

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00081/2015

Friday, this the 25th day of January, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. The Federation of Doordarshan Core Professionals,
Doordarshan Kendra, Kudappanakunnu,
Thiruvananthapuram – 695 043,
Represented by its President Sri.P.Sivakumar.
2. P.Sivakumar, Film/Video Editor,
Doordarshan Kendra, Kudappanakunnu,
Thiruvananthapuram – 695 043.
3. M.Mirza Ismail, Cameraman Gr.II,
Doordarshan Kendra,Kudappanakunnu,
Thiruvananthapuram – 695 043.
4. A.Suyambulingam, Camaeraman Gr.II,
Doordarshan Kendra,Kudappanakunnu,
Thiruvananthapuram – 695 043.
5. K.S.Ranjith,Graphic Artist,
Doordarshan Kendra,Kudappanakunnu,
Thiruvananthapuram – 695 043.

...Applicants

(By Advocate – Mr.P.Santhosh Kumar)

v e r s u s

1. Union of India, represented by the Secretary,
Ministry of Information and Broad Casting,
Sastri Bhavan, Dr.R.P.Road, New Delhi-110 001.
2. The Prasar Bharati (Broadcasting Corporation of India),
Represented by the Chief Executive Officer, P.T.I Buildings,
Parliament Street, New Delhi – 110 001.
3. The Director General (Doordarshan),
Prasar Bharati (Broadcasting Corporation of India),
Mandi House, Copper Nicus Marg,
New Delhi – 110 001.

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4. The Director,
Doordarshan Kendra, Kudappanakunnu,
Thiruvananthapuram- 110 001. ... **Respondents**

(By Advocate Mr.Thomas Mathew Nellimoottil)

This Original Application having been heard on 10th January 2019, the Tribunal on 25th January 2019 delivered the following :

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

This is fourth round of litigation by the applicants. In O.A.No.180/81/2015 the 1st applicant is the Federation of the Doordarshan Core Professionals, which is a Union in respect of Film/Video Editors, Cameramen and Graphic Artists working under the Prasar Bharati, 2nd applicant is a Film/Video Editor, 3rd and 4th applicants are Cameramen Gr.II and 5th applicant is a Graphic Artist. They are seeking grant of higher pay scales as has been granted in Annexure A-1. It is submitted that subsequent to the 5th Pay Commission the Government have made selective upgradation of pay scales in certain categories like Producer, Programme Executive, Assistant Engineer, Transmission Executives, Production Assistants, Floor Managers, and Property/Wardrobe Assistants, but no such revision had been made to categories of Film/Video Editor, Cameramen and Graphic Artist to which the applicants belong. It is submitted that pay scales of all these categories were same during the 3rd Pay Commission, the 4th Pay Commission and the 5th Pay Commission. In the earlier O.As this Tribunal has directed the respondents to consider the representations filed by the applicants and to take a final decision thereon, the last one being order dated 25.10.2011 in O.A.No.298/2010. Even after allowing ever so many

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M.As for extension of time when the respondents did not implement the order of this Tribunal, the applicants were compelled to file CP No.98/2014 against the 1st respondents annexing therein Annexure A-46 communication of the 3rd respondent requesting the 1st respondent for extending the benefit of upgraded pay scales to the left out categories including the applicants. In spite of that without any application of mind the 1st respondent vide Annexure A-47 speaking order dated 9.12.2014 rejected the representation of the applicants stating that their prayer for grant of upgraded pay scale on line with order dated 25.2.1999 cannot be acceded to because by virtue of amendment to Section 11 of Prasar Bharati Act the applicants are now Central Government employees and therefore in the matter of pay scales they will be governed on the basis of the recommendations of Central Pay Commission. Aggrieved they have filed this O.A seeking the following reliefs :

