

Report on Latest Status of EA-SEA Merger and EA to SEA Promotion Issues

(With a detailed Analysis)

Dear members, as you are aware, the CWC meeting held at Jamshedpur resolved to request department to desist from SEA promotions till February 19.02.2019 (hearing date of EA-SEA merger case filed by Sh. Vijay Haror and others). Unfortunately the case could not come up for hearing on 19th, and next date is on 20.05.2019. Vide this three-part Report, ARTEE Central Office wishes to update members about these developments:

Part -1

First of all we wish to address the concerns of some EAs.

WE WISH TO INFORM EA CADRE THAT PROMOTION TO SEA POST WOULD IN NO WAY AFFECT YOUR ALREADY RECEIVED MACP BENEFITS. Due to the very nature of MACP Scheme, MACP benefits must be given in the Grade Pay Hierarchy, whatever is the Grade Pay of your Hierarchical post. In fact, this is the difference between ACP Scheme and MACP Scheme.

MACP Scheme ensures that, if you haven't received any promotion in the first 10 years of your service, then as per Grade Pay Hierarchy, grant the Grade Pay next to your post's Grade Pay.

The 6th CPC Grade Pay Hierarchy is as follows: 1900, 2000, 2400, 2800, 4200, **4600, 4800, 5400** in PB 2, 5400 in PB 3, 6600 and so on (5400 PB2 and 5400 PB3 are two distinct Grade Pays as per MACP Rules). Hence if an EA has not received a promotion to SEA post in the first 10 years of his service, then he must get Rs.4800/- as MACP, because EA post's GP is Rs.4600/- as granted by 6th CPC. It is irrelevant that SEA post's GP also happens to be Rs.4600/-. You must get Rs.4800/- GP as first MACP, even if SEA post Grade Pay were 4600/-, or 4800/- or 5400/- or 6600/-. Your subsequent promotion to SEA post would in no way affect this already granted MACP benefit.

Financial up-gradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. Thus, we should distinguish between Grade Pay of the post and Grade Pay of the employee received as MACP, by virtue of his completing 10/20/30 years without promotion.

The only condition that would so affect the MACP benefit is when both EA and SEA posts are having **same Grade Pay as per Recruitment Rules**. In such case both promotion and MACP has to be in same Grade Pay.

In our case, EA and SEA posts are in different Grade Pays as per Recruitment Rules. The 4600 GP which is now granted to EA cadre is only due to the implementation of DoExp OM dated 13.11.2009, as a result of the Sixth CPC recommendations. It is not due to any other RR amendment. In such circumstances, promotions would in no way affect your already granted MACP. Please note that merger of EAs with SEAs is also as per the DoEXP OM dated 13.11.2009.

In fact, there is a DOP&T order dated 24.03.2009 on how to frame RR Rules for cadres merged / upgraded due to 6th CPC recommendations. It directed all Ministries to

complete the formalities within 6 months. If our department could not do it even after 10 years, it is hardly our fault and it cannot be seen as a reason to treat EA and SEA as separate cadre with same GP for the purpose of MACP. There exist clear DoPT guidelines to neglect promotions and up-gradations granted to the merged cadres. As you are aware, in 2010, DG AIR issued Order to extend MACP benefit of 4800 & 5400 GP to SEAs on this basis only.

By granting Rs.4600/- GP to EA cadre, DG-AIR implemented DoExp OM dated 13.11.2009 only partially. The other part of the DoExp OM which instructs to merge the two cadres has not been implemented. The relevant Recruitment Rules have not been amended.

Para 5 and Para 8 of the Annexure -1 of the MACP Order dated 19.05.2009 are very clear in this matter. In present case, only Para 5 is applicable, which states: ***"Promotions earned in the past to those grades which now carry the same grade pay due to up-gradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting up-gradations under Modified ACPS"***. EA post Grade Pay was upgraded to 4600/- only due to 6th CPC recommendations.

