

Ministry of Law and Justice
Department of Legal Affairs

FTS No. 231959/2015/B

The matter pertains to examining the feasibility of filing SLP against the order dated 12.5.2015 of the Patna HC in CWJC No 1869/2015 vide which appeal filed by UOI (against the review petition No. 141/2012 in writ petition CWJC No. 6451/2010 having withdrawn earlier) was dismissed.

2. Pre pages explain the matter. Briefly, Assocn. of diploma holder EA, SEA and AEs working in AIR/Doordarshan (presently on deemed deputation to PB), in the uniform pay scale of Rs 6500-10500/- (since 01.01.1996 by 5th PC), being aggrieved by non-grant of ACP benefits, filed an OA No. 514/2002 before CAT, Patna Bench praying that they may be given 1st financial up-gradation in the pay scale of Rs 8000-13500/- corresponding to pay scale of AEE of CCW of AIR/ DD in accordance with clarification No.1 issued by DOP&T vide OM dated 10.02.2000 by ignoring all previous promotions from EA to SEA and from SEA to AE.

3. These employees were denied the benefits of the ACP Scheme on the ground that they already availed promotions and up-gradation of their pay scales by MIB order dated 25.02.1999.

4. The CAT, Patna Bench vide order dated 07.09.2009, relying on DOP&T's OM dated 10.02.2000 (Para 4 of the CAT's order) allowed the OA directed the respondents to grant pay scale of Rs 8000-13500/- as 1st financial up-gradation in the promotional hierarchy of pay scale of AEE of CCW. The order, however was challenged by MIB in consultation with DOP&T before Patna HC which (CWJC 6451/2010) vide order dated 25/8/2010 upheld the order of CAT, Patna Bench with modification as cases of applicants may be individually examined in terms of CAT Order.

5. MIB also filed SLP against Patna HC order (CC 20212 of 2010) which was dismissed on facts on 10.01.2011.

6. All nodal Ministries advised MIB for implementation of order of CAT. However, the Screening Committee for ACP examined the cases of applicants in their own way and out rightly rejected the cases ignoring the verdicts which had attained finality at level of Apex Court and rejected the benefits by issuing speaking orders.

7. The matter on being brought to the knowledge of CAT, Patna in (CCPA No. 22/2011 in OA No. 514/2002) (on 08.12.2011) observed that these speaking orders are not in consonance with its directions which had attained finality and directed for personal appearance of CEO, PB. Later, MIB implemented the directions, however, again only for few applicants and in impaired way. The CCPA was however disposed of vide order dated 23.05.2012 directing the respondents for implementation of the ACP scheme in letter and spirit of its order. Later, MIB also implemented order dated 24.05.2011 of CAT, in OA No. 597/2011 extending the benefit of the order dated 07.09.2009 of CAT, Patna Bench for 16 applicants.

8. Although, the CAT, Patna's order having attained finality was to be implemented nevertheless MIB again filed review petition (No. 141/2012) before Patna HC to review its order dated 25.8.2010 (in CWJC No. 6451/2010). The review petition was dismissed, however counsel withdrew the same to file fresh writ petition. Later, writ petition (CWJC 1869/2015) also was dismissed by DB of Patna HC vide order dated 12.5.2015 holding as follows:

"4. Having withdrawn the Review application, having suffered final orders in the earlier original application, having suffered the final order in the writ proceedings, having suffered the final order in CCPA, we fail to appreciate what is the cause of action to file present writ petition against the non-existent order."

9. The MIB however has again forwarded the matter for filing of SLP against the order dated 12.05.2015 in CWJC 1869/2015 and has sought our views.

10. We have perused the matter. The matter being very old, all orders/details of implementation have been called in and placed in separate folder. It is noted that large number of cases have been filed by EA, SEA and AEs for extension of ACP benefits in terms of CAT, Patna order which on being attained finality stood implemented for applicants in OA No.514/2002 as well as in OA No. 597/2011.

11. There appears to be lack of coordination between MIB and PB and within PB itself. On one hand, MIB has implemented directions of CAT in few OAs, have also delegated powers for constituting Screening Committees (for ACP) to DGAIR which in turn have also issued directions to zonal officers for collection of service records of similarly placed EA, SEA and AEs for implementation of CAT order. However on the other hand, MIB has referred the matter for feasibility of filing of SLP. PB interestingly, in individual contempt cases form Screening Committees for ACP which however, examine in their own way ignoring the directions by judicial forums and issue speaking orders rejecting the cases altogether just to discharge the contempt notices thus leading applicants to again challenge the same. The situation is of unending litigation.

