

PRASAR BHARATI  
INDIA'S PUBLIC SERVICE BROADCASTER  
DIRECTORATE GENERAL : ALL INDIA RADIO  
( S-II SECTION )

No. C-18013/07/2016-S.II / 191

New Delhi, the dated : 12.02.2018

OFFICE MEMORANDUM

The undersigned is directed to refer to various court cases which have been filed by the officials of various stations of AIR & DD for the grant of relief from recovery/waiver of excess payment made to them through pay-fixation in pursuance of 6<sup>th</sup> Central Pay Commission w.e.f. 1.1.2006, citing the principles, enunciated by the Hon'ble Apex Court vide its judgment dated 18.12.2014 in case no. 11527/2014 (arising out of SLP(C) No. 11684/2012 in State of Punjab & Ors Vs Rafiq Masih (White Washer) circulated by DOP&T vide their OM dated 02.03.2016.

2. In this regard it is mentioned that Hon'ble CAT, Patna Bench while considering the issue of pay fixation and recovery in OA No. 050/00071/2016 (reserved the order on 08.09.2017) and pronounced on 10.10.2017 and in para no. 15, observed that ...

*".....the scheme of the pay fixation pursuant to the implementation of 6<sup>th</sup> Pay Commission recommendation as per the Rules, Explanatory Note which are part of the Rules and various circulars and clarifications is that the pay fixation in the revised pay scale has to be done with reference to the actual pay drawn by the employee in the pre-revised scale. On this amount, a grade pay corresponding to recommended pay scale is to be given."*

and dismissed the OA finally in following words (para no. 20 ;

*".....as per the Hon'ble Supreme Court judgment dated 29.07.2016 in the matter High Court of Punjab and Haryana Vs Jagdev Singh in Civil Appeal No. 35006 of 2016, the authorities are within their powers to recover any excess payment erroneously made. The OA is dismissed. Interim stay is vacated. No order as to costs."*

3. In another case on same issue, the CAT, Bangalore in OA No.170/00813/2016( filed by Smt Vimla Bai, Head Clerk) passed order dated 16.6.2017 holding that the judgment made in the matter of State of Punjab & Ors Vs Rafiq Masih (White Washer), cannot apply to a situation, where officer whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished a undertaking while opting for the revised pay scale. He is bound by the undertaking." And Accordingly, Hon'ble CAT, Bangalore ordered that , ".....the



action of the respondents to recover the excess amount paid to the applicants towards pay and allowances on account of wrong fixation cannot be considered as unjustified. Therefore, we hold that the action taken by the respondents to recover the amount from the applicants from the DCRG dues perfectly in order. Therefore, on detailed consideration of facts and circumstances of the case, we hold that OA is clearly devoid of any merit and is liable to be dismissed."

4. In view of the above all the concerned Head of Stations/Kendras where similar cases have been filed are requested to bring into the knowledge of respective Hon'ble Tribunals about the judgments; dated 10.10.2017 of the Hon'ble CAT, Patna Bench in OA No. 050/00071/2016 filed by Shri Shafi Ahmad Sofi & Ors and judgment dated 16.6.2017 of Hon'ble CAT, Bangalore in OA No. 170//0813/2106 filed by Smt R. Vimala Bai and the cases may be defended accordingly.

Encl: as above



( SANJEEV KUMAR )  
DY. DIRECTOR ADMINISTRATION  
FOR DIRECTOR GENERAL  
Tel: 23421261/Fax: 23421776

All AIR Zonal Heads

Copy to :-

1. DDA(S-VI), DG, AIR, New Delhi
2. DDA(S.II), DG, Doordarshan , Mandi House, Copernicus Marg, New Delhi
3. DG (News), NSD, New B'casting House, New Delhi.
4. CE, CCW, Soचना Bhawan, Lodhi Road, New Delhi
5. Director (Admn.), Prasar Bharati, Prasar Bharati House, Copernicus Marg, New Delhi.
6. Shri Ranvir Singh US-(BA-P), M/o I&B, Shastri Bhawan, New Delhi
7. *Smt. Vastika Sharma, Standing Counsel, L-601, Agassem Awas, I.P. Extension  
Delhi - 110092.*

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA  
OA/050/00071/2016**

Reserved on: 08.09.2017

Date of Order: 10/10/2017.

**C O R A M**

**HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER  
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**

1. Md. Shafi Ahmed, Son of Md. Raza Karim, Head Clerk Cum Accountant, Doordarshan Kendra, Patna.
2. Vijay Kumar Singh, Son of Sri S.S. Singh, UDC under ACP, Doordarshan Kendra, Patna.
3. Atul Kumar, son of Late C.B. Prasad, UDC under ACP, Doordarshan Kendra, Patna.
4. Varun Kumar Singh, Son of Sri S.N. Singh, UDC under ACP, Doordarshan Kendra, Patna.

