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आकाशवाणी एवं दूरदर्शन तकनीकी कर्मचारी संघ A.I.R. & D.D. Technical Employees Association

(भारत सरकार द्वारा पंजीकृत एवम् मान्यता प्राप्त)
(Registered and Recognised by Govt. of India)

No. 2298/63

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Ref. No.: ADTEA/2018/015

Date: 08.03.2018

To,
The Director General,
{Kind Attn: Dr. Shailendra Kumar ADG(A)},
DG: All India Radio,
Akashwani Bhawan, New Delhi-110001

Subject: Clarification on admissibility of ACP/MACP to EA/SEA in the line of Judgement of Hon'ble Patna CAT in OA 514/2002 and legal opinion in pursuance of MIB order dated 25.02.1999.

Reference: MIB communication F. No.: 503/5/2014-BA(E) dated 31.01.2018.

(Copy of MIB order as Annexure 01)

Respected Sir,

It is deeply shocking for the employees of AIR & DD to know that MIB has directed CEO Prasar Bharti to take action regarding the pay scale granted to the subordinate engineering employees, by the executive order dated 25.02.1999. In the proposed communication dated 31.01.2018, nowhere DOLA advices, dated 04.01.2016, has been endorsed which says that the upgraded scales vide 25.02.1999 order cannot be termed as 'availed financial up-gradations'. (Annexure 02)

In the communication, MOIB has directed to CEO Prasar Bharti to adjust the up-gradation given by the 25.02.1999 executive order against one ACP/MACP by ignoring the following facts.

- 1) Govt. revised the pay scale of Engineering Assistant to Rs. 2000-32000 through MIB order No. 310/15/93-B(D) dated 15.05.1995, at par with Sound Recordist after the Hon'ble Apex Court order dated 25.11.1994, upholding the CAT, Madras Judgement passed in O.A. No. 654/89 dated 29.6.90. (Copy of MIB order as Annexure 03)

- 2) But surprisingly, 5th CPC proposed to down grade the pay scale of Sound Recordist and thereby the same to Engineering Assistant. In Para 73.16 stated that "A demand

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has been made for up-gradation of the posts of Senior Engineering Assistant (Rs. 1640-2900) and Asstt. Engineer (Rs. 2000-3500) in view of the up-gradation of the pay scale of Engineering Assistant (Rs. 2000-3200). We have recommended elsewhere the scale of Rs. 1600-2660 for Sound Recordist. We recommend that the same scale be extended to Engineering Assistant in order to maintain the existing parity between the Sound Recordists and Engineering Assistants. The Engineering Asstts on promotion as Sr. Engineering Asstts be given the present scale of Sr. Engineering Asstts i.e. Rs. 1640-2900. Similarly the post of Asstt. Engineer may continue in the existing scale of Rs. 2000-3500 and be given the replacement scale thereof. However, the existing pay of Engineering Assistant as given pursuant to the Court's order will be fully protected and will be personal to them only."

(Copy of Para 73.16 as Annexure 04)

- 3) As per Govt. of India resolution vide letter no.: G.I.M.F no.: 50(1)/IC/97 dated 30/09/1997 on para -2, it is stated that " The pay scale of Engineering Assistant in the Ministry of I&B has been referred to the committee of Secretaries for examination through Fast Track Mechanism. The matter is under consideration of committee and separate orders will be issued in respect of these categories, pending which normal replacement scale will apply.

(Copy of Govt. Resolution as Annexure-5)

- 4) Hon'ble CAT Hyderabad had restored the downgraded pay scale of Sound Recordist on dated 15.03.2000, which was downgraded by 5th CPC, vide its judgement in OA 1616/1998 to Rs.6500-10500 as a replacement scale of Rs2000-3200 (of 4th CPC).

(Copy of judgement as Annexure-6)

- 5) On dated 16.04.2001, vide office order No. 13/2001-SI(A) from file No. 37/2/99-SI(A). DG DD granted the revised pay scale of Rs.6500-10500 to incumbent sound recordists on personal basis w.e.f 1.1.96 with the approval of Ministry of Finance, Dept. of Expenditure (IC) and concurrence of IFD of MIB.

(Copy of DG:DD order as Annexure-7)

Since EA has the pay parity with Sound Recordist (well established by Hon'ble Apex Court), but it could not be restored till date due to unknown reason.

- 6) The PB CAT Delhi in DEEWA case, OA1867/1998, granted the pay scale of Rs.6500-10500 as normal replacement scale of Rs.2000-3200 (of 4th CPC) to -incumbent EA- which was upheld by Apex court.

(Annexure-8)

This judgement states the natural principle of justice for incumbent Engineering Assistant cadre of AIR & DD, should have the pay scale of Rs.6500-10500 in 5th CPC as replacement scale of Rs.2000-3200 in 4th CPC.

