

**(2007) 10 DEL CK 0034**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 829 of 2002**

Kailash Chand Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision : 31-10-2007**

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19  
Constitution of India, 1950 — Article 14

**Citation : (2007) 10 DEL CK 0034**

**Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J**

**Bench : Division Bench**

**Advocate : Alka Sharma, for the Appellant; NEMO, for the Respondent**

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## **Judgement**

A.K. Sikri, J.—This matter was called out for hearing, in its turn, on 4.10.2007. We heard learned Counsel for the petitioner. Nobody appeared on behalf of the respondent. Still, in order to give a chance, while reserving the orders, we granted one week's time to the respondent to file the written submissions. However, no written submissions are filed. In these circumstances, we are proceeding with the judgment.

2. The controversy involved in this petition revolves on a narrow campus. Before we delineate the issue involved and answer the same, we would like to take stock of the factual matrix.

### **3. FACTS**

The petitioner joined his services as Production Assistant with the Director General, All India Radio, way back in the year 1962. He was promoted as Programme Executive in February 1992 and retired on the said post with effect from 30.4.1996 (on attaining the age of superannuation). He was drawing his pay in the pay-scale of Rs.6500-10500 at the time of his retirement. Almost three years after his retirement, the respondents issued orders dated 25.2.1999 revising the pay-scale of Programme Executives to Rs.7500-12000. This revision

was retrospective, i.e. with effect from 1.1.1996. The pre-revised pay-scale for the post of Programme Executive, i.e. prior to 1.1.1996, was Rs.2000-3500. It was revised to Rs.6500-10500. The feeder post to the Programme Executive is Transmission Executive/Production Assistant, which carried the pre-revised scale of Rs.1400-2600 and it was revised to Rs.5000-8000 after the implementation of the Fifth Central Pay Commission's recommendations with effect from 1.1.1996. Programme Staff Association of the All India Radio (AIR) and Doordarshan (DD) had agitated for parity in pay with Engineering Assistants in AIR/DD at Rs.550-900 from 1.1.1978 and Rs.2000-3200 with effect from 1.1.1986 and consequently to Rs.6500-10500 with effect from 1.1.1996. Following the negotiations between the said Association and the Government, OM dated 25.2.1999 was issued whereby the pay-scales of Transmission Executives/Production Assistants were revised to Rs.550-900 with effect from 1.1.1978, Rs.2000-3200 with effect from 1.1.1986 and Rs.6500-10500 with effect from 1.1.1996. As a consequence, for the post of Programme Executive, which is the promotional post from that of Transmission Executive/Production Assistant, pay-scale was revised to Rs.7500-12000. Subsequently, the order dated 25.2.1999 was further modified on 14.3.2001 allowing the benefit to the upgraded pay-scales to the employees who left the service of AIR and DD by retirement/resignation, etc. during the period 23.11.1997 (after the creation of Prasar Bharati) to 25.2.1999 on the premise that they had actually served in Prasar Bharati after its creation and due to their leaving of service, an option from then could not have been called.

4. In the present case, the petitioner was in service as on 1.1.1996 since he had retired on 30.4.1996. Therefore, ordinarily he would have been entitled to the benefit of this pay revision and as a consequence thereof, he would have got the salary for the period from January 1996 till April 1996, when he retired, in the revised pay-scale. However, the following clause in the order dated 25.2.1999 denied this benefit to persons like the petitioner as it stipulated that the benefit of pay revision would be accorded only to those who were on the rolls on the date of that order, i.e. on 25.2.1999:

4. The benefit of the upgraded pay scales will be available to existing incumbents only and those new direct recruits who join after issuance of these orders will not be entitled to these scales, but will be governed by pay scales recommended by the Vth Pay Commission. However, all promotions of existing incumbents shall be made in upgraded scales only

5. Insofar as the Programme Executives who were in the service as on 25.2.1999 are concerned, they were given the benefit of not only pay fixation in the higher scale with effect from 1.1.1996 but also the arrears of pay on the basis of such pay fixation, albeit in installments, as is clear from paras 2(ii) and 3 of the order dated 25.2.1999. The petitioner herein perceived this action on the part of the respondents as contrary and discriminatory, being violative of Article 14 of the Constitution of India. He demanded the revision of pay but the request was

declined to those retired from 25.2.1999, in which category the petitioner fell, vide communication dated 6.8.1999. Not satisfied, the petitioner preferred OA No. 2579/1999 u/s 19 of the Administrative Tribunal Act before the Central Administrative Tribunal, Principal Bench, New Delhi. The Tribunal has, however, dismissed this OA of the petitioner vide orders dated 21/23.3.2001. Feeling aggrieved, the present petition is preferred by the petitioner.

