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F.Shaheryar and anr. Vs. Ministry of Information and Broadcasting Thr. Secret

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Court : Delhi

Decided On : Sep-19-2013

Judge : S.Ravindra Bhat

Appellant : F.Shaheryar and anr.

Respondent : Ministry of Information and Broadcasting Thr. Secret

Advocate for Pet/Ap. : Mr. Apurb Lal, Mr. Rajeeve Mehra, Mr. R.Mishra, Mr. S.M.Arif, Mr. A.K.I. Behera

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

19. 9.2013 + WP(C) No.6598/2011 CM NO.6841/2013 (for modification /stay) F.SHAHERYAR & ANR. Through: ..... Appellants Mr. Apurb Lal, Advocate versus MINISTRY OF INFORMATION & BROADCASTING THR. SECRETARY & ORS. ..... Respondents Through: Mr. Rajeeve Mehra, ASG with Mr. R.Mishra, Advocate AND WP(C) No.5388/2012 DIRECTOR GENERAL, AIR & ORS. ..... Appellants Through: Mr. S.M.Arif, Advocate versus VINAY KUMAR JAIN AND ORS. ..... Respondents Through: Mr. A.K.I. Behera, Advocate. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI % MR. JUSTICE S.RAVINDRA BHAT(Open Court) 1. The present petitions are directed

against an order of the CAT dated 6th May, 2011 in O.A. No.136 of 2012, the effect of which was to direct extension of regular benefits to the respondents/applicants.

2. The Central Government has preferred a writ petition bearing WP No.5388/2012 against the impugned orders whereas the private respondents in the proceedings before the CAT have preferred W.P.(C) No.6598/2012.

3. The brief factual background is that the applicants and the private respondents were working in the Information & Broadcasting Ministry, in the All India Radio, in three Wings, i.e. Ministerial, Production and Central Information Service. In terms of a Scheme dated 18th June, 1982, options were sought from non-performing cadres (termed so because they were not artistes or performers) to be treated as Government servants on regularization in Group A posts after being duly screened by a Committee in consultation with the UPSC. The applicants opted for regularization in the regular civil cadre in Group A and fixation of inter se seniority. Their requests remained pending with the Government. Other regularized staff in the Production Wing such as the Chief Producer, Deputy Chief Producer and Producer in the Indian / Foreign Language of the services were duly incorporated in regular production cadres. The applicants were informed in November, 1989 that Supervisors (Foreign Language) did not fit into the Programme Management category and could therefore not be extended the benefit given to the others cadres Consequently, they moved the CAT by filing OA No.2036/1990. That application was allowed on 17th January, 1992 with a direction that since duties and responsibilities attached to the post of Supervisors (Foreign Language) were in no way inferior to those shouldered by the encadred Programme Officers of the equivalent rank in the Indian Broadcasting (Programme) Service, the applicants were also to be treated equally by providing for encadrement. Thereafter, it appears from the records that several attempts were made towards that end. One Original Application No.635/2002 was pending; it was disposed off in view of the order made by Central Government on 11th September, 2007 which sought to grant certain benefits to them. That order reads as under:

Subject: Encadrement of Supervisors (ESD) into regular Programme Cadre (Group A) of AIR and subsequently into IB (P) S.

Reference Prasar Bhartis Note No.A-10/76/07-PPC dated 25.05.2007 on the above mentioned subject.

2. The proposal of Prasar Bharti for encadrement of the Supervisors (Foreign Language) in ESD of AIR, who have been declared Govt. Servant in pursuance to the Govt. Of Indias scheme circulated vide letter No.45011/26/80-B (A) dated 3.5.1982, into regular Programme Cadre (Group A) of AIR and their subsequent induction into Indian Broadcasting (Programme) Service has been examined and the competent authority has approved the following: (a) The present four Supervisors vis. S/Shri Bodhisri Shastri, R.L.Malhotra, Vijay Kumar and V.K.Jain may be encadred into the regular Programme cadre (Group A) of AIR. (b) Their pay scale fixed as per rules. (c) Their inter-se seniority may be fixed in accordance with Min. Of I&B office order No.11/88-B(A) dated 9/9/1988 and office order No.22/88-B(A) dated 6/12/1988 i.e. from the date they became regular Government Servants. (d) Accordingly, they may be inducted into IB (P) S as Departmental candidates - initial constituent. Their options as per rule 6(2) of IB (P) S Rules 1990 may be obtained. (e) All consequential benefits including promotion and arrears may be considered as per rules.