Para 8 (which states that Promotions earned in the post carrying same grade pay in the promotional hierarchy ***as per recruitment rules*** shall be counted for the purpose of MACPS) is not at all applicable in our case because EA and SEA grade pay is not same as per the extant Recruitment Rules.

There are judgments by Hon. Supreme Court & High Court reinforcing the rule that MACP must be granted in the Grade Pay hierarchy, whatever be the GP of promotional post - be it the same as feeder post, same as the next GP in the GP hierarchy or more than the next GP in the GP hierarchy. We refer the members to three such judgments:

- i) WPC 5146/2012, UoI Vs Delhi Nurses Union in Hon. Delhi HC (an SLP by Govt against this Order was dismissed by Hon. SC on 04.03.2013)
- ii) WPC 9266/2015, NCT Delhi Vs S.K. Saraswat in Hon. Delhi HC. This judgment upheld a CAT PB Order that gave MACP in 8700 GP to the applicants, Principals in Delhi State Government Schools (carrying a GP of RS.7600/-), even though the promotion post (Deputy Director of Education) also carries same 7600gp. This is a very encouraging judgment, that beautifully described how MACP tried to overcome the shortcomings of ACP and how, in MACP Scheme, the next grade pay in the grade pay hierarchy MUST be given as next MACP, IRRESPECTIVE of the grade pay of the promotion post.
- iii) OA 1031/2015, Satya Maya Singh Vs UoI, in Hon. CAT PB

If the department had felt that our 4800GP as first MACP was wrong (due to Para 8), it would have withdrawn it a long time ago. Because they knew that it was given to us as a Pay Commission recommendation (para 5) they did not do any such thing.

By the way, PAOs have no objection for such so called up-gradations granted by Pay Commissions. They are ignoring such upgradation while counting the total number of upgradations for MACP reckoning. They are treating only those higher scales granted by the department apart from those granted by Pay Commissions as up-gradation for the purpose of MACP. For example, as per them, 25/02/99 scales are an up-gradation, because as per the DoPT clarification they are apart from the scales recommended by 5th CPC. MIB ruling on 25/02/99 Scales also sees it as an upgradation. (Please see the MIB letter dated 08.09.2014). But this is a completely different matter and nothing to do with present issue of EA to SEA

promotions. As per this MIB ruling, Pay scales granted as per MIB order dated 25/02/99 is an up-gradation for MACP.

PART -2

We wish to inform our SEA members that this merger is in their interest. Because due to the implementation of DoEXP OM dated 13.11.2009, which is a part of the Sixth CPC recommendations, EA cadre was granted 4600 GP, which is the Grade Pay of SEA cadre. As remarked in Part-1 above, the same CPC also recommended that in case a post exists in 7450 Pays Scale, this 6500 post should be merged in that post. Otherwise, an anomaly would arise: prior promotes would be at a disadvantage while considering future benefits. Hence, it is essential that previous promotion should be ignored. THE MOST PUCCA WAY FOR IGNORING SUCH PAST PROMOTIONS IS MERGER.

SEA members may please note that your post would NOT be devalued or degraded by this merger. YOUR SENIORITY WILL BE INTACT. It is EA post which is being merged into SEA post, not vice-versa.

Now we come to the part of AE post. As per existing rules, only an SEA (with total 8 years service in the grade of SEA and EA combined, as on 1st January of the year in which the exam is held) can write LDCE exam for AE post.

This Rule shall have to be modified as and when EA-SEA merger happens, because after such merger, there will not be either SEA or EA post. Instead, a post with a new name (like "Broadcast Engineer"), comprising all SEAs and EAs would come into existence. Accordingly, the AE promotion Rule must be modified reflecting this new reality. In this way, even present EAs can also become eligible to write LDCE for future posts.

