

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2010

CORAM

THE HONOURABLE MR. JUSTICE ELIFE DHARMA RAO
and
THE HONOURABLE MR. JUSTICE HARI PARANTHAMAN

Writ Petition No.27155 of 2009

1. A.I.R. And D.D. Technical Employees Association,
reg. No.2298/63, rep. by its Vice President
(South Zone), Doordarshan Kendra,
Chennai-600 005.
2. T.Vijeya Kumaran,
Senior Technician,
Doordarshan Kendra,
Swami Vivekananda Salai,
Chennai-600 005.

... Petitioner

vs

1. Central Administrative Tribunal,
Madras Bench,
High Court Campus, Chennai.
2. Union of India rep. by Secretary,
Information and Broadcasting Department,
Shastri Bhavan, New Delhi.
3. Director General,
Doordharshan Kendra,
Doordharshan, Copernicus Marg,
New Delhi.
4. The Chief Executive Officer,
Prasar Bharati,
P.T.I. Buildings, 2nd Floor,
Parliament Street, New Delhi-1.
5. Director General, All India Radio,
Akashvani Bhavan, Sansad Marg, New Delhi.
6. Deputy Director of Administration (E),
O/o. Director General,
All India Radio, Akashvani Bhavan,
Sansad Marg, New Delhi.

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7. The Chief Engineer (South Zone),
Office of Chief Engineer (South Zone),
AIR & TV,
Swami Vivekananda Salai,
Chennai.

... Respondents.

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st Respondent relating to the order dated 10.07.2008 in O.A.No.390 of 2006 quash the order of the 1st Respondent Tribunal dt. 10.07.2008 in O.A.No.390 of 2006 and consequently direct the 1st Respondent to approve the recommendations to the 3rd Respondent for extending notional fixation of pay of Technician and Senior Technician from 01.07.1983 and pay all monetary benefits arising out of such fixation to the Technician and Senior Technician.

For Petitioner : Mr. Balan Haridas
For Respondents : Mr.R.Kerunakaran for
Mr.Y.Mohammed Ghouse
for R2 to R7.

O R D E R

(Order of the Court was made by ELIPE DHARMA RAO, J.)

The writ petition is directed against the order dated 10.07.2008 in O.A.No.390 of 2006, wherein the Central Administrative Tribunal rejected the claim made by the petitioners for notional fixation of pay scale with effect from 01.07.1983 for Technicians and Senior Technicians on par with Lighting Assistants.

2(a). The brief facts of the case are as follows:-

The technical staff, viz., Technicians and Senior Technicians, working in various cadres in All India Radio and Doordharshan throughout India, are members of the first petitioner Association (hereinafter will be referred to as "Association"). Till the year 1983, there had been pay parity in the pay scale of Technician and Senior Technician with that of Lighting Assistant Grade II and I respectively. In the III Pay Commission, the Technicians and Lighting Assistants were placed in the pay scale of Rs.330-480 and the Assistant Cameramen, working in the Film Division, were placed in the pay scale of Rs.425-700. In the IV Pay Commission, the Technicians and Lighting Assistants were placed in the pay scale of Rs.1200-1800 and the Assistant Cameramen in the Film Division were placed in the pay scale of Rs.1400-2300. The pay scale of Lighting

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Assistants in the IV Pay Commission was revised from Rs.1200-1800 to Rs.1400-2300 and they were placed on par with the Assistant Cameraman.

