

Association of Radio & Television Engineering Employees



Post Box no. 422, New Delhi-110001

Recognized by Govt. Of India and Prasar Bharati as per CCS(RSA) Rules 1993

Affiliated to Union Network International, Geneva

Affiliated to Confederation of Central Govt. Employees and Workers (CCGEW)

www.arteeindia.org

Ref : **ARTEE/P/07/O1/2015**

Date **23.01.2015**

Zonal
Offices

The Hon'ble Minister of State,
Information and Broadcasting,
[Kind Attention: Sh. Puneet Kansal, JS(B-II),
Shastri Bhawan,
New Delhi - 110001

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Respected Sir,

Greeting with warm regards.

This has reference to the meeting held with you in presence of Dy.Sect.& Under Sect. As desired, we hereby submit points in support of the fact that scales granted through 25/2/1999 executive order should not be counted as anup-gradation while granting MACP.

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FACTS ABOUT PAY SCALES GRANTED w.e.f. 01/01/1978

(01). The SOUND RECORDIST in Films Division of Ministry of I & B got pay scale of Rs. 550-900 w.e.f. 1.1.1973 by the 3rd Central pay commission whereas the SOUND RECORDIST of Doordarshan of the same Ministry was given pay scale of Rs 425 - 750 by the government.

(02). The SOUND RECORDIST of Doordarshan filed a writ petition WPC no. 974 of 1978 in honorable Supreme Court of India to clam pay scale of Rs 550-900 admissible to the recordist of film division.

(03). The 4th CPC recommended pay scale for post of recordist in film division of Ministry of I&B and suggested the prescribe pay scale for comparable post in Doordarshan also. However the pay scale of recordist (Film division) and SOUND RECORDIST (Doordarshan) remain different with effect from 01.01.1986 also.

(04). Hon'ble Supreme Court, in its verdict in the case WP(C).No.974/1978 decided on 26.08.1988 in favor of SOUND RECORDIST of Doordarshan, by observing that "When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay" and ordered that SOUND RECORDIST of Doordarshan are entitled to the same scale of pay as their counterparts in the Film Division.

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o/c

(05). Ministry of I&B, vide its order No. A-14011/1/80-SI/TV(A) dated 21.12.1988, revised the pay scale of SOUND RECORDIST of Doordarshan as Rs 550-900 w.e.f. 01.01.1978 & Rs 2000-3200 w.e.f. 01.01.1986.

Annexure - I

- (06). The Engineering Assistant of AIR & Doordarshan filed a petition vide OA No. 654 of 1989 in Chennai Bench of CAT praying that pay scale of Engineering Assistant (EA) should be revised equal to pay scale of SOUND RECORDIST of Doordarshan as the Engineering Assistants are better qualified and have more onerous duties to perform. The OA was allowed and the court held on 29.06.1990 that: "We have carefully studied the recruitment rules and duties and responsibility attached to the two posts. We have also studied carefully the judgment of Hon'ble Supreme Court in WP(C) No. 974 of 1978 dated 26.08.1988 and the ratio enunciated by them. Following the Supreme Court judgment, we consider that in the context of the qualification prescribed as also the nature of duties and responsibilities of the Engineering Assistants, the Engineering Assistants are entitled to the same pay scales/benefits as given to SOUND RECORDIST".
- (07). The Government filed a SLP in Supreme Court on 10.09.1990 against the Judgment of CAT Chennai bench dated 29.06.1990 in OA no. 654/1989. The SLP was dismissed on merits on 07.01.1991. Government then filed a review petition against dismissal of SLP which was also dismissed on 16.07.1991.

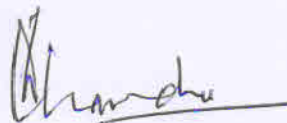
The court observed also that:

"The Engineering Assistant have legitimate grievances for which relief should be afforded. The matter of revision of pay scale of Engineering Assistant has to be considered by the department in totality which, in fact, the government had earlier accepted in its reply that the matter was under active consideration".

