

The current scenario and chronology of EA (5K) Issue

The employees of subordinate Engineering cadres mainly Engineering Assistants are divided into two separate pay scales within the same cadre with the criteria of date of joining in the department. While both the employees in the same cadre are performing same duties, with same designation and without any difference in their job requirements and even with a common seniority list. This discrimination in pay scales of employees in the same cadre based on the cut off date of 1999 is a clear violation of Article 14 and 16 of the Indian constitution. ARTEE took up the cause through filing two cases vide OA No. 1742/2004 and OA No.1743/2004 at The Principal Bench of Hon'ble CAT, Delhi, in 2004. OA No. 1742/2004 was filed by the five members of our association, who joined service after qualifying the examination in the years 2000 & 2001. Simultaneously Sh. Mahendra Singh Rana, EA, who was joined in March 1999, after qualifying the examination in the year 1994, filed another case in the same court under OA. No. 1743/2004. On both the cases the applicant's advocates stated that non accord of higher pay scale on the basis of cut off date would be an invidious discrimination as principle of equal pay for equal work has been denied to applicants. By effective persuasion we won in CAT Delhi and in Hon'ble High Court Delhi (WPC No.2094/2007 and ,2095/2007).

The Hon'ble CAT observed in its verdict dated 31.05.2006 **that “the higher scale having denied to the applicants constitutes a differential treatment and a class legislation and also an unequal treatment meted out to equals is an invidious discrimination, which cannot be sustained in the wake of principles of equality, enshrined under article 14 of the Constitution of India. However the relevance of the cutoff date now shown and explained by the respondents is not reasonable”**. Hon'ble CAT has directed the department and Ministry to re-examine the claim of applicants for grant of higher pay scale of Rs.6500-10500/- as Engineering Assistants grant the same scale as the employees joined the cadre prior to 25.2.1999 to these employees also.

Meanwhile some of our technician members also filed an OA No.995 of 2007 in the Hon'ble CAT, Kolkata on the same grounds and the Hon'ble CAT Kolkata directed the department to grant the same scale of Rs.4500-7000 to the Technicians joined after the cut off date.

The verdict of Hon'ble HC Delhi is very elaborate and it establishes that there should be one pay in one cadre. The Hon'ble High Court Delhi in its verdict in (WPC No.2094/2007,2095/2007) dated, Sept 7, 2010 uphold the verdict of The Principal Bench of Hon'ble CAT Delhi .The argument of the government advocate in court was that “The employees who came to Prasar Bharati from under the Ministry of Information & Broadcasting formed a

separate category. “ The Delhi High Court, stated in Para 11 of its verdict that **“the issues of equal pay for equal work and employees holding same posts under the same employer requiring same pay scales to be applied is no longer res integra.”**

The Delhi High Court upheld the verdict of Principal Bench of Hon'ble CAT Delhi by relying up on the decision reported as 1987 (1) SCC 582 Telecommunication Research Centre Scientific Officers (Class-I) Association & Ors. vs. UOI & Ors ., in which it is held that **“for employees holding same post and doing same work and there being no ground to classify the same in two categories, the placement in different scales of pay was arbitrary. It was noted that the technical and educational qualifications required for both group of employees was the same “.** The court also relied upon the decision reported as 1987(1) SCC 592 M.P.Singh vs.UOI & Ors. where it was held that **“where employees enter the cadre from two different sources, if they do the same work and are similarly placed, there can be no discrimination in payment of wages “.**

Again instead of implementing justice, the department filed the Special Leave Petition SLP (C) No. 77 and 99 of 2011 in the Hon'ble supreme Court of India, But on Jan 14 ,2011 the Hon'ble Supreme Court of India dismissed the SLP in favour of our members, After this we filed the contempt petition CP No. 494/2011, in Principle Bench CAT Delhi for the implementation of its order. In the hearing of the contempt petition at, CAT Delhi the Govt. Counsel informed that Govt. had filed a Review Petition R.P.(C) No.2624 and 2623 OF 2011 in Hon'ble Supreme Court on 16/09/2011. After hearing the argument, Hon'ble justice allowed time for Review Petition to decide and closed the contempt petition with the liberty of the applicants to re open the contempt petition after the decision in review petition by the government .

The Gwalior fiasco

When we were pursuing the review petition in Hon'ble Supreme Court of India, the government advocate brought in to the notice of the court the case of two EAs , Sh.Vimal Kumar Sharma and Sh.Janbed Singh Tomar. These two EAs had filed an OA in CAT Jabalpur (OA No.171/2006) and the verdict of CAT was upheld by Hon'ble High Court Gwalior and Govt. had filed the SLP (Civil) 31958-31959 /2011 in this case in Hon'ble Supreme Court. Unfortunately on 15-12-2011, the Supreme Court linked the Review Petition in our case with the SLP of Gwalior Case and ordered to keep the review petition in abeyance till a decision in the SLP in Supreme Court. Since our review petition was linked with the SLP of the government in the case of Gwalior EAs and the applicants were not in a position to manage the case in SC, we decided to take the control of Gwalior Case. But the case was not

coming up for hearing since last two years. There were several dates and we have waited for full days in the corridors of Hon'ble Sup. Court but case could not come for hearing.

