

UNION OF INDIA

A

V.  
ANUP KR . ROY

JULY 19 , 2006

[ ARIJIT PASAYAT AND ALTAMAS KABIR , JJ . ]

B

Service Law :

Pay Scale - Upgradation of - By a Memorandum - Of the employees affected by Prasar Bharati Act - Voluntary retirement by employee before C enforcement of the Act - Entitlement to the benefit under the Memorandum to the retired employee - Held : Since the benefits under the Memorandum were intended to be given to those employees who were currently in service of Prasar Bharti , retired employee not entitled to upgradation of the pay scale Prasar Bharti ( Broadcasting Corporation of India ) Act , 1990 .

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Respondent - employee took voluntary retirement before Prasar Bharati ( Broadcasting Corporation of India ) Act , 1990 came into effect . There were demands for higher pay scales considering which , a Memorandum was issued Respondent filed application before Central Administrative Tribunal , Guwahati Bench claiming that he was entitled to the benefits flowing from the Memorandum . The Tribunal after having held that the view of different co ordinate Benches that the employees situated as the respondent herein were not entitled to the benefits flowing from the Memorandum , without giving any reasons , held that the respondent was entitled to the benefit under the Memorandum . The view of the Tribunal was upheld by High Court in Writ Petition . Hence the present appeal .

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Allowing the appeal , the Court

HELD : 1. In view of Clause 2 of the Memorandum , the benefits were intended to be given to those who were working in Prasar Bharati or were currently in service of Prasar Bharati ( Broadcasting Corporation of India ) . Therefore , the respondent was not entitled for upgradation of scales of pay .

[ 697 - A ]

2. The Guwahati Bench of Central Administrative Tribunal ( CAT ) after having referred to various orders passed by different Benches had proceeded

A and held that the view of co - ordinate Bench of CAT was binding on it ; and that the Memorandum applied to existing employees . It did not give any reason why it thought that the respondent was entitled to the benefits notwithstanding the said view . [ 697 - B - C ]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2823 of 2005 .

B From the Judgment and Order dated 27.4.2004 of the High Court of Gauhati at Gauhati , in Writ Petition ( C ) No. 2882/2004 .

Rajeev Sharma and Vijay M. Chauhan for the Appellant .

c D.S. Bhattacharya and Deba Prasad Mukherjee for the Respondents .

The Judgment of the Court was delivered by

D ARIJIT PASAYAT , J. Union of India calls in question legality of the judgment rendered by a Division Bench of the Guwahati High Court dismissing the writ petition filed by the appellant . In the Writ Petition challenge was made to the legality of the order passed by the Guwahati Bench of the Central Administrative Tribunal , Guwahati Bench ( in short the ' CAT ' ) .

The controversy lies within a very narrow compass .

E The respondent was working as Transmission Executive in the Broadcasting Ministry of the Government of India . In November 1997 , All India Radio was a part of the Ministry of Broadcasting . The Prasar Bharati ( Broadcasting Corporation of India ) Act , 1990 ( in short the ' Act ' ) was enacted providing for creation of a Corporation with effect from the appointed date which is 23.11.1997 . The respondent took voluntary retirement on 31.7.1997 .

F Section 11 of the Act provided that option is to be called for from the employees working in the Doordarshan and All India Radio as and when they opted for the transfer from the Central Government to Prasar Bharati . No final decision in these matters had been taken . With effect from 23.11.1997 some employees were deemed to be sent on deputation to Prasar Bharati . There

G were demands for higher scales of pay by some employees considering which Memorandum dated 25.2.1999 was issued . The respondent filed an application before the CAT claiming that he was entitled to the benefits flowing from the aforesaid Memorandum dated 25.2.1999 . The respondent in the original application i.e. present appellant took a positive stand that benefits flowing

H from the Memorandum dated 25.2.1999 issued by the Government of India ,

Ministry of Information and Broadcasting was available to only those who A were working on the date of the Circular . During the hearing of the Original Application before the CAT several orders passed by various Benches of CAT taking similar view were placed for consideration . It was clearly held that persons similarly situated as respondents were not entitled to the benefits flowing from the Memorandum dated 25.2.1999 . By its impugned judgment dated 20.12.2002 the Guwahati Bench held that the applicant who was in service till 1997 was entitled to the benefits mentioned in Clause ( iv ) of para 2 of the Memorandum dated 25.2.1999 .

