

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

- (1). The scale of Engineering Assistants as on 01-01-1978 was Rs. 425-750
- (2). 4th Pay Commission granted Normal Replacement Scale of Rs. 1400-2600.
- (3). There is a Cadre Sound Recordists in Films Division which was granted higher Scale of Rs. 2000-3200 in 4th Pay Commission in Pay Parity with Cameraman.
- (4). Sound Recordist in Doordarshan demanded Pay Parity and granted were also given Pay Parity with Sound Recordists of Films Division. (Y.K.Mehta vs Union of India) by Hon'ble Supreme Court of India, W.P. (Civil) Nos. 1239/1979, 974/1978 and 1756/86 Decided on 26-8-1988.**(copy enclosed)**.
- (5). Some Engg. Asstt. Of Doordarshan Filed a case in Chennai CAT on the basis that Sound Recordist is doing only Sound Recording while Engg. Asstt. of is doing Sound Recording, Camera Operations, Studio and Transmitter operation and maintenance, Outdoor broadcasts etc.
- (6). Hon'ble Chennai CAT accepted the Prayer and granted Pay Parity to Engg.Asstts. with Sound Recordists in the scale of Rs. 2000-3200. It was upheld upto Hon'ble Sup.Court (The famous Raj Shekharan Case vs Union of India). . Through Order no. 310/15/93-B(D), Ministry of Information and Broadcasting Dated 15/05/1995. The Pay Parity was implemented for all EA,SEA,AEs, ASE since 01-01-1978 and Arrears were paid. **(copy enclosed)**.
- (7). 5th CPC has brought down the scale of Sound Recordists to Rs. 5000-8000 in place of Rs. 6500-10500 which was normal replacement scale of Rs. 2000-3200. But Protection was granted to incumbent Sound Recordist. It has subsequently brought down the scale of Engg.Asstt.
- (8). When Associations approached the Ministry to remove this anomaly, they referred the matter of pay revision of Engineering Assistant, Technician Grade I & Grade II to Anomaly committee of Secretaries which was constituted to recommend suggestions to remove anomaly in the pay scales. Union Cabinet in on 06 November 1997 considered the report of the Fast Track Committee (Committee of Secretaries) and directed a committee of Three Ministers to take appropriate decision. In the order dated 05.12.1997, issued by Ministry

of I&B (**copy enclosed**) decided that 90% of the difference to be extended to the higher scale, and “the decision relating to either payment of balance 10% or adjustment of adhoc payment shall be settled depending upon the decisions of Prasar Bharati.” This order was issued with the concurrence of Ministry of Finance. Prasar Bharati came into existence on 23/11/1997. Govt. left balance 10% of Pay scales to be decided by Prasar Bharati. Authority which came in to existence in 23/11/97 is vested responsibility to decide about Pay Scales which is implemented w.e.f. 01.01.1996.

(09). Historical Pay Parity of Engineering Assistants is always Maintained with Transmission Executives and Production Assistants and Assistant Engineer with Programme Executive.

(10). Ministry of I&B, vide its order dated 25.2.1999 (**copy enclosed**) finalized the pay scales of subordinate Engineering & programme cadres, including the cadres of Engineering Assistant & Senior Engineering Assistant by granting the remaining 10% of the difference to the higher scale with the Approval of Central Cabinet.

(11). In Addition to 11 Categories which were granted these Pay Scales, PB granted the same to some more cadres on 9th March 1999 in AIR & DD. The Recovery will adversely effect $11+16= 27$ Cadres i.e. more than 15000 employees.

(12). Transmission Executives and Production Assistants were also granted Pay Parity with Engg.Assistants in the scale of Rs. 6500-10500 and Programme Executive with Assistant Engineer in the scale of Rs. 7500-12500.

(13). Some EA, SEA and AEs who refused to be part of 05/12/1997 and 25/2/1999, approached Court law through OA 1867/1998 and their Pay Scale is protected and it is clearly mentioned that scale of **Rs. 6500-10500** is replacement scale and not upgradation. They have been granted ACP also as per CAT PATNA verdict OA 514/2002. DEWA case upheld by Apex Court, benefit is extended to SEA/AE vide CAT Patna case no. OA 85/1998 & 662/1998 and granted Pay Scale 6500-200-10500 as normal replacement of 2000-3200 scale of 4th pay commission.

(14). In 2004 on employees demand 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. (copy of Gazette Notification enclosed).

