Revathi Murthy and ors. Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT

Decided On : Mar-21-2002

Reported in : (2003)(2)SLJ207CAT

Judge : S A V., N Prusty

Appellant : Revathi Murthy and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Mr. S. Sugumaran, Mr. Sugumaran

Advocate for Pet/Ap. : Mr. Bhavani Shankar

Judgement :

1. The applicants who are the Staff Artists/Artists of All India Radio, Bangalore, have filed these applications challenging the order/Office Memorandum bearing No. 6/7/97-SVIII dated 13.1.2000 (Annexure A-3) issued by the third respondent clarifying that the applicant are not entitled to ad hoc bonus from the year 1997-98 onwards, since they are in the grade having pay scale of Rs. 6,500-10,500, Rs. 10,000-15,200, Rs. 12,000-16,500. The applicants were then actually in the pay scale of Rs. 6,500-10,500 and earlier as per Office Memorandum under Annexure A-1 and A-2 they were being paid ad hoc bonus. But in view of the Annexure A-3 the applicants were not paid ad hoc bonus for the year 1999-2000 onwards and ad hoc bonus paid for the years 1997-98 and 1998-99 was also recovered from them. Hence they have approached this Tribunal in these O.As. under Section 19 of the

Administrative Tribunals Act, 1985, for the following reliefs: (i) Quash the impugned Office Memorandum bearing No. 6/7/97-SVIII dated 13.1.2000 of the 3rd respondent (Annexure A-3) holding the same as illegal, bad in law, arbitrary one and violative of Article 14 of the Constitution of India, in the interest of justice and equity in the eye of law.

(ii) Issue directions to the respondents to pay the ad hoc bonus to the applicants for the year 1999-2000 and onwards, along with the interest at the rate of 12% p.a. for the year 1999-2000 in the interest of justice and equity in the eye of law.

(iii) Issue directions to the respondents to refund the ad hoc bonus amount recovered from the salary of the applicants for the years 1997-98 and 1998-99 with interest at the rate of 12% p.a. in the interest of justice and equity in the eye of law.

(iv) Pass sueh other order/s granting such other relief/s as this Hon'ble Tribunal deems fit and just in the circumstances of the case in the interest of justice and equity in the eye of law.

2. The main contentions of the applicants in these O.As. are that : fixation of criteria of the pay scale of Rs. 6,500-10,000 for determining the entitlement of the ad hoc bonus is arbitrary, clear case of discrimination and violative of the Article 14 of the Constitution of India as the other similarly placed employees working under the AIR such as Engineering Assistant and Transmission Executives, who are in the same pay scale as that of the applicants i.e., Rs. 6,500-10,500 are being paid/have been paid the ad hoc bonus: As per the letter dated 13.9.2000 (Annexure A-22) Group C, Group D and all non-gazetted employees in 'B' who were not covered by any productivity linked bonus scheme are entitled for grant of ad hoc bonus. The applicants even though are placed under pay scale of Rs. 6,500-10,500, are equivalent to non-gazetted Group B cadre and not covered under productivity linked bonus. Therefore, the impugned Office Memorandum denying ad hoc bonus to the applicants with effect from 1997-98 is completely illegal, arbitrary and hence liable to be quashed. The order of recovery of the ad hoc bonus already paid to the applicants from 1997-98 is also equally bad and against the settled principles of law. The impugned O.M. dated 13.1.2000

(Annexure A-3) being completely against the government orders allowing ad hoc bonus to Group C and D and Group B (Non-gazetted) cadre of employees who are not covered by any productivity linked Bonus Scheme, cannot be sustained and hence liable to be quashed. As such the O.M. dated 13.1.2000 (Annexure A-3); Memorandum dated 24.4.2000 (Annexure A-4) and Memorandum dated 6.7.2000 (Annexure A-13 to A-17) are liable to be quashed as those were against the settled principles of law, policy of the Government and also as completely discriminatory.

3. The respondents in their reply mainly contended that those categories of staff in AIR such as Announcers, Instrumentalists, Music Composer, etc. having not been classified so far, are comparable in all respects with the similar categories of Central Government servants, which have been classified as Gazetted--since they come under non-classified categories enjoying the pay scale of Rs. 6,500-10,500 which is a Group B Gazetted Scale. The applicants cannot be compared with Engineering Assistants and TREXs as these grades are Group C Non-gazetted in the pay scale of Rs. 5,000-8,000. But pay scale of Rs. 6,500-10,500 are given to the Engineering Assistants and TREXs by the Government on personal basis under certain terms and conditions without altering their classified status of Group C Non-gazetted. Hence no illegality has been committed in extending the ad hoc bonus in their favour even though they are in the pay scale of Rs. 6,500-10,500 but continuing as Group C Non-gazetted. As such the applicants have not been discriminated and the action of the respondents cannot be termed as violative of Article 14 of the Constitution of India.

