

No. 515/114/2014-BA(E)
Government of India
Ministry of Information and Broadcasting
Shastri Bhawan, New Delhi- 1100 01

Dated 06.12.2016

To,

The Director General: AIR,
DG: AIR, Akashwani Bhawan
New Delhi.

(Kind Attention: D. P Shukla, DDA(E))

Subject: - Extension of benefit of higher pay scale of Rs. 4500-7000/- in lieu of Rs. 4000-6000/- to the Technicians appointed/recruited after 25-02-1999 and upto 05-10-2007 - reg.

Sir,

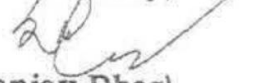
I am directed to refer to DG: AIR's letter No. 14/02/2015-S-IV(A) dated 09.03.2016, on the above mentioned subject and to convey the approval of Department of Expenditure, Ministry of Finance for implementation of following orders of Hon'ble Tribunal in r/o Technicians of Prasar Bharati by way of grant of higher pay scale of Rs 4500-7000/- against Rs 4000-6000 in consonance with the advice of Ministry of Law:-

- (i) Order dated 26.11.2014, filed by Sh. Utpal Karfa, Sh. Tapas Raptan and Sh. Pramod Kumar Singh, in OA No. 350/1530/2014 before CAT, Kolkata;
- (ii) Order dated 30.09.2015, filed by Sh. Amit Barua & two other Technicians in OA No. 350/01551/2015 before CAT, Kolkata.
- (iii) Order dated 15.02.2016, filed by Sh. P.K. Biswas and 2 Ors Technicians in OA No. 350/00647/2015 filed before CAT, Kolkata.
- (iv) Order dated 01.06.2016, filed by Members of ARTEE in OA No. 1575/2015 filed before CAT, (PB), New Delhi.
- (v) Order dated 31.03.2015, filed by Sh. Debabrata Mondal & 10 Ors in OA No. 350/00514/2015 filed before CAT, Kolkata.
- (vi) Order dated 03.05.2015, filed by Sh. Sanatan Murmar, Technician in OA No. 260/00378/2015 filed before CAT, Cuttuck
- (vii) Order dated 21.05.2016, filed by ADTEA in OA No. 4342/2015 filed before CAT, PB, New Delhi.



2. The copies of advice of Department of Expenditure, Ministry of Finance vide their I.D No. 22(3)/E.III(B)2014 dated 28/11/2016 & the advice of Department of Legal Affairs vide their note dated 27/01/2016 are also enclosed for ready reference.

Yours faithfully,



(Sanjay Dhar)

Under Secretary (BA-E)

Tel.No. 23384754

Copy to:- Prasar Bharati, 2nd Floor, PTI building New Delhi.

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16281/2016/B

FTS No. 15180/2015/B

MIB has sought our advice on the issues as to whether upgraded scales granted to technicians vide MIB order dated 25.2.1999 can be granted to the applicants in OA No 350/01530/14 (who joined the service after 25.2.1999) as was done in respect of EAs in MS Rana and Lalit Pawar cases (which on attained finality stood implemented).

2. Pre pages explain the matter. Briefly, matter pertains to directions of CAT (KOI) in Utpal Karfa case (OA No 350/01530/14) wherein applicant technicians were appointed wef 11.2.2003, 11.5.2001 and 19.5.2000 in pre revised pay scale of Rs 4000-6000/-. Pursuant to pay parity issues between lighting asst and technicians settled by the Madras HC and Supreme Court vide order dated 10.1.2013 (UOI v AIR & DD technical employees assn.), the applicants also were granted the scale of 4500-7000/, however, DG/AIR on clarification from PB withdrew the scales on the plea that "appointees on or after 01.01.1996 does not cover under the said order". (89/c).

3. Aggrieved, applicants approached the CAT which while staying the recovery order directed for passing for speaking order by the MIB. There are few more court cases by similarly situated on this issue (OA 1575/2015 by ARTEE, 350/00647/2015, 350/2015) wherein applicants have prayed for grant of scale of 4500-7000/ in terms of Rana & Pawar cases.

4. The matter was discussed with officials of MIB and it was conveyed that instant issue appears to be similar to MS Rana & Lalit Pawar cases in which similar issues (scale of 6500/- in lieu of 5000/- to EAs) was examined by this department. All relevant details have again been called in.

5. The issue of pay parity of lighting assistants and technicians was under litigation and Madras HC vide order 24.11.2010 directed for restoration of pay parity and for notional benefits from 1.7.83. The same was upheld by the Supreme Court vide order dated 10.1.2013. Review petitions too were dismissed. The said order was earlier implemented for pre 25.2.1999 employees as well as for post 25.2.1999 appointed employees also, however later vide order dated 10th March, 2015 by DG/AIR, it was clarified that post 25.2.1999 appointees would be given pay scales as recommended by 5th CPC (as provided in 25.2.1999 order). This has led to litigation by Karfa & several other technicians in various OAs as above noted.

