

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 18.01.2017

Coram

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.30506 of 2013

S.DEVARAJAN

... PETITIONER

Versus

- 1 CENTRAL ADMINISTRATIVE
TRIBUNAL REP. BY ITS REGISTRAR
HIGH COURT CAMPUS
CHENNAI
 - 2 UNION OF INDIA REP. BY ITS
DIRECTOR GENERAL DOORDHARSHAN KENDRA MANDI
HOUSE COOPERNICUS MARG NEW DELHI 110 001
 - 3 DEPUTY DIRECTOR
(ADMN.) PRASAR BHARATI BROADCASTING
CORPORATION OF INDIA
DIRECTORATE GENERAL OF DOORDHARSHAN
MANDI HOUSE COOPERNIUS MARG
NEW DELHI
 - 4 DIRECTOR
DOORDHARSHAN KENDRA
SWAMI SIVANANDA SALAI
CHENNAI-5
- ... RESPONDENTS

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call the records for the concerned records from the 1st respondent quash the order of the 1st respondent tribunal passed in O.A.No.864 of 2011 dated 27.9.2013 and consequently direct the official respondent NO.2 to 4 to confer the 2nd Financial Upgradation under ACP Scheme from the date when the petitioner is eligible along with consequential

arrears of pay and other monetary benefits.

For Petitioners: Mr. Balan Haridas

For Respondents: Mr.M.Arvindkumar, SCGPC
for R2 to R4
R1 Tribunal

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in O.A.No.864 of 2011, dated 27.9.2013 dismissing the application filed by the petitioner herein.

2. The petitioner/applicant has approached the Tribunal, seeking the following relief:

"a) to quash the order of the 2nd respondent dated 6.2.2007 bearing No.32/2/2004-S-1(A)

b) consequently direct the respondents to confer the 2nd Financial Upgradation under the ACP Scheme from the date when he is eligible along with consequential arrears of pay and other monetary benefits."

3. The petitioner joined the services of the respondents as Sound Recordist with effect from 19.6.1975 in the pay scale of Rs.425-750 which was revised as Rs.550-900. Since the post of Sound Recordist was declared as dying cadre, the petitioner was directed to apply for the post of Cameraman Grade II with effect from 12.2.1985 and accordingly, he was appointed to the said post in the pay scale of Rs.650-980, which was revised as Rs.2000-3200 as per IV Pay Commission and later, it was further revised after V Pay Commission as Rs.6500-10500. Later on introduction of Assured Career Progression Scheme on 9.8.1999, two financial upgradations were given on completion of 12 and 24 years of service. According to the petitioner, he was eligible to be granted two financial upgradation under the ACP Scheme in 1999 itself, having joined the services as Sound Recordist on 19.6.1975.

4. The said claim of the petitioner herein was resisted by the official respondents. According to the respondents, the appointment of Cameraman Grade II was by way of Direct Recruitment and admittedly, it was carrying on higher pay scale with effect from 12.5.1985 and therefore, the services had to be counted only from 1995 onwards and hence, he was entitled only to first financial upgradation on completion of 12 years and not

the second financial upgradation as claimed by the petitioner. The respondents placed reliance on the clarification issued by the DoPT vide OM dated 10.2.2000 which became part of original ACP Scheme of the year 1999. In para 4 of the clarification, to a query, it was clarified that the appointment made to higher pay scale either on direct recruitment or on absorption (on transfer) basis or first on deputation basis and later on absorbed (on transfer) basis, such appointment shall be treated as direct recruitment which shall not count for benefits under ACP Scheme. In view of the said clarification, the petitioner having been directly appointed on higher pay scale, was not entitled to count earlier service rendered from 19.6.1975 to 11.5.1985. According to the official respondents, the petitioner herein had completed 24 years of service only on 12.5.2009 by then, new Modified Assured Career Progression Scheme came into force with effect from 1.9.2008 and as per the said scheme, financial upgradation will be granted on completion of 10, 20 and 30 years of regular service and the petitioner was, in fact, granted second financial upgradation under MACP with effect from 1.9.2008.

5. After taking note of the submissions, the learned Tribunal accepted the contentions of the official respondents and dismissed the application. As against the order of the Tribunal, the present Writ Petition has been filed by the petitioner.

6. Shri Balan Haridass, learned counsel appearing for the petitioner, though disputed the conclusion of the learned Tribunal on the clarification issued by the DoPT vide OM dated 10.2.2000, has drawn our attention to his contention which was raised in his additional affidavit of the petitioner filed before the Tribunal. According to the learned counsel for the petitioner, after 1.1.1986, the pay scale of Sound Recordist and the Cameraman Grade II has been brought on par and in such view of the matter, the petitioner was entitled to the upgradation as per the clarification dated 10.2.2000 by OM issued by the DoPT. According to him, an employee who got promotion from the lower pay scale to higher pay scale, as a result of promotion, before merger of pay scale, shall be entitled for upgradation under ACP Scheme ignoring the said promotion, as otherwise, he would be placed in disadvantageous position vis-a-vis the fresh entrant in the merged grade. He strongly contended that this was not appreciated by the learned Tribunal while coming to its conclusion.

7. The submissions of the learned counsel will also reflect in the averments contained in para 5 of the additional affidavit filed on behalf of the petitioner before the Tribunal. It is also his case that the said averment has not been specifically disputed by the official respondents in their reply statement filed before the Tribunal.

8. From the impugned order passed by the Tribunal, it could be seen that the submissions made by Shri Balan Haridass on behalf of the petitioner, regarding the pay parity between Sound Recordist and Cameraman Grade II after 1.1.1986 did not find any mention in the order. It appears that the learned Tribunal was solely guided by the clarification No.(iv) of OM dated 10.2.2000, without taking into account, the averments made in the additional affidavit filed on behalf of the petitioner herein. The said issue appears to have been not drawn the attention of the learned Tribunal and non consideration of the said issue, may affect the valuable right of the petitioner.

In the above circumstances, we deem it fit that the learned Tribunal be directed to address the issue with reference to the averments made by the petitioner herein in para 5 of the additional affidavit and with reference to the clarification issued by OM dated 10.2.2000 on the said issue by taking into all relevant factors of the case. We, therefore, remand the matter to the learned Tribunal for fresh adjudication of the case on the issue specifically stated supra. The learned Tribunal is directed to consider and dispose of the Original Application afresh, after affording an opportunity to the parties, as expeditiously as possible.

With the above observation, the Writ Petition is disposed of. Consequently, the order of the Tribunal dated 27.09.2013 is set aside. No costs.

सत्यमेव जयते -Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The Registrar
Central Administrative Tribunal,
High Court Compus, Chennai-104.

2.The Director General,
Dordharshan Kendra, Mandi House,
Coopernicus Marg, New Delhi.

3.The Deputy Director (Administration)
Prasar Bharati Brodcasting Corporation
of India, Directorate General of Doordarshan,
Mandi House, Copernicus Marg, New Delhi.

4.Director,
Dordarshan Dendra,
Swami Sivananda Salai, Chennai

+ 1 cc to M/s.Balan Haridas, Advocate Sr.No.3458
W.P.No.30506 of 2013

RSK(CO)

RRI 02/05/2017



WEB COPY