- (08). SLP (C) no. 15206-07 of 1992 was ten filed in Hon'ble Supreme Court against the order dated 10.06.1992 of CAT Chennai Bench in RP no.4 of 1992 in OA No. 654 of 1989 rescinding the judgment of same CAT delivered on 29.06.1990 having been upheld by the Hon'ble Supreme Court earlier.
- (09). The Supreme Court decided SLP(C) No. 15206-07 of 1992 along with SLP(C) No. 4307-08 of 1993 in the matter on 25.11.1994 and set aside the impugned order of CAT Chennai Bench dated 10.06.1992 in RP No. 4 (in OA No. 654 of 1989). The Supreme Court held that:

"The tribunal was in error in entertaining the review petition and then allowing it after the SLP and thereafter, the RP against the main judgment has been dismissed by this court. The grounds on which review was sought before the Tribunal was a ground taken in the SLP as well as RP filed in this court. In such situation it was to say the least, wholly in appropriate for the Tribunal to sit in judgment on the merit of this courts order dismissing the SLP giving finality to the Tribunal main order dated 29.06.1990. This alone is sufficient to set aside the impugned order dated 10.06.1992 made by the Tribunal allowing the RP".

Thus the Case attained its finality.



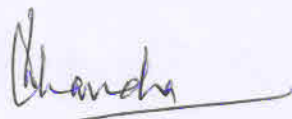
- (10). The Ministry of I&B revised and implemented the pay scale of Engineering Assistant of AIR & Doordarshan vide order no. 310/15/93-B(D) dated 15.05.1995 allowing pay scales of SOUND RECORDIST to Engineering Assistants as below:

Period	Old Pay Scale	Revised Pay scale
From 1.1.78 to 31.12.85	Rs 425-750	Rs 550-900
From 1.1.86 to 31.12.95	Rs 1400-2600	Rs 2000-3200

- (11). Engineering Assistant throughout the country received the pay revision with arrears w.e.f. the above said dates.

Annexure - II

- (12). The 5th Central Pay Commission (CPC) had proposed replacement scales w.e.f. 01.01.1996 for the Govt. Employees. The replacement scale proposed Rs 2000-3200 was Rs 6500-10500.
- (13). But shockingly 5th CPC in its record recommended to down grade the scale of SOUND RECORDISTS and thereby the Engineering Assistants(EA) by proposing a new pay scale for the 4th pay commission Rs.1600-2600 and accordingly its replacements scale of Rs 5000-8000 for these cadres w.e.f. 01.01.1996. However the fixation done as per the scale of Rs. 2000-3200 had maintained as personnel to these staff.
- (14). Perhaps this is the first time in history the pay commission had recommended reducing the pay scales by creating new pay scales in the recommendation of previous pay commission.
- (15). Though the govt. has not reduced the pay scales of Sound Recordist; they have reduced the pay scales of Engineering Assistants.
- (16).The Secretary Ministry of Personal , Public Grievances and Pensions advised Secretary, Ministry of I&B to take up the demand of pay scale at level of Engineering Assistants & Technicians with the Fast Track Committee (of Secretaries) constituted to examine & recommended on certain exceptional cases arising out of report and recommendations of the 5th CPC letter dated 22.07.1997.
- (17). It is learnt that the said fast track committee also recommended the cabinet to restore the replacement pay scale of Rs. 6500-10500 to the Engineering Assistants of All India Radio & Doordarshan.
- (18). But Govt. went ahead with the fixation of the pay scale of Rs. 5000-8000 to the EAs. So the employees of engineering /technical cadres got agitated and we were compelled to start agitation in 1997 itself under the platform of Sanyukt Sangharsh Samiti.



- (19). In the order issued by Additional Secretary Ministry of I&B, dated 31.03.1998, it is stated that "the cabinet in its meeting on 06-11-1997 on considering the report of the said Fast Track Committee decided that the minister of I&B in consultation with Ministry of Finance and Ministry of Personnel, Public Grievances and Pensions, may take appropriate action in the matter".
- (20). Government has issued an order No. 310/173/97-B(D) dated 05.12.1997 granting 90% of the replacement scale not only to Engineering Assistants but also to technician and Senior technicians, in parity with Lighting Assistant of Doordarshan. (National Productivity Council has recommended the parity of Technician with Lighting Assistant, way back in 1990).
- (21). Government issued various clarifications on this order to follow the CCS(Revised Pay) Rules while fixation of pay to these employees.
- (22). Prasar Bharati Board in its first Board meeting held on 10/11 December 1997 recommended the replacement scales based on the agreement between government and SSS.
- (23). Ministry had issued the order dated 25-2-1999 restoring the pay scale to the replacement ones.
- (24). Again an undertaking was taken from the leaders of SSS, that we will maintain industrial peace for another five years on the issue of pay scale and in case of pay revision to any cadres of Air & DD, it will be applicable to these employees also.

