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आकाशवाणी एवं दूरदर्शन तकनीकी कर्मचारी संघ A.I.R. & D.D. Technical Employees Association

(भारत सरकार द्वारा पंजीकृत एवम् मान्यता प्राप्त)
(Registered and Recognised by Govt. of India)
No. 2298/63

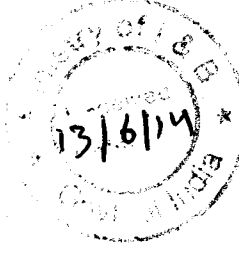
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Letter No. TEA/2014/MIB (M)/ 07

Dated: 13/06/2014

The Hon'ble Minister,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi – 110001.



Subject: One Cadre One Pay and Equal Pay for Equal Work.

Hon'ble Sir,

This is to submit that in a catena of decisions, it has been held by the Hon'ble Apex Court that if any classification is made relating to pay scales and if unequal pay is based on such classification, then Article 14 will at once be attracted and such classification should be set at naught and equal pay must be directed to be given for equal work. In other words, where unequal pay has brought about discrimination within the meaning of Article 14, it will be a case of 'Equal Pay for Equal Work'. The courts in India have followed the general principle that equal protection of the law means the right to equal treatment in similar circumstances. The classification which is unreasonable is open to challenge by way of judicial review.

In AIR and Doordarshan, for all Cadres of subordinate Engineering staff like Helper, Technician, Engineering Assistant, Diesel Engine Driver, Diesel Technician and Mast Technician there are more than one scales of pay within one cadre. Resultantly, there are two different scales of pay for one post, whereas taking into consideration various factors like nature of their selection, manner of appointment, nature of duties and responsibilities attached to the post and chances of promotion and educational & professional qualifications, there is no difference and they are similarly placed and identical in all respects. Therefore, on account of classifying them by artificial division in the same genre and granting them two different pay scales in the same cadre, equal treatment guaranteed under Article 14 is wholly vitiated and such a practice is patently erroneous, arbitrary and has resulted in invidious discrimination. A bare look at the pay structure of the subordinate Engineering cadres (entry level) tells the tale. (Kindly see the Chart annexed herewith) which shows that there are two scales of pay in each and every cadre notwithstanding the fact that artificially divided two sets of employees perform the same and identical duties and known by the same designation but one set is getting higher pay than its counterparts. In fact, there are three different scales of pay in two cadres.

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As a precedent to look at, in the case of Engineering Assistants, there are two pay scales of Rs.6500-10,500 (Rs. 9300-34800, as per 6th CPC) and 5000-8000 (Rs. 9300-34800, as per 6th CPC) with Grade Pay of Rs.4600 and Rs. 4200 respectively. In order to resolve the enigma regarding their lesser pay scales, a few Engineering Assistants on being unable to get any relief from the department exercised their legal remedy and approached Delhi CAT by way of O.A.Nos.1742 & 1743/2004 wherein on dated 31/05/2006 the Hon'ble Court directed the authorities that the applicants be also granted higher pay scale of Rs. 6500-10,500 as EAs and pass a detailed and speaking order within a period of 3 months from the date of receipt of copy of the order. The Hon'ble CAT found classification of EAs as unreasonable and arbitrary and held it to be illegal without being founded on an intelligible differential. The Tribunal has further held that persons holding same posts cannot be discriminated vis-à-vis that scale of pay in which they have to be placed. On the issue related to parity of pay, it was held that for employees holding same post and doing same work and there being no ground to classify them in two categories, their placement in different scales of pay was arbitrary. It was further observed that since the technical and educational qualifications required for both groups of employees were the same, so both the groups were directed to be paid the same wages. Later the Union of India challenged the aforesaid order by way of Writ Petition Nos. 2071, 2094 & 2095 of 2007 and WP(C) 3410/2010 before Hon'ble Delhi High Court but without success. The Hon'ble Court disposed of all the said petitions by a single judgment passed on the 7th September 2010 wherein the contention of Union of India that some Engineering Assistants appointed and handed over letters of appointment before 15/09/1997 and thereafter by MIB and Prasar Bharati respectively would not entitle the Uoi to place the former in the pay scale of Rs. 6500-10500 and latter in the pay scale of Rs. 5000-8000. Therefore, in nutshell, the Hon'ble court did not agree to and struck down the artificial division created by UOI to differentiate between the employees recruited by Prasar Bharati and those coming to Prasar Bharati from MIB. **It was further held that law was well-settled on the point of equal pay for equal work for employees holding same posts under the same employer and as such they were held entitled to be given same pay. The Hon'ble High Court further clarified that where there is complete parity it would be highly discriminatory to treat employees differently on account of the two coming from different sources. The Hon'ble High Court has also quoted with approval a decision of Apex Court reported as 1987(1) Supreme Court Cases 592 in M.P Singh Vs. Uoi and others in which it was held that where employees enter the cadre from two different sources, if they do the same work and are similarly placed, there can be no discrimination in payment of their wages. It was further held that the employees in the same cadre can only be placed in different pay-scales but that would be if it is shown that one set of employees has higher technical or educational qualifications or perform more onerous duties vis-à-vis the other or the like. But where there is complete parity it would be highly discriminatory to treat employees differently merely on account of two coming from different sources.**