..... Applicants.

[ By Advocate:- Mr. M.P. Dixit ]

-Versus-

1. The Union of India through the Secretary to the Government of India, Ministry of Information & Broadcasting, Shastri Bhawan, A Wing, Dr. Rajendra Prasad Road, New Delhi- 110001.
2. The Secretary to the Government of India, Department of Expenditure, Ministry of Finance, North Block, New Delhi-110001.  
The Chief Executive Officer, Prasar Bharati, Prasar Bharati Secretariat, 2<sup>nd</sup> Floor, PTI Building, Parliament Street, New Delhi.
3. The Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi-110001.
4. The Member (Personnel), Prasar Bharati Secretariat, 2<sup>nd</sup> Floor, PTI Building, Parliament Street, New Delhi-110001.
5. The Additional Director General (B&A) Prasar Bharati Secretariat, 2<sup>nd</sup> Floor, PTI Building, Parliament Street, New Delhi-110001.
6. The Deputy Director General (ADMN), All India Radio, Akashvani Bhawan, Parliament Street, New Delhi-110001.
7. The Station Director, Doordarshan Kendra, Chhajjubagh, Patna- 800001.

..... Respondents.



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[By Advocate: Mr. Rana Randhir Singh]

**ORDER**

**Per A.K. Upadhyay, A.M.:-** The application has been filed seeking following reliefs:-

"(8.1) That Your Lordships may graciously be pleased to quash and set aside the orders dated 31.12.2015, 05.01.2016 and 11/13.01.2016 .

(8.2) That Your Lordships may further be pleased to direct/command the Respondents to follow up the method of fixation of pay, already been implemented vide Annexure A/2 Series in terms of applicable Rules and statutory provisions referred in the letter dated 03/04.10.2012 read with letter dated 09.03.2015 and 18.06.2015 as contained in Annexure A/1 and A/3 and fixation made their in at the minimum of the revised pay scale of Rs. 6500-10500 of the corresponding stage of Rs. 6500/- as per illustration 4A in accordance with Note 2A below Rule-7 of 6<sup>th</sup> Pay Commissions w.e.f 01.01.2006 be held legal and proper.

(8.3) That your Lordships may further be pleased to direct the Respondents to grant all consequential benefits in favour of the applicants.

(8.4) Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the Applicants."



2. The applicants in this case are Head Clerks/UDCs (under ACP) in Doordarshan Kendra, Patna. At the time when 6<sup>th</sup> CPC was implemented they were in the pay scale of 5500-9000. The issue was the manner in which their pay was to be fixed consequent upon the introduction of 6<sup>th</sup> CPC. Their pay was initially fixed by first giving them a notional pay scale of 6500-10500 and then applying the

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formula prescribed in the CCS (Revision of Pay) Rules, 2008, i.e. multiplying this notional fixation by a factor of 1.86 + the Grade Pay prescribed corresponding to the pay scale.

3. By the order dated 18.06.2015 (Annexure A/3) the pay scale of Head Clerks and Assistants falling in the pre-revised scale of Rs. 4500-7000 / 5000-8000 were upgraded to the pre-revised pay scale of Rs. 6500-10500/-. Thereafter, the methodology for pay fixation was revised. However, this was re-examined in the light of clarification issued by the Department of Expenditure vide their OM No. 154226/2015-BAP dated 29.10.2015 and the matter of pay fixation as on 01.01.2006 was rectified by order dated 31.12.2015 (Annexure A4) as follows:-

"The pay in the pay band will be determined by multiplying the existing basic pay as on 01.01.2006 by a factor 1.86 and rounding the resultant figure to the next multiple of ten. To ease the complexity of multiplication and rounding off, the fitment tables of pre-revised scales of pay in which the officer has drawn his pay as on 01.01.2006 has to be used for arriving at the pay in the pay band and thereafter, the grade pay corresponding to the upgraded scale as indicated in Column-6 of Part-B or Part-C of CCS (Revised Pay) Rules, 2008 will be payable in addition."



4. The applicant seeks quashing of this order along with the subsequent orders for consequent recovery.

5. The respondents have stated in their reply that there were a series of errors in implementing 6<sup>th</sup> CPC recommendations which lead to erroneous re-fixation of pay. Thereafter, the matter was examined and such erroneous re-fixation by certain regional

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Kendras was corrected. Some employees who are beneficiaries of such errors were taking advantage and filing OAs before various benches of the Tribunal. AIR and Doordarshan Stenographer Association (ADSA) filed an OA No. 24/2016 defended by AIR, Patna at CAT, Patna which is similar in nature and was dismissed by order dated 19.09.2016. Another OA No. 1854 of 2014 of a similar nature was dismissed by CAT, Principal Bench vide judgment dated 01.06.2016. Both the judgments have been annexed with the written statement.

