

Facts leading to filing of OA No. 514/2002
before Hon,ble CAT, Patna Bench for grant
of the benefits of the ACP scheme of 1999

1. The posts of Engineering Assistant (EA), Senior Engineering Assistant (SEA), Assistant Engineer (AE), Assistant Station Engineer (ASE) are in ascending order in the engineering hierarchy of AIR & Doordarshan and they had distinct pay scales as per recommendations of 3rd and 4th Central Pay Commissions as below:

Posts in the hierarchy in ascending order	Pay Scales Recommended by the 3 rd & 4 th Central Pay Commissions	
	3 rd Pay Commission (01.01.1973 to 31.12.1985)	4 th Pay Commission (01.01.1986 to 31.12.1995)
Engineering Assistant (EA)	425 - 750	1400 - 2600
Senior Engineering Assistant (SEA)	550 - 900	1640 - 2900
Assistant Engineer (AE)	650 - 1200	2000 - 3500
Assistant Station Engineer (ASE)	700 - 1300	2200 - 4000

2. Consequent upon order of Hon'ble courts drawing parity between pay scales of Engineering Assistant (EA) and Sound Recordists, the Ministry of Information & Broadcasting had revised the pay scales of Engineering Assistant (EA) and Senior Engineering Assistant (SEA) effective from 01.01.1978 and 01.01.1986 as below:

Posts in the hierarchy in ascending order	Pay Scales Revised Consequent upon order of courts**	
	(01.01.1978 to 31.12.1985)	(01.01.1986 to 31.12.1995)
Engineering Assistant (EA)	550 - 900	2000 - 3200
Senior Engineering Assistant (SEA)	550 - 930	2000 - 3275

** (a) Order dated 29.06.1990 of Madras Bench of CAT in OA No.654/1989 for revision of pay scale of Engineering Assistant (EA) was upheld by Apex Court by order dated 25.11.1994 in SLP(C) No.15206-07 of 1992 & 4307-08 of 1993. Ministry of Information & Broadcasting issued order No. 310/15/93-B(D), dated 15.05.1995 revising the pay scale of EA.

** (b) Order dated 16.02.2000 of Bangalore Bench of CAT in OA No. 983/98 & OA No.22/99 for revision of pay scale of Senior Engineering Assistant (SEA) was upheld by Karnataka High Court by order dated 14.02.2001 in Writ Petitions 28528-529 of 2000 & 32866-870 of 2000 and by the Apex Court by order dated 07.12.2001 in SLP No. CC5902-5908 of 2001. Ministry of Information & Broadcasting issued order No. 310/50/99-B(D)/BA(E), dated 10.06.2002 & 03.09.2002 revising the pay scale of SEA.

3. With the upward revision of pay scales of Engineering Assistant (EA) and Senior Engineering Assistant (SEA), the three posts in the hierarchy, the Engineering Assistant (EA), the Senior Engineering Assistant (SEA) and the Assistant Engineer (AE) came to have virtually identical pay scales with marginally higher ceiling from 01.01.1986 to 31.12.1995 before the implementation of 5th Pay Commission effective from 01.01.1996 as shown below:

Posts in the hierarchy in ascending order	Scale of Pay effective from 01.01.1986 to 31.12.1995
Engineering Assistant (EA)	2000 - 3200
Senior Engineering Assistant (SEA)	2000 - 3275
Assistant Engineer (AE)	2000 - 3500

4. The 5th Central Pay Commission recommended a single revised pay scale of **Rs 6500-10500** for the pre-revised pay scales of Rs 2000-3200, Rs 2000-3275 and Rs 2000-3500 effective from 01.01.1996. Consequently, all the three posts in the hierarchy, the Engineering Assistant (EA), the Senior Engineering Assistant (SEA) and the Assistant Engineer (AE) **came to exist in identical pay scale of Rs 6500-10500 with effect from 01.01.1996.**
5. The 5th Central Pay Commission had recommended for introduction of **Assured Career Progression scheme** (in short ACP scheme hereinafter) for the central Government civilian employees as a safety net to deal with the problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues
6. The Union Government had accepted to introduce the ACP scheme recommended by the Pay Commission and notified it vide **Government of India, Department of Personnel & Training's OM No. 35034/1/97-Estt.(D), dated 09.08.1999.** As per the broad guidelines of the scheme, the employees of Group B, C and D have been allowed maximum **2 financial up-gradations** to the next higher grades in the **existing hierarchy of posts** after **12 and 24 years** of regular service in the grade if no regular promotions during the prescribed periods have been availed by them.
7. The Government issued a set of 32 clarifications on points raised by various Ministries pertaining to implementation of the ACP scheme vide DOP&T's O.M. No. 35034/1/97-Estt. (D) (Vol. IV), dated 10.02.2000 wherein, at Sr.No.1, it has clarified that an employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of the two pay scales, he shall be entitled for upgradation under the ACP scheme **ignoring the said promotion.**
8. Since all the pre-revised lower and higher pay scales of Rs 2000-3200, Rs 2000-3275 and Rs 2000-3500 have been merged to a single revised pay scale of Rs 6500-10500, the holder of these posts i.e. Engineering Assistant (EA), Senior Engineering Assistant (SEA) and Assistant Engineer (AE) had become entitled for the 1st upgradation under the ACP scheme to the next scale in the hierarchy of posts i.e. **Rs 8000-13500** of Assistant Station Engineer, ignoring prior promotions from EA to SEA and thereafter from SEA to AE.

