

MERGER OF POSTS OF ENGINEERING ASSISTANT AND SR. ENGINEERING ASSISTANT FACTS OF THE CASE

On the recommendations of 6th Central Pay Commission, the Government of India, Ministry of Finance had notified the **Central Civil Services (Revised Pay) Rules, 2008** vide F. No. 1/1/2008-IC, dated 29.08.2008 which was published as GSR 622(E) in the Gazette of India (Extraordinary) on 29.08.2008.

Vide para (ii) of **Section 1** of Part-B and Part-C of **The First Schedule** of CCS (Revised Pay) Rules, 2008, the Government, on merger of pre-revised pay scales, has decided as below:

Para (ii):

“On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included in Section 2 of Part-B and Part-C.

As regards other posts, the posts in these three scales should be merged (and granted Grade Pay of Rs.4200 in PB-2). In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the pay scales of Rs.5000-8000 and Rs.5500-9000 should be merged, **with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in the pay band PB-2 i.e. to the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.”**

(para (ii) of Section 1 of Part-B and
Part-C of The First Schedule of CCS (Revised Pay) Rules, 2008 is annexed as **Annexure-1**)

2. The decision as mentioned as para (ii) above of the CCS (Revised Pay) Rules, 2008 on merger of posts, was again emphasized by Ministry of Finance (DOE), Implementation Cell, by issuing an OM vide F. No. 1/1/2008-IC, dated 13.11.2009.

(OM vide F. No. 1/1/2008-IC, dated 13.11.2009 is annexed as **Annexure-2**)

3. The post of **Engineering Assistant (EA)** and its next higher post (promotional post) of **Senior Engineering Assistant (SEA)** in Prasar Bharati were in the pre-revised scales of Rs.6500-10500 and Rs.7450-11500 respectively. Now, as per decision mentioned as para (ii) above of the CCS (Revised Pay) Rules, 2008 and also as per MF(DOE) OM dated 13.11.2009, the post of Engineering Assistant in the scale of Rs.6500-10500 was required to be upgraded to the next higher grade in the pay band PB-2 with the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. And because, the post of Senior Engineering already existed in the scale of Rs.7450-11500, the post of Engineering Assistant being upgraded from the scale of Rs.6500-10500 should be merged with the post of Senior Engineering Assistant in the scale of Rs.7450-11500.

4. The Director General, All India Radio, the competent authority, vide Office Order issued from F. No. 3/20/2008-SIV(A), dated 16.01.2009 accordingly upgraded the post of Engineering Assistant in the pre-revised scale of Rs.6500-10500 to the next higher grade in the pay band

PB-2 with the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. Surprisingly, the DG AIR did not take any action on merger of both the posts of Engineering Assistant and Senior Engineering Assistant which was required to be done simultaneously and compulsorily.

(DG:AIR office order F. No. 3/20/2008-SIV(A), dated 16.01.2009 is annexed as **Annexure-3**)

5. The inordinate delay in issuance of an order on merger of the two posts of EA and SEA (which have already been allowed to come in same grade pay of Rs.4600 in PB-2 by the DG:AIR, the competent authority, by order dated 16.01.2009) prompted Praveen Kumar and five other Engineering Assistants to file OA No. 2940/2010 before the Principal Bench of CAT, New Delhi praying for direction to the respondents to (1) allow them to appear in the Limited Departmental Competitive Examination for promotion to the next higher post of Assistant Engineer and (2) to merge the two posts of EA and SEA as decided by the govt. Hon'ble CAT vide order dated 30.11.2010 passed following direction:

"We, however, cannot be oblivious of the right of the applicants to be considered on fair and equitable basis for promotion as fundamental right for which we now direct respondents to finalize the merger and also the Recruitment Rules in consultation with whatever authorities involved within a period of 3 months from the date of receipt of a copy of this order and thereafter on the basis of vacancies available, the claim of the applicants for promotion through Departmental Competitive Examination be considered. In such an event, the law shall take its own course."

