 17.6.2003 rejecting their representation. They have sought quashing of the above order and extension of benefits of OM dated 25.2.1999 for upgradation of the pay scales.

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2. Applicant No.1 is a registered Association of Graphic Artists and Graphic Supervisor in Doordarshan Kendra, Delhi. The post of Graphic Supervisor was recommended the pay scale of Rs.6500-10500/- and Graphic Artist in the pay scale of Rs.5000-8000/- by the 5th Central Pay Commission as accepted by the Government of India vide resolution dated 30.9.1997.

3. The Ministry of Information and Broadcasting by an order dated 25.2.1999 decided to accord the upgraded pay scale of categories who exercise their option for their absorption in Prashar Bharti. The same was not extended to the category of the applicants.

4. Earlier being aggrieved with non-grant of upgraded pay scale claiming parity with the Production Assistant, they had preferred in OA 1798/2001, which was dismissed on 26.4.2002.

5. CWP No.6013/2002 filed against the Tribunal's order which was dismissed as withdrawn by order dated 23.9.2002 with liberty to file review application.

6. Applicants instead of filing review application preferred a representation to the respondents seeking offer of option to them to be absorbed in Prashar Bharti and extension of upgradation of pay scale as per letter dated 25.2.1999. The aforesaid representation was rejected giving rise to the present OA.

7. Learned counsel for the applicants submits that

in so far as res judicata is concerned, as stated in the earlier OA, the claim was for parity with the Production Assistant and the issue regarding option to the Graphic Artist and Graphic Supervisor and extension of benefit of letter dated 25.2.1999 was not adjudicated and no finding has been recorded. Accordingly, the present OA is not barred by res judicata.

8. On merits, it is stated that the respondents' letter dated 25.2.1999 is a one time scheme. Those categories, who had been offered option to be absorbed, have been granted the revised pay scale and as aforesaid option has not been extended to the cadre of Graphic Artist and Graphic Supervisor they have been deprived of the upgraded pay scale. This, according to the applicants, is invidious discrimination violative of Articles 14 and 16 of the Constitution of India.

9. Shri Yogesh Sharma, learned counsel for the applicants contends that though in their representation the aforesaid contention has been brought to the notice of the respondents, but the same has not been dealt with. Applicants are not claiming any parity with any category or posts, but seek an option to be absorbed and further application of upgraded pay scales as per letter dated 25.2.1999.

10. Respondents' counsel Ms. Anita Pandey has vehemently opposed the contention and stated that the present OA is barred by res judicata. Applicants have earlier filed OA 1798/2001 wherein the same plea, which

is raised herein had been raised. Accordingly the present OA is not maintainable. On merits also, it is stated that though the applicant was given liberty to file review application in the Writ petition yet no review has been filed. Moreover, the categories of Transmission Executives are distinctive with different function, the question parity of pay scale cannot be gone into by the Tribunal but to be left to the Expert Body. It is further stated that the letter dated 25.2.1999 was a one time and was extended to those who opted for it.

11. In the rejoinder, pleas taken by the applicants are reiterated.

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

13. To attract the principles of res judicata, it has to be established that the issue raised is substantially between the same parity has been conclusively decided in the earlier proceedings.

14. In OA 1798/2001, claim of the applicant was parity with the Production Assistant and also extension of benefit of OM dated 25.2.1999. The Tribunal on the basis of the functional requirement reiterated that the OA was not within the domain of the Tribunal for equating the post.

15. However, the issue regarding option to be accorded to the category of the posts of Graphic Artist and Graphic Supervisor was neither adjudicated nor

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conclusively decided, no finding has been recorded on the above issue. Accordingly, the petition to seek option to be extended by the respondents as done in the other category, is not hit by the principles of res judicata. The contention of respondents is hereby overruled.

16. As per letter dated 25.2.1999, the following decision has been taken:-

"The employees belonging to certain cadres to All India Radio and Doordarshan (Particularly, subordinate engineering and programme cadres) had been agitating for grant of higher scales of pay than those recommended by the Vth Central Pay Commission and accepted vide Government of India Resolution of 30th September, 1997, the matter has been carefully considered by the Government and it has been decided to further upgrade the scales of pay of the categories of employees of All India Radio and Doordarshan of Prasar Bharati (Broadcasting corporation of India) as indicated against each category in Annexure-1.