9. The deprivation of the legitimate benefits of the ACP Scheme lead the Association of the engineering employees of EA, SEA and AE cadres of AIR & Doordarshan filing of OA No. 514 of 2002 in the Central Administrative Tribunal, Patna Bench, Patna, under the banner of **Akashvani & Doordarshan Diploma Engineers Association**, to seek legal justice in the matter.

.....
.....
.....

**Order of Hon'ble CAT, Patna Bench &
Patna High Court as upheld by Apex Court
in the entitlement of benefits of ACP scheme**

1. The engineering employees of AIR & Doordarshan filed **OA No. 514 of 2002** under the banner of "**Akashvani & Doordarshan Diploma Engineers Association**" before the Hon'ble Central Administrative Tribunal, Patna Bench for grant of the benefit of ACP scheme to them.
2. Since all the pre-revised lower and higher pay scales of Rs 2000-3200, Rs 2000-3275 and Rs 2000-3500 have been merged to a single revised pay scale of Rs 6500-10500, the holder of these posts i.e. Engineering Assistant (EA), Senior Engineering Assistant (SEA) and Assistant Engineer (AE) had become entitled for the 1st upgradation under the ACP scheme to the next scale in the hierarchy of posts i.e. **Rs 8000-13500** of Assistant Station Engineer, ignoring prior promotions from EA to SEA and thereafter from SEA to AE.
3. The **OA No. 514 of 2002** was allowed vide order dated **07.09.2009** passed by Hon'ble Central Administrative Tribunal, Patna Bench with a direction to the respondents **to grant the applicants the pay scale of Rs 8000-13500 under the ACP scheme as and when they had completed 12 years of service in the pay scale of Rs 6500-10500 and also to pay the arrears to them.**
4. The order dated 07.09.2009 in OA No. 514 of 2002 was challenged by the Union of India by filing **C.W.J.C. No. 6451 of 2010** before the Hon'ble Patna High Court. Hon'ble High Court had upheld the order of the Tribunal by order dated **25.08.2010** with the modification to the extent that the cases of the applicants be considered individually in accordance with the scheme of the ACP and the clarification contained in DOP&T's order dated 10.02.2000 while granting them the pay scale of Rs 8000-13500 under the scheme of ACP.
5. Thereafter, the Union of India went to Supreme Court of India filing SLP No. CC 20212 of 2010 against the judgment dated 25.08.2010 passed by Hon'ble Patna High Court in C.W.J.C. No. 6451 of 2010 (arising of order dated 07.09.2009 of CAT, Patna Bench in OA No. 514 of 2002). **The SLP was dismissed on facts on 10.01.2011.** Thus the case reached to the finality.

