

ASSOCIATION OF RADIO & TELEVISION ENGINEERING EMPLOYEES



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Largest Employee Welfare Association of Electronic Media in India

Web Site : www.arteeindia.org



Regd. & Recognised by Govt. of India

ARTEE/P/32/02/2018

06/02/2018

Ref. No.

Date.....

The Chief Executive Officer,
Prasar Bharati, Copernicus Marg,
New Delhi - 110001

[Kind Attention Sh. Dinesh Mahur, ADG(A), Prasar Bharati]

Subject : Submission of points by ARTEE on letter from Hon'ble MIB to Prasar Bharati dated 31/01/18 (encloses as Annexure - I) for taking further action after treating 25/2/99 scales as an Upgradation while granting MACP and subsequent Recovery from Employees.

Respected Sir,

With warm regards, It is learnt that Hon'ble MIB has written a letter to Prasar Bharati on 31/1/18 further action after treating 25/2/99 scales as an Upgradation while granting MACP and subsequent Recovery from Employees.

We are of the view that while taking decision Hon'ble MIB has not given due consideration on some facts which are important while taking a decision on an issue which pertains to 18000+ Employees. We hereby submit following additional facts for your kind consideration and review your decision.

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

Matter is subjudice

(A). It is pertinent to mention that matter is subjudice in Hon'ble High Court Delhi through WP(C) 2034/2017.

(B). Two OAs 3046/2015 filed by Programme Staff Association and OA 2596/2015 are still pending in Hon'ble CAT PB in Delhi and in both the OAs there is a stay on issuance of any adverse order on 08/9/2014. So the impugned order may invite contempt in both the OAs.

(C). The stay imposed only on the order of CAT in OA 1118/2015 by Shyamli Biswas Case. This OA is not applicable on the Order of CAT in OA 2479/2015 filed by this Association. It is pertinent to mention that in this OA Govt, has not challenged the order in Hon'ble High Court, Delhi through WP(C).

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[1]. The scales of Engineering Assistants was revised as on 01-01-1978 in pay parity 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 EAs,SEAs,AEs, ASEs w.e.f 01-01-1978 and Arrears were paid. In this order it is clearly mentioned that Scale is Revised. (Copy enclosed as Annexure II).

(2). 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. Sound Recordist's scale was never downgraded and protected.

(3). When Associations Agitated 90% of scale was restored order dated 05.12.1997, (Copy enclosed as Annexure III). Prasar Bharati came into existence on 23/11/1997. Govt. left balance 10% of Pay scales to be decided by Prasar Bharati the Authority which came in to existence in 23/11/97 restored it w.e.f. 01.01.1996 through order 25/2/1999. The scale was granted to 11 categories.

(4). 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.

(5). The High level Group of Ministers (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.

(6). PB Granted 7th CPC and MACP to Govt. Employees working in Prasar Bharati on deemed deputation since clarity was brought by Amendment in PB Act 2012 with the Approval of Prasar Bharati Board over and above 25/2/99 scales. (copy enclosed as Annexure-IV). In its proposal PB mentioned that these scales were granted for higher job contents and responsibilities so as per clause 35 of ACP Clarification 2001 it has not to be treated as an Upgradation.

(14). In W.P.(C) 4151/2003 filed by MIB in Hon'ble High Court Delhi Challenging the decision of CAT Delhi in OA 2293/2001, CAT for ACP filed by PSA, Hon'ble HC dismissed the Writ and upheld the CAT Verdict to grant the ACP. Pl. note that the Applicants in this case are incumbents of 25/2/1999 order. During discussions in this writ both DoPT and DoLA advises are discussed and debated. On the basis of these Advise Govt. Writ was dismissed and the verdict is implemented also. The beneficiaries are incumbents of 25/2/99.

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

The Order released by DOPT Dated 03/03/2016 based on verdict by Hon'ble Supreme Court about Recovery from Employees clearly established guidelines. 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 Guidelines are as follows :

- (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.

