(2014) 10 DEL CK 0254

In the Delhi High Court

Case No : W.P. (C) 18034/2004 & 18035/2004

UOI and Others — APPELLANT

Vs

Doordarshan Programme Professional Union and Others — RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Prasar Bharati (Broadcasting Corporation of India) Act, 1990 — Section 11, 11 (A), 11 (i), 11A, 12

Citation : (2014) 10 DEL CK 0254

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Rajeev Sharma, Advocates for the Appellant; M.K. Bhardwaj and Parmod Bhardwaj, Advocates for the Respondent

Judgement

S. Ravindra Bhat, J.—The Prasar Bharti Corporation (hereafter called "Prasar Bharti") is aggrieved by two orders of the Central Administrative Tribunal, Principal Bench, New Delhi (CAT) in OA No. 322/2001 dated 5.12.2012 and RA No. 339/2003 dated 13.7.2004 by which the application of the respondents (hereafter called as "the applicants") questioning its decision to recall the financial upgradation given to them, was upheld.

2. The brief facts are that the applicant Association espouses the cause of Central Government employees who were deployed on deputation to the Prasar Bharti; the second applicant is one of its members. Among those deputed to serve in the Prasar Bharti were several Floor Assistants; these are represented by the Association. In terms of an earlier office memorandum (of 1978 vintage) issued by the Central Government, when broadcasting and programme production for television were exclusively within its domain, Floor Assistants were described as Technical Executives, along with several other categories. In anticipation of the creation of Prasar Bharti and its handling broadcasting, telecasting and all other functions of the Central Government, several employees, including officers of the Indian Information services were deputed to work in Prasar Bharti, which had

been created as a Corporation in 1990, by the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 (hereafter "the Act"). They were thus deputationists and they continued to enjoy lien in the Central Government, their parent department.

3. By order dated 25.02.1999 (hereafter called the "upgradation order"), the Central Government upgraded the pay scales of certain categories of employees working in Prasar Bharti. By this, the existing pay scale of incumbent Floor Managers of Rs. 5500-9000 was upgraded to Rs. 6500-10500. The immediate promotional avenue for Floor Assistants was to the cadre of Floor Managers. The upgradation order, in paragraph 2 (i) stated that the new scales would be allowed to those working in Prasar Bharti as government employees in its service and that in the event they, pursuant to their option of not continuing in the Corporation, revert as Central Government employees, they would no longer be entitled to the upgraded scales. These upgraded scales were to be effected from 1.1.1998 but payment of salaries was to be made w.e.f. 1.3.1999 (paragraph 2 (ii). The said upgradation order also stated that:

"3. The pay fixation in upgraded scales of pay shall be done as provided in CCS (RP) Rules, 1997.

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

4. On 9.8.1999, the Central Government through the Department of Personnel (DoPT) issued an Office Memorandum putting in place the Assured Career Progression (ACP) Scheme by which Central government''s employees who had stagnated without promotions in their career, were given the entitlement to at least two financial upgradations - one at the end of 12th year and the other at the end of 24th year. These benefits were hedged with certain conditions, for instance, that employee should not have been a beneficiary of any regular promotion during the prescribed periods (i.e., 12 and 24 years) and that she or he ought to have fulfilled normal promotional norms for grant of financial upgradation such as bench mark, seniority-cumfitness etc. Interpreting the combined effect of the upgradation order and the order dated 9.8.199 permitting ACP, Prasar Bharti by its Order No. 19/2000 dated 10.4.2000 placed the members of the respondent association - all of whom were working as Floor Assistants uninterruptedly from the periods ranging from as far back as 1975 to 1987 in the pay scale of Rs. 6500-10,500. This was premised upon Prasar Bharti''s understanding that the Floor Assistants - who were then in the pay scale of Rs. 4000-6000 - who had completed 12 years, were entitled to be placed in the next higher promotional grade which had, by then been upgraded (by virtue of the upgradation order of 25.2.1999) to Rs. 6500-10,500. The respondents, particularly the Association sought for a clarification of the order stating that

since many of them had completed 24 years of service, as on 10.4.2000, they were entitled to be placed in the scale higher to Rs. 6500-10,500 by way of second financial upgradation. The Prasar Bharti turned down this demand by its order dated 22.3.2001. The said order inter alia in its relevant part stated as follows: -