However, as has been the usual practice, the Union of India further assailed the aforesaid order of Hon'ble Delhi High Court by filing SLPs (Civil) Nos. 19,77, 99 and 1387 of 2011 which too were dismissed by Hon'ble Supreme Court vide order dated 14-01-2011. Therefore, as such the order of Principal Bench of Delhi CAT dated 31-05-2006 has attained finality as also the review petitions (Civil) Nos. 2622, 2623 & 2624 of 2011 filed by Union of India were dismissed on the twin grounds of delay as well as merits.

Nevertheless, the orders of the Courts have not yet been complied with and the original applicants are separately waiting for the justice to be done. They have also filed contempt petitions. This is despite the fact that DG: AIR through its letter vide F.No. 3/17/2009-SIV (A)/73

dated 17th February, 2011 highlighted the aforesaid matter attaining finality and made very favourable recommendations to the Ministry of Information and Broadcasting for unifying the pay scales for the post of Engineering Assistants by granting them all a pay scale of Rs. 6500-10,500 instead of Rs. 5000-8000. Further, as per the minutes of the meeting held by Member (Personnel) of Prasar Bharati Secretariat with the office bearers of two Engineering Associations i.e. ARTEE and ADTEA on 19-01-2011 and 20-01-2011 respectively, it was decided to implement the decision of CAT, New Delhi because on this issue the Union of India had remained unsuccessful at both the higher judicial fora i.e. Delhi High Court as well as Supreme Court. However, the above said recommendations merely remained on papers because the steersmen of MIB were reluctant to implement the orders of the court.

Likewise, the order of Madras High Court dated 24-11-2010 in case of Technicians / Sr. Technicians for grant of Notional Fixation of pay at par with the Lighting Assistants Grade I & II respectively also attained finality by reaching the doorstep of Honorable Supreme Court but the low paid employees are yet to reap benefits of the pronouncements of the courts. The Union of India is pussy footing the matter and is not ready to accept the repeated findings of the courts to the effect that pay parity is a static but not a dynamic concept and the **employees once held equal by judiciary cannot be made to suffer inequality by paying them different wages**. Here, it is pertinent to mention that once when the Lighting Assistants were held equal to their counterparts i.e. Assistant Cameramen in Films Division by the Hon'ble Supreme Court in **Y.K.Mehta Vs. Union of India reported as 1988(Supp) Supreme Court Cases 750**, they were also held entitled to the same pay scale as granted to the latter. However, as a matter of fact when 5th Pay Commission downgraded the pay scale of Lighting Assistant to Rs. 4500-7000 in comparison with their above said counterparts of Films Division, the Hon'ble High Court of Delhi again intervened and stepped up their pay scale to Rs. 5000-8000 w.e.f 01-01-1996. In the same manner, the Technicians of AIR and Doordarshan are entitled to the pay scale drawn by Lighting Assistants of Doordarshan because parity between them has been established between them ever since 1983 by judicial fora at all levels. By drawing an analogy, the **Technicians are also entitled to the pay scale of Rs. 5000-8000 respectively w.e.f 01-01-1996 like their counterparts of Doordarshan i.e. Lighting Assistants because of the parity between the two cadres consistently maintained and attained finality before the highest court of the land.**