In hearing of MA by MIB to vacate the stay, Hon'ble CAT allowed OA 2479/2015 filed by ARTEE and said that this OA is subjected to the verdict in C.W.J.C. No. 2034/2017 by MIB.

(7). After a long Gap of 15 yrs, DoPT advised MIB to treat the 25/2/1999 scales as an Upgradation while granting MACP. (Copy of DoPT and MIB Letter enclosed as Annexure IV)

(8). The issue of MACP Recovery was sent to DoLA (Copy enclosed as Annexure-VI) and in their considered Advise. DoLA advised as follows : (enclosed as Annexure V)

Clause 9, 10 , 16 , 17 and 25 may be read for reference.

The recent communication of MIB has not mention anything about this exhaustive Advise but has a mention a two para advise of DoPT. It is pertinent to mention that both DoLA and DoPT are Nodal Ministries to Advise Administrative Ministries like MIB on issue pertaining to Litigation and Policy. It is indeed surprising that MIB did not mention any thing about Advise of DoLA.

(9). When PAO Started Recoveries, Prasar Bharati has issued a Speaking Order dated 03/06/2016 has made it clear that these scales are replacement scales and not the Upgradation. PB has clearly conveyed its decision of granting MACP ignoring these scales. (Copy enclosed as Annexure VI). MIB Letter ignored this Speaking Order also

(10). 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.

(11). In an Individual Case filed by Ms. Shyamli Bishwas in CAT Delhi through OA 1118/2015, Hon'ble Court allowed this case and gave a clear verdict not to treat these scales as an Upgrataion while granting MACP.

(12). The three Association i.e. ARTEE, PSA & ADP3 representing 11 Categories has challenged the move in Hon'ble CAT through OA 2479/2015, OA 3046/2015 and OA 2596/2015. Hon'ble CAT granted absolute stay on the recoveries whatsoever. OA 2479/2015 is allowed by Hon'ble CAT on 01/12/17 and mentioned that this is subjected to the outcome of C.W.J.C. 2034/2017 in Shaymli Biswas case.

(13). Recent judgment in case of Floor Assistant & Floor Manager while granting ACP. Hon'ble High Court clearly says that scales granted 25/2/1999 are to be ignored while granting ACP.

Such step of treating these scales as Upgradation which were w.e.f 01/01/78 shall cause huge amount of Recoveries which is atrocious. Such step will be injustice in the eye of laws and will be against the verdict of CAT Delhi in OA 1118/2015 by Shaymli Biswas and in OA 2479/2015. It will open unlimited anomalies, Recoveries, Court Cases and ruin the career prospects of more than 18000 employees in 29 Cadres including Sub ordinate Engg. and Program people.

Our Prayers

We request you to consider following important factors and review that decision by Hon'ble MIB as per dated 31/1/2018.

- [1]. Approval of MACP by Prasar Bharati Board ignoring these scales as Upgradation.
- [2]. The exhaustive and detailed DoLA Advise which clearly say that these scales are not upgradation and we are entitled for ACP/MACP ignoring these scales.
- [3]. Prasar Bharati speaking Order which justifying the grant of MACP ignoring these scales.
- [4]. Clause 35 of ACP Clarification 2001.
- [5]. Hon'ble High Court Verdict in W.P.(C) 4151/2003 filed by MIB in Hon'ble High Court Delhi Challenging the decision of CAT Delhi in OA 2293/2001 in case of ACP to Programme Executives filed by Program staff Association.
- [7]. Stay in intact in PSA and ADP3 Cases OA 3046/15 and OA 2596/15.

We request your high office to differ the decision till the issue is decided by Hon'ble High Court in WP(C) 2034/2017 Shaymli Biswas and Ors.

It will save future of 18000+ Employees and Recoveries thereof.

Enclosed as above

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Thanking you,
Yours faithfully,



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