"The Directorate General Doordarshan have been receiving a number of reference from various Doordarshan Kendras regarding grant of 2nd financial upgradation under ACP scheme to the incumbents of the post of Floor Assistant. The matter has carefully examined in consultation with the Min. of I & B. It is mentioned in this regard that floor Assistant are in the scale of pay of Rs.4000-100- 6000 (S-7 scale). The eligible floor Assistants have however, already been granted 1st financial upgradation in it substantially higher pay scale of Rs.6500-200-10500 (S-12 scale) which is the upgraded pay scale of the post of Floor Manager i.e. the promotional post of Floor Assistant. It is also relevant to mention in this regard that the incumbents of the post of Floor Manager, who were recommended the pay scale of Rs.5000-150-8000 by the Vth Central Pay Commission, have been granted upgraded pay scale of Rs.6500-200-10500 which is over and above the recommendation of the pay commission vide Min. of I & B order NO. 310/173/97-B (D) dated 25.2.99. As per the clarification issued by DG. AIR. In consultation with the Min. of I& B, vide communication No. 14/57/99-S.IV (A)/230 dated 9.3.2000, those incumbents who have already opted for the pay scales revised vide Min. of I & B order dt. 25.2.99 are not entitled for financial upgradation under ACP scheme as such a scheme is already inbuilt in the said order. The incumbents of the post of Floor Manager (Scale Rs.6500-10500), Production Assistant (6500-10500) and Programme Executive (Scale 7500-12500) are, accordingly, not being granted financial upgradation under ACP scheme. Since the incumbents of the post of Floor Assistant (pay scale Rs.4000-6000 (S-7 scale) have been granted first financial upgradation in a substantially higher pay scale of Rs.6500-10500 (S 12 Scale), it is, therefore, implied that the 2nd financial upgradation is inbuilt in this scale. The Floor Assistants would, therefore, not be eligible for 2nd financial upgradation separately as granting of a further higher scale to the incumbents of the post of Floor Assistant by way of 2nd ACP would create an anomaly as Floor Managers. Production Assistants and Programme Executives are not being considered for benefit under ACP."

The order denying the second upgradation to those who had completed 24 years of service was challenged by the respondents - including the Association - in OA No. 322/2001. In its reply, the Prasar Bharti''s position was that the incumbent Floor Assistants who had opted for upgraded pay scales were not entitled for financial upgradation under the ACP Scheme since the terms of the ACP were inbuilt in the upgradation order. It was stated inter alia,

"Since the incumbents of the post of floor assistant (S-7 scale) have already been granted 1st financial upgradation in a substantially higher pay scale of

Rs.6500-10500 (S-12 scale), it is, therefore, implied that the second financial upgradation is in-built in this scale. The floor assistants are, therefore, nor being considered for second financial upgradation separately as granting of a further higher scale to the floor assistants by way of 2nd ACP would create an anomaly as floor manager. Production Assistants and Programme Executive are not being considered for benefit under ACP. It is because of these reasons that the meeting of the screening committee for the 2nd financial upgradation to floor assistants has not been convened. This action of the respondents is in line with the clarification No. 9 issued by the DoPT vide their OM No. 35034/1/ 97-Estt (D) dated 10.2.2000."