6. We have perused the matter and at outset submit that clarification issued by PB appear to have been issued only in terms of operative directions of Madras HC case without consulting MIB which has handled EAs pay parity issue (MS Rana, Lalit Pawar & Ors cases) and also without considering the mandate of PB (Amendment) Act, 2012.

7. With regard to MS Rana & Pawar cases, the background is that vide executive order of 25.2.1999, upgraded pay scales were given to 11 categories of officials (EAs as well as technicians) on conditions for opting for transfer in PB. EAs (one of category) were granted higher scale of 6500/ EAs. Certain EAs who were recruited prior to 25.2.1999 (however due to administrative reasons could join after that date) were placed in lower scale ie 5000/ filed OAs (1742 & 1743/2004) as discriminatory and violative of equality principles. CAT vide order dated 31.5.2006 directed for consideration of grant of higher scales to these applicants being violative of Art.14 and 16 of COI. SLP as well as review petitions as filed by PB were dismissed by the Supreme Court vide order dated 14.1.2011 and 9.1.2014 on delay as well as on merits.

8. The matter was referred to this department and vide FTS No 1982/2014/B, it was advised that with the dismissal of review petition, order dated 31.5.2006 has attained finality. These orders and several other orders in respect of EAs were implemented in consultation with D/Expenditure.

9. The PB (Amendment) Act, 2012 was promulgated and S.11 was substituted retrospectively. The 2012 Act provides that all officers and employees recruited during the period on and after appointed date till the 5th day of October (GOM date) shall be central government employees. (S.11 (2) r/w Explanation, 11(3) and 11(5)). In other words, distinction as made by executive order (25.2.1999) is irreverent in wake of substituted S.11 of 2012 Act and there are only two categories of employees (i) those who joined before 5th Day of October, 2007 as central government employees and (ii) those who joined after 5th Day of October, 2007 who will be governed by PB service regulations. Consequently all the employees (those transferred to PB as well as those who were recruited by PB during the period on or after the appointed day till the 5th

cases. Only employees recruited by PB after 5th day of October, 2007 would be governed by PB terms and conditions and may even have different pay scales if so, provided in PS regulations framed under S.33(2)(d) of Act.

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10. The implications of 25.2.1999 order vis a vis 2012 Act have been explained by this department on various occasions and recently while examining MACP recovery case, this department had referred to observations of Delhi High Court in Professional Union case as:

"Such Central Government employees would be deemed to be deputationists in the entire tenure of their service life. This is expressly spelt in Section 11(i). Section 11(A) goes to the extent of saying that the existing terms, scales, etc. would be continued by PrasarBharti which would then have the option of framing any new rules etc. Such being the position, paragraph 2 (i) of the up gradation order merely reflects historical facts, and no more. The option exercised by the class of Central Government employees who wish to continue with that status became irrelevant"


11. MIB vide 12-13/N has confirmed that there is no fundamental difference of qualifications and nature of duties of technicians recruited before 25.2.99 or appointed thereafter and PB/DG/AIR has not consulted them while issuing clarification of withdrawing the pay scale to these technicians. The matter cannot be seen only from point of view of implementation of Madras case dehors the mandate of 2012 Act and ratio of law laid down in MS Rana & Pawar cases who are similarly situated.

12. In cases of MS Rana & Pawar, applicants were EAs (grant of 6500/- in lieu of 5000/-), whereas in present case, applicants are technicians (4500/- in lieu of 4000/-) and all of these employees were recruited prior to 5th day of October, 2007. Ratio of law as upheld by the Supreme Court in these cases squarely applies in respect of technicians (yet another category) and differentiation in pay scales would be violative of doctrine of 'equal pay for equal work' as has been upheld by the Supreme Court.

13. The Supreme Court in A.K. Srivastava case, 2015(1) SCC 347 has held that "when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly".

14. In view of the above, cases of technicians being similar to EAs, MIB to avoid litigation, may issue instructions to PB for extending similar benefits to technicians category (4500/- in lieu of 4000/-) who are recruited /appointed on or before 5th Day of October 2007 with all consequential benefits in terms of law laid down in MS Rana & Pawar cases in Karfa, ARTEE, Biswas etc cases as per details at Para 3 above.

The matter has been discussed with the Addl. Secy.


(T. Malik)
Dy. Legal Adviser
27.1.2016

MIB (Shri Ajay Joshi-DS)

(1628/16/B)
(विधि कार्य विभाग)
(Dept. of Legal Affairs) 28/1/2016
श. सं. 15180/16/19
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