12. As regards the merit of the case, pay scales of applicants working as EA, SEA and AEs working in different pay scales (prior to 01.01.1996) were merged and placed in single revised scale of Rs 6500-10500/- (wef from 01.01.1996 by the 5th PC as a result of rationalization of pay scales). Consequently, their promotions from EA to SEA and from SEA to AE before merger of pay scales are required to be ignored while considering their entitlement for financial up-gradation under the conditions of ACP Scheme. Since they completed 12 years of service in same scale and availed no promotions as per clarification No. 1 of DOP&T OM dated 10.02.2000, they sought ACP benefits as per ACP scheme which however were denied on the ground that the applicants have already enjoyed promotions prior to year 1996 and also vide MIB order dated 25.02.1999.

13. The CAT allowed the OA while referring to clarification No.1 of DOPT OM dated 10.02.2000 holding that an employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for up-gradation under ACPs ignoring the said promotions.

14. As per MIB order dated 25.02.1999, the pay scale of 11 categories of employees were upgraded at the formation stage of PB, however same were with conditions that these upgraded scales will be allowed not as Govt. employees per se but as Govt. employees currently in service of PB. Being *per se* scales, obviously, the pay scales given by MIB order dated 25.02.1999 were not replacement pay scales of 5th PC for the categories of employees mentioned therein. In terms of MIB order, these employees had to give options for transfer to PB which situation however never arose as options were never asked for and Later PB (Amendment) Act, 2012 was specifically enacted to determine the status of these employees. As per S.11 of 2012 Act, these employees was conferred the status as "Central Government employees on 'deemed deputation till retirement' with all pay and admissible benefits" which undoubtedly include ACP benefits. In terms of S.11 of 2012 Act, the exercise of seeking options etc for these employees was done away and the undertaking submitted by the employees of AIR & DD in 1999 became void and ^{infructuous}. Therefore there are only two categories of employees now; one - those who joined service on or before 05/10/2007 working in Prasar Bharati 'on deemed deputation' as central govt. employees and another are Prasar Bharati employees those who joined after 05/10/2007 {S. 11(1) (2) and (5).}

15. As regards the issue of filing of SLP at this stage, it appears that yet another round of litigation is proposed to be initiated. The situation appears to be peculiar as applicants of OA No. (514/2002) and (No. 597/2011) have already been benefitted. It is understood that applicants of OA 514/2004 were granted benefits of upgraded pay scales and benefit of scale of Rs. 8000-13500 (ACP scale) as per verdict is granted to them after withdrawing it firstly and the re-fixing them in scale of Rs. 6500-10500/- after the litigation attained finality.

16. The grounds suggested for SLP appear to be same which have already been agitated through earlier WP and SLP, filed by MIB which all were dismissed. In situation of repeated filing of petitions and not implementing the orders, Patna HC in (CWJC 2797 /2014) vide order dated 29.06.2015 observed as follows:

"we are surprised at the conduct of the Doordarshan Authorities. Once a statutory scheme is framed, then whether a person asked for a benefit there under or not, it becomes a statutory duty of the implementing authorities to give benefit to the employees or beneficiaries of the scheme. That is the command of law. No beneficiary has to go with a begging bowl to ask for what is rightfully entitled to. It is only upon the failure of the executive to perform its duty or when the executive disputes the entitlement, does that matter come to the Tribunal, but that does not mean that unless the tribunal orders, the executive can hold its hands and sit back without implementing the scheme. The attitude of Doordarshan appears to be that unless you get an order of the Tribunal to give you benefit of ACP, we shall not examine the case nor give you the benefit. A preposterous situation and total abdication of power and authority".

17. In similar situation, the CAT (ND) in its order dated 21st May, 2015 also observed as follows:

"The fundamental of adjudication is that it does not require any of the litigating parties' permission for orders to be mandatorily implementable. The discussion with the Law Department can be only for the purpose of smooth implementation or with a view to file an appeal or a review. But other than any such exercise will be a direct challenge against judicial determination and per se contempt. In the Indian Constitutional process, this must be so as otherwise it requires only litigant parties to decide that he is not bothered about such a determination. Such is not the Law of the Land".


18. The present matter explicitly attract doctrine of *res judicata* as orders on being attained finality are being implemented despite of exhaustion of remedies and verdicts are being ignored and simultaneously being re-opened by filing various petitions and situation is of abuse of process of court. The Supreme Court in M Nagabhushan case, AIR 2011 SC 1113 held that:

"The principles of Res Judicata are of universal application as it is based on two age old principles, namely, 'interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet his ve ari, si constet curiae quod sit pro un aet eadem cause' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever set the controversy at rest".

19. In given facts and circumstances, MIB on one hand has since implemented the directions of CAT in respect of number of applicants on other hand screening committees are rejecting the cases on their own understanding thus flouting the directions of judicial forums and case appears to be abuse of process of court. We are not much hopeful that the Supreme Court under its extraordinary jurisdiction would like to interfere in the matter. However, we may forward the matter to one of the Ld Law Officers for seeking his considered opinion on the feasibility of filing of SLP under Article 136 of the Constitution of India.

May kindly see.

Shri T.N. Tiwari (Addl. Secy.)


(T. K. Malik)
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20.10.2015

21-10-2015

A.S & Incharge, CAS

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