3. Prasar Bharti is requested to take the necessary early follow up action.

4. Thus, the 11-9-2007 proposals sought to give effect to the parity declared by CAT in its order of 1992. Some officials felt aggrieved by the said order dated 11th September, 2007, as they were of the opinion that their vested right to seniority and other consequential benefits were threatened. They consequently filed OA No.2361/2007 for a direction that the Central Government ought not to give effect to the 11th September, 2007 order. On the other hand, the applicants filed OA No.871/2008 seeking enforcement of the same order. Both these rival applications were disposed off on 21st October, 2008 by the CAT which required the Central Government to consider the matter afresh in the light of the observations made by it in the said order.

5. In these circumstances, on 8th October, 2009, the Central Government issued an order which is in substance the bone of contention in the present case. In sum, the effect the circular of the 8th October, 2009 order was to withdraw the previous order of 11th September, 2007 by which the Government had sought to confer limited regularization and limited encadrement benefits to the applicants. This triggered yet another round of litigation and OA No.2032/2009 came to be preferred by one of the applicants Shri R.L.Malhotra. That proceeding terminated with the order of the Tribunal dated 4th December, 2009 where the following observations were made:5. The applicant, as mentioned above, in the OA has made only one primary prayer and that is to implement order dated 11.9.2007. It is not his case that his judgment recorded by this Tribunal in the two OAs referred to above is incorrect, nor is there any challenge to the same. We are of the considered view that once, the order dated 11.9.2007 has been superseded by the order dated 8.10.2009, and that too, on the directions of this Tribunal, this Application in its present form and with present relief needs to be closed. So ordered. The applicant shall, however, be at liberty to challenge the order that has now been passed, i.e., dated 8.10.2009, if he may so choose. While thus disposing of the Application as indicated above, we leave the parties to bear their own costs.

6. Liberty was granted to challenge the order of 8th October, 2009. It was in these circumstances that the applicants preferred OA No.136/2010 challenging the order of 8th October 2009 and seeking consequential directions in the form of orders to implement the previously superseded order of 11th September, 2007.

7. After narrating the history and conspectus of facts, the Tribunal was of the opinion that the Government had not focussed its attention to the materials on record in the correct perspective. The Tribunal consequently gave directions in the following manner:

16. Resultantly, this O.A. is disposed with following directions: (i) The applicants shall be encadred into the regular programme cadre. They would be inducted into IB(P) S as Departmental candidates - initial constituent. (ii) The applicants will be entitled for all the consequential benefits, as per rules, including seniority,

promotion, arrears of pay and re-fixation of retrial dues wherever applicable. However, in case of arrears, there would not be any entitlement for interest thereon, including that on the retrial dues. (iii) To the extent of applicants, wherever required, supernumerary posts shall be created so as not to affect the other set of employees. (iv) In the matter of promotions, the same would be accorded to the applicants on notional basis only - whether past or future.

17. We are conscious that these directions, to a great extent, are in accordance with the orders passed by the respondents, on 11.09.20107. But those orders were not found to be not in order by any authority and the direction of the Tribunal in its common order in O.A. 1361/2007 and O.A. 871/2008 was to consider the entire matter again and pass orders. Thus, at one stage, the official respondents found that the applicants were entitled to these benefits after examining the matter with regard to their date of joining, regularization, nature of duties, etc. The order of the Tribunal in O.A.1361/2007 and O.A. 871/2008 among other things wanted care to be taken with regard to the other set of employees to see that they are not affected.

18. The above directions shall be complied by the respondents within a period of three months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

8. The private respondents (petitioners to WP(O) No.659/2011) and the Central Government (in WP53882012) question the impugned order contending that the Tribunal should not have directed framing of a policy especially when the previous order of 11th September, 2007 was superseded and withdrawn. It was argued that the previous order of the Tribunal nowhere indicated that the order dated 11th September, 2007 was upheld and yet a direction has been issued in the impugned order to effectuate it. In these circumstances, as to what kind of benefit the applicants were entitled to was a matter entirely within the discretion of the Central Government. The Tribunal had consciously recognized its limitation and eschewed issuing any positive direction one way or the other in all the previous proceedings. However, in the impugned order, it directed the Central Government to act in a particular manner.

9. Counsel for the private respondents (petitioners in W.P.(C) 6598/2011) submitted that besides this aspect of the Tribunal in making the impugned direction, it failed to consider that their rights are likely to be adversely affected. It was submitted that the directions in question would amount to conferring retrospective benefit to the respondents / applicants, which is not only impossible, but also not feasible in as much as it would adversely affect the private respondents already conferred benefits.

