

Real Facts About Stay on Recovery and Re-Fixation

As you are aware, ARTEE was the first to approach Court of Law with the OA No.2479/15, when MIB 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 on 13.07.2015 and got the absolute stay on 08.09.2015. It was due to this stay that all the Subordinate Engineering employees saved from re-fixation and recovery from 13.07.2015 onwards.

OA No.2479/15 was finally allowed by Delhi CAT 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.

On 11.04.2017, the Hon'ble Delhi High Court stayed the Delhi CAT order dated 31.03.2016 in Smt. Syamali Biswas case. Hence the stay order in our case also affected.

Taking advantage of this development Hon'ble MIB issued order dated 31.01.18 for recovery and re-fixation.

We approached Hon'ble High Court against this order dated 31.01.18 and high Court directed us to approach CAT since 31.01.18 order is a fresh cause of action, till then protection was provided. After this DG (AIR) issued another order dated 26.06.18 for recovery and re-fixation.

After the release of 26.06.18 order by DG (AIR), ARTEE filed Contempt Petition (as directed by Delhi High Court) in OA 2479/15, and CP. No.371/18 was listed on 29.06.18.

After hearing Court directed the respondents **“not to take any coercive action”** and to file reply upto 02.08.18 (next hearing date). **Hence ARTEE got stay against DG AIR order dated 26.06.18 on 29.06.18 itself.**

The Contempt Petition CP. No.371/18 was listed again on 03.08.18, 24.09.18, 22.10.18, 14.12.18, 08.03.19 and on 27.05.19. But department had not submitted reply to the show cause notice serve to them on 29.06.18.

Hence the Interim relief ordered by the Court on 29.06.19, which is preventing the respondents from taking any coercive action on the order dated 26.06.18 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 dated 31.01.2018, issued by the respondents, in continuation of order dated 08.09.2014, and
- 2). Quash the order dated 06.04.2018 & 26.06.2018 or any other consequential order (s), issued by the Respondents, in continuation of orders dated 31.01.2018 and dated 08.09.2014,
- 3). Direct the respondents not to treat the pay scales granted vide O.M. dated 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 favor 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 favorable order in the above OA, it was subject to the decision in WPC 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 misrepresented 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.

But the government side submitted that they are not recovering any amount from any employee (due to the Stay in our CP 371/18 which prevents government from taking any c action) including from the members of the Association.

But the government side raised a **“practical issue”** that since our members which were around 4600 were posted all over the country and it is 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.

Even though it is just a technicality that court excluded Association from relief which is granted to individual applicants before the tribunal, it was only after the submission by the government advocate 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.

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

As it is evident from the order, the order itself is contradictory. In para 8 of the order, Court also agrees that says 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.

Now after the RSA Subscription deduction in the financial year 2019-20, the full details of ARTEE members are with the department and hence the **“practical issue”** quoted by the government advocate is no more valid.

As we told earlier, all ARTEE Members are protected as per the Court Order in CP 371/18 in OA 2479/15.

We are glad to know that now AADEE also utilized the Absolute Stay granted in OA 2479/2015 filed by ARTEE in their support in OA. No.2449/2018

Please read below portion from Court order dated 20.07.18 in OA. No.2449/2018 to know how AADEE got status quo in their OA No.2449/2018. 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).

It is now very ridiculous that some members of AADEE in south zone are wrongly propagating that ARTEE doesn't have any valid stay order in this matter.

We request them to go through the above Delhi CAT order dated 20.07.2018, where it is mentioned that advocate of AADEE itself produced *“three Court Orders (OA No. 2479/2015 filed by ARTEE, OA No. 1003/2007 and OA No.3046/2015) 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”*.

From the above it is established without any controversy that even the advocate of AADEE mentioned the stay order in the OA filed by ARTEE to get stay in their case.

It is very condemnable that members of the same association are now propagating that ARTEE don't have stay order against recovery and re-fixation. It is very unfortunate that they are acting just like Goebbels. This is just an example and they are propagating similar false propagandas in each subject.

These false propagandas really establish their wrong intentions and motives. Welfare of employees is not included in their agenda. Their real agenda is the personnel glorification of one individual.

Hence we request all employees who fallen to their various false propagandas to come back to ARTEE to strengthen the real welfare force of employees in AIR & DD. We are working democratically as a true welfare service association, and we invite all engineering employees to work together with ARTEE to safeguard the genuine interest of engineering employees.

Central Office, ARTEE