5. The CAT in its order impugned by the Prasar Bharti upheld the contentions of the respondents/applicants and held as follows: -

"5. The floor Managers and production Assistants placed in the higher pay grade of Rs.6500-10500/- as above are not being considered by the respondents for financial upgradation under the ACP scheme, on the ground that they have already gained a pay scale higher than the one recommended in their favour by the 5th CPC. Similarly, certain other categories of posts on the Engineering and Programme side were also given upgraded pay scales higher than the pay scales recommended in their favour by the 5th CPC. These officers have also not been considered for financial upgradation under the ACP Scheme. The argument advanced the respondents is that since the incumbents of the aforesaid posts have already been granted pay scale higher than the one recommended by the 5th CPC, it has been assumed that these incumbents have already received one financial upgradation in the process. Thus, according to the respondents, insofar as the posts of floor manager and production assistant and certain other posts referred to are concerned, their incumbents can be seen, according to the respondents, to have been financially upgraded twice, i.e. once when the 5th CPC recommended a certain pay scale in their favour and thereafter when the Central Government decided to place them in the pay scales higher than the pay scale recommended by the pay commission. On this basis, the respondents are not inclined to grant any financial upgradation to the incumbents of the aforesaid posts. In these circumstances, giving of second financial upgradation to the applicant floor assistant beyond the pay scale of Rs.6500- 10500/- would inevitably take them to the pay grade, which has not been made available to the aforesaid holders of higher posts. For these reasons, the respondents have found it unnecessary to hold a meeting of the Screening Committee for granting second financial upgradation to the floor assistants. According to them, this action on their part is consistent with the clarification No. 9 issued by the DOP & T vide their OM of 10.02.2002.

6. We have considered the aforesaid submissions and find that the argument contained in the previous paragraph cannot be said to be an argument consistent with the DOP &T''s OM dated 09.08.1999 by which the ACP scheme has been notified. We are here not dealing with the case of the holders of posts of floor

managers and similar higher posts in respect of whom the respondents have made an assumption that the grant of the higher pay scale of Rs.6500-10500/- amounts to granting two financial upgradations at one go. The applicants herein are floor Assistants and according to the conditions for the grant of benefits under ACP scheme attached with the DOP &T''s OM dated 09.08.1999 "Financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for he purpose". In the existing hierarchy, admittedly the next post beyond the post of floor assistant is that of the floor Manager. The post of floor Manager has been placed, for whatever reason, in the pay grade of Rs.6500-10500/-. The in the aforesaid pay scale of Rs.6500-10500/- by way of first financial upgradation. By way of second financial upgradation, the applicants have to catch up, in terms of pay grade, with the pay grade of the post next higher to the post of floor manager. This, in our view, is the correct position in accordance with the aforesaid condition for grant of benefits under the ACP Scheme. In the order dated 10.04.2000 (A-3) issued by the respondents, they have clearly stated that the floor assistants who have remained without promotion after completing 12 years of service were being granted the pay scale of Rs.6500-10500/- under the ACP scheme. This amounts to the respondents themselves admitting that the aforesaid pay scale of Rs.6500-10500/- has been given to the applicants by way of first financial upgradation. Clarification No. 9 referred to in the previous paragraph does not consist the respondent No. 2

7. It is stated on behalf of the applicants that some of them had completed 24 years of service on the date of the first financial upgradation was granted in their favour. Their contention is that instead of just one financial upgradation being granted the respondents ought to have granted both the financial upgradation in their favour at one go in terms of clarification point No. 17 forming part of the DOP & T''s OM dated 10.02.2000, we have perused the aforesaid clarification and find that by taking the instance of a S-7 post in the pay grade of Rs.4000-6000, the respondents have clarified that such an incumbent shall be allowed to upgradations to S-8 and S- 9 pay grades and that for this purpose his pay shall be fixed first in S- 8 pay grade and thereafter in the S-9 pay grade. From the office order dated 13.12.2000 (A-5) passed in the case of Graphic Artists, it becomes clear that in cases where the employee has completed 24 years of service without any promotion, both the financial upgradations can be granted with effect from the same date. Similar, orders have been passed on 07.11.2000 (page 39 of the paper book) in a case of make-up-assistants. There can be no difficulty, therefore, in following the same practice in the case of the applicant floor assistants."

