

F. No: 503/5/2014-BA(E)
Government of India
Ministry of Information and Broadcasting
'A' Wing, Shastri Bhawan, New Delhi-01.

Date: 28th December, 2017

To,
The Director General: AIR,
DG: AIR, Akashwani Bhawan,
New Delhi-110001

(Kind Attention: Sh. N. P. Joshi, Director (Admn.))

Subject:- Seeking Legal opinion from Government Counsel on MIB order dated 25-02-1999-reg.

Sir,

I am directed to refer to Hon'ble CAT, PB, New Delhi order dated 01-12-2017 in OA No. 2479/2015 filed by ARTEE disposing of said OA in terms of judgment of the same Tribunal in OA No. 1118/2015 dated 31-03-2016 filed by Smt. Syamali Biswas and subject to the orders passed in WP No. 2034/2017 filed by DG: AIR wherein the stay on the operation of the impugned order of CAT, PB, New Delhi in the above said order dated 31-03-2016 in OA No. 1118/2016 has been granted. The next date of hearing in WP is on 05-02-2018.

2. As you are aware that advice of DOP&T / Ministry of Finance was sought from time to time on the following points:-

- (a) Whether the scales granted vide MIB order dated 25-02-1999 to 11 categories of employees of subordinate Engineering & Programme cadres of Prasar Bharati are to be treated as upgraded pay scales and if so whether it is to be treated as one upgradation against the three upgradations allowed under MACP Scheme, and
- (b) If, yes, whether the recoveries from the salaries of some of the affected employees including those, who were retiring/retired on attaining the age of superannuation, as proposed by PAO, Ministry of I&B on the advice of DOP&T dated 10-07-2013 on account of grant of 3rd MACP under the MACP Scheme of DOP&T is to be continued or withdrawn.

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3. DoPT vide its note dated 2nd March, 2016 inter-alia had advised that:-

- (a) *Since, now there are no new facts in this case, our earlier advice holds goods. As such it is stated that upgraded scales granted to 11 categories of employees of subordinate Engineering & programme cadre of Prasar Bharati is to be treated as one upgradation against the three upgradations allowed under MACP scheme.*
- (b) *It may be noted here that the Hon'ble Supreme Court, on the issue related to Recovery of excess payment to employees, in its verdict dated 18.12.2014 in Civil Appeal no. 242 has clearly stated that recovery from Employees belonging to Class III and Class IV service shall be impermissible whereas, the present matter pertains to the service employees of Class II.*

Further Ministry of Information and Broadcasting may also consult Department of Expenditure in the matter.

4. In view of the above advice of DOP&T, Department of Expenditure was also consulted who vide their note dated 24-08-2017 finally advised that Ministry of I&B may take appropriate action based on views of DOP&T, which is the nodal Department on MACP/ACP Scheme. In other words, this Ministry has to follow the advice tendered by DOP&T vide its note dated 02-03-2016 to decide the issues mentioned vide 2 (a) and (b).

5. Here it is pertinent to mention that a main case in the matter was earlier filed by ARTEE before Hon'ble CAT, PB, New Delhi in OA No. 2479/2015 regarding recovery from employees belonging to certain categories under Prasar Bharati in AIR & Doordarshan on account of MACP by default.

6. In this connection, it is stated that the Hon'ble Tribunal at the stage of admitting the OA on 13-07-2015 passed an interim order. The operative part of the order of this Hon'ble Tribunal in the case reads as under:-

"We have heard the learned counsel for the applicant. Issue notice to the respondents returnable on 27-07-2015.

As regards Interim Relief is concerned and in the interest of justice, the respondents shall not pass any adverse orders against the applicant before the next date of hearing."

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7. As the final advice was received from DOP&T and Department of Expenditure on the question of treatment of MIB order dated 25-02-1999 as an upgradation or otherwise against 3 MACPs, it was decided to file MAs for vacation of the STAY order and early hearing in the above court case so that an early decision can be taken in the Ministry.

8. Now as already stated above, in pursuance of the MAs, Hon'ble CAT, PB vide its order dated 01-12-2017 in OA No. 2479/2015 filed by ARTEE & Ors has disposed of the OA in terms of judgment of this Hon'ble Tribunal in another OA No. 1118/2015 dated 31-03-2016 filed by Smt. Syamali Biswas which is subject to the WP No. 2034/2017 filed by DG:AIR wherein the STAY has been granted by High Court Delhi vide its order dated 11-04-2017 on the impugned order of the CAT dated 31-03-2016. The next date of hearing in the WP is on 05-02-2018.

9. In view of the above developments taken place, it is observed that the rider of STAY on recoveries put in by CAT, PB, New Delhi in OA No. 2479/2015 filed by ARTEE does not exist as on date, as the OA is disposed of and the controversy involved in MIB OM dated 25-02-1999 is linked to the outcome of WP No. 2034/2017 filed by DG:AIR in Delhi High Court stipulated for next date of hearing on 05-02-2018. The above stated WP in Syamali Biswas case is being defended by DG: AIR through their Govt. Counsel.

10. In view of the facts stated above, it seems that now the proposal for decision on MIB order dated 25-02-1999 can be initiated as per the advice rendered by DOP&T and Department of Expenditure subject to the outcome of WP No. 2034/2017 filed by DG: AIR in Delhi High Court. However, before the proposed course of action is taken. DG: AIR is requested to seek the legal opinion from its Govt. Counsel on the proposed course of action and forward the same to this Ministry urgently.

This may be accorded Top Priority.

Yours faithfully,



(Sanjay Dhar)

Under Secretary to the Govt of India
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