1. To set aside Annexure A-47 order dated 9.12.2004 in File No.515/46/2010-BA(E) issued by the Government of India, Ministry of Information & Broadcasting denying the upgradation of the pay scales as has been granted in Annexure A-1.
2. To issue a declaration to give upgraded scale of Rs.7500-12000 to Cameraman Grade II, Edit Supervisors and Graphic Supervisors with effect from 1.1.1996, as has been granted in Annexure A-1.
3. To issue a declaration to give upgraded scale of Rs.6500-10500 to Graphic Artists and Film/Video Editors with effect from 1.1.1996 by notionalizing the pay from 1.1.1978, as has been granted in Annexure A-1.
4. To issue a declaration to give upgraded scale of Rs.6500-10500 to Cameraman Gr.III with effect from 1.1.1996.
5. To grant such other further reliefs as this Hon'ble Tribunal may deem just, fit and proper in the facts and circumstances of the case.

2. The respondents in their reply statement submitted that as per Ministry of Information and Broadcasting order dated 25.2.1999, as an incentive 11 identified categories of employees which were benefitted of higher pay scale belonged to Subordinate Engineering and Programme Cadres to be identified as Prasar Bharati Corporation employees and the applicants were not part of the said categories. The said order dated 25.2.1999 was brought pursuant to promulgation of Prasar Bharati (Broadcasting Corporation of India) Act, 1990, which came into force on 15.9.1997 in respect of certain categories of employees to be transferred to Prasar Bharati (Broadcasting Corporation of India) as per Section 11 of the Act. There were other categories of employees who were left out from the benefit of the said order dated 25.2.1999. The plea of the applicants to de-link their case from left out categories of employees was not agreed to by the Prasar Bharati as according to them it is not feasible and it will have ripple effect resulting into enormous court cases. It is submitted that pursuant to the directions of this Tribunal in O.A.No.298/2010 the matter was considered by Committee of Joint Secretaries which recommended for withdrawal of order dated 25.2.1999 observing that the employees were not to be entitled to the upgraded pay scales in the event of their not getting absorbed in Prasar Bharati. The said recommendations lost its sanctity because of non consideration by the Group of Ministers set up by the outgoing Government, and because of scrapping of concept of Group of Ministers by the present Government. Further, as per order dated 25.2.1999 the upgraded scales will be allowed not as Government employees per se but as Government employees currently in service of Prasar Bharati. As and

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when the employees, presently working in All India Radio and Doordarshan are asked to exercise their option, those employees who do not opt for Prasar Bharati will revert as Government servants and will no longer be entitled to above scale. They will also have to refund all benefits availed of by them as a result of the grant of higher scales of pay and will be liable for recovery. Further as per Section 11 of Prasar Bharati Act, all officers and employees recruited during the period on or before 5.10.2007 shall be on deemed deputation to the Corporation till their retirement. They shall be entitled to the pay and all other benefits as admissible to an employee of the Central Government without any deputation allowance. Therefore all those who have entered into Government service on or before 5.10.2007 shall be governed by Government pay scales. Hence their proposal is rejected since by virtue of amendment to Section 11 of Prasar Bharati Act, they have now become Central Government employees and they would be governed on the basis of recommendations of Central Pay Commission in the matter of pay scales.

3. A rejoinder and reply statement has also been filed reiterating the contentions raised.

4. Heard Shri.P.Santhosh Kumar, learned counsel for the applicant and Shri.Thomas Mathew Nellimoottil, learned counsel for the respondents. The Principal Bench has considered the question of similar pay scales as per OM dated 25.2.1999 which has been claimed by Engineering Assistants in Doordarshan Kendra by filing O.A.No.1742/2004 & O.A.No.1743/2004.

The Principal Bench has unequivocally held that “*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*”. The Principal goes on to state that a differential treatment, 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 and the explanation given by the respondents for the same is not reasonable. The Principal Bench vide order date 31.5.2006 disposed of the O.As with the following observations :

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 months salary 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 months average. 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 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 hours difference 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

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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.