It is worthwhile to note that the anomalies in the pay-scales of the employees in subordinate Engineering Cadres arose after issue of O.M.No. 310/173/97-B (D) dated 05-12-97 by MIB whereby an *ad hoc* increase in salaries of some grades of subordinate engineering services of AIR and Doordarshan was ordered and which pay-scales were regularized by another MIB's order No. 310/173/97-B (D) dated 25-02-99. It is pertinent to note that as per available official records, the pay-scales granted as per order dated 25-02-99 were in continuation to the recommendation of the 5th Central Pay Commission because the above said order was released due to a decision of Union Cabinet taken in its meeting held on 06-11-97 as advised by the Fast Track Committee of Secretaries constituted to remove and rectify the anomalies arising out of the recommendations made by the 5th Pay Commission. In accordance therewith the employees of subordinate engineering cadres were granted 90% of the benefits as per order dated 05-12-1997. Thereupon, the Prasar Bharati in its first meeting held on 10-11 December, 1997 agreed to grant the remaining 10% benefits to the employees. It was specifically mentioned by MIB in the order dated 25-02-1999 that the employees belonging to certain engineering and program cadres had been agitating for grant of higher pay-scales than those recommended by 5th Central Pay Commission and accepted by the Government of India's Resolution dated 30th, September, 1997.

It will not be out of place to mention here that MIB in its communication No. 122/06-BA (E) dated 22-12-2006 has admitted and accepted that the benefits of upgradation of pay-scales granted vide order dated 25-12-99 were in continuation to the recommendations of 5th CPC. Further that these recommendations were made only after consultation with DoPT and Ministry of Finance which dispelled and rebutted the contention of the Audit that the pay-scales given to the employees vide O.M dated 25-02-99 were apart from the recommendations of 5th Pay Commission and hence held objection of the Audit as 'untenable'.

It is also noteworthy that a Cabinet decision dated 29-01-2009 cleared the status of employees wherein it was been decided that all the Central Government Employees recruited for the purpose of and working in Akashwani and Doordarshan as on 5th October 2007 (the date on which GoM on Prasar Bharati took decision in this regard) on vacant government posts and recruited as per government rules, shall enjoy the status equivalent to employees serving on "deemed deputation" from the date of their joining service under Akashwani and Doordarshan till the time of their retirement they will be eligible and entitled for all facilities available to Central Government employees including all retirement and pensionary benefits also irrespective of the status of Prasar Bharati as an Autonomous Organization.

During the meetings of service associations with Member (Personnel) of Prasar Bharati on dated 19-01-2011 (with ARTEE) and dated 21-01-2011(with ADTEA) it was decided that since the SLP filed by DDK, Delhi to challenge the order of Delhi High Court, had been dismissed by the Hon'ble Supreme Court, therefore, now the department is left with no legal option but to implement the court order to grant pay-scale of Rs.6500-10,500 to direct recruited Engineering Assistants. Further, in view of circular vide F.No.1/1/2008-IC dated 13-11-2009 issued by DOPT, Grade Pay of Rs. 4600 in PB-2 to EAs getting pre-revised pay-scale of Rs.6500-10,500 should also be granted to them. However, the above said decision of Prasar Bharati remained only on papers because of the dilly-dallying attitude of the authorities due to which a contempt petition is also pending before the Principal Bench of Delhi, CAT.