6. When the respondents did nothing in compliance of the order dated 30.11.2010 of Hon'ble CAT within the stipulated time, the applicants filed Contempt Petition No. 297/2011 in OA No. 2940/2010. During the course of contempt petition, the Secretary, Ministry of I&B (Respondent No.1) submitted progress report dated 27.03.2012 and made submissions vide para 13 and para 14 of the affidavit that the concurrence of Department of Expenditure, Ministry of Finance for the merger of cadre of EA with SEA was received, and therefore, with the approval of DOP&T and Ministry Finance, one action i.e. merger of SEA and EA is complete. It was also submitted that the follow up action for amendment of the Recruitment Rules, had also been initiated in the ministry of I&B. Furthermore, the Recruitment Rules framed for the merged posts of SEA and EA would again require approval of nodal ministries before they are notified after finalization which will also take considerable time. It was assured that the Respondents shall make all out efforts to finalize the RR as soon as possible. Vide para 15 of the affidavit, it was prayed as below:

Para 15: "That in the backdrops of the steps taken by the Respondents – Contemnors, it is prayed that this Hon'ble Tribunal may graciously be pleased to dispose of the contempt or may give at least six months time to finalize the amended recruitment rules for the merged cadre"

(The affidavit dated 27.03.2012 submitted by the Secretary, Ministry of I&B (Respondent No.1) is annexed as **Annexure-4**)

7. Hon'ble CAT, New Delhi accepted the submission dated 27.03.2012 made by the Secretary, Ministry of I&B (Respondent No.1) and disposed of the contempt petition CP No.

297/2011 in OA No. 2940/2010 vide order dated 17.05.2012 with following remarks and direction:

"We are, therefore, inclined to accept the assurances given by the learned counsel for the Respondent No. 1 and close the CP with the stipulation that the amended Recruitment Rules would be finalized for the merged cadre within this period of six months being granted now. In the event of the same not happening, the applicants would be at liberty to revive this CP"

It is highly regretted that the Respondents could not be true and honest to their submissions and assurances submitted to Hon'ble Tribunal vide affidavit dated 27.03.2012. The amended Recruitment Rules for the merged posts of EA and SEA have neither been finalized nor notified till today even after elapse of 10 years time.

(Order dated 17.05.2012 passed by Hon'ble Tribunal in CP No. 297/2011 is annexed as **Annexure-5**)

8. The CEO, Prasar Bharati (Respondent No.3) issued Draft notification for amended Recruitment Rules for Assistant Engineer and Junior Engineer (Broadcast) (the merged cadre of erstwhile EA & SEA) vide Circular F.No. 10/66/2010-PPC, dated 16.08.2016 and asked for the comments of the stakeholders on proposed notification.

(Circular issued by the Prasar Bharati vide dated 16.08.2016 is annexed as **Annexure-6**)

9. The CEO, Prasar Bharati (Respondent No.3) referred Draft notification for amended Recruitment Rules for Assistant Engineer and Junior Engineer (Broadcast) (the merged cadre of erstwhile EA & SEA) vide OM F. No. 10/66/2010-PPC, dated 09.01.2017 to the Ministry of I&B for approval.

10. The CEO, Prasar Bharati (Respondent No.3) sent proposal for merger of EA and SEA in the subordinate engineering cadre of AIR & Doordarshan in PB-2 with Grade Pay of Rs.4600 as per CCS(RP) Rules, 2008, vide OM F. No. 10/66/2010-PPC, dated 20.01.2017 to the Ministry of I&B for approval. This OM was issued to the Ministry of I&B for partial modification of their letter No. 501/02/2011-BA(E) dated 13.04.2012 in which merger of posts of EA and SEA was approved to be done in PB-2 with Grade Pay of Rs.4200 without any basis.