6. The petitioner seeks quashing of the aforesaid clause which confines the benefit of pay revision only to the existing employees as on 25.2.1999 as well as clarification dated 10.3.1999 and Circular dated 6.8.1999 denying the benefits to those retired before 25.2.1999.

7. The question, in this backdrop, which falls for consideration is as to whether denial of benefit of pay revision to the persons who were in service as on 1.1.1996, from which date the revision of pay-scales is implemented, but who retired before 25.2.1999 is arbitrary and discriminatory. Before we advert to this issue, we may peruse the judgment of the Tribunal in order to understand as to what were the reasons which prevailed with the Tribunal in rejecting the OA filed by the petitioner.

#### 8. TRIBUNAL'S ORDER

A reading of the impugned judgment of the Tribunal would suggest that the Tribunal referred to para 2(i) of OM dated 25.2.1999 as per which the upgraded scales were allowed as Government employees per se, but as Government employees currently in service of Prasar Bharati. This para further stipulated that as and 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 scales. Though the pay-scales were made effective from 1.1.1996, the actual salary as per the upgraded scales was payable only with effect from 1.3.1999. In view of this provision, the Tribunal held:

6. While it is directed that the upgraded pay scales would be effective from 1.1.96 the payment of salaries of the employees, as per the upgraded pay scales will come into force only from 1.3.99. This, however, is subject to the first condition that it would be for those currently in service and not to others. Though the applicant had retired on superannuation only on 30.4.96 i.e. after the date on which the adopted recommendations of the 5th Pay Commission were given effect to, he was not in service on 25.2.99 when the Circular was issued specifically limiting the benefits to those who are still serving. That being the case he would be entitled only to have his emoluments correctly worked out at the time of his retirement in the replacement scale of the scale in which he was drawing his pay under the 4th Pay Commission's level and not at the newly upgraded scale of Rs.7500-12,000/- which he is now claiming. The said scale Along with the conditions for entitlement to get the same were not at all in force when the applicant was still in service. He cannot Therefore, in law claim this. In

other words, the benefit of the replaced/upgraded scales would be subject to the fulfillment of the conditions prescribed by the Circular of 25.2.99 and as he does not fulfil the same, he cannot avail himself of its benefits. The case of the applicant falls outside the purview of the circular, which has been correctly issued and we adhere to the same. In the circumstances the application has to fail.

The genesis of the aforesaid reasoning is that as the person like the petitioner herein was not fulfilling the conditions prescribed by the Circular in order to get the benefit of replaced/upgraded scales, he was outside the purview of the Circular and, Therefore, the prayer made by him could not be acceded to.

## 9. PETITIONER'S SUBMISSIONS

Learned Counsel for the petitioner has assailed the order of the Tribunal by making the following submissions:

(a) Statutory right is conferred upon the petitioner to draw pension under CCS (Pension) Rules, 1972; as per revised pay scales with effect from 1.1.1996; 1.1.1986 and 1.1.1978.

(b) The matter might have been different if the revised scale of pay in terms of the recommendations of the Fifth Pay Commission would have been made applicable to the cases of the employees who had also retired prior to 1.4.1995 (in respect of revised scales w.e.f. 1.1.96) as was held by the Hon'ble Supreme Court.

(c) The entitlement of revised pay scale w.e.f. 1.1.1986 for those who retired between 1.1.1986 and 30.6.1987 is already established in the Supreme Court decision.

(d) Legislative and Executive action can be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved. It was held by the Apex Court that pensioners form a class as a whole and cannot be micro- classified by an arbitrary, unprincipled and unreasonable eligibility criteria.