Decisions and Actions taken by Present Central Office

After election in 2013 July, in the first meeting of the central executive (held on 07-08-2013) itself, we decided to avail the service of senior lawyer Sh. Jayant Bhushan for mentioning the case and for appearing in Gwalior case. Consequently as per the decision of the central executive senior lawyer Sh. Jayant Bhushan mentioned the case before the court of Hon'bl Supreme Court on 29-08-2013 and the court granted the hearing on 24-09-2013. There after our advocate again mentioned the case on 24-09-2013 and in 01-10-2013. And in 22-10-2013, senior lawyer Sh. Jayant Bhushan again mentioned the case and we got the hearing date as 29-10-2013. In 29-10-2013 hearing Sh. Jayant Bhushan appeared for us and successfully argued for us and due to his effective arguments all issues raised by Govt. Counsel were over ruled. Hon'ble Supreme Court dismissed the government SLP (SLP (Civil) 31958-31959 /2011) in favour of the applicants. It is only due to the frequent mentioning by our lawyers that we got three listing dates in this month (October) itself, and finally we achieved victory in Gwalior case also.

The Current Scenario

Just after the dismissal of , the expectations were boosted tremendously and it was obvious as deprived Members are denied justice for the last many years. Since the SLP is dismissed, our first job was to get the Review Petition in MS Rana (R.P.(C) No.2624 OF 2011 IN SLP(C) NO. 77/2011) case and Lalit Pawar Case (R.P. (C) No. 2623/2011 IN SLP(C) NO. 99/2011) case is dismissed.

The Review Petition is dismissed on 9th Jan 2014. After the dismissal of Review Petition the contempt petition CP No. 494/2011 in Principle Bench of CAT Delhi, revived and we demanded quick and immediate implementation.

Our efforts was to get a proposal prepared from DG AIR and Prasar Bharati after the approval of Ministry of I & B it is to be sent to Department of Expenditure, Ministry of Finance. Meanwhile, we pursued the matter organizationally also. Our efforts were focused for the earliest implementation of the case.

By the pressure mounted by ARTEE, Department Implemented the scale of Rs. 6500-10500 for the applicants of OA 1742 and OA 1743 in October 2014.

Later it was implemented for Applicants of some other OAs including Applicants of Gwalior Case.

Last Phase

I regret that ARTEE never thought of becoming party in the Litigation or never thought of filing a separate OA for Generalization and as a result, even after a legal fight for 12 years Government escaped just by implementing it for the applicants of OA 1742 and 1743.

Present Central Office filed an OA 4012/2014 in November 2014 for generalization with C.S.Azad, Joseph Martin, Harbir Singh and S.M.Sharma as co-applicant and President as the main applicant for all EA (5K)s who are Members of ARTEE.

We succeed in getting the favourable verdict in the first hearing itself and with the efforts of ARTEE, DG(AIR) prepared a proposal with a financial Implication of Rs. 37 Crores one time and Rs. 5.75 Crores as annual. This Proposal was passed by Prasar Bharati Board also in its 122nd and 123rd Board Meeting.

The proposal has faced some ups and down. When the proposal was sent to Department of Legal Affairs (DOLA) again with ARTEE's persuasion the file cleared with positive note.

After this Ministry of I&B had no option, except to prepare a proposal and send it to Department of Expenditure for approval. The proposal was sent to Department Of Expenditure in July 2015, but unfortunately applicants of another OA (filed by EAs joined after 05.10.2007, who are Prasar Bharati Employees) were included in the proposal. Due to this, the Department of Expenditure sent the file back to the Ministry of I&B seeking some clarifications.

This confusion was cleared from DG(AIR) and now the file is again sent to Department of Expenditure on 18th Sep 2015.

Department of Expenditure has its own way of working and we cannot control the things beyond a certain limit. We have been following it up there also and as per our information the file is put up.

ARTEE has done its best for this case and spent more than 7 lakhs in the litigation. The implementation is the in last phase. Now we are expecting that the file will be cleared from Department of Expenditure in the coming days.

I appeal all members to have bit of patience and hopefully things will be settled very soon. All issues including this are of equal importance for us and we are working on all issues.

Umesh Chandra, President, ARTEE
09871765714, umsharma01@gmail.com