Annexure - III

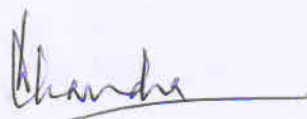
- (25). O/o of the Director, CPC, Doordarshan, Delhi had granted the pay scales as directed by Hon'ble CAT to these EAs, without any undertaking, vide its order dated 18.12.2002.
- (26). Some of the Engineering Assistant joined after 25.02.1999 also approached the court of law and the Principal Bench of CAT, Delhi directed the respondent (Secretary, Ministry of I&B and others), "to re-examine the claim of applicants for grant of higher pay scale of Rs. 6500-10500 as Engineering Assistants". Issue has attain finality and implemented.

Annexure - IV

- (27). Ministry of I&B, in a communication in December 2007 also informed that the up gradation of pay scales vide order dated 25.02.1999 was in continuation of the recommendations made by the 5thCPC.

Annexure- V

- (28). In 2004 on demand of employees a High level Group of Ministers (GOM) was formed to review the functioning of Prasar Bharati including funding. The GOM took the decision that Employees joined upto 05/10/2007 shall remain Govt. Employees working in Prasar Bharai till their Retirement with all the benefits admissible to Govt. Employees. Section 11 of Prasar Bharai Act was amended accordingly. The pay scales



granted as per the CCS(RP) Rules 1997 amended in the light of OM dated 25.2.1999 (as mentioned in above said letter) stands automatically converted to revised pay scales as per CCS(RP) Rules 2008.

Annexure- VI

(29). Hence it is very clear from the above said facts that the scales granted as per the OM dated 25.2.1999 are the restoration of the pay scales to these cadres and accordingly the pay scale of Engineering Assistants who are on deemed deputation in Prasar Bharati is Rs.6500-10500, the pay scale of Senior Engineering Assistant is Rs.7450 - 11500 and Assistant Engineers is Rs. 7500-12000 and replying to an audit objection Ministry I&B itself admitted that Pay Scale granted vide order dt.25.02.99 are in continuation of 5th Pay Commission recommendations. On the demand of left out cadres a committee of Joint Secretaries was Constituted, suggested to withdraw 25/2/1999. These Recommendations are placed before Hon'ble GOM who asked to discuss the issue with Associations. This exercise was never done.

(30). In an Affidavit submitted by Ministry of I & B in a case in CAT Ernaculam, MIB admitted that Recommendations of COJS have become redundant. The issue that after the cut off date of 05/10/2007 , 25/2/1999 scales have been inacted was sent to Ministry of Law and it has been negated. So scales granted in 25/2/1999 can not be withdrawn.

Annexure - VII

(31). In One Cadre One Pay issue the file was sent to Ministry of Law for seeking opinion on the issue that by the decision of Hon'ble GOM of declaring 05/10/2007 as cut off date for Govt. and Prasar Bharati Employees, Hon'ble Min. of Law categorically clarified that 05/01/2007 can not inact 25/2/1999.

Annexure - VIII

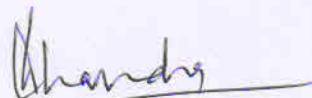
Pay revision of Programme cadres:-

- I. The transmission Executive (Trex) of AIR and Doordarshan approached the court of law for maintaining the parity between similar cadres in Engineering Wing.
- II. The parity was restored vide order dated 25.02.1999.

Factors to establish impermissibility of Recoveries

(01). The Hon'ble Supreme Court in civil appeal no.11527 of 2014 arising out of SLP no.11684 of 2012 and other 242 Civil Appeals clearly laid down the circumstances where the recovery from employees shall be impermissible which are given below (Refer to Para 12) :

- (a). Recovery from Employees belonging to Class III an Class IV services. (Class 3 and class 4 employees)
- (b). Recovery from employees retired or retiring within one year from the date of Recovery.
- (c). Recovery for excess payment done more than five years prior to order of Recovery.
- (d). Recovery where Employee performed duties equitable to higher post but paid for lower.