2. The grant of revised pay scales as mentioned in para 1 above will be subject to the following conditions:

(i) The upgraded scales will be allowed not as Govt. Employees per se but as Government employees currently in service of Prasar Bharati (Broadcasting corporation of India) As and when the employees presently working in All India Radio and Doordarshan are asked to exercise their option, those employees who did not opt for Prasar Bharati will revert as Government servants and will no longer be entitled to above scales. They will also have to refund all benefits availed of by them as a result of the grant of higher scale of pay they will be liable to recovery of all such benefits. An undertaking, in the proforma given at Annexure-II to this effect has to be submitted by each and every employee concerned before availing the benefit of upgraded scales of pay. This is in accordance with their agreement with the

Government to avail these upgraded scales on this condition only.

(ii) Upgraded pay scales would be effective from 1.1.1996 but payment of salary to employees as per upgraded scales of pay will be made with effect from 1st March, 1999.

(iii) The employees concerned will be entitled to arrears with effect from 1st January, 1996 and these arrears will be paid in instalments. The first instalment of arrears pertaining to the period from November, 1997 till February, 1999 will be paid by April, 1999. The second instalment pertaining to remainder of the arrears (i.e. arrears from 1.1.1996 to October, 1997) will be paid by April, 2000. The payment of arrears shall be made after adjustment of the amount already paid to the categories of Technicians, Senior Technicians, Engineering Assistants and Senior Engineering Assistants on the basis of this Ministry's Office Memorandum No. 310/173-B dated 5.12.1997.

(iv) In addition, the pay of those employees of All India Radio and Doordarshan who had been working as Transmission Executives as on 1.1.1978 or afterwards would be notionally fixed in the pay scale of Rs.550-900 with effect from 1.1.1978 and in the pay scale of Rs.2000-3200 with effect from 1.1.1986 before fixing their pay in the upgraded pay scale as on 1.1.1996. But as per their agreement with the Government, this will not entitle them to any payment of arrears for the period prior to 1.1.1996 and will be limited to fixation of their current pay as on 1.1.1996.

3. The pay fixation in the upgraded scales of pay shall be done as provided in CCS (RIN) Rules, 1997.

4. The benefit of the upgraded pay scales will be available to existing incumbents only and those new direct recruits who join after issuance of these orders will not be entitled to these scales, but will be governed by pay scales recommended by the Vth Pay Commission. However, all promotions of existing incumbents shall be made in upgraded scales only.

5. Further, Prasar Bharati (DG: AIR and DG:DD) are also requested to identify the posts in the grades of Helper, Diesel Engine Driver, Diesel Technicians and Mast Technicians, zone wise, for placing them in the upgraded scales of pay in order of seniority as per the percentage of posts

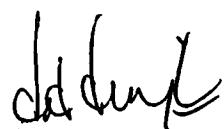
shown against each category in Annexure-I. The number of posts in higher scales of pay shall be with reference to the sanctioned strength indicated in Annexure-I against each post."

16. If one has regard to the above recommendations of 5th Central Pay Commission and on further consideration, it has been decided to further upgrade the pay scale of category for which the employees working in Doordarshan have been offered an option to opt for Prasar Bharti. Those who opted for Prasar Bharti have been given the upgraded pay scale but the others have been revered back as a Government servant in the pay scale recommended by 5th CPC.

17. The applicants have raised this issue in their representation but in the order, no finding has been recorded in this regard, showing non application of mind. Be that may so, the matter requires reconsideration by the respondents. There is no justification put forth as to why the Graphic Artists and Graphic Supervisor have not been extended option to opt for Prasar Bharti with further upgradation.

18. Accordingly, the OA stands disposed of by setting aside the order on representation. Respondents are directed to reconsider the claim of the applicants for extension of all option to opt for Prasar Bharti and also applicability of letter dated 25.2.1999. The decision shall be taken by the respondents within three months from the date of receipt of a copy of this order.

In the event, the applicants are extended option, they shall be entitled to the upgraded pay scale in accordance with rules. No costs.



(S.A. Singh)
Member (A)



(Shanker Raju)
Member (J)

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