

**Central Administrative Tribunal
Principal Bench**

**OA No.1742/2004
OA No.1743/2004**

New Delhi this the 31st day of May, 2006.

Honble Mr. Shanker Raju, Member (J)
Honble Mrs. Chitra Chopra, Member (A)

O.A. No.1742/2004

1. Shri Lalit Kumar Pawar
S/o Shri Jairam Pawar,
Engineering Assistant
Doordarshan Kendra, New Delhi.
2. Shri N.Santhosh Kumar
S/o Shri K.Nataraja Pillai,
Engineering Assistant
Doordarshan Kendra, Bangalore.
3. Shri Ananda Kumar A.A.
S/o Shri Appukkuttan Nair C.
Engineering Assistant
LPTV-Dhubri (Assam).
4. Shri A. Prabhakar
S/o Shri A.M. Kottary
Engineering Assistant
Doordarshan Kendra, Bangalore.
5. Shri P.Rajith Kumar
S/o Shri B.Padmanabha Pillai
Engineering Assistant
Doordarshan Kendra, New Delhi.

-Applicants

O.A. No.1743/2004

Shri Mahendra Singh Rana,
S/o Shri Shiv Singh Rana,
Engineering Assistant,
Doordarshan Relay Kendra,
Kotdwara (Garhwal)
(Uttanchal)

-Applicant

(By Advocate:Shri B.S.Mainee with Ms. Meenu Mainee)

-Versus-

Union of India

Through:

1. The Secretary to the
Government of India,
Ministry of Information & Broadcasting,
Shastri Bhavan,
New Delhi-110 001.
 2. The Chief Executive Officer,
Prasar Bharti, P.B.I. Building,
Parliament Street, New Delhi-110 001.
 3. The Director General,
All India Radio, Akashvani Bhavan,
Parliament Street,
New Delhi-110 001.
 4. The Director General,
Doordarshan, Doordarshan Bhavan,
Mandi House, New Delhi.
- Respondents

(By Advocates: Shri Vikrant Yadav & Shri Ajesh Luthra)

ORDER (ORAL)

Mr. Shanker Raju, Honble Member (J):

As these OAs are filed by one class of government employees, i.e., Engineering Assistants, being founded on same set of facts and cause of action, to avoid multiplicity, are being disposed of through this common order.

2. In OA-1742/2004 applicants have sought placement in the pay scale of Rs.6500-10,500/- at par with their colleagues with all consequential benefits being working as Engineering Assistants and placed in the pay scale of Rs.5,000-8,000/-.

3. Similarly, in OA-1743/2004 applicants are direct entrants as Engineering Assistants have been seeking the same reliefs.

4. Briefly stated, applicants who are Engineering Assistants appointed after qualifying the examination in the years 1994, 2000 and 2001 admittedly joined after 25.2.1999. As delay had taken place in OA-1743/2004 for completion of verification etc. applicants on appointment were placed in the pay scale of Rs.5000-8000/- but those Technicians who had been promoted as Engineering Assistants though placed junior to applicants in the seniority list, were placed in the pay scale of Rs.6500-10,500/-. The Apex Court in Writ Petition (Civil) No.974/1978 decided on 26.8.1988 after evaluating the recruitment rules and duties and responsibilities attached to the posts of Engineering Assistant and Sound Recordist, accorded the higher pay scale.

5. One of the Engineering Assistants sought the same benefit in OA-654/1989 before the Madras Bench and by an order dated 29.6.1990, relying upon the decision of the Apex Court Engineering Assistants have been given the benefit of Ministry of Information and Broadcasting letter dated 21.12.1988. The aforesaid when carried to the Apex Court in a SLP was dismissed on 7.1.1991. However, on filing review petition the same too was dismissed by the Apex Court on 16.7.1991. Thereafter, Union of India filed a review application before the Madras Bench of the Tribunal for review of its judgment dated 29.6.1990, which was allowed by the Tribunal. This has been assailed by the applicants in SLP No.4307-08 of 1991 etc. and by an order passed on 25.11.1994 the decision of the Madras Bench in review was set aside, upholding the earlier order passed by the Tribunal on 29.6.1990.

6. Learned counsel appearing for applicants states that non-accord of higher pay scale on the basis of cut off date would be an invidious discrimination as principle of equal pay for equal work has been denied to applicants. It is in this conspectus stated that that Junior Technicians under 20% quota of Engineering Assistants had been enjoying the pay scale of Rs.6500-10500/- and would be placed in the higher pay scale of Rs.7450-11,500/-, yet applicants are stagnating in the lower pay scale. It is in this backdrop contended by the learned counsel that colleagues of applicants S/Shri Mohan Singh Tomar and Padmakar Brahmankar who stood below in the seniority list to applicants had been accorded the higher pay scale merely because they had joined the post earlier to the cut off date of 25.2.1999.

7. Learned counsel would contend that once the higher pay scale of Rs.6500-10,500/- has been allowed and revised by implication of law to applicants, the same, by virtue of an administrative order and on the basis of a cut off date cannot be denied to them.