(14). The issue of MACP Recovery was sent to DoLA and in their considered Advise (copy enclosed) DoLA advised as follows :

Clause 9, 10 , 16 , 17 and 25 are reproduced below :

9. The background of 25.2.1999 – prior to 5th CPC, there were issues of disparity in pay scales of EA/SEA/AEs with cameraman and sound recordist and other categories of employees which were settled at level of Supreme Court (Y K Mehta case and Rajshekharan) case. It was implemented w.e.f. 01.01.1978. However, 5th CPC again brought down the pay scale of Sound Recordists and consequently, disparity again occurred. On representations, Cabinet on 6 November 1997 constituted COS which vide order dated 05.12.1997 (with concurrence of M/Finance) directed for 90% ad-hoc increase in salaries of some grades of subordinate Engg. service, Later, vide order dated 25.2.99 remaining 10% was granted. Pay scales of other categories were also upgraded with concurrence of M/Finance and DOPT w.e.f. 01.01.1996 **to maintain the Pay Parities with EA/SEA/AEs**. These scales however were given not as govt. employees per se but govt. employees working in PB (PB by that time had come into existence and to blunt their resistance to transfer to PB).

10. In short, these upgraded scales were given to redress the issues relating to disparity in pay (re-occurred pursuant to 5th CPC). Very opening words of 25.2.99 order read that certain cadres had been agitating...than those recommended by Vth CPC”. A complete reading of these two administrative orders explicitly explains the circumstances and purpose for which these were issued as intent was to **Restore** they pay parity which was disturbed and was restored by the M/Finance. These upgraded scales are continuation of recommendations of 5th CPC. The word ‘up-gradation’ is misnomer.

16. It is noted that an equation is trying to be established between ‘up-gradation’ and ACP/MACP. Up-gradation in context of 25.2.1999 is result of recognition of higher job content of posts and long due disparity of pay settled by the Supreme Court and has different connotation whereas ACP address the issues of stagnation and is granted where there are no promotions available. The pay scales (vide 25.2.1999 are in continuation of 5th CPC recommendations which created disparity and same was **removed/restored** through this order by MOF/D/of Exp). The distinction is clear and treating the ‘up-gradation’ in 25.2.99 for the purpose of depriving ACP/MACP benefits to eligible on the premise that they have already availed financial up-gradations”of “ACP is inbuilt in 25.2.99”order appears to be erroneous view.

17. Pertinent to note that in DEWA case, employees who did not submit undertaking (as were desired to be submitted at that time) filed OA (1867/1998) and were granted scales of 6500-10500/- as normal replacement scale. Later some of these employees availed these upgraded pay scales and were also given ACP benefits. This fact is admitted by MIB in minutes of first screening committee. (copy of minutes enclosed).

25. In view of the above stated examination of matter, we are of view that upgraded scales vide 25.2.1999 order have different connotations altogether for the reasons as stated above and cannot be termed as '**availed financial upgradation**' and 'ACP inbuilt in 25.2.1999' for the purpose of depriving of ACP/MACP benefits to these employees/effecting recoveries thereof. Pursuant to 2012 ACT, these employees being central government appear to be eligible for ACP/MACP benefits in terms of ACP Patna case and Professional union which have attained finality.

(15). Prasar Bharati has issued a Speaking Order dated 03/06/2016 (copy enclosed) has made it clear that these scales are replacement scales and not the Upgradation.

So from all above mentioned facts it is clearly established that these scales are not UPGRADATION but it is was restoration of Pay Parity and the scales were essentially REPLACEMENT SCALES.

Factors to establish impermissibility of Recoveries.

(01). The latest verdict by Hon'ble Supreme Court about Recovery from Employees. On 18.12.2014 Hon'ble Supreme Court in its verdict in 242 Civil Appeals about Recovery of excess payment to employees, clearly settled this issue in favour of Employees. In verdict delivered in case State of Punjab others vs Rafiq. Masih (White Washer) etc. In civil Appeal No. 11527 of 2014 arising out of SLP No. 11684 of 2012.

The Apex Court has 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.

(02). The Order released by DOPT Dated 03/03/2016 (copy enclosed) also reiterate the above mentioned stand.

(03). DOPT Clearance to ignore the scales 25/2/1999 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 Govt. claim and clearly settled this issue that ACP shall be granted ignoring these scales. It was implemented for Applicants after clearance by DOPT.

(04). The ACP and MACP Schemes are declared to grant financial upgradations i.e. after 12/24 and 10/20/30 yrs of service if PROMOTIONS are not granted. The scales granted through 25/2/1999 order are not Promotions by any means since Designations, Duties and Responsibilities etc remained same. It was given as per the verdict of Hon'ble Supreme Court.

(05). Clause 11 of covering letter of MACP Scheme clearly says "Old Cases will not be opened" than why this issue of upgraded scales is being used to victimize Members.

(06). MACP scheme is the extension and modified version of ACP and when the scales are ignored for ACP how it can be counted as an upgradation in MACP.

(07). In MACP Scheme and its clarification issued it no where mentioned that any upgradation granted in pursuance of Court verdict for higher job content has to be treated as an upgradation. This is an misinterpretation by Management.

(11). Such step of Recovering huge amounts on an order which is fifteen years old, is discriminatory and shall open Pandora box of unlimited anomalies, Recoveries, Court Cases and ruin the career prospects of more than 15000 employees in 27 Cadres including Sub ordinate Engg. And Program Cadres. It is also a threat to Industrial peace in the department.