

Issue of ACP & MACP vis-à-vis OM dated 25.02.1999

Pay Scales Considered in ACP Case in CAT, Patna Bench.

In OA No. 514/2002 before the CAT, Patna Bench, the applicants Shri B.K.Roy and others had submitted that the Pay Scales of three feeder and promoted posts of EA, SEA and AE in the hierarchy of subordinate engineering cadre got merged into a single revised pay scale of Rs. 6500-200-10500 w.e.f. 01.01.1996 due to recommendation of 5th Pay Commission to replace cluster of 'Existing Pay Scales' of Rs. 2000-3200 and Rs. 2000-3500, held by EA, SEA and AE, by the single 'Revised Pay Scale' of Rs. 6500-200-10500. They had argued that, therefore, by applying *Clarification No. 1* and *Clarification No. 32* issued by DOP&T vide Clarification dated 10.02.2000, they were eligible for the 1st ACP in the Pay Scale of Rs. 10000-325-15200 held by the analogous post of *Executive Engineer* in the hierarchy of *Civil Construction Wing* of AIR & DD. In the judgment dated 07.09.2009, the CAT, however, ordered that the applicants are allowed 1st ACP in the Pay Scale of Rs. 8000-275-13500 held by *Assistant Executive Engineer* of CCW. This was opposed by the applicants but could not be agreed to the Pay Scale of Rs. 10000-325-15200 by the court.

Let us keep aside this aspect while discussing on the *upgraded pay scales* as granted to EA, SEA and AE besides 8 other categories of staff by the Ministry of I&B (MIB) vide its Office Memorandum dated 25.02.1999.

Pay Scales Recommended by 5th Central Pay Commission:

After the 5th Pay Commission's recommendations got gazette notified on 30.09.1997, the MIB was adamant on the point that the 5th Pay Commission had granted revised Pay Scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 to EA, SEA and AE respectively effective from 01.01.1996 with *protection of pay*. Owing to resentment of staff associations, the issue of revision of pay scale of EA was referred to Fast Track committee which, instead of deciding the matter there, referred back the issue to be decided by the MIB itself. The MIB, after a meeting with officers of DOP&T, MOF, Min. of Law and officials of ARTEE & ADTEA, came out with OM dated 05.12.1997 granting Pay Scale of Rs. 6500-200-10500 to EA and SEA also on *ad-hoc increase basis* w.e.f. 01.11.1997 under a condition that 90% of the pay in *ad-hoc* scale would be paid at present leaving payment of remaining 10% to be decided by the Prasar Bharati later on. Further agitations resulted into signing of another agreement between Staff Associations & the MIB and thereby issuing of OM dated 25.02.1999.

Upgraded Pay Scales Granted by MIB as per OM dated 25.02.1999.

The staff side present in the meeting chaired by the then Minister of I&B, Late Shri Pramod Mahajan, had informed next day that the MIB had emphatically told the staff side that once the replacement pay scale of Rs. 6500-200-10500 for the post of Engineering Assistant was denied by Pay Commission as well as the Committee of Secretaries (Fast Tack Committee), the matter of grant of this pay scale to the post of EA under the government was closed, except by the decision of a court of law. However, grant of higher pay scales than those recommended by the 5th Pay Commission might be considered under the umbrella of Prasar Bharati which had come into being in 1997 and which would also dodge other employees of various Government departments clamoring for parity of their pay with the EA. Thus, higher pay scales of Rs.6500-10500, Rs.7450-11500 and Rs.7500-12000 were coined in place of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 respectively for EA, SEA and AE respectively under the subject "Up-gradation of Pay Scales". The upgraded pay scales were allowed not as Government employees *per se* but as Government employees in the service of Prasar Bharati. Of course, many conditions and need of undertaking for availing of these pay scales were absurd.

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The 5th Pay Commission, in its report, had given a recommendation on adoption of a new "**Assured Career Progression Scheme (ACP Scheme)**" for civilian central government employees. This was accepted by the government and notified by DOP&T vide O.M.No. 35034/1/97-Estt.(D), dated 09.08.1999. **The ACP scheme was made applicable w.e.f. 09.08.1999 only** under certain instructions and guidelines.

