

The current scenario and chronology of EA(5K) issue

Central Office is receiving frantic calls from various cadres which are suffering from multiple scale problem after the dismissal of Govt. SLP in EA(5K) Gwalior Case. We have prepared a chronology of the issue and all are advised to go through it carefully.

The employees of subordinate Engineering cadres mainly Engineering Assistants are divided into two separate pay scales within the same cadre with the criteria of date of joining in the department. While both the employees in the same cadre are performing same duties, with same designation and without any difference in their job requirements and even with a common seniority list. This discrimination in pay scales of employees in the same cadre based on the cut off date of 1999 is a clear violation of Article 14 and 16 of the Indian constitution. ARTEE took up the cause through filing two cases vide OA No. 1742/2004 and OA No.1743/2004 at The Principal Bench of Hon'ble CAT, Delhi, in 2004. OA No. 1742/2004 was filed by the five members of our association, who joined service after qualifying the examination in the years 2000 & 2001. Simultaneously Sh. Mahendra Singh Rana, EA, who was joined in March 1999, after qualifying the examination in the year 1994, filed another case in the same court under OA. No. 1743/2004. On both the cases the applicants advocates stated that non accord of higher pay scale on the basis of cut off date would be an invidious discrimination as principle of equal pay for equal work has been denied to applicants. By effective persuasion we won in CAT Delhi and in Hon'ble High Court Delhi (WPC No.2094/2007 and ,2095/2007).

The Hon'ble CAT observed in its verdict dated 31.05.2006 **that "the higher scale having denied to the applicants constitutes a differential treatment and a class legislation and also an unequal treatment meted out to equals is an invidious discrimination, which cannot be sustained in the wake of principles of equality, enshrined under article 14 of the Constitution of India. However the relevance of the cutoff date now shown and explained by the respondents is not reasonable"**. Hon'ble CAT has directed the department and Ministry to re-examine the claim of applicants for grant of higher pay scale of Rs.6500-10500/- as Engineering Assistants grant the same scale as the employees joined the cadre prior to 25.2.1999 to these employees also.

Meanwhile some of our technician members also filed an OA No.995 of 2007 in the Hon'ble CAT, Kolkata on the same grounds and the Hon'ble CAT Kolkata directed the department to grant the same scale of Rs.4500-7000 to the Technicians joined after the cutoff date.

The verdict of Hon'ble HC Delhi is very elaborate and it establishes that there should be one pay in one cadre. The Hon'ble High Court Delhi in its verdict in (WPC No.2094/2007,2095/2007) dated, Sept 7, 2010 uphold the verdict of The Principal Bench of Hon'ble CAT Delhi .The argument of the government advocate in court was that "The employees who came to Prasar Bharati from under the Ministry of Information & Broadcasting formed a separate category. " The Delhi High Court, stated in Para 11 of its verdict that **"the issues of equal pay for equal work and employees holding same posts under the same employer requiring same pay scales to be applied is no longer res integra."**

The Delhi High Court upheld the verdict of Principal Bench of Hon'ble CAT Delhi by relying up on the decision reported as 1987 (1) SCC 582 Telecommunication Research Centre Scientific Officers (Class-I) Association & Ors. vs. UOI & Ors ., in which it is held that **"for employees holding same post and doing same work and there being no ground to classify the same in two categories, the placement in different scales of pay was arbitrary. It was noted that the technical and educational qualifications required for both group of employees was the same "**. The court also relied upon the decision reported as 1987(1) SCC 592 M.P.Singh vs.UOI & Ors. where it was held that **"where employees enter the cadre from two different sources, if they do the same work and are similarly placed, there can be no discrimination in payment of wages "**.

Again instead of implementing justice, the department filed the Special Leave Petition SLP (C) No. 77 and 99 of 2011 in the Hon'ble supreme Court of India, But on Jan 14 ,2011 the Hon'ble Supreme Court of India dismissed the SLP in favour of our members, After this we filed the contempt petition CP No. 494/2011, in Principle Bench CAT Delhi for the implementation of its order. In the hearing of the contempt petition at, CAT Delhi the Govt. Counsel informed that Govt. had filed a Review Petition R.P.(C) No.2624 and 2623 OF 2011 in Hon'ble Supreme Court on 16/09/2011.

After hearing the argument, Hon'ble justice allowed time for Review Petition to decide and closed the contempt petition with the liberty of the applicants to re open the contempt petition after the decision in review petition by the government .

