

Item No.2



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 2691/2021

MA No. 3329/2021

Tuesday, this the 05th day of July, 2022

Hon'ble Mr. R N Singh, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

1. Bhanwar Lal Rawal, aged 60 years
s/o sh. Ratan lal Rawal,
Retired Assistant Engineer
from Doordarsan Jodhpur,
r/o 1/102, Rajasthan Housing Board Colony,
Sirohi (Raj)-307001.
2. V.C.Bhardwaj, aged 60 years
s/o Sh. Ram Chandra Bhardwaj,
Retired Assistant Engineer from DMC
Hanumangarh
r/o G-176, New Civil Lines,
Hanumangarh Junction,
Distt. Hanumangarh (Raj)-335512.
3. Mangal Mundari, aged 59 years
s/o Late Sh. Budhu Mundari,
working as Senior Technician
in All India Radio Rourkela,
r/o PO Jhirpani (Jharia Kachha), via Rourkela,
Distt. Sundergarh, (Odisha)-769042
4. Rakesh Kumar Singh, aged 59 years
s/o Late. Sh. Arvind Bhadur,
working as Senior Engineering Assistant
in Doordarsan Indore(MP),
r/o H2/204, Belmont Park, Sch.78, Phase-II
Indore (MP)
5. Mahatam Prasad Chaoudhari, aged 59 years
s/o Sh. Sesh Raj Chaudhari,
Working as Assistant Engineer,
in Doordarsan Lucknow
r/o D-2205, Indira Nagar,
Lucknow (UP).
6. Sumonto Gupta, aged 59 years
s/o Sh. Rabindra Nath Gupta,
working as Assistant Engineer
in Doordarsan Lucknow
r/o Flat No. 201, Greenwood Apartments, B-21,
Sector -E, New Aliganj, Lucknow(UP).

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7. Krishn Nandan Thakur, aged 59 years
s/o sh. Badri Narayan Thakur,
working as Senior Engineering Assistant
in All India Radio Dharbhanga.
r/o Kathalbari Chowk, Station road,
New Colony, Darbhanga (Bihar).
8. Niranjn Tripathy, aged 59 years
s/o Sh. Padma Lochan Tripathy,
working as Senior Technician
in All India Radio Rourkela,
r/o All India Radio, Jagda, Rourkela,
Distt. Sundergarj (Odisha).
9. Saraphat Ali, aged 59 years
s/o Sh. Diwan Ali
working as Senior Technician
in All India Radio Soro,
r/o Koel Bank, Kharia Bahal, Rourkela-4.
Distt. Sundergarh, Odissia.
10. Puran Chandra Tiwari, aged 59 years
s/o Sh. M.D.Tiwari,
working as Senior Engineering Assistant
in Doordarsan Lucknow
C-1295, Indira Nagar, Lucknow (UP).
11. M.V.Purushothaman, aged 59 years C
s/o Sh. M.M.Velayudhan
Working as Engineering Assistant
in Doordarsan Thrissur.
Manangath House, PO Thrithallur, .
Thriussur Distt., Kerala-680619.
12. P.N.Bala Krishnan, aged 59 years
s/o Sh. P.R.Nanu,
working as Technician
in All India Radio Thrissur,
r/o Parakkkal House, PO, Pullut,
Thriussur Distt., Kerala-680663
13. Yogesh Kumar, aged 59 years
s/o Sh. Jagdish Prasad,
working as Assistant Engineer
in Doordarsan Delhi,
r/o M-204, Ajnara Landmark Apartment,
Sector 4
Vasihali, Ghaziabad(UP).
14. Smt.Barrey Rajya Laxmi
W/O Barrey Isaiiah
Working as Senior Engineering Assistant
at All India Radio Hyderabad

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r/o Plot No.266/A, Huda Sai Nagar,
Vanasthalipuram, Hyderabad,
Telanga State-500070

15. Rajan M.P. S/o Sh. M.V.Pappu
Working as Senior Engineering Assistant
At LPT Shoranur
R/O Madappattil House, Njellur Road,
PO Kallur, Thrissur-680317

...Applicants

(Through: Mr. Yogesh Sharma, advocate)

Versus

1. Union of India, through the Secretary.
Ministry of Information and Broadcasting,
Govt. of India, Shastri Bhawan,
New Delhi-1 10001
2. Director General,
All India Radio,
Akashwani Bhawan,
Sansad Marg,
New Delhi.
3. Director General,
Doordarsan, Doordarsan Bhawan,
Copernicus Marg, New Delhi.
4. The Chief Controllers of Accounts,
Principal Accounts officer,
Ministry of Information& Broadcasting,
703-703A, 'A' wing,
Shastri Bhawan, New Delhi.
5. The Chief Executive Officer
Prasar Bharti, Broadcasting Corporation of
India, Copernicus Marg, New Delhi.