Similarly, in view of the order dated 25-02-99, the Technicians who were already in service before the date of order were placed in the pay-scale of Rs.4500-7000 whereas other group of Technicians who joined service after 25-02-99 was given the pay-scale of Rs. 4000-6000 only. More or less similar anomalies also exist in the promotion of these cadres. In the aforesaid meetings of Prasar Bharati, it was also decided anomalies in these cadres should also be removed by granting a pay-scale of Rs. 4500-7000 to all the Technicians whether appointed before or after 25-02-99 and a pay-scale of Rs. 5000-8000 to all Sr. Technicians on the similar lines but these decisions could not be implemented due to lack of will and determination on the part of authorities to take executive decisions to resolve the problems.

More or less, same is the case in other cadres where more than one scales of pay are in existence. As a matter of fact, there are three different scales of pay in the cadres of Diesel Technician and Mast Technician. **Time and again, this practice of having two or three different scales of pay in the single cadre received scathing criticism from the judicial fora because of absence of any rationale behind the artificial classification of the employees.** In some judicial pronouncements, it has been held that there can be two scales in one cadre only on the basis of higher educational or professional qualifications and more onerous duties and responsibilities of one group of employees, but unlike such cases in our department where all employees in one cadre are having similar qualifications, performing same duties, being governed by same service conditions and fall in same seniority list--there cannot be any differentiation and discrimination

in their wages. Hon'ble Supreme Court has also held that service jurisprudence evolved by this court from time to time postulates that all persons similarly situated be treated similarly.

Close scrutiny reveals that in various cadres the controversy at the core is the same i.e. different wages for single designation in the concerned cadre. It may be observed that the controversy herein applies to all such employees of AIR and Doordarshan; it is not confined to some individuals or a section of employees. Due to its prevalence, resultant position is that some employees are getting less pay than their brethren employees working on the same post or are identical to them in all respects. Such anomalous situation is not only per se discriminatory but also resulted in a condition which is undesirable for a cadre of large number of employees in a big establishment like that of AIR and Doordarshan. Unequal pay amongst the equals or similarly placed incumbents tends to have demoralizing effect on the workforce which in turn results in lack of motivation and gives rise to widespread resentment.

Truly speaking the Government should have on its own checked this evil of unequal pay of the fleet of employees of the same cadre. **The Government of India as a Welfare State and representative of the world's largest democracy should see to it that incidents giving rise to court cases particularly service matters should be minimized. After the law is laid down, it should see to it that it is applied uniformly to all and similarly or identically placed persons automatically get the same relief without resorting to litigation.** Interalia putting in place some measures to resolve the issues afflicting the subordinate cadres, our department must hold across the table discussions to find solutions to dissuade the aggrieved employees to have recourse to seek justice from the Court of Law. Even if under compelling circumstances, litigation is thrust upon the machinery of government, **all out efforts should be done to settle the service disputes by the way of out-of-court settlement through negotiations and persuasions due to which a lot of precious administrative time, energy and money can be saved.** It will also help towards confidence-building and restore faith of the suffering employees in the system. **Resolving the issues through the process of dialogue by holding Departmental Council Meetings at regular intervals is the hallmark of administrative acumen but unfortunately this practice has been abandoned in MIB.**

Another disturbing point is that the benefit of service litigation is extended only to the applicants in a case whereas there are a plethora of judgments on this point that the relief granted to a few persons by the court should be granted to other employees also who are similarly placed so as to avoid multiplicity of litigation to better serve the interests of justice. Those judgments which have universal application are called judgements *in rem* and are applicable even to those employees who could not approach any judicial forum due to one reason or the other. The Hon'ble Supreme Court in **Uttaranchal Forest Rangers' Association (Direct Recruits) Vs. State UP (2006) 10 SCC 346**, while referring to the decision in the case of **State of Karnataka Vs. C. Lalitha (2006) 2 SSC 747** has held as, "Service jurisprudence evolved by this court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently".