(e) If irrespective of classification of junior and senior groups, the same work was done by both, the principle of equal pay for equal work is definitely attracted. The scale of Rs.6500-10500 is applicable with effect from 1.1.1996 to the Transmission Executive which is lower feeder post, is vocative of the principle of "equal pay for equal work". Equal pay for unequal work will be a negation of that right. Equal scales of pay for different class of employees cannot be prescribed. By giving lower pay scale of Transmission Executive to the petitioner who held the higher cadre post of Programme Executive viz. of Rs. 6500-10500 with effect from 1.1.1996, it has resulted in equal pay for unequal work which amounts to negation of the right of equal pay for equal work.

(f) When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay.

(g) Plea of settlement as stated in impugned letter dated 25.2.1999 does not authorise the majority of the employees to trample upon the constitutional guarantees or rights of the individual or minority employees. Majority cannot thwart or barter away the constitutional rights of the minorities. The constitutional guarantees are to protect this very danger.

(h) Any decision of the Apex Court contrary to the above decisions will be treated as per incuriam as the rights vested upon the petitioner through above statutory rules cannot be divested and the larger Benches decisions are applicable as stated above. This Court has treated such decisions per incuriam in various decisions.

10. Counsel for the petitioner also relied upon the detailed written submissions filed by her dilating on the aforesaid contentions with the aid of case law. Though nobody has appeared on behalf of the respondent we have gone through the averments made in the counter affidavit filed by the respondents. In fact, what is stated in the counter affidavit was the stand of the respondents before the Tribunal as well, which has been reflected in the impugned judgment as the Tribunal accepted the respondents' case while dismissing the OA filed by the petitioner.

## 11. OUR DECISION

We have considered the respective submissions. However, we are unable to agree with the reasoning given by the learned Tribunal and are of the opinion that the petitioner was entitled to the benefit of upward revision of pay-scale, namely Rs.7500-12000, which was implemented with effect from 1.1.1996 as he was in service as on that date and exclusion of the employees who were in service as on that date, but had retired prior to 25.2.1999, is clearly discriminatory, inasmuch as, it is not based on any intelligible differentia. Since the pay- scale was revised with effect from 1.1.1996, all those who were in position as on that date would form the same class and a particular class, namely, the employees who retired after 1.1.1996 and before 25.2.1999, cannot be treated as different class and such a classification is arbitrary and hit by Article 14 of the Constitution of India.

12. We may mention here that we are dealing with the revision in the pay-scale. As already noted above, the feeder post for promotion to the post of Programme Executive is that of Transmission Executive. No doubt, on the plea of the Association representing Transmission Executives, the pay-scales were revised vide order dated 25.2.1999 and the position on this revision is as under:

|            |                  |                                               |
|------------|------------------|-----------------------------------------------|
| As On      | Pay Scale of PEX | Pay Scale (Transmission (Programme Executive) |
| Executive) | 1.1.1978         | 650-1200 550-900 1.1.1986 2000-3500 2000-3200 |

1.1.1996 7500-12000 6500-10500

13. With effect from 1.1.1996, the pay-scale of Transmission Executives were revised to Rs.6500-10500. This was the pay-scale which was given to Programme Executives on the implementation of the Fifth Central Pay Commission and since the post of Programme Executive is a higher cadre, higher pay-scale of Rs.7500- 12000 was accordingly granted to them. Cut off date, which is material for the purpose of implementation of these pay-scales, is 1.1.1996. The petitioner was very much in the employment of the respondent as on that date and working as Programme Executive. If he is not given the benefit of orders dated 25.2.1999, the effect is that he continued to get the pay in the pay-scale of Rs.6500-10500 though this pay-scale is accorded to the lower post, i.e. the Transmission Executive. That would be the first anomaly as the petitioner cannot be equated with the Transmission Executives in the grant of pay. It would be relevant to point out that the respondents themselves acknowledged this distinction as in the reply filed before the CAT, in para 4(ii) it was averred as under:

It is, however, submitted that at any particular point of time, in terms of pay scale, the grade of Programme Executive has always been placed above the grade of Transmission Executive. This may be understood from the following comparative table of pay scales of two posts:

|           |                  |                     |            |            |         |        |
|-----------|------------------|---------------------|------------|------------|---------|--------|
| As On     | Pay Scale of PEX | Pay (Scale of TREX) | 1.1.78     | 650-1200   | 550-900 | 1.1.86 |
| 2000-3500 | 2000-3200        | 1.1.96              | 7500-12000 | 6500-10500 |         |        |

14. It is trite law that as the petitioner was holding a higher post, he was entitled to the higher pay-scale. In fact, if the benefit is not given and the scale of the petitioner and persons alike is fixed in the scale of Rs.6500- 10500, it would tantamount to demoting the petitioner.