10. The respondents / applicants argued that their previous attempt to secure justice had been recognized in the earlier order of the Tribunal dated 17th January, 1992 in O.A. No.2036/1990. The Tribunal had then - long ago in 1992 itself - recognized that they being Supervisors (Foreign Language) were entitled to parity with the Encadred Programme Officers in the Indian Broadcasting (Programme) service and, therefore, entitled to be encadred or granted similar benefits of encadrement. That finding became final. Therefore, all that remained was that the Central Government had to frame a reasonable scheme to extend to the respondents / applicants encadrement benefits. That the respondents / applicants had litigated at various stages for over 25 years (since the initial scheme of 1982) to claim their parity with the (now) encadred officers which ultimately culminated in the circular dated 11th September, 2007 is undisputed. That the rival claims for its enforcement on the one hand and challenge, on the other led to the matter being remitted to the Government on 21st October, 2008. This, however, did not mean that the pre-existing parity recognized as far back as in 1992 could however been, in any manner, disturbed by the Central Government by indulging in fresh exercise of formulation of scheme by issuing the impugned Circular on 8th October, 2009 and recalling the order / circular dated 11th September, 2007. It was argued that in any event the impact upon the Central Government is minuscule, if at all, since three out of the four original applicants had retired and in any event, direction (iii) in the impugned order would obviously protect third party officials against any adverse impact to the existing employees so far as the conferment of seniority and other terminal benefits to the respondents / applicants are concerned.

11. This Court has considered the submissions. It is evident from the above narrative that the Central Government never disputed the factual situation which the respondents / applicants were in. It is also not in dispute that in 1982, options were elicited from all when the proposal to encadre various non-performing staff employees were mooted. It is further not in dispute that the applicants opted to be encadred. Unfortunately for them - unlike in the case of others, -this option remained unprocessed and pending. Their claim for justice was recognized in 1992 by the CAT which held that the duties and functions performed by them was in no way different from that of Encadred Programme Officers in the Indian Broadcasting (Programme) Service which had been constituted in 1990 further to the options exercised by all the officers from whom the options were elicited. The exclusion of the applicants, therefore, was virtually a quirk of fate and a matter of injustice to them. Their efforts to secure justice remained unsuccessful until after several proceedings (and during the pendency of a case instituted in 2002)- their plea was granted by the Central Government on 11th September, 2007. That the Central Government did not factor the possible adverse impact on the other employees, who were by then encadred in the regular Production Cadre, due to the manner in which the regularization benefits were sought to be conferred upon the respondents / applicants by it perhaps justifiably led to the regularly encadred officers seeking restraint orders from the Tribunal. It was in these circumstances that the Tribunal left it to the Government to work out rival claims - for encadring of the applicants on one hand and the limiting of any adverse impact of such a move, voiced by existing cadred employee on the other. This never meant that the pre-existing parity recognized by the Tribunal and directed by it in terms of the previous order of 1992 was ever effaced.

12. Ordinarily, this Court would have agreed with the Central Governments contention that the Tribunal ought to be slow and circumspect in directing encadrement or regularization which would be according to itself the powers of policy formulation as well as its implementation. The facts of the present case, however, show that the parity and the need to encadre the applicants had never been disputed at all; they had, under the 1982 scheme, opted to be encadred like the others as far back then. The others were given that benefit in 1990 when the Service was constituted. The reason for exclusion of the applicants is nowhere

discernable; none has been disclosed. It is in these circumstances that the Tribunal directed as it did that limited encadrement benefits be conferred upon the four officials who were applicants before it. In order to obeviate any likelihood of consequential disadvantage, on the part of the private respondents (petitioners in W.P.(C) 6598/2011), this Court hereby directs that their vested right to seniority and promotion shall not be in any manner be adversely affected by direction No.(iii) contained in the impugned order. Likewise as far as the Central Government is concerned, it is a matter of record that three out of the four original applicants have since retired. The Tribunal has hence taken care that even pension benefits are granted only notionally in the form of refixation of dues where applicable and whose actual arrears had to be disbursed, claims for interest on such arrears have been pre-empted.

13. For the foregoing reasons and in view of the above conclusions, the Court finds that there is no justification in interfering with the impugned order of the Tribunal which is eminently reasonable and has secured the ends of justice to all concerned. The Central Government is granted six weeks time to implement the CATs directions from today.

14. The petition is accordingly dismissed. S. RAVINDRA BHAT, J (JUDGE) NAJMI WAZIRI, J (JUDGE) SEPTEMBER19 2013 sn

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