6. The applicants filed Contempt Petition No. CCPA 22 of 2011 before Hon'ble CAT, Patna Bench against non-implementation of the order dated 07.09.2009 passed by Hon'ble CAT, Patna Bench in OA No. 514 of 2002 which had been upheld by Hon'ble Patna High Court and Supreme Court of India giving finality to the case.
7. During the contempt proceedings, an order dated 04.11.2011 was served by the Government to the applicants saying that no one was found eligible for the benefits of ACP scheme. Hon'ble Tribunal held that the order dated 04.11.2011 of the respondents was not in consonance with the order of this Tribunal dated 07.09.2009 in OA No. 514/2002 as well as the order of High Court dated 25.08.2010 in C.W.J.C. No. 6451/2010 and the instructions of the DOP&T in the order dated 10.02.2000. Hon'ble CAT directed for the personal appearance of the CEO, Prasar Bharati to explain why charges for contempt should not be framed against him.
8. During the contempt proceedings, the respondents (DG:AIR) then issued another order No. 8/3/2011-S-IV(B)pt.II, dated 17.01.2012 granting pay scale of Rs 8000-13500 with effect from 01.01.2008 to only 8 applicants by misinterpreting the order dated 07.09.2009 of Hon'ble CAT, Patna Bench. The respondents filed an MA No. 73/2012 before the Tribunal seeking exemption from personal appearance of the CEO, Prasar Bharati in the light of order dated 17.01.2012. The applicants had also filed MA No.217/2012 seeking initiation of an inquiry under section 340 of Cr.P.C. for perjury by the respondents in furnishing wrong information according to the MA.
9. The contempt petition CCPA 22 of 2011 was disposed of by Hon'ble CAT, Patna Bench by order dated 23.05.2012. "In the facts and circumstances of the case and in the light of the position set out above we do not consider it expedient to take up an inquiry under section 340 of Cr.P.C. The prayer in the MA is accordingly rejected. The CCPA stands disposed of in terms of *para-16* hereinabove. No costs."

10. At *Para-10* of the order dated 23.05.2012, Hon'ble Tribunal has observed,

" Heard the learned counsel for the petitioners and the respondents on 26.04.2012 and perused the entire records. It is seen that in *para-9* of the order of this Tribunal dated 07.09.2009, the portion " The respondents are directed to grant the applicants the pay scale of Rs 8000-13500 as and when they completed 12 years of service in the pay scale of Rs 6500-10500" has given rise to doubt. The direction of Hon'ble High Court to the respondents was to consider the grant of benefit of ACP scheme to the applicants before the Tribunal in accordance with law and the observations made in the that order and the order of the Tribunal. The respondents have gone by the literal meaning of the words in *para-9* of the order of this Tribunal and not taken note of the clarification given by DOP&T as indicated in the earlier paras of the order of the Tribunal and also set out in the order of the Hon'ble High Court.

11. At *Para-12* of the order dated 23.05.2012, Hon'ble Tribunal has observed,

" It is beyond our purview in a contempt proceeding to go into the claims if there is a dispute or doubt in regard to the scope of an order and the consequential entitlement of

benefits. This will legitimately be the subject matter of a separate proceeding in a fresh OA if filed by the petitioners”

12. At Para-16 of the order dated 23.05.2012, Hon’ble Tribunal has conclusively observed,

“We find, in the facts and circumstances of the case, that there is no contumacious conduct or willful disobedience of the order of this Tribunal and accordingly the contempt proceedings are ordered to be dropped and the notices issued to the contemnors hereby discharged. It is open to the petitioners to file a representation to any or all the three respondents setting out their case in detail and seek reconsideration, or file a fresh OA in regard to the entitlement of ACP, if they are aggrieved by the action/decision taken by the authorities. If any representation is filed by the petitioners [in this CCPA] to the respondents, **the latter should go by the letter and spirit of the entire order of this tribunal in the OA as well as the order of Hon'ble High Court in CWJC instead of being circumscribed limited by para-9 of the order in the OA.** It is noticed that the implication of the direction of Hon'ble Patna High Court was that the order passed by this Tribunal was modified to the extent that the applicants were not outright entitled to pay scale of Rs 8000-13500 and that the individual cases of the applicants had to be considered in terms of DOP&T scheme dated 10.02.2000. The scheme of DOP&T dated 10.02.2000 makes it amply clear and declares unambiguously that "an employee who got promotion from lower pay scale to higher pay scale as a result of promotion before merger of pay scales, shall be entitled for upgradation under ACP ignoring the said promotion". **However, the respondents have acted taking the literal meaning of the order passed by this Tribunal in para-9.** In such view of the matter, in order to comply with the order of this Tribunal as modified by Hon'ble High Court, the respondents should consider each and every case in terms of the scheme with clarifications on it as it clears their doubts about the entitlement of each and every individual in terms of the DOP&T scheme dated 10.02.2000 and thereafter consider the grant of ACP to the applicants. While parting on this subject, we would like to reiterate that *a contempt proceeding is judicially punitive in nature and not remedial even though the effect of proceeding in cases of willful disobedience of the judgment or orders may compel compliance of the same.* Accordingly, without resorting to giving any additional direction in the CCPA, the respondents should appropriately examine the case of each and every applicant as ordered by Hon'ble High Court and accordingly decide on grant of ACP benefits to the applicants in terms of DOP&T scheme dated 10.02.2000".