...Respondents

(Through Advocate(s): Mr. S.M. Arif with Mr. S.M.
Aatif and Ms. Shabnam Parween)

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O R D E R (ORAL)

Hon'ble Mr. Tarun Shridhar, Member (A):

By virtue of the present Original Application, the applicants seek the following relief(s) :-

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 19.8.2021 (Annex. A/1) and consequently pass an order directing the respondents to grant the regular pension and regular gratuity amount and all other retirement benefits to the applicant No. 1 and 2 immediately and to other applicants o their retirement without any recovery.
- (ii) Any other relief which the Hon'ble Tribunal may deem fit and proper may also be granted to the applicant along with costs of litigation.”

2. The main grievance of the applicants is that vide impugned communication, a direction has been issued by the Chief Controller of Accounts to the Prasar Bharati that the employees who have retired or who are likely to retire, be awarded only provisional pension, till the conclusion of pending litigation in the matter.

3. Brief facts of the case are that the employees of the Doordarshan and All India Radio, subsequent to the creation of the Prasar Bharati Organisation, were granted upgraded pay scale and this upgraded pay scale was

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supposed to be offset with the three MACPs, which came into existence later on. However, some of the employees managed to get the benefit of three MACPs as also the upgraded pay scales. To cut a long story short, this Tribunal in Original Application No.2449/2018, vide order dated 01.08.2019 held that the employees were not entitled to both these benefits at the same time i.e. three MACPs as also the upgraded pay scales and directed that the pay scales shall be re-determined. The limited relief granted to the applicants was that the respondents were restrained from making the recoveries of excess amount already paid. The said order of the Tribunal has been challenged before the Hon'ble High Court of Delhi and the matter at present rests there. Vide the impugned communication, the following direction has been issued :-

“Sub:- Continuation of Status Quo in compliance of Hon'ble High Court, Delhi Order dated 13.09.2019 in WP No. 9891/2019 filed by AADEE & Ors Vs UoI & Ors. and pension Fixation of the retiring employees –reg.

I am directed to refer to M/o I&B Letter No. 11013/20/2018-BAE dated 18.08.2021 (copy enclosed) issued by US(BAE) M/o I&B with the approval of Secretary (L&B) wherein instructions have been issued to settle the pension case of retiring employee during the period of maintenance of status -quo as per the order dated 13.09.2019 in WP No. 9890/2019 filed by AADEE & Ors Vs UoI & Ors.

2. In this Connection, a reference was made to M/o I&B to issue necessary directions as to

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how to regulate/finalise the pension cases of such category of employees of subordinate Engineering & Programme cadre of Prasar Bharati who have been granted both the benefit of 3rd Financial Up-Gradation under MACPs and upgraded pay scales vide M/o I&B Order dated 25.02.1999 and who got retired during the period of status quo or are due to retire in the interim as the pension cases of such category of employees are to be settled/finalised within the timelines laid down in CCS (Pension) Rules as also the status quo is to be maintained as per directions of Hon'ble Court.

3. Now, M/O I&B vide Letter dated 18.08.2021 has clarified that the pension case of retiring employees may be settled by issuing provisional pension and provisional gratuity as per Rule 64 of CCS(Pension) Rules. But since the pending litigation is not likely to be concluded within 6 months time as envisaged in Rule 64, therefore, it has been decided in consultation with DoPPW that the provisional pension and provisional retirement gratuity maybe granted till the final conclusion of the pending litigation.

