

Ministry of Law and Justice
Department of Legal Affairs

FTS No. 1982/2014/B

Reference issues for advice at Para 12 -13 of 3/N.

2. M/I&B has sought our advice in respect of implementation of CAT order dated 31.5.2006 in CP NO. 499/2011 in OA No 1742 and 1743/2004 in wake of retrospective amendment to Section 11 of Prasar Bharati Act, 1990.

3. The Prasar Bharati (Broadcasting Corporation) Act, 1990 (1990 Act) was promulgated on 15.5.97 and appointed day was 23.11.97. The Ministry with the approval of Cabinet decided to provide one upgraded scale to 11 categories of staff of Doordarshan and AIR including EAs(F/B). Accordingly, Ministry vide order dated 25.2.99 (45/c) placed the EA in one up higher scale of pay of Rs 6500/- initially placed in the pay scale of Rs 5000/- to those who joined before 25.2.99.

4. It was provided in said order that upgraded scales will be allowed not as Govt. employee per se but as an incentive to opt for being employees of Prasar Bharati and the benefit of upgraded pay scales will be available to existing incumbents only and those new recruits who join after issuance of these orders will not be entitled to these scales but will be governed by pay scales recommended by 5th CPC.

5. Certain EAs who were placed in pay scale of Rs 5000/- filed OA No 1743 & 1742/2004 regarding their placement in higher scale (Rs 6500/) at par with other colleagues . Few of them were recruited as direct EAs (prior to 25.2.99) and because of administrative procedures with no fault on their part they could join after 25.2.99 and there were few who were recruited and joined after 25.2.99 , however both were placed in lower scale (Rs 5000/).

6. The CAT vide common order dated 31.5.2006 directed for consideration of grant of higher scale to the applicants. Review petition against the CAT order was dismissed. Later, writ petitioners filed by Prasar Bharati were dismissed by Delhi High Court vide order dated 7.9.2010 holding that persons holding same posts cannot be discriminated vis-a vis scale of pay in which they have been placed.

7. The Prasar Bharati filed SLPs No 19/2011, however all tagged one were dismissed on 14.1.2011 .The review petitions filed by Prasar Bharati against above order too were dismissed on 9.1.2014 on grounds of delay as well as on merits.

8. The applicants have filed contempt petitions before the CAT and notices have been issued to respondents. The Ministry has stated that order of CAT dated 31.5.2006 could not be implemented because of appellate actions taken in the matter. They have also referred to Section 11 of Prasar Bharati (Amendment) Act, 2012 stating that as per retrospectively amended provisions by which employees are termed as central government employees with pay and allowances, executive order (dated 25.2.99 conferring upgraded scale) seems to have become ineffective and redundant.

9. It is in background of above our advice has been sought on issues at Para 12 of 3/N.

10. We have perused the matter. By executive order dated 25.2.99(F/A), it was provided that upgraded scales will not be allowed not as govt. employees per se but as government employees currently in service of Prasar Bharati Corporation. It was also provided that as and when employees presently working in AIR and Doordarshan are askec to exercise their option, those who do not opt for Prasar Bharati will revert as Government servants and will no longer be entitled to upgraded scales.

11. The Ministry is referring to PB amendment Act substituting Section 11 (status of officers and employees) in isolation without appreciating that in 1990 Act, Section 11 wa:

also in existence with heading (Transfer of service of existing employees to Corporation). It was provided that employees working in AIR and Doordarshan would be transferred to Corporation and they will cease to be employees of Central Government on the date of transfer order. They were asked to exercise an option in this regard.

12. The employees were transferred to Corporation, however no option was asked from these employees for years and on the issues of uncertainty about their status as employees of Central Government or that of Corporation, the Supreme Court in Prasar Bharati v Amarjeet Singh, AIR 2007 SC 1269 directed as follows:

20. We have furthermore noticed hereinbefore that the question as to whether the Central Government should pass an order in terms of Sub-section (1) of Section 11 of the Act or not is pending consideration before its highest authority for a long time. No decision has been taken for more than nine long years. Despite observations made by this Court, the Central Government has failed and/or neglected to take a decision one way or the other. Ordinarily, this Court would not have issued a direction but the present state of affairs cannot be permitted to continue. The rights of the respondents cannot be allowed to remain in uncertain position for a long time.

