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**(2018) 03 CAT CK 0048**

**In the Central Administrative Tribunal**

**Case No : Original Application No. 3436 Of 2015**

**Maresh Prasad And Ors**

**APPELLANT**

**Vs**

**Union Of India And Ors**

**RESPONDENT**

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**Date of Decision : 13-03-2018**

**Acts Referred:**

Prasar Bharti (Broadcasting Corporation Of India) Act, 1990 — Section 11

**Citation : (2018) 03 CAT CK 0048**

**Hon'ble Judges : V. Ajay Kumar, J;Nita Chowdhury, Member (A)**

**Bench : Division Bench**

**Advocate : M.K. Bhardwaj, D.S. Mahendru, J.P. Tiwary, S.M. Arif**

**Final Decision : Allowed**

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## **Judgement**

V. Ajay Kumar, J

1. The applicants, 11 in number and working as Engineering Assistants under the respondent- Prasar Bharti, filed the OA seeking quashing of the Annexure A-1 order dated 06.08.2015 whereunder the claim of the applicants for granting of the pay scale of Rs.6500-10500/Rs.9300-34800 with Grade Pay of Rs.4600/- in Pay Band-2, w.e.f. their date of joining, was rejected.

2. Prasar Bharti (Broadcasting Corporation of India) Act, 1990, was notified on 15.09.1997 and the date where from the erstwhile Civil Servants under the Union of India, Ministry of Information and Broadcasting were to be treated as on deputation with Prasar Bharti, i.e. the appointed date was declared as 23.11.1997. Vide Section 11 of the Act, the employees who were on deputation with Prasar Bharti could opt for service under Prasar Bharti, failing which they were to be treated as Central Government employees and on deemed deputation with Prasar Bharti. With effect from 25.02.1999, Prasar Bharti decided that employees of the Ministry of Information and Broadcasting working under it, on permanent absorption under Prasar Bharti, could be given wages in the scale of Rs.6500-10500 as against the scale of pay of Rs.5000-8000. Due to the advent

of time, in the Prasar Bharti, three category of employees were created. The first category is that of casual workers working for long as employees of the Informaiton and Broadcasting whose right for regularization/confirmation as per policy framed by the Central Government which would maturued on various dates after 23.11.1997, i.e., the appointed date after Prasar Bharti Act was promulgated on 15.09.1997. The second category of employees are those who were selected as per select list notified prior to 15.09.1997 but was given employment after 23.11.1997 by Prasar Bharti. The third category of employees are those whose process of employment commenced after 23.11.1997 and were appointed accordingly thereafter.

3. Though the scale of pay of an Engineering Assistant in Prasar Bharti was Rs.5000-8000, but at the time of notification of Prasar Bharti as the employees of the Central Government working in the Ministry of Information and Broadcasting were not opting for service under Prasar Bharti and probably by way of incentive were given a higher pay scale of Rs.6500-10500, i.e., to those who were employees of Central Government and working in Prasar Bharti as on 23.11.1997 and were absorbed later on in Prasar Bharti, were given the scale of Rs.6500-10500 as against the existing scale of Rs.5000-8000 but the persons who were appointed as Engineering Assistants whose process of selection was commenced after 23.11.1997 and were appointed thereafter were given the pay scale of Rs.5000-8000 only. Some of the persons whose selection process was commenced after 23.11.1997 and who were appointed thereafter and who were placed in the pay scale of Rs.5000-8000 approached the Tribunal seeking to place them also in the pay scale of Rs.6500-10500 on par with those Engineering Assistants who were granted pay scale of Rs.6500-10500 under the above circumstances with all consequential benefits. The said OAs bearing No.1742/2004 and 1743/2004 were allowed by the Tribunal by declaring that persons holding same posts cannot be discriminated vis-à-vis the scale of pay in which they have to be placed. The Hon'ble High Court of Delhi by its common order dated 07.09.2010 in W.P. (C ) No.2071/2007 in Union of India and Another Vs. Sanjay Kumar and Others and batch filed against the above referred OAs and other identical OAs while dismissing the Writ Petitions filed by the respondent-authorities, observed as under:-

"10. Qua employees in Category-III in respect of whom selection process commenced in the year 1999 i.e. much after 23.11.1997 and was completed obviously thereafter, they urged that employees doing similar work and holding similar posts could not be discriminated qua the pay scale in which they had to be placed. The response of the petitioners was the same as that to the employees of Category-I i.e. the employees who came to Prasar Bharti from under the Ministry of Information & Broadcasting formed a separate category.

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-à-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".

4. The SLPs filed against the aforesaid orders of the Hon'ble High Court of Delhi and the Review Petitions filed therein were also dismissed by the Hon'ble Apex Court. Accordingly, the respondents have complied with the aforesaid orders and placed the applicants thereunder who are the Engineering Assistants and whose selection process commenced after 23.11.1997 and were appointed thereafter in the pay scale of Rs.6500-10500 on par with those employees who were originally the employees of Ministry of Information and Broadcasting and were absorbed in Prasar Bharti after the appointed date, i.e., 23.11.1997.