6. The petitioner, i.e., Prasar Bharti felt aggrieved by the said impugned order and approached this Court by filing CW 5256/2003. In those writ proceedings, it was contended that the Prasar Bharti could not exist beyond ten years and that, consequently, the ACP Scheme was inapplicable to Central Government''s employees in Prasar Bharti. This Court by its order dated 19.9.2003 held that

there was no discussion on that aspect in the impugned order of the CAT. The Prasar Bharti, accordingly, withdrew the writ petition and sought liberty to apply to the CAT afresh. In the review proceedings, it was reiterated that Central Government''s employees working on deemed deputation in Prasar Bharti could be given ACP benefits on personal basis and that since Recruitment Rules as well as regular scales - which were to be paid to the employees had to be framed by the Prasar Bharti, they could not claim the benefit of upgraded scales and ACP benefits over and above it. The CAT in its review order noticed that this question had been dealt with it in the main order and, accordingly, dismissed the Review Application.

7. The Prasar Bharti contends that the respondents/applicants could not claim entitlement to second financial upgradation having regard to the fact that they were given the benefit of the pay scale itself, i.e., Rs. 6500-10,500. It was contended in this context that in terms of the upgradation order, especially paragraph 2, those who opted not to continue in Prasar Bharti, continued with their status as Central Government employees. Thus, the ACP benefits they were entitled to under the OM of 9.8.1999, were as prescribed by the 5th CPC. In its terms, those conditions stated that first financial upgradation for those working as Floor Managers, i.e., in the scale of Rs. 4000-6000 was put to the grade of Rs. 5500-9000 and second upgradation was to be from Rs. 5500-900 to Rs. 6500-10,500. In effect, the terms of the order of 9.8.1999 had been complied with by Prasar Bharti on 10.4.2000. The respondents/applicants, therefore, could not claim anything over and above it. It was secondly contended on behalf of the Prasar Bharti by its counsel that the terms of the upgradation order, specially paragraph 4 clarifies that the upgradation was only for the incumbent Prasar Bharti Corporation employees and that future employees, i.e., direct recruits were denied the upgraded scales which was in effect an in situ benefit enjoyed only by the Prasar Bharti optees. Having regard to these considerations and a conjoint application of paragraph 2 and 4, the respondents/applicants were not entitled to the second financial upgradation in any pay scale higher than Rs. 6500-10,500. It was lastly contended that the terms of the Act, particularly Section 11, at the relevant time and even as on date, define the status of Central Government employees who continued in Prasar Bharti''s service as deputationist. In these circumstances, the ACP benefits that they were entitled to, was in terms of what the Central Government had spelt out. They could not, consequently, lay claim to the benefits prescribed by Prasar Bharti to its employees.

8. Learned counsel for the respondents/applicants urged that this Court should not disturb the findings of the CAT which are sound and reasonable. They highlighted the fact that the upgradation order, in effect, ousted the scale of Rs. 5500-9000 not only for incumbent Floor Assistants but also for those likely to be promoted in future. Such being the case, if any Floor Assistant was to be promoted, the Prasar Bharti could not have contended it would be in the grade of Rs. 5500-9000. Counsel highlighted that this was brought home emphatically in

paragraph 2 of the upgradation order dated 25.2.1999 itself. Learned counsel submitted that the argument with respect to applicability of the Act or Section 11 was not relevant, considering that all those deputed by the Central Government to work in Prasar Bharti - irrespective whether they opted to do so or otherwise - were to continue functioning there even though the label given to them was of deputationist. In other words, statutorily they were deemed to be working in Prasar Bharti even though as Central Government deputationists. In these circumstances, the Prasar Bharti''s reliance on paragraph 2 of the upgradation order of 25.2.1999 became irrelevant. Counsel contended that once the promotional post, i.e., Floor Manager was denuded of the pay scale of Rs. 5500-9000 and instead the another grade of Rs. 6500-10,500 was prescribed for it, the ACP benefits had to follow that and no other pay scale since adopting the latter course would result in discrimination.