(OM issued by the Prasar Bharati vide dated 20.01.2017 is annexed as **Annexure-7**)

11. The CEO, Prasar Bharati (Respondent No.3) sent Revised Draft Recruitment Rules for the post of Senior Broadcast Engineer (erstwhile Assistant Engineer) and Broadcast Engineer (merged cadre of erstwhile EA & SEA), after suitable modification, to the Ministry of I&B (Respondent No. 1) for approval and notification at the earliest, vide OM F. No. 10/66/2010-PPC (pt), dated 17.02.2017. These Revised Draft Recruitment Rules were considered and approved by the Prasar Bharati Board in its 139th board meeting held on 14.01.2017.

(OM issued by the Prasar Bharati vide dated 17.02.2017 is annexed as **Annexure-8**)

12. The CEO, Prasar Bharati (Respondent No.3) sent a reminder to Ministry of I&B (By name: Sanjay Dhar, US) vide dated 24.11.2017 to expedite approval of merger of existing post of EA with SEA in PB-2 with Grade Pay Rs.4600 and consequent amendment of Recruitment Rules.

(Letter issued by the Prasar Bharati vide dated 24.11.2017 is annexed as **Annexure-9**)

13. In the situation that no action was taken by the Secretary, Ministry of I&B (Respondent No. 1) on finalization and notification of modified RR for erstwhile AE and merged cadre of erstwhile EA and SEA despite Hon'ble CAT, PB, New Delhi's order dated 30.11.2010 in OA No. 2940/2010, and order dated 17.05.2012 in CP No. 297/2011 (in OA No. 2940/2010), and also despite the proposal of Revised Draft Recruitment Rules sent to Respondent No. 1 by the CEO, Prasar Bharati (Respondent No.3) for approval and notification, duly approved by the Prasar Bharati Board in its 139th board meeting held on 14.01.2017, another set of 10 Engineering Assistants approached CAT, New Delhi with OA No. 282/2018 titled Vijay R. Haror & Others vs UOI & Others, praying for a direction to the Secretary, Ministry of I&B (Respondent No.1) for notification of the modified Recruitment Rules which was approved by the Prasar Bharati Board in its 139th board meeting and the proposal forwarded thereafter to Respondent No. 1. Hon'ble CAT vide order dated 08.02.2018, has disposed of the OA with direction to Respondent No. 1 to notify the modified Recruitment Rules within a period of 3 months from the date of receipt of certified copy of this order.

(Judgment and order dated 08.02.2018 of CAT, New Delhi passed in OA No. 282/2018 is annexed as **Annexure-10**)

14. Applicants then filed Contempt Petition No. 310/2018 in OA No. 282/2018 when the Respondents did not comply with the order of Hon'ble Tribunal. Notices were issued to the Respondents.

15. Instead of complying with the order dated 08.02.2018 of Hon'ble Tribunal in OA No. 282/2018, the Respondents have moved to Delhi High Court, to challenge Hon'ble Tribunal's order dated 08.02.2018, by filing Writ Petition (C) No. 8712/2018. In an interim order passed on 20.08.2018, Hon'ble High Court has expressed grave displeasure on inaction of the Respondents in issuing modified RR from the year 2012 onwards, and sought clarification through an affidavit to be signed by a officer of the petitioner/ Ministry not below the rank of a Joint Secretary.

(The interim order dated 20.08.2018 of Hon'ble Delhi High Court passed in WP(C) No. 8712/2018 is annexed as **Annexure-11**)

16. The Ministry of I&B (Respondent No.1) is sitting on the judgments and orders of Hon'ble CAT and High Court. They have not issued modified RR as yet. The respondents are holding DPCs and are making regular promotions from EA to SEA cadre inspite of the facts that the nodal ministries have already approved merger of these posts in 2012. Furthermore, the Respondents are contemplating reduction of pay and recovery thereof by treating the post of EA and SEA not-merged and thereby counting promotion from EA to SEA as one upgradation under the MACP Scheme as is evident from DG AIR's order dated 30.06.2021.

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