The Gwalior fiasco

When we were pursuing the review petition in Hon'ble Supreme Court of India, the government advocate brought in to the notice of the court the case of two EAs , Sh.Vimal Kumar Sharma and Sh.Janbed Singh Tomar. These two EAs had filed an OA in CAT Jabalpur (OA No.171/2006) and the verdict of CAT was upheld by Hon'ble High Court Gwalior and Govt. had filed the SLP (Civil) 31958-31959 /2011 in this case in Hon'ble Supreme Court. Unfortunately on 15-12-2011,the Supreme Court linked the Review Petition in our case with the SLP of Gwalior Case and ordered to keep the review petition in abeyance till a decision in the SLP in Supreme Court. Since our review petition was linked with the SLP of the government in the case of Gwalior EAs and the applicants were not in a position to manage the case in SC, we decided to take the control of Gwalior Case. But the case was not coming up for hearing since last two years. There were several dates and we have waited for full days in the corridors of Hon'ble Sup. Court but case could not come for hearing.

Decisions and Actions taken by Present Central Body

After elections ,in the first meeting of the central executive(held on 07-08-2013) itself, we decided to avail the service of senior lawyer Sh. Jayant Bhushan for mentioning the case and for appearing in Gwalior case. Consequently as per the decision of the central executive senior lawyer Sh. Jayant Bhushan mentioned the case before the court of Hon'bl Supreme Court on 29-08-2013 and the court granted the hearing on 24-09-2013. There after our advocate again mentioned the case on 24-09-2013 and in 01-10-2013. And in 22-10-2013, senior lawyer Sh. Jayant Bhushan again mentioned the case and we got the hearing date as 29-10-2013. In 29-10-2013 hearing Sh. Jayant Bhushan appeared for us and successfully argued for us and due to his effective arguments all issues raised by Govt. Counsel were over ruled. Hon'ble Supreme Court dismissed the government SLP (SLP (Civil) 31958-31959 /2011) in favour of the applicants. It is only due to the frequent mentioning by our lawyers that we got three listing dates in this month (October) itself, and finally we achieved victory in Gwalior case also.

The Current Scenario

Just after the dismissal, the expectations are boosted tremendously and it is obvious as deprived Members are denied justice for the last many years. Now Since the SLP is dismissed, Now our first job is to get the Review Petition in MS Rana (R.P.(C) No.2624 OF 2011 IN SLP(C) NO. 77/2011) case and Lalit Pawar Case (R.P. (C) No. 2623/2011 IN SLP(C) NO. 99/2011) case is dismissed. For achieving it we will again, avail the services of senior advocate Sh. Jayant Bhushan, if it is required. After the dismissal of the review petitions in Supreme Court, the contempt petition CP No. 494/2011 in Principle Bench of CAT Delhi, will be reopened and we will demand immediate implementation of court order.

Meanwhile we will pursue the matter organizationally also. Our efforts will be focused for the earliest implementation of the case.

Now we are receiving calls from all the Cadres, enquiring whether it will be applicable to them also. The Hon'ble High Court Delhi verdict in M.S.Rana and Lalit Pawar case is very elaborate and comprehensive and totally defies, more than one scale in one cadre. **We are committed for getting the court verdict implemented in its true spirit.** But the thumb rule is that it is initially implemented for the cadre who approached the court of law. This will be implemented for applicants and EAs joined after 25/2/99 first. Thereafter it will be generalized. Time factor is another important aspect.

Implications on Technicians, Diesel Engine Drivers, D.Techs, Mast Techs and Helpers.

The benefit to other cadres like Technicians joined after 25/2/99, Diesel Engine Drivers, D.Techs, Mast Techs, and Helpers is also equally justified and we will do all efforts in this direction. We are committed for the earliest implementation of the verdict for all eligible cadres. Efforts are on to take up this cause through Cadre Review.

EAs and Technicians joined and joining after 5th Oct 2007

About extending the benefit to the EAs and Technicians joined and joining after 5th Oct 2007 the legal position is that as of now we are not authorized to take their issues directly to the management, due to restrictions imposed in CCS (RSA) Recognition, but since their designation, duties and responsibilities are same their demand is also equally justified and we will take up this after expert legal consultation. We will certainly find out the way to extend the justice to them also. **IT IS OUR PROMISE AND COMMITMENT THAT WE WILL NOT LEAVE THEM ALONE, IN THIS BATTLE FOR JUSTICE, DIGNITY AND SELF RESPECT.**

Now financial conern, ARTEE has spent a huge amount of money for these cases at various courts, which is certainly beyond an individual's capacity. When the applicants of Gwalior case found it beyond their reach to manage the case in Hon'ble Supreme Court , they approached ARTEE in 2011 and in the interest of our members we had to take decision. We took the decision immediately. As per a rough estimate now, we have spent more than Rs. 4 lakh Rupees for Gwalior case which was filed without our consent and which delayed EA(5K) cause. But supporting and fighting our this case became our compulsion otherwise this case could adversely effect EA(5K) cause. Tomorrow it may happen in other cases also.

We agree that no amount is higher than the interests of our Members. But we may require funds and we will approach our Members if the need arises.

With best wishes
Central Office