9. What is disclosed from the above discussion is that the CAT''s determination with regard to the respondents''/applicants'' entitlement to the ACP first upgradation benefit of Rs. 6500-10,500 has been challenged by the Prasar Bharti in terms of the provisions of the Act and also in terms of ACP order of the DoPT dated 9.8.1999. Prasar Bharti in effect contends that the upgradation order dated 25.2.1999 could inure only to its employees and that ACP benefits being stand alone, entitlement for Central Government employees had to be worked out independently to those opting to continue as such.

10. There is no doubt that the object of the ACP Office Memorandum dated 9.8.1999 was to relieve stagnation of its officers and employees who failed to secure any promotion at all within the prescribed period, i.e., 12 years and 24 years. The scheme, therefore, constituted a promise and an entitlement that post based promotion would be governed and at least two financial upgradations would be assured to those unsuccessful in getting even one promotion, and one financial upgradation would be assured to someone who secures only one promotional benefit. As noticed earlier, the benefit was dependent upon the possession of basic eligibility conditions applicable for the promotional post but was not dependent upon existence of vacancy. Whilst this is the reality underlying the ACP Memorandum of 9.8.1999, what is to be noticed is that the same Memorandum expressly states that in situ promotions and fast track promotions availed through Limited Departmental Competitive Examination would be counted as promotions disentitling the claimant to the benefit (paragraph 5.1). However, paragraph 7 of the ACP Memorandum specifically states that upgradation under the scheme "shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of post without creating new post for the purpose". The CAT''s reasoning in the main order is that in the existing hierarchy, the next promotional avenue was to the cadre of Floor Manager. The scales for that post stood upgraded from Rs. 5500-9000 to Rs. 6500-10,500 by the upgradation order of 25.2.1999. The logic used to reject Prasar Bharti''s claim, therefore, was compelling and inevitable, namely, that even in the existing hierarchy, the grade of Floor Managers carried

the pay scale of Rs. 6500-10,500 as on 9.8.1999 when the ACP Memorandum itself was issued. This Court finds no reason to interfere with this finding.

11. The next submission made by the Prasar Bharti was that a conjoint reading of paragraphs 2 and 4 of the upgradation order clarified that only incumbent Floor Managers who had opted to continue in Prasar Bharti were entitled to upgradation, and that Central Government deputationists were not entitled to such benefits. Much emphasis was placed upon paragraph 2 (i) and paragraph 4, specially that part of the latter condition which stated that direct recruits in the grade would not enjoy the upgradation. Prasar Bharti''s contentions with regard to the optees is also, to an extent, dependent upon its interpretation of the provisions of the Act. For this purpose, it would be necessary to extract the relevant portions of the Act.

"11. Status of officers and employees.-(1) All officers and employees recruited for the purposes of Akashvani or Doordarshan before the appointed day, and in service in the Corporation as on the 1st day of April, 2000 shall be on-deemed-deputation to the corporation with effect from the 1st day of April, 2000, and shall so continue till their retirement.

(2) All officers and employees recruited during the period on or after the appointed day till the 5th day of October, 2007 shall be on deemed deputation to the Corporation with effect from the 1st day of April, 2000 or the date of their joining service in the Corporation whichever is later and until their retirement."

The above provision is as it exists today, before its amendment by Act 6 of 2012 with effect from 08-03-2012, provided, inter alia that:

"11. Transfer of service of existing employees to Corporation. (1) Where the Central Government has ceased to perform any functions which under section 12 are the functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates as may be specified in the order, to the Corporation any of the officers or other employees serving in the Akashvani or Doordarshan and engaged in the performance of those functions:

Provided that no order under this sub-section shall be made in relation to any officer or other employee in the Akashvani or Doordarshan who has, in respect of the proposal of the Central Government to transfer such officer or other employee to the Corporation intimated within such time as may be specified in this behalf by the Central Government, his intention of not becoming an employee of the Corporation....

