

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH.

Wednesday, the 10th day of June One thousand Nine  
Hundred and Ninety Two.

PRESENT

The Hon'ble Justice Dr. David Annoussamy, Vice -  
Chairman

and

The Hon'ble Shri R. Venkatesan, Administrative Member

Review Petition No. 4 of 1992

in

Original Application No. 654 of 1989

RP.No.4/1992

O.A.No.654/89

1. The Union of India rep. by its  
Ministry of Finance,  
Dept. of Expenditure  
North Block, New Delhi-1
  2. The Union of India rep. by its Ministry of Personnel,  
Public Grievance and Pension  
Department of Personnel,  
North Block, New Delhi-1.
- .. Petiti- Proposed  
oners. Respondents

V/s

A. Rajasekaran

... Respondent ... Applicant

M/s. N.S.Sivan  
G. Anbumah &  
C.R.Prakash

.. Advocate for the  
petitioners

M/s. A. Sambandan  
S. Ilam Vazhudai  
A.L.Narasivayam

.. Advocate for the  
respondent

Contd.....2/8

Order pronounced by  
the Hon'ble Justice Dr. David Annoussamy, Vice-Chairman.  
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This review petition has been filed by the respondents. The applicant who was an Engineering Assistant in the Doordarshan Kendra, Madras, approached this Tribunal with a prayer to fix the scale of pay of Engineering Assistants at Rs.550-900(pre-revised) with effect from 1.1.1978, the date on which the Supreme Court allowed the revision of pay to Sound Recordists who were in the same scale as Engineering Assistants and to allow the corresponding revised time scale of 2000-3200, as per the Fourth Pay Commission's recommendations. That application was allowed by judgement dated 29.6.1990, after taking into consideration the fact that Sound Recordists and Engineering Assistants had been in the same scale of pay and that in view of the fact that the counsel for the respondents reported that the nature of duties and responsibilities were in no manner inferior to those of the Sound Recordists. In that O.A. the respondents were the Secretary to Government, Ministry of Information and Broadcasting and the Director General, Doordarshan and Director, Doordarshan Kendra, Madras. Aggrieved by that judgement, the Union of India through Secretary to Government, Ministry of Information and Broadcasting and the Director General, Doordarshan, approached the Supreme court and filed the Special Leave Petition on 10.9.1990. That Special Leave Petition (SLP) was dismissed by the Supreme Court on 7.1.1991. Subsequently a review petition was filed before the Supreme Court and that review petition was dismissed.

dismissed on 16-7-1991. Thereafter, the Union of India represented by the Ministry of Finance, Ministry of Personnel, Public Grievances and Pensions and the Director General, All India Radio approached this Tribunal with a petition to condone the delay in filing the review petition. That misc.petition (MP No.576/91) was filed on 7.10.1991 and it was disposed of on 30.12.91 by its being allowed. Aggrieved by that order, the applicant in the O.A. filed a review petition, viz.No. 11 of 1992 which was dismissed by an order today.

2. In this review petition the main ground urged by the petitioner is that the judgement of the Tribunal would have the effect of dislocating the hierarchy of the Engineers in the Doordarshan Kendra as and that the decision rendered in the O.A. was therefore not workable. It was argued on the side of the applicant in the original application that the review petition was not admissible, since the SLP by the present petitioners has been dismissed by the Supreme Court, that the review petitioners were not entitled to urge a ground which they have not pleaded in the OA and that the decision of this Tribunal was rendered after going into the merits of the case and therefore the review petition should be dismissed.

3. We shall first take up the question of Admissibility of the review petition after the SLP has been dismissed by the Supreme Court. In this connection, the learned counsel for the review petitioners placed reliance on the following decisions:-

- (i) AIR 1978 -SC -1283 .. The Workmen of Cochin Port Trust  
-vs-  
The Board of Trustees of the Cochin Port Trust and another.
- (ii) AIR 1981-SC-960 .. Ahmedabad Manufacturing and Calico Printing Co. Ltd.  
-vs-  
The Workmen and another
- (iii) AIR 1986-SC-1780 .. Indian Oil Corporation Ltd.  
-vs-  
State of Bihar and Other
- (iv) (1990)12-ATC-666 .. C.V.K. Naidu and others batch  
-vs-  
Union of India and Other
- (v) (1989) 9 ATC -560 .. M. Ramachandran  
-vs-  
The Director of Audit Southern Railway Madras and others.