(b).The Technicians, who were doing superior job and shouldering more responsibility, made representations to the respondents to bring their pay scale on par with the pay scale of Lighting Assistants. The said demand was accepted by the second respondent as per Office Memorandum dated 05.12.1997 and the pay scale of the Technicians was revised as Rs.1320-2040 in the IV Pay Commission and as Rs.4000-6000 in the V Pay Commission, i.e., from 01.01.1996. The pay was also notionally calculated in the scale corresponding to Rs.1400-2300, i.e., Rs.4500-7000 with effect from 01.11.1997. In the same order, the pay scale of Senior Technicians was revised to Rs.1400-2300 in the IV Pay Commission and as Rs.4500-7000 in the V Pay Commission, i.e., with effect from 01.01.1996 and the pay was notionally calculated in the scale corresponding to Rs.1600-2660, i.e., Rs.5000-8000 with effect from 01.11.1997. Thereafter, the first respondent, by order dated 25.02.1999, upgraded the pay scales of the Technicians and Senior Technicians to Rs.4500-7000 and Rs.5000-8000 respectively.

(c). Even though the pay scales of Technicians and Senior Technicians were brought on par with the Lighting Assistant Grade II and I, the respondents failed to give notional fixation with retrospective effect from 01.07.1983 being the date when the scales of Lighting Assistant Grade II and I were revised. Hence, the Association had been demanding notional fixation of pay scale for Technicians and Senior Technicians. The fifth respondent, conceding the said demand in the minutes of the meetings held on 07.03.2001, recommended for notional fixation of the pay scale with effect from 01.07.1983. In this regard, a representation has been made by the Association to the first respondent on 11.04.2001. The fifth respondent, by order dated 07.08.2002, called upon the Association to submit the estimated financial implication arising out of such notional fixation of pay scale for Technicians and Senior Technicians and the same was submitted on 22.09.2003, which was approved by the fourth respondent in the meeting held on 05.11.2003. Thereafter, the said proposal was sent to the first respondent for approval. But, the first respondent did not approve the proposal for notional fixation of the pay scale of Technicians and Senior Technicians with effect from 01.07.1983, as per order dated 03.09.2004.

(d). It is stated that the Minister for Information and Broadcasting, in the National Convention organized by the Association at Chennai on 05.10.2004, promised to settle the demand in respect of notional fixation of pay scale of Technicians and Senior Technicians. In this regard, the petitioners have sent representations dated 25.10.2004, 19.07.2005 and 30.09.2005 to the Minister for Information

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and Broadcasting. In spite of the same, no action is initiated by the respondents to give notional fixation with retrospective effect from 01.07.1983 to the Technicians and Senior Technicians. Hence, the petitioners have filed an original application in O.A.No.390 of 2006 before the Central Administrative Tribunal, Chennai.

3. The Tribunal, taking into consideration the facts and circumstances of the case and also following the earlier decision of the Principal Bench of the Tribunal in O.A.No.164 of 1999, dismissed the original application and rejected the claim made by the petitioners. Hence, the petitioners are constrained to file the present writ petition with the aforesaid prayer.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

5. The learned counsel for the petitioners, reiterating the contentions raised before the Tribunal, contended that though initially there was pay parity between the pay scales of Technicians and Senior Technicians and Lighting Assistants Grade II and I and Assistant Cameramen in the Film Division, subsequently, the pay scales with respect to Lighting Assistants Grade II and I were revised and paid on par with the Assistant Cameramen in Films Division and thereafter, the said benefit was extended to the petitioners with effect from 01.01.1996. It is also submitted that when both the writ petitioners and the Lighting Assistant Grade II and I are enjoying the same revised pay scales, the action of the first respondent in taking a decision to fix the notional revision of pay from 01.07.1983 in respect of the Lighting Assistant Grade II and I with payment of arrears and refusing to extend the said benefit to the petitioners is contrary to law, violative of the principles of natural justice, in spite of the fact that the petitioners were agreed not to demand for payment of arrears from 1983 and the employer, under whom they were working, has also agreed for the proposal, and approval was also given by the Minister for Regional Information and Broadcasting, when he visited Chennai. It is also contended that when the second respondent had equated the post of Technician/Senior Technician on par with Lighting Assistant Grade II and Grade I respectively, the action of the first respondent in not extending the benefit of notional fixation with effect from 01.07.1983 to the petitioners, which was extended to the post of Transmission Executive, as evident from paragraph No.2(iv) of the order dated 25.02.1999, is arbitrary and unconstitutional. In view of the above, the learned counsel for the petitioners submitted that the order passed by the Tribunal suffers from illegality and infirmity and hence, the same is liable to be set aside.