6. The applicants have filed a rejoinder in which they have filed a judgment of the Hon'ble High Court, Delhi in WP(C) 8058/2015 which was disposed of vide order dated 04.11.2016 by which a batch of Writ Petitions were decided relating to 71 applicants.

7. Heard the parties and perused the documents.

8. The pay fixation pursuant to the implementation of 6<sup>th</sup> CPC has to be done in accordance with the statutory Rules issued by the Government. The general Rules were issued under the title "Central Civil Service (Revised Pay) Rules 2008" by Ministry of Finance (Department of Expenditure) Notification GSR 622 (E) dated 29.08.2008. Under these Rules, 36 old pay scales were revised into a much smaller number of Pay Bands having longer span. Within each Pay Band, there were a number of Grade Pays which signified the status and rank. These Rules came into effect from 01.01.2006.



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9. The dispute essentially centres around what would be taken as the pre-revised basic pay as reference for fixation in the revised pay scales. The general Rule for pay fixation is given in Rule 7(1) of the aforesaid CCS (RP) Rules 2008, the relevant portions of which are as follows:-

**7. Fixation of initial pay in the revised pay structure**

(1) .....

(A) In the case of all employees:-

(i) The pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10. (emphasis supplied)

.....  
(iii) The pay in the pay band shall be determined in the above manner. In addition to the pay in the pay band, grade pay corresponding to the existing scale will be payable."

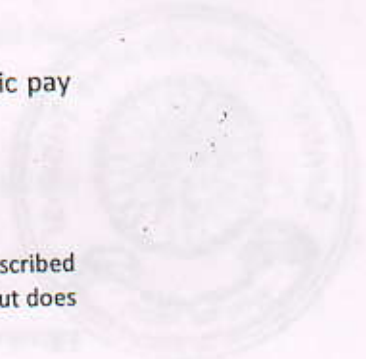
10. Thus, the reference for revision is the existing basic pay which has been defined in Rule-3 (i) as follows:-

**3. Definitions**

(i) "existing basic pay" means pay drawn in the prescribed existing scale of pay, including stagnation increment(s), but does not include any other type of pay like 'special pay', etc.

Thus, the above Rules clearly specify that the "existing basic pay" means the pay actually drawn by the employee in the pre-revised scales. This has been further clarified in the explanatory notes and the memorandum explanatory to the Rules which are integral part of the statutory Rules. A number of circulars issued by the Ministry also reiterate the same point.

12. The dispute arises only in those cases where there was merger of two or more pre-revised scales into one scale, and in cases



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where some scales were recommended to be upgraded. The cases of upgradation and merger have been dealt in Note 2A and 2B of Rule 7 of the CCS(RP) Rules 2008 which deal with the question "Fixation of initial pay in the revised pay structure". The present matter pertains to upgradation of pay scale which is dealt in Note 2A of Rule 7 quoted below for better appreciation:-

**"Rule 7-Fixation of initial pay in the revised pay structure**

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

**Note 2A-** Where a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in the Schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with Clause (A)(i) and (ii) of Rule 7 by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. The grade pay corresponding to the upgraded scale will be payable in addition. Illustration 4A in this regard is in the Explanatory Memorandum to these Rules. *(Emphasis supplied).*



13. Thus, the key concept is the "existing basic pay", which we have already discussed above with reference to the Definitions in Rule 3(1) which define it as the pay drawn in the prescribed existing scale of pay. For understanding the meaning and intent of the Note 2A to Rule 7(1), we need to refer to Illustration 4A in the Explanatory memorandum which is as follows:-

**Illustration 4A:-** Pay fixation in cases where posts have been upgraded e.g. posts in pre-revised pay scale of Rs. 3050-75-3950 to Rs. 3200-85-4900 scale.

- 1. Existing Scale of Pay Rs. 3050-4590  
 (Corresponding Grade Pay Rs. 1900)

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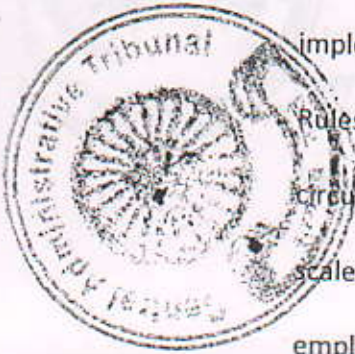
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- 2. Pay Band applicable PB-1 Rs. 5200-20200
- 3. Upgraded pay scale Rs.3200-4900  
(Corresponding Grade Pay Rs. 2000)
- 4. Existing basic pay as on 01.01.2006 Rs. 3125/-
- 5. Pay after multiplication by a factor of 1.86- Rs. 5813  
(Rounded as Rs. 5820)
- 6. Pay in the Pay Band-2 Rs. 5820/-
- 7. Pay in the pay band after including benefit of bunching in the pre-revised scale of Rs. 3050-4590, if admissible - Rs. 6060/-
- 8. Grade Pay attached to the scale of Rs. 3200-4900-Rs. 2000
- 9. Revised basic pay-total of pay in the pay band and grade pay- Rs. 8060.