(4) An officer or other employee transferred by an order under subsection (1) shall, on and from the date of transfer cease to be an employee of the Central Government and become an employee of the Corporation with such designation as the Corporation may determine and shall, subject to the provisions of sub-sections (5) and (6), be governed by such regulations as may be made as

respects remuneration and other conditions of service including pensionary leave and provident find and shall continue to be an officer or other employee of the Corporation unless and until his employment is terminated by the Corporation."

Section 11A of the Act also has a material bearing on the present case. It reads as follows:

"11A. Transfer of posts of Akashvani and Doordarshan to corporation.-

(1) All posts in the erstwhile Akashvani and Doordarshan other than the posts borne on the strength of the cadres referred to in sub-section

(2) shall be deemed to have been transferred to the Corporation with effect from the 1st day of April, 2000.

(2)All matters relating to the posts bone on the strength of the cadres of the Indian Information Service, the Central secretariat Service or any other cadre outside Akashvani or Doordarshan, in so far as such Posts are concerned with the Corporation, shall be determined in suck manner and on such terms and conditions as may be Prescribed"

Prasar Bharati''s contention is that the upgradation of pay-scales over and above what was recommended by the 5th CPC for the post of Floor Manager, (from Rs. 5000-9000 to Rs. 6500-10,500) was confined to incumbent Floor Managers and not those who were given ACP benefits, like the then existing Floor Assistants, represented by the Association. This is based on two submissions, i.e., that the members of the Association were essentially Central Government employees and entitled to the terms of the ACP scales; consequently they were to remain unaffected by the upgradation of scales in the Corporation, given to its employees. This argument is sought to be supported by the further submission that the members of the applicant association had all opted to continue as Central Government employees; they were therefore entitled to seek the ACP benefits from the Central Government and not Prasar Bharti. It is therefore argued that the grant of Rs. 6500-10,500 in effect amounted to a second financial upgradation in the parent department. The second submission of Prasar Bharti is that the upgradation benefits were to only the incumbents holding the post of Floor Managers. Even future recruits were denied the said higher pay scale of Rs. 6500-10,500. Therefore, the impugned order is unsustainable.

12. This Court is of the opinion that Prasar Bharti''s arguments are unacceptable. Whatever be the predilections of Prasar Bharti as of 2001, the fact remains that exercise of option for the entire class of Central Government employees sent on deputation became a relevant factor at least by virtue of the amendment brought into force w.e.f. 8.3.2012. Such Central Government employees would be deemed to be deputationists in the entire tenure of their service life. This is expressly spelt in Section 11 (i); Section 11 (A) goes to the extent of saying that the existing terms, scales, etc. would be continued by Prasar Bharti which would then have the option of framing any new rules etc. Such being the position,

paragraph 2 (i) of the upgradation order merely reflects historical facts, and no more. The option exercised by the class of Central Government employees who wish to continue with that status became irrelevant. They and even others who opted to be the Prasar Bharti''s employees continued to be deputationists. Therefore, the arguments based upon the interpretation of the Act are not relevant. So far as paragraph 4 of the deputation order goes, whilst no doubt it spells out that the benefit (of upgradation) would be confined to incumbents in the post, and correspondingly direct recruits (of Prasar Bharti) would not be entitled to the upgraded scales, the last part of this condition (paragraph 4) states that the promotees would be entitled to the upgraded scales. Now, if this was the correct position, there can be no manner of doubt that employees working as Floor Assistants including Central Government employees - were entitled to be considered for promotion as Floor Manager. If that benefit were to be given in the normal course, the grade or pay scales of Floor Manager would inevitably be Rs. 6500-10,500. In that eventuality, whether the promotee was from the class of Central Government employees or a Prasar Bharti optee would also be irrelevant. The ACP scheme was framed to alleviate the hardship of those who were unable to secure such promotions. Therefore, the financial upgradation had to be to such pay scales as were within the existing hierarchy. Consequently, even the existing hierarchy, the pay scale for Floor Managers was Rs. 6500-10,500; the ACP could have been to no other grade.

13. For the foregoing reasons, this Court finds no ground to interfere with the orders of the CAT. The writ petitions are accordingly dismissed without any order as to costs.