The Guwahati Bench of CAT in its judgment which was assailed before the High Court noted that the earlier judgment of Principal Bench , CAT was clearly binding on it . After having noted this position in law , which according to us is a correct , the Tribunal came to an abrupt conclusion that the applicant who was in service till 1997 was entitled to the benefits . A writ petition was filed in the Guwahati High Court which by the impugned order held that the Tribunal's judgment did not suffer from any infirmity .

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Learned counsel for the appellant submitted that a bare reading of the Memorandum makes it clear that it is only available to existing incumbents i.e. to those who were presently in service . Since the respondent took voluntary retirement even before the Prasar Bharati Corporation came into existence on 23.11.1997 , the benefits claimed cannot be given .

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Learned counsel for the respondent on the other hand submitted that the fixation of the benefits is done on the basis of negotiation , the intention is clear that those who had at any point of time been working in the All India Radio or Prasar Bharati were entitled to the benefits .

Clause 2 ( i ) of the Memorandum dated 25.2.1999 needs to be noted . clearly makes the position clear that the upgradation of pay scales to certain categories of employees related to those who were working in Prasar Bharati . Admittedly , the respondent was neither working in the All India Radio or Doordarshan on 25.2.1999 . " Upgradation " referred to in clauses 2 and 4 read as follows :

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" 2. The grant of revised pay scales as mentioned in para 1 above will be subject to the following conditions :

( i ) The upgraded scales will be allowed not as Government employees per se but as Government employees currently in service of Prasar H

A Bharati ( Broadcasting Corporation of India ) . 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 . They will also have to refund all benefits availed of by them as a result of the grant of higher scales of pay .

B They will be liable to recovery of all such benefits . An undertaking in the proforma given at Annexure - II to this effect has to be submitted by each and every employee concerned before availing the benefit of upgraded scales of pay . This is in accordance with their agreement with the Government to avail these upgraded scale son this condition only .

( ii ) Upgraded pay scales would be effective from 1.1.1998 but payment of salary to employees as per upgraded scales of pay will be made with effect from 1st March , 1999 .

D ( iii ) xx XX                      XX                      XX

( iv ) In addition , the pay of those employees of All India Radio and Doordarshan who had been working as Transmission Executives as on 1.1.1978 or afterwards would be notionally fixed in the pay scale of Rs.550-900 with effect from 1.1.1978 and in the pay scales of Rs.200 3200 with effect from 1.1.1988 before fixing their pay in the upgraded pay scale as on 1.1.1998 . But as per their agreement with the Government , this will not entitle them to any payment of arrears for the period prior to 1.1.1996 and will be limited to fixation of their current pay as on 1.1.1996 .

F The pay fixation in the 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 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 . "

( Underlined for emphasis )

H A bare reading of the provisions makes the position clear that the

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benefits were intended to be given to those who were working in Prasar A Bharati or were currently in service of Prasar Bharati ( Broadcasting Corporation of India ) . The underlined words leave no manner of doubt . Therefore , the respondent was not entitled for upgradation of scales of pay . That being so the order of the Tribunal as affirmed by the High Court cannot be maintained . We observe with some amount of dismay that the Guwahati Bench of CAT <sup>B</sup> after having referred to various orders passed by different benches had proceeded and held that the view of co - ordinate bench of CAT was binding on it , and that the Memorandum applied to existing employees . It did not on any reason why it thought that the respondent was entitled to the benefits notwithstanding the said view . The impugned order of the Guwahati High Court affirming the order of the Guwahati Bench of CAT is set aside c

The appeal is allowed . There will be no order as to costs .

K.K.T.

Appeal allowed .