4. The admitted position in this case is that the applicants are not gazetted officers even though they are in the pay scale of Rs. 6,500-10,500. They have not yet been classified in any manner (as stated by the respondents in paragraphs 4 and 10 of their reply) and as such continuing in the Non-gazetted status.

Mr. S. Sugumaran, learned Counsel for the respondents during the course of hearing submitted that since a proposal for declaring the applicants as gazetted is pending for consideration/finalisation, the applicants being in the pay scale of Rs. 6,500-10,500 which is equivalent to Group B Gazetted scale, are not entitled to ad hoc bonus. At this stage Mr.

Bhavani Shankar, learned Counsel for the applicants submitted that no final order has yet been passed on the said proposal declaring the applicants as gazetted. Hence the applicants as on date are entitled for ad hoc bonus as they are continuing as non-gazetted. In Para 2 (at page 26) of Annexure R-4 of the reply--wherein it has been clearly and categorically mentioned: "Ministry of Finance had opined that all the categories which are equivalent to the similar categories in the Central Government having Non-gazetted status may be granted bonus and..." In the instant case it goes without saying that the Staff Artists of All India Radio are still continuing as equivalent to Group C and Group B Non-gazetted categories. Hence they are entitled to ad hoc bonus till they continue to be non-gazetted even though they are in the pay scale of Rs. 6,500-10,500, at least till they are declared as gazetted and also only after it is finally determined in a proper forum.

5. We have heard Mr. Bhavani Shankar, learned Counsel for the applicant and Mr. Sugumaran, learned Counsel for the respondents, gone through the pleadings and documents filed on behalf of the respective parties.

The main point for consideration in this case is as to whether the Annexure A-3 is sustainable in the eye of law; whether the applicants are entitled for ad hoc bonus and are liable to get refund of the ad hoc bonus which was received by them earlier to issuance of Annexure A-3 and recovered later.

6. Now coming to the question of recovery of the ad hoc bonus paid to the applicants for the years 1997-98 and 1998-99 in one lumpsum from their salary for the month of April 2000 as per Order/Memorandum dated 24.4.2000 (Annexure A-4):- the fact remains that the applicants were paid the ad hoc bonus by virtue of O.M. dated 3.3.1993 (Annexure A-1) and continued to receive the same as per O.M. dated 29.10.1997 (Annexure A-2). Accordingly they had also received the ad hoc bonus for the years 1997-98 and 1998-99. The clarification was only issued vide O.M. dated 13.1.2000 (Annexure A-3) and accordingly order for recovery was issued by Memorandum dated 24.4.2000 (Annexure A-4). It goes without saying that the benefit of the ad hoc bonus was extended in favour of the applicants and others similarly situated persons by virtue of O.Ms issued under Annexures A-1

and A-2 dated 3.3.1993 and 29.10.1997 as per the decision of the Government of India and the applicants had no contribution or involvement in the issuance of the said O.Ms. Annexures A-1 and A-2 were issued by the Government taking into consideration the service conditions and pay scale of the applicants as they have not been classified as gazetted. Accordingly applicants were paid the ad hoc bonus inclusive of the year 1997-98 and 1998-99. As such they had received the amount in the respective years and utilised the same--accepting it as their legitimate dues. The O.M.dated 13.1.2000 (Annexure A-3) and O.M. dated 24.4.2000 (Annexure A-4) for recovery of the ad hoc bonus already paid to the applicants for 1997-98 and 1998-99 were issued by the Prasar Bharati without any earlier intimations to the applicants and without determining their eligibility/non-eligibility for ad hoc bonus, in their presence. In a good number of cases the Hon'ble Apex Court, taking into consideration all relevant aspects, has already settled the law on this point of the effect that any action that would adversely affect the accrued right of an official, cannot be cancelled or modified without following the principles of natural justice and also it is well settled that a benefit already extended to an official/employee cannot be withdrawn with retrospective effect. This settled principle of law still holds good in the field and is being followed by different forums till today.

In view of observations made above we are of the considered opinion that the order of recovery of ad hoc bonus already paid to the applicants earlier to the date of issuance of the said memorandum i.e., for the years 1997-98 and 1998-99 by virtue of Annexure A-4 dated 24.4.2000 and the subsequent orders under Annexures A-13 to A-17, issued on the basis of Annexure A-3 dated 13.1.2000 are bad and against the settled principles of law and hence are liable to be quashed.