4. Obviously, when a new fact or a document has been discovered, the fact of the SLP having been dismissed will not prevent the Tribunal to go again into the matter. When the Review petition is based on other grounds and when a party files a review petition, even though the SLP before the Supreme Court was dismissed, that review petition can be entertained

provided that the Supreme Court has not given a speaking order on the matter. This gets explained by the fact that the SLP jurisdiction is a discretionary one and the refusal of exercising such a discretion does not mean that the Supreme Court has given its seal of approval or disapproval to the judgement which has been brought before it. Therefore, to reject in limine, a review petition there should be a speaking order of the Supreme Court after it has gone into the merits of the case.

5. The learned counsel for the original applicant, who is the respondent herein, has brought to our notice a sentence in the judgement (G.V.K.Naidu's case) (cited supra) which according to him did not give a right to the petitioners to have the judgement reviewed after the dismissal of the SLP. The sentence relied upon reads as follows:-

"It is, however, true that the dismissal of the SLP in the case of Dinesh Chandra Gupta -vs- Union of India means that the case of Dinesh Chandra Gupta cannot be reopened on judicial review "

It may be noted that this sentence is found in the portion of the judgement dealing with the first point which arose in that case. That point is as follows:

"Firstly what is the effect of the

decision of the Supreme Court in dismissing the special leave petition on May 9, 1988 and review petition dismissed on September 8, 1988 ?" (para 35 of the judgement).

The question is replied as follows:-

"We are, therefore, firmly of the opinion, the first point urged by the learned counsel for the applicants that the Supreme Court in the case of Jabalpur Bench of the Tribunal had declared the law and the same is binding as a precedent on all the Benches of the Tribunal is untenable and unacceptable. We firmly reject the contention. The first point is accordingly answered against the applicant". (para 30)

6. We therefore find that the sentence relied upon is in the nature of an obiter. The general principle affirmed in this judgement as well as in the other judgements relied upon by the petitioners is that the dismissal at the admission stage is not the indication of the opinion of the Supreme Court, but only the result of the exercise of its discretion.

No conclusion can be drawn therefore that the decision has attained a finality which is unshakable. We therefore decide that not much importance should be attached to the sentence relied upon which is in the nature of obiter. When the Supreme Court has not decided, as in the present case by way of speaking order, the possibility of review by the Tribunal remains in tact, provided that there is legal ground for a review.

7. The learned counsel for the respondents contended that in this case the Supreme Court has dismissed it by the following order;

" SLP dismissed on merits".

This is not simple refusal of admission, the decision on merits would bar further review by this Tribunal, it is contended. We are of the view that the simple addition of the word 'merits' will not authorise to think that the Supreme Court had gone into the entire facts and circumstances of the case and that the judgement cannot be equated to a speaking judgement which alone would deprive the right of the person concerned of having the original judgement reviewed by the Tribunal.

8. We therefore find that in the special circumstances of the case, it is open to the review petitioners to ask this Tribunal to review the judgement passed earlier.

9. The second point is whether the petitioners o raise now a question not raised earlier when the case was heard by this Tribynal and adjudicated upon. In fact, the main ground urged is that the fact of according the scale of pay prayed for by the applicants would dislocate the very pay structure of the depart- ment as regards the Engineers. In fact, this point was not raised. A party to the proceeding already cannot obviously raise a new point. But in this case in the original application, the Union of India was not made a party and when the Union of India is not made as a party, the proceedings become irregular and the earlier judgement suffers from a grave infirmity. In this connection we would like to refer to the decision of the Supreme Court rendered in Ranjeet Mal- Vs- General Manager, Northern Railway, New Delhi (AIR 1977-SC-1701) and also the decision of the and others V. Dy. Collector of Custom and others (CA Nos. K-238/87 and K-271/87 - decided on 31.3.19 1989(2) SLJ 337 wherein this Tribunal had held that where the decision of the Tribunal is likely to affect other employees at various, places it will be necessary to implead the ultimate employer, viz. Union of India. Futher, the Supreme Court had observed in the decision referred to supra as follows:-

"The Union of India represents the Railway Administration. The Union carries



administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Art. 226 which will have the effect of setting aside the removal will fasten liability on the Union of India and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High Court to be a necessary party".

