

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No.4012 of 2014
MA No.3493 of 2014**

New Delhi, this the 13th day of November, 2014

HONBLE SHRI G. GEORGE PARACKEN, MEMBER (J)
HONBLE SHRI SHEKHAR AGARWAL, MEMBER (A)

1. Association of Radio & Television
Engineering Employees, through its President
Shri Umesh Chandra,
Room No.542, Akashwani Bhawan, Sansad Marg,
New Delhi-110001.
2. Satyandra Kumar Sharma, aged 40 yrs.
S/o Sh. Ram Poojan Sharma,
G-157, Lajpat Nagar, Sahibabad,
Ghaziabad-201005 (U.P.)
Working as Engineering Assistant,
Presently working at Doordarshan Kendra, Delhi
3. Harvir Singh Nirmoliya, aged 44 years
S/o Sh. Tek Chand,
c-29, Patel Nager-2,
Ghaziabad-201001. (U.P.).
Working as Engineering Assistant,
Presently working at Doordarshan Kendra, Delhi
4. Chandra Shekhar Azad, aged 35 years
S/o Sh. Shyam Nandan Singh
R/o D-9, Doordarshan Staff Colony,
Viraj Khand-I, Near Sahara Hospital,
Gomti Nagar, Lucknow-226010 (UP).
Working as Engineering Assistant,
Presently working at Doordarshan Kendra, Lucknow.
5. Joseph Martin CJ, Age around 37 yrs.
s/o Sh. Joseph,
Chalaveetil House, Kumbalanghi,
P.O. Kochi-682001 (Kerala),
Working as Engineering Assistant,
Presently working at All India Radio, Ooty, Tamil Nadu.

.....Applicants
(By Advocate : Shri Yogesh Sharma with Shri Vikas Sharma)

versus

1. Union of India through the Secretary,
Ministry of Information & Broadcasting,
Govt. of India, Shastri Bhawan,
New Delhi-110 001.
2. Chief Executive Officer,
Prasar Bharati,
PTI Building,
New Delhi-110001.
3. Director General,
Doordarshan,
Mandi House, Copernicus Marg,
New Delhi.
4. Director General,
All India Radio,
Akashwani Bhawan, Sansad Marg,
New Delhi.

.....Respondents

ORDER (ORAL)

SHRI G. GEORGE PARACKEN, MEMBER (J) :

MA No.3493 of 2014

This MA has been filed by the Applicants for joining together in a single Original Application. For the reasons stated therein, the same is allowed.

OA No.4012 of 2014

At the outset, the contention of the learned counsel for the applicants in this case is that their cases are squarely covered by the decision of this Tribunal in OA No.1742/2004 Lalit Kumar vs. Union of India and others, and another connected OA. The aforesaid judgment was allowed by this Tribunal on 31.5.2006. The operative part of the said Order reads as under:-

“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 dispose 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.”

2. The learned counsel for the applicants has submitted that even though the aforesaid Order was challenged by the respondents before the Hon’ble High Court of Delhi vide Writ Petition (Civil) No.2071/2007 and other connected Writ Petitions which were dismissed on 7.9.2010. The relevant part of the said Order reads as under:-

“11. The issue of equal pay for equal work and employees holding same posts under the same employer requiring same pay scales to be applied is no longer res integra. We eschew reference to various authorities where parity is claimed by employees in different departments under the Union, for the reason different issues arise for consideration therein, but note only two decisions where employees in the same department were sought to be placed in different scales of pay, notwithstanding the employees holding identical posts and doing same jobs. In the decision reported as 1987 (1) SCC 582 Telecommunication Research Centre Scientific Officers (Class-I) Association & Ors. vs. UOI & Ors. the employees were sought to be placed in two categories. Category-I was employees directly recruited as officers in the Telecommunication Research Centre, a Department of the Post & Telegraph Wing directly under the control of the Post & Telegraph Board of the Ministry of Communication and the second category being employees who came on transfer in the said department but employed under the Indian Telecommunication Service Group-A and Group-B Posts. Two issues were urged before the Supreme Court by the directly recruited employees vis-`-vis the transferred employees. First pertained to denial of promotional opportunities and the second with respect to a special pay being paid to the transferred employees. Qua the plea of denial of promotional opportunities, the Supreme Court, in the absence of adequate pleadings, declined to answer the question, but on the issue of parity of pay held that for employees holding same post and doing same work and there being no ground to classify the same in two categories, the placement in different scales of pay was arbitrary. It was noted that the technical and educational qualifications required for both group of employees was the same. Thus, it was directed that both groups be paid the same wages.

12. In a somewhat different factual setting, in the decision reported as 1987(1) SCC 592 M.P.Singh vs. UOI & Ors. it was held that where employees enter the cadre from two different sources, if they do the

same work and are similarly placed, there can be no discrimination in payment of wages.

13. Of course, employees in the same cadre can certainly be placed in different pay scales but that would be if it is shown that one set of employees has higher technical or education qualifications or performs more onerous duties vis-à-vis the other or the like. But, where there is complete parity it would be highly discriminatory to treat employees differently merely on account of the two coming from two different sources.

14. Holding so in favour of the respondents, let us see the plea put up as a justifiable excuse by the petitioners to place the respondents in a lower scale of pay.

15. To the Category-I employees i.e. those working on casual basis under the Central Government but confirmed against regular posts under Prasar Bharti, suffice would it be to state that the claim for regularization pertained to a policy of the Central Government and merely because some got confirmed under the Central Government and some got confirmed under Prasar Bharti would not result in two groups being formed. Thus, apart from the principle that employees holding same posts and doing same duties cannot be discriminated in matters pertaining to wages with reference to the source of appointment, we find no justifiable cause to treat Category-I employees as forming a different and a distinct category.