Further, another problem is that the plea of financial implications is always cited as a subterfuge to deny the relief granted notwithstanding the fact that justice cannot be deprived on the basis of monetary considerations otherwise it will shake the faith and confidence of public in the judicial institutions and undermine the dignity and efficacy of course in the administration of justice.

In K.L. Khanna Vs. Nehru Yuva Kendra Sangathan (O.A. No. 1272/2012) decided on 11/02/2014, the Principal Bench of CAT, New Delhi has observed that when the dispute of the employees reached Allahabad High Court and Apex Court, Govt. of India had to sanction Rs. 10,74,36,263/- for implementing the judgment which reiterates and reaffirms the view that if justice is to be done, it is to be done at any cost and financial outgo, howsoever huge those may be, cannot stand in way.

Furthermore, on this point the observations of the Hon'ble Supreme Court in service-matter titled Union of India Vs. M.P. Singh reported as AIR 1990 SC 1098 (para 8) can also be aptly quoted, "Justice is alert to difference and sensitive to discrimination. It cannot be measured in terms of money."

On the issue of one cadre one pay and equal pay for equal work, no solution could be offered at lower pedestals, hence this representation to your goodself.

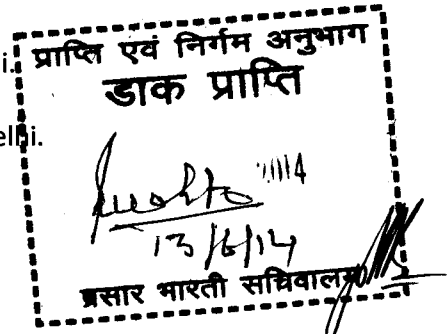
It is, therefore, prayed that your graciousness be pleased to issue instructions to the officers concerned:-

1. To initiate steps to implement the judgment dated 07/09/2010 of Hon'ble High Court of Delhi in WP (C) Nos. 2071, 2094, 2095 and 3410 of 2010 to cover all the Engineering Assistants apart from the applicants in the matter on the basis of *mutatis mutandis*;
2. To start the process of unification of the scales of all cadres as per chart attached;
3. To advise Ld. Secretary, Ministry of I&B to give an individual meeting to our Association or to re-start the meeting of the Departmental Council as per the JCM scheme in order to resolve the contentious issues.



Copy to:-

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2. CEO, Prasar Bharati, Sansad Marg, New Delhi.
- 3. DG: AIR, Sansad Marg, New Delhi.
4. DG: DDn, Mandi House, New Delhi.



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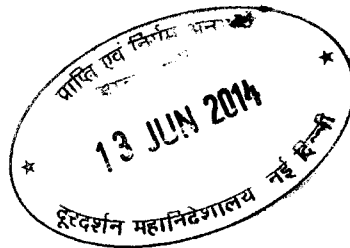


Chart Showing Pay-Scales of Subordinate Engineering Staff (in Rupees)

Sr. No.	Cadre	4 th CPC W.E.F 01-01-1986	5 th CPC W.E.F 01-01-1996	6 th CPC W.E.F 01-01-2006
1.	Helper	800-1150	2650-4000	5200-20200(GP-1800) 5200-20200 (GP-1900)
2.	Technician	1200-1800	4000-6000	5200-20200(GP-2400) 5200-20200 (GP - 2800)
3.	Diesel Engine Driver	950-1500	3050 - 4590	5200-20200(GP - 1900) 5200-20200 (GP - 2000)
4.	Diesel Technician	1320 - 2040	4000 - 6000	5200-20200(GP-2400) 5200-20200(GP-2800) 9300-34800(GP-4200)
4.	Mast Technician	1320 - 2040	4000 - 6000	5200-20200(GP-2400) 5200-20200(GP-2800) 9300-34800(GP-4200)
5.	Engineering Assistant	1400-2600	5000-8000	9300-34800(GP-4200) 9300-34800(GP-4600)