7. Now coming to Annexure A-3 O.M. dated 13.1.2000, the same was issued by the Prasar Bharati declaring that the applicants who are in the pay scale of Rs. 6,500-10,500 (and above) are not entitled to ad hoc bonus from the year 1997-98. It may be a vital factor that an employer has every right to take a policy decision regarding payment of ad hoc bonus. But Prasar Bharati--which is a Wing of the Government, being a model employer cannot formulate a policy like an ordinary employer which would be violative of the Articles Hand 16 of the Constitution of

India. It goes without saying that the scope of the Administrative Tribunal for interfering with a policy decision is very limited. But there should be an uniformity in taking a policy decision i.e., in respect of all the employees placed in equal footings. Article 14 forbids arbitrariness. All the similarly placed employees have to be treated equally and same benefit as has been extended to a particular set of employees of one wing of the Government, has to be extended to other similarly placed employees working in the other wing of the Government department. On the plea of policy decision no discrimination can be allowed to be made between the similarly situated different sets of employees and if made the Courts/Tribunal cannot sit as a silent spectator. Article 14 of the Constitution of India only permits reasonable classification but totally forbids class legislation.

8. Hence keeping in view the above stated settled principles of law it has to be examined as to whether O.M. dated 13.1.2000 Annexure A-3 can be sustained as per law. Annexures A-1 and A-2 were issued by the Government of India extending the grant of ad hoc bonus in favour of the applicants, who are working as Staff Artists/Artists under All India Radio in the pre-revised scale of Rs. 2,000-3,500 (pre-revised) who are in the cadre of non-gazetted. The applicants grade has not yet been included in the gazetted cadre, even though the matter same is pending before Government for final decision to be taken on the same.

As such the applicants are continuing as non-gazetted staff of Prasar Bharati in the pay scale of Rs. 6,500-10,500 as no final decision has been taken in the matter of including the applicants grade in the gazetted cadre. The ad hoc bonus has been extended to the employees, who does not belong to gazetted cadre but enjoying the pay scale of Rs. 6,500-10,500 in the other wings of Governmental Departments/organisations. The non-gazetted employees working under Government carrying the pay scale of Rs. 6,500-10,500 who are equivalent to the applicants arc (a) Office Superintendents in Central Excise Department, (b) Recordist in Films Division of the Ministry of Information and Broadcasting (to which department the applicants belong), (c) Assistant Superintendent of Post Offices in Postal Department, (d) Senior Technical Assistant, Senior Technical Assistant (Chemical), Senior Geologist in the Geological Survey of India. The learned Counsel for the applicants submitted that the above stated categories of officials working under the different departments of Government of India, also in the pay scale of Rs. 6,500-10,500 and non-gazetted arc getting the ad hoc bonus, even though they are in the equal scale of pay as of the applicants. The applicants are still continuing as non-gazetted staff working under the All India Radio/Prasar Bharati. Since the benefit of ad hoc bonus is being extended to the similarly situated persons of other Government of India departments, Annexure A-3 debarring the applicants only of the same benefit, is completely against law and hence liable to be set aside/quashed. The applicants are entitled for equal treatment. No discrimination can be made between the equals. Hence, they are also entitled for ad hoc bonus. Furthermore, the learned Counsel for the applicants submitted that, so far as Kendriya Vidyalaya Sangathan is concerned a clarification was issued that even though there is no concept of gazetted or non-gazetted as KVS is an Autonomous Body, the category is Teachers in Autonomous Bodies who are in the pay scales below Rs. 8,000-13,500 i.e., in the pay scale of Rs. 6,500-10,500 corresponding to teachers classified as non-gazetted Group B and C Non-gazetted in the Central Government--bonus can be granted to them.

But since Vice-Principals in Government schools are classified as gazetted--bonus cannot be granted to Vice-Principals in Autonomous Bodies such as KVS, NVS, NDMC etc. At this stage Mr. Sugumaran, learned Counsel for the respondents pointed out that steps are being taken to declare the applicants cadre as gazetted and hence they cannot claim for ad hoc bonus.

9. Keeping in view the submissions of the respective parties the admitted position as on date is that no final decision has yet been taken in the matter of bringing the applicants in the gazetted cadre.

Even though they are in the pay scale of Rs. 6,500-10,500, they are continuing in the non-gazetted cadre. As such the applicants belong to Group B Non-gazetted cadre. The personnel who are working in other Government of India organisations and Autonomous bodies in the cadre of Group B non-gazetted, benefit of ad hoc bonus has been extended to them and they are enjoying the benefit till date without any interruption.