16. To the Category-II employees, suffice would it be to state that their empanelment was under the Central Government and admittedly some employees under the same panel were inducted by the Central Government and Prasar Bharti placed them in the scale of pay Rs.6500-10500. On the fortuitous circumstance of some empanelled candidates not being able to have character verification completed prior to 27.11.1997 and thereby they being inducted as employees to the same posts directly under Prasar Bharti would not make them a distinct category vis-à-vis their counterparts who were in the same select panel but were appointed by the Central Government.

17. With respect to Category-III employees the principle of law noted by us in paras 11 and 12 above would apply.

18. The writ petitions are found to be without any merit and hence are dismissed. However, since the issue raised was arguable, we refrain from imposing any cost.”

3. Learned counsel for the applicants has further submitted that thereafter the respondents have challenged the aforesaid Order of the Hon'ble Delhi High Court before the Hon'ble Supreme Court vide SLP No.77/2011 (Union of India and others vs. Lalit Kumar Pawar and others) and other connected SLPs, which were also dismissed by the Hon'ble Supreme Court vide Judgment dated 14.1.2011. Again the respondents have filed a Review Petition (Civil) No.2624 of 2011 in SLP (Civil) No.77 of 2011 and other connected Review Petitions which were also dismissed on 9.1.2014. However, in the case of the applicants, the respondents have taken a view vide impugned letter dated 23.9.2014 stating that the aforesaid Order passed in OA No.1742/2004 and OA No.1743/2004 supra are applicable only to the applicants in those OAs and not anyone else.

4. In our considered view, the aforesaid decision taken by the respondents is not in conformity with the law laid down by the Hon'ble Supreme Court in the matter. The Apex Court in the case of Inder Pal Yadav and others vs. Union of India and others, (1985) 2 SCC 648, has held as under:-

5. The Scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. Those in respect of whom the court granted interim relief be stay/suspension of the order of retrenchment, they would be treated in service on 1.1.1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the Scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock 842 at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court. Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify part 5.1 (a) (i) by modifying the date from 1.1.1984 to 1.1.1981. With this modification and consequent rescheduling in

absorption from that date onward, the Scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by re-casting the stages consistent with the change in the date as herein directed.

Similarly, in the case of *Rajpal vs. State of Haryana and others*, 1996 (SCC (L&S) 600, the Hon'ble Supreme Court has held as under:-

3. In view of the order passed by this Court in SLPs (C) Nos.3099-3100 of 1985 and batch, the persons similarly situated were admittedly taken into service and their services have been regularized. Under these circumstances, since the appellant, who is the only person left out in the field, also stands in the same position, we think, on this special circumstances, he is also entitled to the same relief.

4. The appeal is accordingly allowed. But the appellant would not be entitled to the back wages; he would, however, get all other consequential benefits. The respondents are directed to take the appellant into service within a period of four weeks from the date of receipt of this order.

Again in the case of *K.C. Sharma and others vs. Union of India and others*, 1998 (1) AISLJ 54, the Hon'ble e Supreme Court has held as follows:-

This appeal is directed against the judgment of the Principal Bench of the Central Administrative Tribunal (hereinafter referred to as the Tribunal) dated July 25, 1994 in O.A. No. 774 of 1994. The appellants were employed as guards in the Northern Railway and they retired as guards during the period between 1980 and 1988. They felt aggrieved by the notifications dated December 5, 1988 whereby Rule 2544 of the Indian Railways Establishment Code was amended and for the purpose of calculation of average emoluments the maximum limit in respect of Running Allowances was reduced from 75% to 45% in respect of period from January 1, 1973 to March 31, 1979 and to 55% for the period from April 1, 1979 onwards.

2. The validity of the retrospective amendments introduced by the impugned notifications dated December 5, 1988 had been considered by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. No. 395-403 of 1993 and connected matters and the said notifications in so far as they gave retrospective effect to the amendments were held to be invalid as being violative a Articles 14 and 16 of the Constitution. Since the appellants were adversely affected by the impugned amendments, they sought the benefit of the Full Bench of the Tribunal by filing representations before the Railway

Administration. Since they failed to obtain redress, they filed the application (O.A. NO. 774 of 1994) seeking relief before the Tribunal in April 1994. The said application of the appellants was dismissed by the Tribunal by the impugned judgment on the view that the application was barred by limitation. The Tribunal refused to condone the delay in the filing of the said applications.

3. The correctness of the decision of the Full Bench of the Tribunal has been affirmed by this Court in Chairman, Railway Board & Ors. V. C.R. Rangadhamaiah & Ors., Civil Appeals Nos. 4174-4182 of 1995 and connected matters decided today.

4. Having regarding to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No. 774 of 199 is condoned and the said application is allowed. The appellants would be entitled to the same relief in matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs.

5. In view of the above position, we dispose of this OA at the admission stage itself with direction to the respondents to examine the case of the applicants with reference to the aforesaid Orders of this Tribunal, Hon'ble Delhi High Court and the Hon'ble Supreme Court and if their cases are covered by the said Orders, they shall also be given the same benefits under intimation to them within a period of two months from the date of receipt of a copy of this Order. There shall be no order as to costs.

(SHEKHAR AGARWAL)
MEMBER (A)

(G. GEORGE PARACKEN)
MEMBER (J)

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