5. The applicants are claiming that they are also identically placed like the applicants in the aforesaid cases and made representations requesting them to place them also in the pay scale of Rs.6500-10500 from the date of their appointment as Engineering Assistants with all consequential benefits. While the respondents have not considered their representations, they have filed OA No.1625/2015 and the same was disposed of by this Tribunal on 30.04.2015 directing the respondents to consider the representations of the applicants and to pass appropriate orders thereon. In pursuance of the same, the respondents passed the impugned Annexure A-1 order dated 06.05.2015, however, rejecting the claim of the applicants stating that persons like the applicants, who joined in Prasar Bharti after 05.10.2007 are not Central Government employees, but are employees of the Prasar Bharti Corporation, hence cannot claim any parity with the persons who were earlier Central Government employees and later absorbed in Prasar Bharti. Hence, the OA.

6. Heard Shri M.K. Bhardwaj, learned counsel for the applicant, Shri D.S. Mahendru and Shri J.P. Tiwary for respondent No.1 and Shri S.M. Arif for respondents No. 2 to 4.

7. Shri M.K. Bhardwaj, learned counsel appearing for the applicants submits that the issue involved in the OA is no more res integra and that this Tribunal had already considered the claim of identically placed persons, i.e., those Engineering Assistants whose selection process was commenced after the appointed date of Prasar Bharti and who were appointed therein subsequent thereto and the said view was affirmed upto the Hon'ble Apex Court. The contention of the respondents that the applicants were not identically placed like any of the respondents in W.P. (C ) No.2071/2007 in Union of India and Another Vs. Sanjay Kumar and Others and batch (supra), filed against the OA Nos. 1742/2004 and 1743/2004 and batch, is incorrect. The applicants are identically placed like the third category of employees, as detailed by the Honb'ble High Court of Delhi in Sanjay Kumar and Others (supra), i.e., whose selection process commenced after 27.11.1997 and were appointed thereafter. Hence, the applicants were also entitled for extension of the benefits of the said decisions on par with the said persons.

8. On the other hand, Shri D.S. Mahendru and Shri S.M. Arif, learned counsels appearing for the respondents while not disputing the facts as noted in the above paras, however, submits that the applicants were appointed during the period from 2008 to 2010 as per Prasar Bharti Rules and Regulations in the Pay Band PB-2 in the Grade Pay of Rs.4200/- which was clearly mentioned in their appointment letters and hence they cannot claim parity with any other person much less with the respondents in Sanjay Kumar and Others (supra). Accordingly, the learned counsel submits that there is no illegality in rejecting the claim of the applicants.

9. The learned counsel for the respondents further submits that the Government is contemplating to treat the placement of those persons who were originally employees of the Ministry of Information and Broadcasting and were deemed to be on deputation as on the appointed date, i.e., on 23.11.1997 with the Prasar Bharti and later absorbed in placing them in the pay scale of Rs.6500-10500 as an ACP benefit instead of regular pay scale, and in such an event, all persons who were directly appointed in Prasar Bharti after the appointed date, cannot claim any parity with them. Accordingly, the learned counsel prays for adjourning the OA till the orders in that regard are issued by the Union of India.

10. Admittedly, the third category of employees, as described by the Hon'ble High Court of Delhi in Sanjay Kumar and Others (supra) whose selection process commenced after the appointed date, i.e. 23.11.1997 and were appointed thereafter. The applicants were also selected and appointed after 23.11.1997, may be much long after the said third category of employees, in time. In the aforesaid decisions, it was decided that employees working in the same post cannot be placed in different pay scales and any such action is against the principles of equal pay for equal work. Identical contentions of the respondents were considered and rejected. On the same analogy and also in view of the decisions above referred, the applicants are entitled for the releief claimed.

11. The submission of the learned counsel for the respondents that since the Union of India is contemplating some different policy instead of granting pay scale of Rs.6500-10500/- to those Engineering Assistants who were the employees of the Ministry of Information and Broadcasting as on the appointed date and later absorbed in Prasar Bharti, with whom applicants and others are seeking parity and hence OA has to be adjourned till the Union of India takes such a decision is untenable and cannot be accepted and accordingly, the same is rejected.

12. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned Annexure A-1 order dated 06.08.2015 is quashed and the respondents are directed to consider granting of the pay scale of Rs.6500-10500/Rs.9300-34800 with Grade Pay of Rs.4600 in PB-2 on par with the applicants in OA Nos.1742/2004 and 1743/2004. This exercise shall be completed within a period of 4 months from the date of receipt of a certified copy of this order. However, it is needless to mention that, this order shall not preclude the respondents from passing any orders, as submitted by the learned counsel for the respondents and referred in para 9 above, if they are so advised. No costs.