Obviously, the OM dated 25.02.1999 on grant of Upgraded Pay Scales was issued approx. six months before the OM dated 09.08.1999 on adoption of ACP Scheme was issued. Therefore, there was no scope of selection of words etc in the framing of the OM dated 25.02.1999 keeping in consideration of the essential conditions of eligibility for ACP and giving smooth applicability of it. Nevertheless, it is not the word "upgraded" but the upgraded pay scales not being the Government pay scales for the relevant posts of EA, SEA & AE that is cause behind denial of ACP/MACP benefits. Had these upgraded pay scales been allowed as Government pay scales for the relevant cadres of EA, SEA, and AE, there could have not been any objection in the admissibility of ACPS for employees of these cadres. It is wrongly being understood by few quarters in the employees that the word "upgradation" in the MIB's OM dated 25.02.1999 is culprit which needed to be deleted. In fact, it is the sentence "the upgraded scales will be allowed not as Govt.

employees *per se* but as Govt. employees currently in service of Prasar Bharati” that is responsible for denial of ACPS/MACPS in these scales which actually needed to be suitably modified.

This point stands clarified vide Clarification No. 35 issued by DOP&T vide OM No. 35034/1/97-Estt. (D) (Vol. IV), dated 18.07.2001

No.	<u>Point of Doubt:</u>	<u>Clarification:</u>
35	Whether placement/appointment in higher scales of pay based on the recommendations of the Pay Commissions or Committees set up to rationalize the cadres is to be reckoned as promotion/financial upgradation and offset against the two financial upgradations applicable under the ACP Scheme ?	<p>Where all the posts are placed in a higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts in not to be treated as promotion/upgradation. Where, however, rationalization/restructuring involves creation of a number of new hierarchical grades in the rationalized set up and some of the incumbents in the pre-rationalized set up are placed in the hierarchy of the restructured set up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre-structured/pre-rationalized grade, then this will be taken as promotion/upgradation.</p> <p>If the rationalized/restructured grades require possession of a specific nature of qualification and experience, not specified for the existing posts in the pre-rationalized set up, and existing incumbents in pre-rationalized scales/pre-structured grades, who are in possession of</p>

the required qualification/experience are placed directly in the rationalized upgraded posts, such placement will also not be viewed as promotion/upgradation. However, if existing incumbents in the pre-rationalized grades who do not possess the said qualification/experience are considered for placement in the corresponding rationalized grade only after completion of specified length of service in the existing grade, then such a placement will be taken as promotion/upgradation.

Where placement in a higher grade involves assumption of higher responsibilities and duties, then such upgradation will be viewed as promotion/upgradation.

When only a part of the posts are placed in a higher scale and rest are retained in the existing grade, thereby involving redistribution of posts, then it involves creation of another grade in the hierarchy requiring framing of separate Recruitment Rules for the upgraded posts. Placement of existing incumbents to the extent of upgradations involved, in the upgraded post will also be treated as promotion/upgradation and offset against entitlements under the ACPS.

For any doubts in this regard, matter should be referred to the Department of Personnel and Training (Establishment 'D' Section) giving all relevant details.

Explanation:

First eleven lines of 1st para of the clarification herein states that where all the posts are placed in a higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts in not to be treated as promotion/upgradation. This is exactly the case in grant of upgraded pay scales to EA, SEA and AE. Thus grant of higher scale/upgraded scale this way cannot be treated as promotion/upgradation for offsetting against financial upgradation applicable under the ACP Scheme.

In case of grant of upgraded scales to EA, SEA & AE by MIB's OM dated 25.02.1999, the applicability of ACPS is denied *ab initio* because the upgraded scales are not Government scales for the relevant posts of EA, SEA & AE.

It is therefore required that the upgraded scales of Rs. 6500-10500, Rs. 7450-11500 and Rs. 7500-12000 be allowed to EA, SEA and AE respectively as Government pay scales. The word 'Upgraded' has no liability whatsoever in applicability of ACPS/MACPS.

Ram Shanker,
AE (Rtd)