8. Learned counsel would contend that as per OM dated 25.2.1999 in the matter of upgradation of pay scale and benefit of the upgraded pay scale would be applicable from 1.1.1996 with benefits to those existing incumbents but new direct recruits who joined after issuance of these orders would not be entitled to the pay scale and would be provided the recommended pay scale by the Fifth Central Pay Commission is very ambiguous. If 25.2.1999 is the date of decision in OA-1743/2004 when juniors of applicants of the batch of 1994-95 by virtue of their joining only had been discriminated in the matter of pay scale, the delay in joining being not attributed to applicants this cut off date has no intelligible differentia as applicants are not new direct recruits but the recruits of 1994-95 batch who had been by virtue of the cut off date of being appointed before 24.2.1999 had been accorded the higher pay scale. Denial of this pay scale to applicants has no reasonable nexus with the objects sought to be achieved. Accordingly it is stated that the cut off date, which is arbitrary cannot stand scrutiny of law in the light of the decision of the Apex Court in D.S. Nakara v. Union of India, 1983 SCC (L&S) 145.

9. On the other hand, learned counsel of respondents vehemently opposed the contentions and stated that the cut off date is relevant as the upgraded pay scale was to be allowed to individuals not as government employees but as government employees in service of Prasar Bharti. Employees were asked to exercise their option and those who opted to stay in Prasar Bharti were given the higher pay scale. This benefit of upgraded pay scale was available only to existing incumbents. Direct recruits who joined after issuance of these orders were to be governed by the pay scales recommended by the 5th Pay Commission. It is stated that there is no irrationality or unreasonableness in the cut off date and government employees who were with Prasar Bharti on 25.2.1999 were granted higher pay scale as an incentive to switch over from Government to the Prasar Bharti, which does not suffer from any legal infirmity.

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

11. It is trite law that a cut off date if causes hardship is no ground to declare it illegal. It is a policy decision of the Government. When such a policy decision does not withstand scrutiny of law in the matter of discrimination under Article 14 of the Constitution of India or is arbitrary in any manner being a policy decision the only scope for interference in a judicial review is to remand back the matter to Government for reconsideration, as held by the Apex Court in *Union of India v. K.S. Okkuta*, 2002 (10) SCC 226.

12. In the matter of cut off date and discrimination thereof, the Apex court in *D.S. Nakara*, held as follows:

42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalization was considered necessary for argumenting social security in old age to government servants then those who retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs.8100 p.a. and average emolument to be worked out on 36 monthssalary while the other will have a ceiling of Rs.12,000 p.a. and average emolument will be computed on the basis of last 10 monthsaverage. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalizing the pension scheme. In fact this arbitrary division has not only no nexus to the liberalized pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly vitiated inasmuch as the pension rules being statutory in character, since the specified date, the rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation and discriminatory treatment to equals in the matter of commutation of pension. A 48 hoursdifference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.

43. Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14. The next question is what is the way out?

13. In the matter of application of Article 14 of the Constitution of India the twin test is of relevance, according to which any arbitrary action involves class legislation. Any unreasonable classification, which is not founded on intelligible differentia and those who are left of the group and also those who are included, if does not show any reasonable nexus with the objects sought to be achieved, the same would be an illegality.

14. The relevance to the cut off date now being explained by respondents is on the ground that the cut off date has been fixed with a purpose that those government employees who had switched over to Prasar Bharti from Government were granted the higher pay scale as an incentive. In OA-1743/2004 applicants had also sought to join the Prasar Bharti as direct recruits the cut off date is incidentally the decision taken by the respondents. These are employees who had been of the batch of 1994-95 though their juniors in the merit of Engineering Assistants having joined earlier are accorded higher pay scale whereas on the technicality of non-completion of formality as to verification etc. without any fault attributable to applicants delayed their joining which has deprived them of the higher pay scale. If as an incentive higher pay scale is accorded on the basis of joining the same cannot be denied by virtue of delayed joining. The cut off date of 25.2.1999 has no reasonable nexus and intelligible differentia with any underlined object or nexus with the object sought to be achieved. Applicants who are equally placed are not considered for grant of higher pay scale merely because they are entrants of 1994-95 batch, the other members of the batch had been accorded the higher pay scale having denied to applicants constitutes a differential treatment and a class legislation and also an unequal treatment meted out to equals is an invidious discrimination, which cannot be sustained in the wake of principles of equality, enshrined under Article 14 of the Constitution of India. However, the relevance of the cut off date now shown and explained by respondents is not reasonable.

15. As regards applicants in other OA, we find that the higher pay scale has been given on the basis of the cut off date to those promotee Assistants under 20% quota who had been promoted as Engineering Assistants and are placed below in the seniority list, yet being juniors they are enjoying the higher pay scale and even on promotion would get higher pay scale and this would be maintained throughout the service career of these Technical Assistants. It is very strange that being junior one is allowed to enjoy higher pay scale. The aforesaid aspect of the matter has not been looked into by the respondents, as representations preferred by applicants have not been responded to.

16. In the result, for the foregoing reasons, we dispose of these OAs, with a direction to respondents to re-examine the claim of applicants for grant of higher pay scale of Rs.6500-10,500/- as Engineer Assistants, in the light of the observations made above and disposed of the same by passing a detailed and speaking order, within a period of three months from the date of receipt of a copy of this order. In the event it is decided to grant higher pay scale to applicants, consequences would follow. No costs.

17. Let a copy of this order be placed in the case file of OA-1743/2004.

(Chitra Chopra)
Member (A)

(Shanker Raju)
Member (J)