14. Thus, in case of upgradation (as also merger), "the existing basic pay" has been taken as the actual pay drawn by the employee in the pre-revised pay scale. After the basic pay in the pre-revised pay scale has been replaced as per the prescribed formula under the Rules, the corresponding Grade Pay for the upgraded pay scale or the higher pay scale due to merger has to be added.

15. Thus, the scheme of the pay fixation pursuant to the implementation of 6<sup>th</sup> Pay Commission recommendation as per the Rules, Explanatory Note which are part of the Rules and various circulars and clarifications is that the pay fixation in the revised pay scale has to be done with reference to the actual pay drawn by the employee in the pre-revised scale. On this amount, a grade pay corresponding to recommended pay scale is to be given.

16. We have already decided several cases belonging to different departments on these lines. The respondents have also brought to our notice the judgment by CAT, Bangalore Bench dated 16.06.2017 in OA No. 813/2016 as well as the judgment of CAT, Madras Bench dated 28.11.2014 in OA No. 824/2012 where a similar



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prayer of the employees of the same organization has been dismissed. This judgment has also been affirmed by Hon'ble High Court, Madras in WP No. 1910 of 2015 by order dated 26.03.2015.

17. We have gone through the judgment of the Hon'ble High Court, Delhi cited by the applicant in the rejoinder. This is of promoted Nursing Sisters and the issue was anomaly in pay scale with respect to direct recruits after 01.01.2006. Since the Hon'ble Madras High Court judgment relates to an identical matter and organization as in the present OA we rely upon that judgment filed by the respondents.

18. We also note that the applicants also support Illustration 4A pertaining to Note 2A of Rule 7 of the 6<sup>th</sup> CPC CCS (RP) Rules 2008.

As we have shown above this illustration exactly states opposite of what the applicants presume. In this illustration, the existing actual pay drawn has to be multiplied by 1.86 upon which the Grade Pay of upgraded pay scale has to be added. This is what was exactly clarified by the letter dated 31.12.2015.

19. In conclusion, the multiplication by factor 1.86 has to be on the actual pay drawn by an employee as on 01.01.2006. On the figure thus arrived, the Grade Pay corresponding to the upgraded pay scale has to be added. Therefore, the pay fixation earlier done by 3/4.10.2012 by the local Kendra was erroneous. The clarification given by letter dated 18.06.2015 (Annexure A/3) was contrary to the Rules. The rectification done by letter dated 31.12.2015 (Annexure



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A/4) in consultation with the Department of Expenditure which is the concerned Department for Pay Commission recommendation, is correct. Consequent recovery orders are also in order because the applicants were already put on notice at the time of the initial wrong fixation that

- " (i) this fixation is subject to audit objection
- (ii) payment of pay and allowances/arrears are being paid subject to adjustment from amounts that may be due subsequently should any discrepancies be noticed later."

20. As per the Hon'ble Supreme Court judgment dated 29.07.2016 in the matter of High Court of Punjab and Haryana Vs. Jagdev Singh in Civil Appeal No. 35006 of 2016, the authorities are within their powers to recover any excess payment erroneously made. The OA is dismissed. Interim stay is vacated. No order as to



[Jayesh V. Bhairavia]/M[J]

[A.K. Upadhyay]/M[A]

Srk.

"True Copy"

Certified that this is a True and correct copy of the Judgement / order as in case file OA/RT/TA/CCPA/MA-15 No. OA-71/16-2015 and that all the matter appearing the rain legible and faithfully orders with no modifications.

- (A) Sl. No. of application: 18930
- (B) Name of Applicant: Bana Randhir Singh
- (C) Date of Application: 10/10/17
- (D) Number of Pages: 32 pages
- (E) Copying fee : charges urgent/ordinary: urgent
- (F) Date of fixed for deposit of copying fee: 25/10/17
- (G) Date of Preparation of copy: 31/10/17
- (H) Date of delivery of the copy to the applicant: 01/11/17

*Rakent*  
31.10.2017  
Dy. Registrar / Section Officer  
Central Administrative Tribunal  
Patna Bench, Patna

*B*  
31/10/17