(e). In any other case when Court arrives at the conclusion that recovery if made from employees would be iniquitous or harsh or arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover. (copy enclosed)

(02). DOPT delivered the clearance to ignore the scale given vide 25.02.1999, while granting ACP:

ACP was not granted to these employees and for this one OA 514 was filed in PATNA in 2004, the litigation went upto Hon'ble Supreme Court and in the litigation the issue of these scales is discussed and debated. Hon'ble High Court negated the claim of Government and clearly settled this issue that- ACP shall be granted ignoring scale of 25.02.1999. It was implemented for Applicants after clearance by DOPT.

(03). According to ACP & MACP Schemes, financial up gradations are to be given after 12/24 & 10/20/30 years respectively **if PROMOTIONS are not granted**. As per clarification No. 35 of DOPT vide file no. 35034/1/97-Estt.(D)(Vol.IV) dated 18.07.2001 the scales granted vide order dated 25/2/1999 is not to be treated as promotions since the designations, duties, RRs& responsibilities remains the same.

(04). Some EA, SEA and AEs who refused to be part of 05/12/1997 and 25/2/1999, approached Court law and their Pay Scale is protected(OA 1867/1998) and they have been granted ACP also as per CAT PATNA verdict. **It is not personal to them as same has been extended to some other people in PATNA though OA 85/1998 and 664/1998 who later filed litigation for ACP i.e. OA 514/2004 upheld upto Hon'ble Supreme Court.** It means who followed instructions of Hon'ble Ministry of I & B are being victimized and who refused to follow are being protected and being awarded.

Annexure - IX

(05). As per clause 11 of MACP scheme -"Old Cases will not be opened".

(06). Scales of 25.02.1999 were ignored in ACP then why it is being considered in MACP.

(07). As per MACP clarification all types of financial up gradation will be ignored while giving MACP.

(08). We are the Govt. employees working in Prasar Bharati on deemed deputation and our Cadre Controlling Authority is DG(AIR) and controlling Authority is Ministry of I & B and henceforth entitled to get all benefits admissible to Govt. Employees like Pay Commissions, ACP and MACP etc.

Annexure - X

(09). Recent reference of DOPT was regarding MACP for Assistant Engineers of CCW only. This reference is being generalized resulting huge recoveries from the retiring employee.

(10). This step of recovery of huge amounts on the basis of an order which is fifteen years old, is against the bench mark judgment of Hon'ble Supreme Court as



aforesaid. The spirit of 25.02.1999 executive order was to restore the pay scales in continuation with 5thCPC .

Annexure- XI

(11). Recently Hon'ble High court in the WPC©-18034 & 18035 / 2004 in Case of Floor Assistant & Floor Manager directed to ignore 25.02.1999 while grating ACP. Hon'ble High Court Delhi admitted that all admissible ACP upgradation can be given over and above scales granted as per 25/2/1999.

(12). Prasar Bharati wrote a letter on date 22/10/14 in support of impressibility of Recoveries with all supporting documents.

Annexure - XII

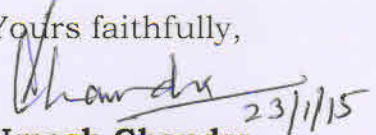
(13). Prasar Bharati wrote a DO letter to Hon'ble Ministry of I & B on 9/01/2015 in continuation of its earlier letter dated 22/10/104 to settle the issue.

Annexure- XIII

With keeping in view all the above mentioned facts, a humble request is to your goodself that the order for recovery should be quashed immediately, so that working culture & environment of this department may be maintained.

Thanking you,

Yours faithfully,


Umesh Chandra,
President, ARTEE
09871765714
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enclosed as above


Umesh Chandra,

Cc for information to :

- [1]. Chief Executive Officer, Prasar Bharati, New Delhi-110001
- [2]. Principle Advisor, (PA), Prasar Bharati, New Delhi-110001
- [3]. Director General, All India Radio, New Delhi
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