But what is the coming – into – effect date of such modified Rules?. A study of the DoPT Rules and guidelines, established practice in different departments, as well as numerous court judgments indicates that normally such Rules come into effect prospectively - from the date they are notified in Gazette -because such Rules are statutory in nature. Thus, only those vacancies arising after this notification date would be governed by these new rules. Earlier vacancies (that had arisen before notification date) must be governed by old Recruitment Rules only.

Why so? Because, Recruitment/promotion/any such benefits granted according to a new rule should not adversely affect a person who had already got such a benefit as per old Rule, prior to this amendment. If a modified Rule comes into effect with an old (retrospective) date, then it might adversely affect those persons who got benefit as per old rules in the past.

That is why Recruitment Rules amendments and mergers are normally given effect from date of notification in Gazette.

But for benefits like MACP, all previous promotions will be ignored, Please note that PAOs are checking only one thing: whether the retiree had taken Both FR22(1)(a)(1) benefit while accepting SEA promotion and later taken MACP ignoring that FR22? If so, they are withdrawing one MACP. Thus, this is having a negative effect on those who got SEA promotion prior to 01.01.2006.

What is the remedy for this? One remedy is merger, as informed earlier. However, because it is likely to come into effect only with a prospective date, what about those who already retired?

ARTEE is trying to convince the PAOs to ignore such earlier promotions by highlighting Paragraph 5 of MACP Order. For example, our South Zone Office-bearers have approached both AIR & DDK PAOs and presented them with relevant documents. We are hoping for a positive result in this endeavour.

Apart from this, ARTEE's OA 2479/2015 in this matter has been disposed off in terms of Hon. CAT's Orders in OA 1118/2015, where Hon. CAT clearly instructed the govt to restore the two withdrawn MACP benefits to the applicant, Smt Shyamali Biswas (in Rs. 4800 & 5400 GP). Unfortunately the government challenged this decision in Hon. High Court, where it is presently pending.

After 01.01.2006 (last SEA promotion Order was issued in 2009 and their pay fixation was done in 2010), FR 22(1)(a)(1) benefits were not given because both posts were carrying same Rs.4600 GP by virtue of 6th CPC recommendations.

Hence, we repeat that MERGER IS IN THE INTEREST OF SEA CADRE. SEAs ARE NEITHER DEVALUED NOR DEGRADED BY MERGER. ON THE CONTRARY, MERGER ENSURES THAT THEIR MACP BENEFITS WOULD BE INTACT.

Part-3

Latest Developments: In December 2018, Sh. Ashwani Dagar and others (supported by AADEE,) filed OA 4703/2018 in Hon.CAT Delhi, seeking stay on EA to SEA promotion. Their contention was that promotion would reduce their Grade Pay. On 28.12.2018, Hon. CAT had granted stay. But this stay was vacated on 13th February, on grounds of non-maintainability. (The Hon. CAT said that of the 9 applicants, only the three EAs have cause for filing the OA. The other 6 have no cause to be aggrieved by the proposed promotions).

The subordinate engineering fraternity is extremely disturbed by two aspects of this OA.

The first aspect is that, instead of seeking protection to themselves, they sought to block the entire promotion exercise, thus depriving all the aspiring EAs and below cadres a chance for career progression. The eligible EAs have lost one full year because of this OA. These people are trying to defend themselves by stating that it is only money that matters, and those who seek career progression or promotion are fools!

The second most disturbing aspect is their attempt to justify the presence of Techs, Sr Techs etc as applicants in the OA by stating that all are having same Grade Pay. Please read the following extract from the Hon. CAT judgment:

“The contention of the applicants that the posts of Technicians and Sr. Technicians are having the same Grade Pay as that of Engineering Assistants as well as Sr. Engineering Assistants and that the post of Assistant Engineer is a promotional post from the post of Sr. Engineering Assistant, and hence the single OA is maintainable, cannot be accepted...”

