

## Real Facts About Stay on Recovery and Re-Fixation

As you are aware, our Association was the first to approach Court of Law with the OA No.2479/15, when the Ministry of Information & Broadcasting issued order dated 08.09.2014 for re-fixation and recovery based on the DoPT clarification that 1999 scales should be counted against one up-gradation permissible under MACP Scheme. In this OA, we got interim stay against recovery and re-fixation and the Honbl CAT directed the department that "in the interest of justice, the respondents shall not pass any adverse orders against the applicant before the next date of hearing"

[Click here for Interim Order dated 13.07.2015](#)

And in this case ARTEE got the absolute Stay on 08.09.2015 against the implementation of the MIB order dated 8.09.2014. It was due to this stay that all the Subordinate Engineering employees saved from re-fixation and recovery from 13.07.2015 onwards.

[Please see the Absolute Stay order dated 27.07.2015](#)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH, NEW DELHI	
ORDER SHEET	
COURT NO. : 2 27/07/2015 O.A./2479/2015	No. Of Adjournment : 14  ASSOCIATION OF RADIO TELEVISION ENGINEERING EMPLOYEES & OTHERS -V/S- M/O INFORMATION AND BROADCASTING
ITEM NO:13 FOR APPLICANTS(S) Adv. :	Shri Yogesh Sharma
FOR RESPONDENTS(S) Adv.:	Shri Sameer Aggarwal for R-1 Shri Rajeev Sharma with Ms.Radhalakshmi for R-2 & 3

Notes of The Registry	Order of The Tribunal
	<p>Reply is yet to be filed. Learned counsel for the respondent No.1 seeks 8 weeks time to file the reply and learned counsel for the respondent Nos.2 and 3 seeks two weeks time to file the reply. In our considered view, it is unreasonable to seek 8 weeks time for filing reply. However, learned counsel for the respondents admitted that stay operation be made absolute.</p> <p>List the case under the head "Ready For Hearing Matters" on 24.09.2015.</p> <p>(SHEKHAR AGARWAL) MEMBER (A)</p> <p>( G. GEORGE PARACKEN) MEMBER (J)</p> <p>itb</p>

OA No.2479/15 was finally allowed by Learned Tribunal on 01.12.17. The OA 2479/2015 filed by our Association disposed of in terms of the Delhi CAT order dated 31.03.2016 in Smt. Syamali Biswas case (OA No.1118/2015) and the same was subject to the orders passed in Writ Petition No.2034/2017.

[Click here for Delhi CAT Order dated 31.03.16 in OA 1117/2015 by Smt. Syamali Biswas](#)

[Click here for Delhi CAT Order dated 01.12.2017 in OA 2479/2015 filed by ARTEE](#)

Unfortunately this OA was clubbed with Mrs. Shaymali Biswas Case which was pending in Hon'ble High Court Delhi and being handled by some self styled leaders.

On 11.04.2017, the Honb'l Delhi High Court stayed the Delhi CAT order and there by stayed the absolute stay passed by Delhi CAT in Mrs. Shyamali Biswas Case. Taking advantage of removal of absolute stay, Hon'ble MIB issued 31.01.18 order. On 06.04.18, Prasar Bharati directed DG (AIR) to comply the MIB order dated 31.08.18. We approached Hon'ble High Court against this order and high Court directed us to approach CAT, since 31.01.18 order is a fresh cause of action, till then protection was provided. But before we could file Contempt Petition in CAT, DG (AIR) released the 26.06.18 order.

After the release of 26.06.18 Order by DG(AIR), on 27th and 28th June 2018 itself a Contempt Petition in OA 2479/15 was prepared and the contempt was listed on 29.06.18. After hearing Ld. Judge Ordered the Respondents "not to take any coercive action" and to file Reply upto 02.08.18 (next hearing date)

### Copy of CAT Order in CP 371/18 in OA 2479/18

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

ORDER SHEET

COURT NO. : 2  
29.06.2018  
C.P./100/371/2018  
O.A./100/2479/2015

ASSOCIATION OF RADIO TELEVISION ENGINEERING  
EMPLOYEES & OTHERS  
-V/S-  
AMIT KHARE

ITEM NO:1  
FOR APPLICANTS(S) Adv. : Dr. Ashwani Bhardwaj  
FOR RESPONDENTS(S) Adv. :

Notes of The Registry

Order of The Tribunal

Heard the learned counsel for the petitioners.