The documents filed by the respondents as Annexure R-4 indicates that the Ministry of Finance had recommended ad hoc bonus in favour of Group D, Group C and Group B (non-gazetted) cadre and accordingly they are getting the ad hoc bonus. The respondents further in Para 19 of their reply have categorically stated that the post of News Readers cum Translators, an erstwhile staff Artist/Artist, similar in all respects to the applicants (Announcers, Instrumentalists, Music Composers) has been classified and are placed in gazetted category. But nothing has been stated in the reply or no documents filed to the effect that the applicants have already been classified as gazetted category. In Paragraph 7 of the reply it has been stated that the Finance Ministry had clarified that where classification of post has not been decided, all categories which are equivalent to similar categories in the Central Government having non-gazetted status may be granted bonus and the categories which are equivalent to gazetted categories in Central Government may not be granted bonus (Ref: Annexure R-2). In Paragraph 10 of the reply the respondents have also stated in clear terms-categories of staff in AIR viz., Announcers, Instrumentalists and Music Composers have not been classified so far and the learned Counsel for the respondents has also submitted that no final decision has yet been taken declaring the applicants category as gazetted, but the matter is pending consideration/for final decision. In view of the submissions of the learned Counsels for the parlies and on the basis of the documents on record, the only conclusion that can be drawn is that till date the applicants are continuing as Group B Non-gazetted staff under the respondents in the pay scale of Rs. 6,500-10,500 group. It may be a factor that Group B gazetted also are in the pay scale of Rs. 6,500-10,500. But the post in which the applicants are continuing has not yet been declared as gazetted even though they are in the same scale of pay. Since similarly placed employees under the Government of India and the Autonomous Bodies which are fully controlled by the Union Government, in the pay scale of Rs. 6,500-10,500, but are Group B non-gazetted, are enjoying the benefit of ad hoc bonus, the applicants having been working in the same scale of pay and their grade having not yet been declared as gazetted--they cannot be debarred from getting the ad hoc bonus.

10. Considering all the facts and circumstances stated above in our considered opinion equal service benefit has to be extended for equal grades of employees in

all concerned departments of Government of India and the organisations which are fully owned/ controlled by the Government. We have already observed that the employees in the scale of pay of Rs. 6,500-10,500 who are continuing in the non-gazetted (Group B) cadre are entitled to ad hoc bonus on the basis of the Government of India decision in this regard, which has also been duly approved by the Ministry of Finance. The applicants being similarly situated persons in the scale of pay of Rs. 6,500-10,500 but not yet declared as gazetted and as such continuing in the cadre of Group B non gazetted, cannot be debarred from getting the same benefit, on the plea that the matter relating to declaring them as gazetted is pending for final decision.

The applicant should not be discriminated and denied of a benefit which is being enjoyed by their counterparts in other Government of India organisations, who are in the same pay scale and grade like that of the applicants. The criteria fixed in the case of the applicants, denying them of the benefit of ad hoc bonus, does not have any bona fide, reasonable, intelligible and rational nexus with the object of differentiation. As such this differentiation amounts to discrimination and this is a hostile discrimination. The equals cannot be allowed to be treated unequally. Hence the only conclusion that can be drawn in this case is that the policy decision taken by the Prasar Bharati in this case, relating to non-payment of ad hoc bonus to the applicants cannot be sustained and the same is violative of Article 14 of the Constitution of India. As such applicants are entitled to the ad hoc bonus till they are continuing in the same grade with the same scale of pay i.e., Group B non-gazetted in the scale of Rs. 6,500-10,500.

11. In view of the discussions made above the impugned O.M. dated 13.1.2000 under Annexure A-3 declaring the applicants not entitled for ad hoc bonus from the year 1997-98 and subsequent order/Memorandum dated 24.4.2000 under Annexure A-4 directing recovery of ad hoc bonus already paid for the years 1997-98 and 1998-99 and subsequent orders dated 6.7.2000 (Annexures A-13 to A-17) are quashed/set aside. The respondents are directed to refund the ad hoc bonus amount recovered from the salary of the applicants which was paid to them for the years 1997-98 and 1998-99 along with interest at the rate of 9.5% per annum from the date of such recovery till the date of refund and continue to pay the ad hoc

bonus from 1999-2000 regularly till a final decision is taken in the matter, which shall justify non-payment of such ad hoc bonus to the applicant in accordance with settled principles of law.