21. We, therefore, while allowing the appeal, direct the Union of India to take a firm decision in terms of Section 11 of the Act within six months from date. The Secretary, Department of Personnel and Training shall file an affidavit before this Court within or immediately after the expiry of the aforementioned period.

13. It is in pursuance of directions of the Supreme Court, PB Amendment Act was brought in substituting Section 11 of the Act for determining status of all the officers and employees transferred to Corporation 'as Central Government employees on deemed deputation till their retirement'.

14. It is well established that Statement of Object and Reasons are permissible aid to construction of statutes. In British Airway v UOI, AIR 2002 SC 391, the Supreme Court has held that "reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of Affairs, the surrounding circumstances in relation to the statute and the evil which the statute was sought to remedy".

15. In SOR to 2012 Amendment Act (F/X), it is provided that "employees were not given their option in terms of Section 11 of the Act for transfer of their services to the Corporation" and GOM decided that "the government employees shall continue to serve in Prasar Bharati on "deemed deputation" basis till the time of their retirement with all the facilities at par with Central Government employees".

16. Thus by amendment Act, 2012, employees working in Prasar Bharati, after appointed day (when Prasar Bharati was established) and serving in Prasar Bharati (on the date of decision of GOM ie 5th October, 2007)) have been conferred the status of Central Government employees on deemed deputation till their retirement.

17. However, as per order dated 25.2.99 as referred above, only one upgraded scale was given as an incentive to those employees who were currently working in Prasar Bharati and there were no concerns about their status etc. The upgraded scale was given not a government employee 'per se' (the dictionary meaning of which is 'by himself or itself') but working in Prasar Bharati. In that order, it was also stipulated that an undertaking was to be obtained from employees that they will opt for Prasar Bharati if they are so asked. However, by the Amendment Act, 2012 it is provided that all employees of AIR and Doordarshan recruited upto 5.10.2007 (on the date of decision of GOM) are to be central Government employees and conditions of seeking options etc being dispensed with Section 11 was substituted by the Amendment Act and order dated 25.2.99 does not appear to have been affected by said Amendment.

18. The Supreme Court in its order dated 9.1.2014 has dismissed the review petition on the grounds of delay as well as on merits. It is also pertinent to note that few orders of CA in similar terms have been implemented subject to outcome of SLPs which are stated to have been dismissed.

19. As per order dated 25.2.99 as referred above, only one upgraded scale (Rs 6500/-) was given as an incentive to those government employees who were currently working in Prasar Bharati and rest of the employees (applicants in OA) were given pay scales of Rs 5000/-). These employees challenged the same as discriminatory before the CAT and judgments have attained finality in view of dismissal of review by the Supreme Court. Section 11 of 2012 Amendment Act is substituted providing that all employees (including those government employees who were given upgraded pay scale and those who were recruited before or after appointed day till 5th October, 2007) under the regulation are conferred status of the Central Government employees on deemed deputation. The necessary consequence of retrospective Amendment Act is that applicant employee having been conferred the status of central government employees will be granted pay scale of Rs 6500/- in parity with those employees who were granted upgraded pay scale as Government employees.

20. In view of the above facts and circumstances of the case, the administrative Ministry is advised as follows:

- (i) The amendment of Section 11 of the Act does not in any way affect the operation of the order dated 25.2.1999 of the Ministry.
- (ii) With the dismissal of review petition/SLPs in the matter, the order dated 31.05.2006 of the CAT (OA No. 1742 and 1743/2004) has attained finality and the department is left with no option but to implement the same **in letter and spirit**. Not doing so or withdrawing the benefit of the order of 25.2.99 will invite contempt in the case.

May kindly see.

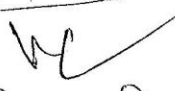

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31-7-14

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(A-A-E)

May like to see for reform
for

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