15. Furthermore, the Tribunal has committed factual error in observing that the benefit of upgraded pay-scale was given only with effect from 1.3.1999. Para 2(ii) and 2(iii) of orders dated 25.2.1999, which have already been extracted above, in no uncertain terms stipulate that employees would be entitled to arrears with effect from 1.1.1996 and these arrears would be paid in installments.

16. In sum and substance, decision contained in OM dated 25.2.1999 is this:

Revising the pay-scales with effect from 1.1.1996 and paying the actual salary as per the upgraded pay-scales only with effect from 1.3.1999.

However, at the same time, this benefit was given to only those who were in the employment as on 25.2.1999, the date on which the OM was issued. Insofar as the employees who got the benefit of this OM, by virtue of they being in the employment as on 25.2.1999, is concerned, they got the revision in their pay-scales with effect from 1.1.1996. Thus, they got the pay fixation in the upgraded pay-scale of Rs.6500-200-10500 with effect from 1.1.1996, but the actual salary as per the revised pay fixation was drawn with effect from 1.3.1999. Once the

pay fixation is given to the incumbents actually in service on 25.2.1999, but with effect from 1.1.1996, it could not be denied to those who were in service on 1.1.1996, with effect from the date the pay-scales were implemented, though they had retired prior to 25.2.1999. The only effect could be that they would not get any arrears in the upgraded pay-scales. However, their pay had to be fixed in the revised pay-scales and they would get the pensionary benefits on that basis. All those who were in service as on 1.1.1996, with effect from which date the upgrade pay-scales are introduced, would form the same class. By excluded them, the respondents have tried to create class within class, which is not permissible.

17. In *D.S. Nakara v. Union of India* AIR 1983 SC 130, the Supreme Court struck down such a classification being arbitrary and discriminatory in the following words:

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

16. As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved. The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws.... The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification.... Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated too the object sought to be achieved. The State, Therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, when at page 1034, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

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65...by introducing an arbitrary eligibility criteria; "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not

based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in impugned memoranda Exhibits P-1 and P-2, violates Article 14 and is unconstitutional and is struck down.

18. In *Subrata Sen and Others Vs. Union of India and Others*, a Division Bench of this Court, while applying the principles laid down in *D.S. Nakara (supra)*, observed as under:

In our view the aforesaid para does not in any way support the contention of the respondents. On the contrary, on parity of reasoning, we would also reiterate that let us be clear about this misconception. Firstly, the Pension Scheme including the liberalised scheme available to the employees is non- contributory in character. Payment of pension does not depend upon Pension Fund. It is the liability undertaken by the Company under the Rules and whenever becomes due and payable, is to be paid. As observed in *D.S. Nakara and Others Vs. Union of India (UOI)*, , pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio- economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch.

Again in a recent judgment in the case of *U.P. Raghavendra Acharya and Others Vs. State of Karnataka and Others*, , it was held:

21. It is one thing to say that the State can fix a cut off date unless and until the same is held to be arbitrary or discriminatory in nature, the same would be given effect for carrying out the purpose for which it was fixed. In this case, the cut-off date for all intent and purport had been fixed as 1.1.1996. It is, thus, not a case where cut-off date was fixed as 1.4.1998 as the State merely intended to confer only same benefits. It is, thus, also not a case like *Transmission Corpn., A.P. Ltd. and Others Vs. P. Ramachandra Rao and Another*, where a section of the employees were excluded from being given the benefit of revised pension as they had retired prior to the cut-off date.