5. We are in total agreement with the aforesaid order passed by the Principal Bench of this Tribunal and holds that the aforesaid order squarely covers the case of the applicants in this O.A since they are equally placed as that of Engineering Assistants therein. We therefore dispose of this O.A by setting aside Annexure A-47 order dated 9.12.2014. We direct the respondents to reconsider claim of applicants for grant higher pay scale of Rs.6500-10500 to Cameraman Grade II, Film/Video Editor and Graphic Artist with effect from 1.1.1996 in the light of the observations made hereinabove 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 order to costs.

(Dated ts the 25th day of January 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00081/2015

1. Annexure A-1 - True copy of order No.310/173/97-B(D) dated 25.2.1999 of the 1st respondent.
2. Annexure A-2 - True copy of IA No.11482/2005 in OP 17605/2000 before the Hon'ble High Court of Kerala.
3. Annexure A-3 - True copy of Judgment dated 8.8.2005 in OP No.17605/2000.
4. Annexure A-4 - True copy of order dated 3.2.2006 in O.A No.65/2006 of the CAT Ernakulam Bench.
5. Annexure A-5 - True copy of Order No.2/5/2006-S-I(A)dated 15.6.2006 of the 2nd respondent.
6. Annexure A-6 - True copy of Lt No.27/2/2006-S-I(A)dated 15.6.2006 of the 2nd respondent.
7. Annexure A-7 - True copy of order dated 20.7.2006 in O.A No.388/2006 of this Tribunal.
8. Annexure A-8 - True copy of communication dated 16.10.2006 of the 1st respondent to the 3rd respondent.
9. Annexure A-9 - True copy of the communication dated 5.12.2006.
10. Annexure A-10 - True copy of the communication dated 4.4.2007.
11. Annexure A-11 - True copy of the communication dated 23.4.2007 of the 3rd respondent.
12. Annexure A-12 - True copy of communication dated 29.6.2007 of the 1st respondent to the 1st applicant.
13. Annexure A-13 - True copy of the Minutes of the meeting held on 7.9.2007 under the Chairmanship of 2nd respondent.
14. Annexure A-14 - True copy of Minutes dated 18.1.2008 under the Chairmanship of the 3rd respondent.
15. Annexure A-15 - True copy of Lt. Dated 18.8.2008 of the 1st applicant to the 2nd respondent.
16. Annexure A-16 - True copy of Lt. Dated 18.8.2008 of the 1st applicant to the 1st respondent.
17. Annexure A-17 - True copy of Statements dated 4.12.2008 filed by 1 stand 2nd respondents in CPC 88/2008.

18. Annexure A-18 - True copy of M.A for extension of time dated 11.3.2009.
19. Annexure A-19 - True copy of M.A for extension of time dated 9.7.2009.
20. Annexure A-20 - True copy of interim order dated 20.11.2009 in CPC No.88/2009.
21. Annexure A-21 - True copy of Lt. No.Misc-1/119/2007-PPC dated 28.6.2007 of the 2nd respondent to the 1st respondent.
22. Annexure A-22 - True copy of Lr. No.F 512/20/2006-BA(E) dated 20.7.2009 of the 1st respondent.
23. Annexure A-23 - True copy of Lt. No.Misc-1/154/2007-PPC(Pt)dated28.7.2009 of the 2nd respondent.
24. Annexure A-24 - True copy of Lt.No./F 512/20/2006-BA(E) dated 14.10.2009 of the 1st respondent.
25. Annexure A-25 - True copy of Lt. No.F 2/5/2006-SI(A).PL1 dated 30.1.2010of the 2nd respondent.
26. Annexure A-26 - True copy of Lt. No.Misc.1/154/2007-PPC (Pt.)dated 4.11.2009 of the 2nd respondent.
27. Annexure A-27 - True copy of OM No.45013/30/99-B(A) dated 31.10.2001 of the 1st respondent.
28. Annexure A-28 - True copy of order dated29.6.2004 in TA 258/JK/2003of CAT Chandigarh Bench.
29. Annexure A-29 - True extract of comparative pay structure of Group B employeesof Doordarshan.
30. Annexure A-30 - True extract of comparative pay structure of Group C employees of Doordarshan.
31. Annexure A-31 - True copy of the Minutes of the 2nd Meeting of GOM on Prasar Bharati held on 17.6.2010.
32. Annexure A-32 - True copy of Lr.No.15/4/2005-BP&LVOL.VI dated 23.6.2010of the 1st respondent.
33. Annexure A-33 - True copy of Lr. No.F 15/4/2005-BP & L VOL.VI Pt. Dated 6.10.2010 of the 1st respondent.