- 7) By Prasar Bharti order No: Pat-33(4)/05-G(NKS)/278 dated 9.2.2009, Department granted Rs. 6500-10500 scale (in 5th CPC) as normal replacement scale of Rs. 2000-32000 (4th CPC) to 24 applicants of OA 662/2004 and OA 85/1998 in Hon'ble Patna CAT after the matter attained finality in Hon'ble Supreme Court. (Annexure-9)
- 8) The pay scale of SEA has been revised on 10.06.2002 by the MIB order No. 310/50/99-B(D)/BA(E), as per the verdict dated 07.12.2001 by Hon'ble Apex Court in the SLP No. CC 5902-5908/2001 (upheld the Hon'ble CAT Bangalore order in OA 22/99), to 2000-3275 from 01.01.1986 and up to 31.12.1995.

(Copy of MIB order as Annexure-10)

Hence, under the facts mentioned above it is clear that as per 4th CPC, pay scale granted to EA was 2000-3200, SEA was 2000-3275, and AE was 2000-3500. The 5th CPC recommended the single pay scale of Rs. 6500-10500 (S-12) after the rationalisation of the two scales i.e. 2000-3200 & 2000-3500. Needless to say, the pay scale of Rs. 2000-3275 (generated for SEA after the Hon'ble Bangalore CAT judgement) being the scale in between, should also be merged with these scales.

► It is pertinent to mention here that 5th CPC has also recommended for cadre restructuring in such cases where different pre-revised scales got merged to a single pay scale due to rationalisation of scale exercise. But, unfortunately, dept. did nothing.

► In the meantime, Hon'ble CAT Patna vide order dated 07.09.2009 in OA No. 514/2002, filled by Shri. B.K.Roy & others Vs. UOI granted 1st. ACP in the pay scale of Rs. 8000-13500 scale {scale of Assistant Executive Engineer (Civil) in CCW} (as per ACP clarification No. 32) which was upheld by judgement dated 25.08.2010 passed by Hon'ble HC Patna in CWJC No. 6451/2010 and attained finality when Hon'ble Supreme Court dismissed the SLP filled by UOI vide its order dated 10.01.2011 in SLP no. 20212/2010, by considering the merger of the par scales of EA,SEA and AE to a single replacement pay scale of Rs. 6500-10500 w.e.f. 01.01.1996.

(Copy of Hon'ble CAT Patna judgement as Annexure-11)

Dept., too, after taking all the clearances from the nodal ministries such as DOP&T, Ministry of Finance, Ministry of Law, implemented the Hon'ble CAT judgement, in OA No. 514/2002, to the various applicants. But, when other similarly situated EA/SEA/AE started demanding the same benefit, as given to OA 514/2002 applicants, management started conspiracies by withdrawing ACP/MACP from EA/SEA/AE in the name of up-gradation given by 25.02.1999 order (which should be ignored in light of ACP clarification no. 35), despite the favourable advice of DOLA which is very well available in the MOIB & DG: AIR.

► Hon'ble High court Delhi in W.P.(C) 4151/2003, UOI & ORS. Vs Programme Staff Association & ors. disposed off the Govt. Writ on dated 13.07.2017, by directing the Deptt. to grant two ACP/three MACPS to PEX cadre along with upgraded pay scale of 25/02/1999,

despite the two opposite advices of Law Ministry and DOPT.

(Judgement Copy as Annexure -12)

Dept., too, has implemented the Judgement of Hon'ble HC Delhi without challenging in the Hon'ble Supreme Court.

► It is very sad that, in the case of subordinate engineering employees, the DG AIR and his team, not only challenging the cases which has attained finality but also adopting all routes to trivializing the implemented orders by their predecessors to pull back again in litigation, despite employee favourable remarks of Attorney General of India. As DOLA stated, in ACP CASE, in para 19, dated 20.10.2015, that "Screening Committees are flouting the directions of judicial forums and case appears to be abuse of process of court.

(Annexure-13)

Hence, In light of the submission made above, it is a request to you to kindly intervene in the matter to stop any derogatory decision, of withdrawal of 25.02.1999 order against one ACP/MACP, and save the Subordinate Engineering Cadre, who are deprived for 25+ years of cadre stagnation and on the door of heavy recoveries. We will be grateful to your good self if an early hearing may be granted to this association as per your convenience.

Thanking you sir.

Annexure: (13) as stated above

(TOTAL 50 PAGES
INCLUDING APPLICATION)

Sincerely Yours

Anil Gupta
07/3/18

(Anil Kumar Gupta)

Vice President ADTEA

Ph: 9450395298

Copy To:

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2. Chief Executive Officer, Prasar Bharti, Coparnicus Marg, New Delhi-110001

3. The Senior Economic Advisor, Ministry of

I & B For Prasar Bharti

(Kind Attention: - Shri N.K. SINHA IAS.)

Anil Gupta
07/3/18

(Anil Kumar Gupta)

Recd.
Pinay
8/3/18