4. In view of above, all PAOs are directed to settle the retirement cases of the retiring government employees by providing provisional pension and provisional gratuity under Rule 64 of CCS(Pension) Rules till the final conclusion of the pending litigation. Further all PAOs are directed to maintain status quo in the matter of refixation as well as recoveries in the salaries of the affected employees in the matter in compliance of High Court order dated 26.11.2018 in the earlier WP No. 12524/2018 with Contempt Petition No. 512/2019 & Hon'ble High Court order dated 13.09.2019 in fresh WP No. 9890/2019 filed by AADEE & Ors Vs Uol & Ors till the next date of hearing in respect of applicants and other similarly placed officials.

5. This issues with the approval of CCA, M/o I&B, New Delhi.

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6. This may be accorded "Top Priority".

4. Learned counsel for the applicants argues that the said direction, which is impugned, is contrary to the provisions set out in CCS (Pension) Rules, 1972, specifically Rule 64. Pointing towards the provisions of Rules, he mentions that none of the conditions governing grant of provisional pension is made out in the instant case. The limited cause to withhold the Final Pension Payment Order (FPPO) and grant only provisional pension to the applicants is the pending litigation whereas the CCS (Pension) Rules do not contain any provision with respect to a litigation being allowed to withhold the final PPO settlement. He further points out that even conceding that the respondents would like to protect their interest on account of the pendency of the case, the provisional pension cannot go beyond the period of six months as has been categorically stated in Rule 64. Therefore, the impugned order is contrary to the statutory provisions of CCS (Pension) Rules, 1972. While agreeing that the amount mentioned as provisional is equivalent to what the final PPO would have been, he points out that the respondents have withheld 10% of the admissible gratuity amount of the applicants in case of those who have retired

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and would be similarly withholding 10% with regard to those persons who are likely to be retire. He further argues that in the absence of final PPO, the applicants are also being denied the benefit of commutation of pension, which is their legally admissible right.

5. The learned counsel for the respondents on the other hand, while placing the brief history of the matter, points out that the instant controversy has arisen only on account of pending litigation in the matter. He points towards the administrative complications in finalising the pension of the applicants, in accordance with the relevant rules, since many of the employees have already got double benefit of MACP as also the upgraded pay scales. He emphasises that the applicants have not been put to any financial loss, at this stage, as the amount sanctioned to them as provisional pension is the full and final amount. He submits that the respondents have sought the advice of the DOP&T, which is the nodal department in the instant matter and are being strictly guided by the said advice. He, particularly, draws attention to the advice given by the DOP&T on 19.03.2021, which reads as under :-

“Reference : Ministry of I&B ID Note No.V-111013/01/2019-BA(E) dated 23.02.2021.

The matter has been examined in the Department. The matter was earlier Examined

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in this Department and since it was presumed that the outcome of the writ petition filed in Delhi High Court may not result in reduction of pay of the employees, Ministry of I&B, vide ID note dated 16.07.2020, was advised to re-examine the matter and to bring out clearly, with examples, as to how the outcome of the writ petition may necessitate reduction of pay and pension of the employees. The facts of the case forwarded by Ministry of I&B now are still not very clear as the example given in their file is very general and does not appear to relate to any one affected employee/pensioner in this case. Ministry has also not mentioned whether the Govt. servants in question have retired or not. If retired, how their pension and other pensionary benefits have been settled/calculated (on the basis of which pay scale etc.). Further since the matter relates to fixation of their pay as per DOPT guidelines on MACP, whether DoPT has been consulted and the stand taken before the Hon'ble Court(s) is on the basis of such consultation etc.

3. Further in regard to sanction of provisional pension under rule 64 or 69 in the instant case, Rule 9(4) provides as under:

9(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

69 (1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

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(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

4. Therefore, it appears from the above proposal of the Ministry that the employees are not under suspension or any disciplinary or criminal proceedings are pending against them. Therefore, there is no ground for sanctioning provisional pension under rule 69 of CCS (Pension) Rules, 1972.

5. Moreover, Rule 64 sub rule (3) (a) of CCS (Pension) Rules provides that

(3) Where the amount. of pension and gratuity cannot be determined for reasons other than the Departmental or Judicial proceedings, the Head of Office shall –

(a) issue a letter of sanction addressed to the Government servant endorsing a copy thereof to the Accounts Officer authorising –

(i) 100 per cent of pension as provisional pension for a period not exceeding six months to be reckoned from the date of retirement of the Government servant, and

(ii) 100 percent of the gratuity as provisional gratuity withholding ten per cent of gratuity.