34. Annexure A-34 - True copy of Lr. No.A10/127/2006-PPC VOL.III (Pt.II(a)) dated 27.7.2011 of the 2nd respondent.
35. Annexure A-35 - True copy of Lr. Dated 1.8.2011 of the 1st applicant to the 2nd respondent.
36. Annexure A-36 - True copy of order dated 25.10.2011 in O.A No.298/2010 before this Tribunal.
37. Annexure A-37 - True copy of order dated 10.1.2012 of this Tribunal in M.A for extension of time.
38. Annexure A-38 - True copy of order dated 14.5.2013 in M.A No.475/2013 in O.A 298.2010.
39. Annexure A-39 - True copy of the reply stated 29.8.2013 in MA No.929/2013 in O.A 298/2010 filed by the 2nd respondent.
40. Annexure A-40 - True copy of Lt. No.A 10/127/2006-PPC (Vol.IV) dated 13.1.2014 of the 2nd respondent.
41. Annexure A-41 - True copy of order dated 9.4.2014 in M.A 378/2014 in O.A No.298/2010 of this Tribunal.
42. Annexure A-42 - True copy of order dated 4.7.2014 of this Tribunal in M.A No.378/2014 in O.A 298/2010.
43. Annexure A-43 - True copy of common order dated 31.5.2006 of the CAT Principal Bench in O.A No. 1742 & 1743/2004.
44. Annexure A-44 - True copy of Lt.No.515/50/2011.BA(E) dated 23.9.2014 of the 1st respondent.
45. Annexure A-45 - True copy of statement showing the financial implication dated 19.9.2014 of the 2nd respondent.
46. Annexure A-46 - True copy of Lt.No.2/6/2010-S(I)-A dated 3.11.2014 of the 2nd respondent.
47. Annexure A-47 - True copy of speaking order No.515/46/2010-BA(E) dated 9.12.2014 of the 1st respondent.
48. Annexure A-48 - True copy of order dated 10.12.2014 of this Tribunal in CPC No.98/2014.
49. Annexure A-49 - True copy of the office order No.14/2015 dated 24.3.2015.

50. Annexure A-50 - True copy of the office order No.2/19/2009-Sl.Vol.II dated 27.8.2015.
 51. Annexure A-51 - True copy of the office order No.1(4)EA/2014-Admn dated 7.11.2014.
 52. Annexure A-52 - True copy of the Legal Opinion sought under RTI File No.1601/142/2014-B.A (E) dated 26.9.2014.
 53. Annexure A-53 - True copy of the File No.515/21/2011-B.A(E) dated 19.10.2014.
 54. Annexure A-54 - True copy of the office memorandum no.1/11/3/2014-Cab, dated 4.6.2014.
 55. Annexure A-55 - True copy of the question and answer presented before Rajyasabha, dated 1.12.2015.
 56. Annexure A-56 - A true copy of the communication as per No.35/36/2016/S.I., dated 24.4.2017 to the Prasar Bharati.
 57. Annexure A-57 - A true copy of the communication dated 11.8.2017 from the Ministry of Information and Broadcasting.
 58. Annexure A-58 - A true copy of the order No.35/36/2016A/S.I., dated 12.9.2017 the Director General.
 59. Annexure R-1 - True copy of the relevant page of the Prasar Bharati (Broad Corporation of India) Act, 1990.
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