22. The State while implementing the new scheme for payment of grant of pensionary benefits to its employees, may deny the same to a class of retired employees who were governed by a different set of rules. The extension of the benefits can also be denied to a class of employees if the same is permissible in law. The case of the appellants, however, stands absolutely on a different footing. They had been enjoying the benefit of the revised scales of pay. Recommendations have been made by the Central Government as also the University Grant Commission to the State of Karnataka to extend the benefits of the Pay Revision Committee in their favor. The pay in their case had been revised

in 1989 whereas the pay of the employees of the State of Karnataka was revised in 1993. The benefits of the recommendations of the Pay Revision Committee w.e.f. 1.1.1996 thus could not have been denied to the appellants.

23. The stand of the State of Karnataka that the pensionary benefits had been conferred on the appellants w.e.f. 1.4.1998 on the premise that the benefit of the revision of scales of pay to its own employees had been conferred from 1.1.1998, in our opinion, is wholly misconceived. Firstly, because the employees of the State of Karnataka and the appellants, in the matter of grant of benefit of revised scales of pay, do not stand on the same footing as revised scales of pay had been made applicable to their cases from a different date. Secondly, the appellants had been given the benefit of the revised scales of pay w.e.f. 1.1.1996. It is now well settled that a notification can be issued by the State accepting the recommendations of the Pay Revision Committee with retrospective effect as it was beneficent to the employees. Once such a retrospective effect is given to the recommendations of the Pay Revision Committee, the concerned employees despite their reaching the age of superannuation in between the said dates and/or the date of issuance of the notification would be deemed to be getting the said scales of pay as on 1.1.1996. By reason of such notification as the appellants had been derived of a vested right, they could not have been deprived there from and that too by reason of executive instructions.

24. The contention of the State that the matter relating to the grant of pensionary benefits vis-a-vis the revision in the scales of pay stands on different footing, thus, must be rejected.

25. Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is co-related and has a nexus with the salary payable to the employees as on the date of retirement.

26. These appeals involve the question of revision of pay and consequent revision in pension and not the grant of pension for the first time. Only the modality of computing the quantum of pension was required to be determined in terms of the notification issued by the State of Karnataka. For the said purpose, Rule 296 of the Rules was made applicable. Once this rule became applicable, indisputably the computation of pensionary benefits was required to be carried out in terms thereof. The Pension Rules envisage that pension should be calculated only on the basis of the emoluments last drawn. No order, Therefore, could be issued which would be contrary to or inconsistent therewith. Such emoluments were to be reckoned only in terms of the statutory rules. If the State had taken a conscious decision to extend the benefit of the UGC pay scales w.e.f. 1.1.1996, to the appellants allowing them to draw their pay and allowances in terms thereof, we fail to see any reason as to why the pensionary benefits would not be extended to them from the said date.

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33. Yet again, in *State of West Bengal and Another Vs. West Bengal Government Pensioners Associations and Others*, , this Court stated the law in the following terms:

Because the scales of pay had been revised from 1.1.1986, the recomputation of pension for such employees as had been granted the revised scales of necessity was limited to the same cut-off date. All that the impugned Memorandum No. 4056-F dated 25.4.1990 did was to recompute the benefits in favor of post-1.1.1986 retirees according to the existing formula as provided by Memorandum No. 7530-F and No. 7531-F, both dated 6.7.1988. The same formula continues to be applied to the pre-1986 pensioners is only on account of the revision of pay scales and not on account of failure of the State Government to equitably apply the liberalised Pension Scheme formula. The quantum of the emoluments formed no part of the formula for grant of pension during 1986 to 1995.

[Also see *K.L. Rathee Vs. Union of India and others*, , and *Indian Ex-Services League and others Vs. Union of India*, .

34. It is also trite that persons similarly situated cannot be discriminated against , [See *K.T. Veerappa and Others Vs. State of Karnataka and Others*,

19. The Tribunal went by the strict letter of OM dated 25.2.1999 without considering that such a clause depriving the benefit to those who were in service as on 1.1.1996, which was the cut off date fixed for the revision of pay-scales, would be arbitrary and causes individuals/hostile discrimination and, Therefore, is unsustainable.

20. In these circumstances, rule is made absolute. Judgment of the Tribunal is set aside with a direction is given to the respondents to accord the benefit of revised pay-scale of R.6500-200-10500 to the petitioner with effect from 1.1.1996 and fix his pension accordingly on his retirement on 30.4.1996. The arrears of pension shall be paid within two months.

21. With these observations, this writ petition is disposed of.

No costs.