2. Issue notice before admission to the respondents, returnable on 02.08.2018.

3. Personal presence of the respondents is dispensed with for the time being.

4. It is needless to mention that the respondents shall not take any further coercive steps against the petitioners, till the next date of hearing.

Order by **DASTL**

Free Copy U/R 22 of CAI (Procedure Rules)  
प्रमाणित सत्यप्रतिनिधि  
CERTIFIED TRUE COPY  
दिनांक/Dated: 29/06/2018

श्री. व. अजय कुमार (सा.)  
Section Officer (J)  
केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

(V. AJAY KUMAR)  
MEMBER (J)

This was the fastest possible action by ARTEE that Stay was obtained on 29.06.18 itself against the order issued on 26.06.18. 30th / 01st were Saturday and Sunday and we got copy of the Order on 02.07.18. On 02.07.18 itself, copies of Contempt Petition with the order were send by hand to all Respondents i.e. Secretary, I&B, CEO, PB, DG(AIR), DoPT. We uploaded format of a covering letter and asked our representatives to submit the copy of CAT order to their Station head with a clear

Clause that in case of any effort of Downgradation/Re-fixation, we shall make him as contemnor in our contempt 371/18 in OA 2479/15.

Please see the format we uploaded in website on 02.07.18

[Format to be Submitted to Station Head along with Copy of CAT Order.](#)

The Contempt Petition CP. No.371/18 in OA 2479/15 was listed for hearing on 24.09.18, 22.10.18, and 14.12.18. But department had not yet submitted reply to the Show case notice serve to them on 29.06.18. Hence the Interim relief ordered by the Court ( in CP. No. 371/2018 in OA 2479/2015 filed by ARTEE) preventing the respondents from taking any coercive action on the Order dated 26.06.18 issued by DG (AIR) about recovery and re-fixation is continuing.

Mean time we filed another OA 2575/2018 with the following demands and requesting to stay the operation of the order during the pendency of the present OA as an interim relief.

- 1). Quash the Order dt. 31.01.2018, issued by the respondents, in continuation of order dt. 08.09.2014, and
- 2). Quash the Order dt. 06.04.2018 & 26.06.2018 or any other consequential order (s), issued by the Respondents, in continuation of orders dt. 31.01.2018 and dt. 08.09.2014,
- 3). Direct the respondents not to treat the pay scales granted vide O.M. dt. 25.02.1999, not as an upgradation but as Restoration and Replacement scales for all the purposes, including for ACP/MACP, with all consequential benefits, including restoration of pay and allowances and refund of the recovery, if any made by the Respondents, in pursuance of the impugned orders.
- 4). Allow the OA with all consequential benefits of pay allowances and promotion, with all arrears, and costs and pass any other or further order(s), in favour of the Applicants, which this Hon'ble Tribunal may deem fit, just & proper in the above- mentioned facts & circumstances.

In our earlier OA No.2479/15, we had challenged the MIB order dated 08.09.2014. Even though, ARTEE had got favourable order in the above OA, it was subject to the decision in WPC No.2034/2017 pending in Delhi High Court. We filed the fresh OA 2575/2018 with an aim to overcome this negative factor and to have complete say and control on the case against recovery. But in hearing held on 13.07.2019 the government advocate mis represented the Court that our Association is not a registered Association and benefits cannot be granted to members of an unregistered Association, and hence tribunal granted interim stay only to the applicants who were a party in personnel capacity.

We filed MA No.3612 / 2018 seeking to modify the earlier interim order dated 13.07.19 by extending the benefit of the same to Association also. In the hearing our advocate submitted the proof of our registration, but government side now submitted that our association is not a recognized Association. They also submitted that they are not recovering any amount from any employee (probably due to the Stay in our CP 371/18 which prevents government from taking any coercive action) including from the

members of the Association. But the government side raised a point that since our members which were around 4600 were posted all over the country and it is not possible to verify their whereabouts and individual service particulars and any general order may lead to filing of contempt cases. Unfortunately Court accepted this argument of government side and ordered that it cannot be said that members of the said Association, who were not parties in their individual capacity before the tribunal, are also entitled for any individual reliefs, automatically.