In simple words, AADEE is claiming that ***all the four cadres, namely Tech, Sr Tech, EA and SEA all are having same Grade Pay of RS.4200/-!*** This is totally untrue. It is most dangerous thinking and against the interest of all employees. As of today, both Technicians and Sr. Technicians are having GP of 4200/-. DG-AIR says that it is not upgraded scale. But Ministry is mum on the matter. On the other hand, EA and SEA are having a GP of Rs. 4600/-, whose status is again under dispute (As per Ministry's Letter dated 08.09.2014, the scales granted as per MIB order dated 25/02/99, must be considered as one up-gradation). But as per AADEE's argument all four cadres are having same Grade Pay. ***The only conclusion that can be drawn***

from this preposterous stand is that AADEE is bent on merging EA and SEA posts in 4200 GP. If this is indeed so, then it would be the greatest disservice that they can do to both SEAs and EAs.

Anyway, after this dismissal, Sh. Dagar filed WPC 1653/2019 in Hon. High Court Delhi. Hon. HC declined to grant stay on SEA promotions. Petitioners could not convince the Hon. Judge that these promotions would adversely affect them.

The Hon. Judge observed: *"...we are prima facie of the view that even applicant Nos. 1 to 3 – who are petitioner Nos. 1 to 3 before us, MAY NOT HAVE HAD A VALID GRIEVANCE to oppose the proposed promotions from the post of Engineering Assistant to Senior Engineering Assistant..."*

The Hon. Judge further stated: *"Petitioners submitted that the proposed promotions from the post of Engineering Assistants to Senior Engineering Assistants, if made, would have the effect of reducing the Grade Pay of the promotees"*.

The Hon. Judge did not accept this contention, stating that :*"Prima facie, it appears to us that this cannot be the result, since it would be opposed to the well settled principles of service jurisprudence – that upon promotion the promotee's pay cannot be reduced..."*

As mentioned earlier, from the beginning we have been pointing out that the publicly expressed fears of AADEE leadership regarding reduction of Grade Pay are totally baseless. The differences between Para 5 and Para 8 of the MACP Order have been repeatedly explained.

It is sad that a leadership which was at the helm of affairs for last two decades cannot interpret simple rules. They seem to be completely unaware (or feigning ignorance for reasons best known to them) about the difference between Grade Pay of Post and Grade Pay earned by an employee due to stagnation. The great tragedy is that innocent people are suffering from their misadventures.

The Hon. Judge also observed: *"...merely because there is a proposal to merge the posts of Engineering Assistants and Senior Engineering Assistants that, by itself, cannot be a reason to withhold the promotion process since the respondent authorities are bound to act in terms of the existing Recruitment Rules which have statutory force..."*

In Sunny Joseph case which allowed SEA to AE promotions, the Honbl CAT Ernakulam had observed that; *" The new recruitment rules as and when notified will have prospective and not retrospective effect. The vacancies occurring prior to amendment of recruitment rules, which were delayed for whatever reason, will have to be filled by examination and DPC as per recruitment rules in existence on the date of occurrence of vacancies..."*

As you are aware, there is a continuous hate propaganda against ARTEE and it's leaders on this issue. Through this Report, we wish to inform our members about the actual Rule position, so that a well informed decision can be made.

EA-SEA merger in Rs.4600 GP (as stipulated by 6th CPC) should have been completed in 2011 itself. Unfortunately, because at that time post-1999 EAs were still in 5000/- scale, this could not take place as it might have adversely affected post-1999 EAs.

ARTEE IS COMMITTED FOR MERGER IN 4600 GP, AS STIPULATED BY SIXTH CPC.

As you are aware, ARTEE is fully supporting the EA- SEA merger case in Delhi High Court by giving full funding to Sh. Vijay Haror. In addition, we have also decided to avail the service of senior advocate Sh. Manish Bisnoi. This once again establishes the commitment and sincerity of ARTEE towards the issue of EA –SEA merger in 4600 GP.

We are open to suggestions from our esteemed members regarding our immediate course of action in the light of these developments.

ARTEE Central Office