6. Thus as mentioned above, since the matter is under litigation, the Ministry has perhaps not been able to settle the pension cases. In such a case provisional pension under Rule 64 can be sanctioned for a period of 6 months, the maximum period under Rule 64. However, since the pending litigation may not likely to be concluded within the said period, the administrative Ministry may take an administrative decision accordingly.

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7. This issues with the approval of the competent authority in the Department.”

6. He submits that this advice makes it abundantly clear that the DOP&T has taken into consideration the pending litigation and suggested that the administrative Ministry may settle the pension cases against the back drop of the same. He submits that since almost all dues have been paid, the applicants should await the outcome of the matter pending in the Hon'ble High Court.

7. Learned counsel for the respondents also points out that the present OA is not maintainable in the present form since all the applicants are not similarly placed, some having already retired while some are still in service. Moreover, they are also working at different places or have retired from different offices. Further, he submits that they have approached this Tribunal prematurely, without exhausting the remedy of preferring a representation before the Competent Authority.

8. We have heard the learned counsels for the parties and also gone through the documents on record.

9. The instant matter squarely rests upon the relevant Rules, but before dealing with the merits of the case and rules governing the same, we would like to dwell upon the

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objection raised by the learned counsel for the respondents. No doubt, the applicants may not strictly be enjoying the same status as some have already retired and some are still in service; also it is a fact that the applicants may be posted at different offices, but it is noted that what is challenged in the present OA is a letter dated 19.08.2021, containing the following subject :-

“Continuation of Status Quo in compliance of Hon’ble High Court, Delhi Order dated 13.09.2019 in WP No.9890/2019 filed by AADEE & Ors. Vs. UoI & Ors. and pension Fixation of the retiring employees – reg.

10. It is obvious that the applicants are not seeking any individual relief or a specific direction. What the applicants seek is merely a direction that their retiral dues be sanctioned, in accordance with the CCS (Pension) Rules. Therefore, we do not think that there are enough grounds for the objection raised by the learned counsel for the respondents to stand in the way of our adjudicating the present OA. Moreover, it may be mentioned that the impugned order has been issued by the Office of Principal Accounts Officer, which has its Headquarter in Delhi, hence, within the jurisdiction of this Bench of the Tribunal.

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11. Coming to the merits of the case, we may mention it out rightly that rule position is abundantly clear. While rules provide for grant of provisional pension in the case of retired or retiring employees under certain conditions, they also categorically state that provisional pension cannot continue beyond a period of six months. It is obligatory on the part of the Head of Office or the Competent Authority to issue a final PPO on or before the lapse of a period of six months. There is neither any proviso nor exception to the said rule. Pendency of a litigation in the matter cannot be a ground to with hold the pension of the employee, specifically, when the amount that has been sanctioned as the provisional pension is the same as the final PPO. Moreover, a bare reading of Rule 64 of CCS (Pension) Rules also indicates that within a lapse of a period of six months, the Head of Office is duty bound to sanction the balance gratuity, which may have been with held, on account of non-finalisation of the final PPO. We have also gone through the detailed advice of the DOP&T referred to by the learned counsel for the respondents and find that while this advice abundantly elaborates the rule position and also explains as to the circumstances in which the provisional pension can be sanctioned, none of those circumstances are attracted in the present case. Moreover,

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the DOP&T in the said advice also reiterates that the provisional pension under the rules can be sanctioned only for a period of six months and the little window of opportunity it gives to the respondents is that the administrative Ministry may take a decision against the backdrop of litigation. It can be nobody's case that the administrative decision can be taken in contravention of the rules. Therefore, we do not have any hesitation in setting aside the impugned communication dated 19.08.2021, bearing No.G-11502/Pr.AO/I&B/CourtCase/2021-22/632. Pursuant to quashing of said impugned communication, the respondents are directed to issue appropriate orders, sanctioning pension and gratuity, as admissible to the applicants, in accordance with CCS (Pension) Rules, 1972, as envisaged under the Rules within the time lines prescribed.

Pending MA No.3329/2021 shall stand disposed of.

There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(R.N. Singh)
Member (J)

/rk/daya/