As you are aware, in many OAs filed by Associations including ARTEE (which were not recognized as per CCS (RSA) Rules) before and after the said decision in our OA, Tribunals across the Country had granted benefits of the OAs to individual applicants, un recognized associations and to the members of the un recognized associations who were not a party to OAs.

As is evident from the order, the order itself is contradictory. In para 8 of the Order, the Honbl Court also agrees that as per Rule 4 (5)(b) of CAT (Procedure) Rules, 1987 enables an Association to join along with affected employees to espouse the common cause, but in the next sentence itself it interprets otherwise.

**We have decided to challenge the decision in this OA, because it might become a bad precedent in future for any association- backed court cases.**

**However, members may kindly note that since we are having a strong order in CP 371/18 in OA 2479/15 (the stay obtained in this OA was so comprehensive that it is quoted in all latter OAs of different Associations), all ARTEE Members are protected.**

We are glad to know that now, many other Associations are utilizing the Absolute Stay granted in OA 2479/2015 filed by ARTEE against any adverse orders for re-fixation and recovery.

However, probably due to improper handling of the case by one such group, the stay in our case was mistaken as status quo. As members are aware, there is a big difference between stay and status quo, which can be easily interpreted negatively by the authorities. Not only that. In their case, when this limited status quo was first given in July 2018, it was for both fixation as well as recovery. However, in the next hearing (October 2018), this Interim Relief was modified to the extent of allowing re-fixation!

In contrast, the Interim Order granted in ARTEE's CP 371/2018 in OA 2479/2015 again grants a clear stay on any coercive action against petitioners. Kindly note that DoPT is also one of the respondents in this case.

Please read above Court order dated 20.07.18 to know how split group got status quo in their case. It was based only on the court order in OA 2479/2015 filed by ARTEE and other two OAs.

Learned counsel for the applicants produced three orders wherein the Vacation Bench of CAT had considered the similar matter and passed orders to the effect that the respondents shall maintain *status quo* in respect of fixation of pay as well as recovery (OA No.2479/2015, OA No.1003/2007 and OA No.3046/2015).

And please see how on 30.10.18 status quo changed only as stay against recovery, with liberty to the department to re-fix salary. Hence if no re-fixation happened to employees treating 1999 scales as upgradation for MACP, then it is only due to earlier cases filed by ARTEE.

After the defeat in CAT on 30.10.18, the split group filed appeal in Delhi High Court and on 26.11.2018, Hon'ble Delhi High Court restored the earlier CAT order dated 20.07.18 ([which they got from Delhi CAT by mentioning the stay order in OA. 2479/2015 filed by ARTEE and others](#)) by cancelling the interim CAT order dated 30.10.18.

From the above points, it is very clear that the reason or base of the Delhi CAT interim order dated 20.07.18 in OA 2449/18 (filed by split group) and hence the OM issued recently for status quo about re-fixation and recovery is the Delhi CAT Order in OAs filed by ARTEE.

Due to the stay against recovery and re-fixation as per order dated 26.06.2018, department was not initiated any recovery and re-fixation by considering 1999 scales as one up gradation for MACP. But when audit team directed for recovery and re-fixation in DDK Lucknow, ARTEE submitted letter dated to representing the stay against recovery and re-fixation in our case.

[Click here for letter dated 24.01.19 to MIB](#)

**Now O/o DG (AIR) has initiated correspondence with Prasar Bharati, based on the above letter and we are hopeful of issue of Orders within a short time.**

**Hence our members are informed that ARTEE has ensured that there will not be any re-fixation and recovery, since we have stay against recovery and re-fixation due to treating 1999 scales as one up-gradation for MACP. Members are requested to neglect the false propagandas spread by negative elements.**

**[ARTEE Central Office](#)**