Applying the ratio of the aforesaid decisions to the instant case, we hold that since the real party was not brought before us by the applicants in the first instance, it is open certainly to that party now before us to raise a ground which was not raised early.

10. Now let us turn to the merits of the case. The judgement passed earlier is a correct one when only the submissions made before the Tribunal are taken into account. Now a new plea is raised, which we have held to be maintainable.

11. The new plea is based on the pay structure of Engineers in the Doordarshan Kendra which is as follows:-

Category of Posts	Scale of pay under Third Pay Commission	The scale of pay under IV Pay Commission
1. Engineer-in-Chief	2500-3000	7300-7600
2. Chief Engineer	2500-2750	5900-6700
3. Director(F)	2250-2500	4500-5700
Suptdt. Engineer	1500-2000	3700-5000
4. Dy. Director (F)	1100-1600	3000-4500
Station Engineer		
5. Asst. Director/Asst. Station Engineer	700-1300	2200-4000
6. Asst. Engineer -	650-1200	2000-3500
7. Sr. Engineer Asst.	550-900	1640-2900
8. Engg. Assistant	425-700	1400-2600
9. Sr. Technician	350-560	1320-2040
10. Technician	330-480	1200-1800

12. It is pointed out that the scale of pay of Sound Recordists has been fixed at Rs. 2000-3200 and if the same pay scale is given to the Engineering Assistants like the applicants, then the Senior Engg. Assistants would have a lower pay, viz. Rs. 1640-2900 which will constitute an unacceptable anomaly. There is merit in this contention put forth by the petitioners. It may be noted that the interpretation of law should not lead to any absurd result.

Similarly, no decision of the Tribunal should lead to a confusion/dislocation of the administration/organisation and to an absurd situation.

13. The learned counsel for the applicants reiterated the same arguments which were put forward when the case was first argued before this Tribunal and which were accepted by it, viz. that the Engineering Assistants who have been having the same scale as Sound Recordists and whose work is in no way inferior to that of Sound Recordists, should be given the same pay on the basis of the right of equality, unregardful of the consequences. It is a well accepted principle that when two categories of persons are holding posts carrying similar responsibilities and requiring the same qualification, they should have the same pay scale. But at the same time if the fact of giving the should pause and ponder over the matter. In this case, the fact of granting the Engineering Assistants the same scale of pay as Sound Recordists will result in the Sr.Engg. Assistants who are higher to the Engg. Assistants in the hierarchy having a lower pay than the Engg. Assistants. This will hit the principle of equality more severely. So this consideration will necessarily prevail over the simplistic equality of scale between Engineering Assistants and Sound Recordists. The proportionate equality has to be maintained as between the various categories of Engineer

The horizontal equality between the Engg. Assistants and the Sound Recordists cannot be achieved by disturbing the Vertical harmony in the cadre of Engineers. So the judgement rendered earlier by this Tribunal on incomplete facts cannot be allowed to stand. However, the respondents herein have a legitimate grievance for which relief should be afforded. Therefore the matter has to be considered by the department in its totality. In fact, before us it was reported that the matter is under active consideration. We hope that the consideration will be accelerated and the matter referred to, if necessary, to the Anomalies Committee and a decision arrived at within a reasonable time.

14. Before parting with the case, we have to record our displeasure on the respondents firstly arrayed in not getting proper departmental instructions at that time and in not bringing before this Tribunal the full facts and circumstances of the case. This has resulted in multiplicity of proceedings resulting in a series of litigation for the applicants in the OA, in the Supreme Court and in this Tribunal for which they deserve compensation.

15. In the result. The operative portion of the judgement dt-29.06.1990, in OA 654 of 1989

is rescinded and the original application stands dismissed. However, the respondents in the OA shall pay Rs.1,000/- by way of costs to the applicants in the OA.

16. The review petition is allowed as above.

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Sd/.

DEPUTY REGISTRAR