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6. We have gone through the entire materials placed on record. It is seen that the present writ petition is filed against the order of dismissal of the original application filed by the petitioners to grant the relief of claiming notional fixation of pay scale with effect from 01.07.1983 for Technicians and Senior Technicians on par with Lighting Assistants Grade II and I respectively as was extended to them through proceedings dated 25.02.1999. It is also seen that the Tribunal, without going into the merits of the case, on the basis of the submission made by the learned counsel for the respondents that in similar circumstances, the Principal Bench of the Tribunal dismissed the original application in O.A.No.164 of 1999, against which, W.P.No.3787 of 2000 was filed before the High Court of Delhi and the same is pending consideration, dismissed the original application filed by the petitioners.

7. On going through the materials, we are of the considered opinion that once the respondents have brought the pay scales of the petitioners on par with the Lighting Assistant Grade II and I respectively, extending the benefit of fixation of notional pay from 1983 to the Lighting Assistant Grade II and I and denying the same to the Technician and Senior Technician, without assigning any reasons, would amount to violation of principles of natural justice. Even in the order passed by the first respondent dated 03.09.2004, no reasons were given while rejecting the proposal. Further, as per the communication dated 11.06.2006, which is placed across the Bar by the learned counsel for the respondents during the course of the arguments, the post of Lighting Assistants had already become a dying cadre due to technological upgradation and it is not a valid ground to reject the claim made by the petitioners. Secondly, relying on the agreement entered into between the parties and using the terms and conditions of the agreement against the benefit of the petitioners is also held to be arbitrary. When there is a correspondence with regard to making estimates about the financial implications and after making such financial estimates by the Association, it is not fair on the part of the first respondent to reject the same on flimsy grounds, which were not mentioned as on the date of rejection.

8. In the above facts and circumstances, as the counsel for the petitioners, after instructions, submitted that the petitioners are not claiming any arrears, we consider it appropriate that extending the benefit of notional fixation of pay scale to the petitioners from 01.07.1983 is sufficient. Accordingly, the order dated 10.07.2008 in O.A.No.390 of 2006 passed by the Central Administrative Tribunal is set aside. The respondents are directed to extend the benefit of notional fixation of pay scale with effect from 01.07.1983, conferred on the post of Transmission Executive, as evident from paragraph No.2(iv) of the order dated 25.02.1999, to the

Verdict

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petitioners also, within a period of eight weeks from the date of receipt of a copy of this order, without awarding any arrears, from 01.07.1983.

9. The writ petition is disposed of with the above direction. However, there will be no order as to costs.

Sd/-
Asst.Registrar

/True Copy/


Sub.Asst.Registrar

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To

1. Central Administrative Tribunal,
Madras Bench, High Court Campus, Chennai.
2. The Secretary, Union of India, Information and Broadcasting
Department, Shastri Bhavan, New Delhi.
3. Director General, Doordharshan Kendra,
Doordharshan, Copernicus Marg, New Delhi.
4. The Chief Executive Officer, Prasar Bharati, P.T.I. Buildings,
2nd Floor, Parliament Street, New Delhi-1.
5. Director General, All India Radio,
Akashvani Bhavan, Sansad Marg, New Delhi.
6. Deputy Director of Administration (E),
O/o. Director General, All India Radio, Akashvani Bhavan,
Sansad Marg, New Delhi.
7. The Chief Engineer (South Zone),
Office of Chief Engineer (South Zone),
AIR & TV, Swami Vivekananda Salai, Chennai.

+ 1 cc to Mr.g. Balan Haridas, Advocate SR.83823

+ 1 cc to Mr.Y.Mohammed Ghouse, Advocate SR.83800

LA(CO)
EU 1.12.10

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