



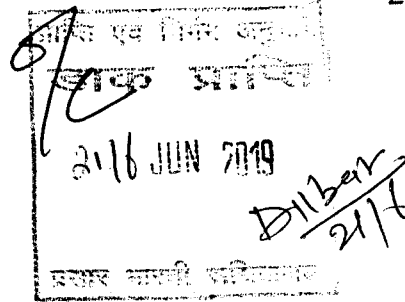
**PROGRAMME STAFF ASSOCIATION
OF
ALL INDIA RADIO & DOORDARSHAN**

21.06.2019

No.PSA/OC/2/ADG-PB/2019/3

To,

Ms.Mukta Goel,
Additional Director General (HR),
Prasar Bharati, PB Towers,
Copernicus Marg,
New Delhi-110001.



Sub: Continuing the grant of ACP / MACP to Programme cadres.
Ref: Meeting at PB on 17.05.2019 with our Office Bearers

Respected Madam,

Kindly recall the informal discussion your kindself had with the representatives of our Association along with officials on 17.05.2019 regarding MACP and other outstanding issues of programme cadre. In the context of MACP, it was understood during the course of discussion that apparently certain vital points pertaining to the MACP with respect to Programme cadre were either missed out or not brought on the record which eventually has led to a decision by MIB, proving detrimental to the interest of the Programme staff in Prasar Bharati.

In this connection, PSA wishes to submit the following points for kind perusal and consideration:

- 1) **Background:** The Camera Men in the Films Division were granted a Pay revision in the 70s. This was extended to the Sound Engineers in Film Division. Based on that, the Sound Engineers in Doordarshan were also given scale hikes. The Engineering Assistants working in Doordarshan started demanding the same scale of pay and after prolonged litigation, based on the judgement of the Supreme Court it was finally granted to them in 1995. The Transmission Executives in All India Radio & Doordarshan who were the functional counter parts in the programme section as the EAs in the Engineering section demanded the same Pay scale given to the Engineering Assistants, which again after litigation and agitations was acceded to by the Union Cabinet after due approvals by different ministries.

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- 2) Subsequently, vide order No. 310/173/97-B (D) dated **25.02.1999**, MIB revised the pay scales of certain categories of employees including that of Transmission Executives (TREXs) and Programme Executives (PEXs). These scales were granted not as Govt. Employee per-se but as Govt. employee working in Prasar Bharati. In short, these revised scales were given to redress the issues pertaining to the disparity in pay (re-occurred pursuant to 5th CPC). With regards to TREXs and PEXs the above-mentioned order states that ***The pay of those employees of AIR & DD who had been working as Transmission Executives as on 1.1.1978 or afterwards was notionally fixed in the pay scale of 550-900 with effect from 1.1.1978 (3rd CPC) and in the pay scale of 2000-3200 with effect from 1.1.1986 (4th CPC) before fixing their pay in the upgraded pay scale as on 1.1.1996 in pay scale of 6500-10500 (5th CPC) as per agreement with Govt., this did not entitle them to any payment of arrears for the period prior to 1.1.1996 and was limited to fixation of their current pay as on 1.1.1996. The scale of 1841 posts of TREXs was upgraded from 5000-8000 to 6500-10500 and for 1961 posts of PEXs the scale was upgraded from 6500-10500 to 7500-12000.***
- 3) Thereafter, the Assured Career Progression (ACP) Scheme was implemented in the same year from **09.08.1999** (after the 25.02.1999 order). However, the benefit of ACP scheme were denied by AIR & Doordarshan to TREXs and PEXs on the premise of the following two points:
 - That they have already been given higher scales vide aforesaid MIB order dated 25.02.1999 and hence ACP entitlements to be off-set against that, and
 - That they are not government employees, hence not eligible for ACP entitlements.
- 4) Against this stand of the department PSA (our Association) approached to CAT Delhi in 2001 (OA.No.835/2001), whereby **CAT Delhi on 09.04.2001 directed the department to consider their representation for grant of ACP.**
- 5) The department issued a speaking order dated 28.05.2001(No.6 (38)98-SI (B)/267) as directed by CAT Delhi in the case mentioned above which in turn was on the basis of Ministry advice dated 21.05.2001 refusing to concede ACP to those granted revised scales on 25.2.1999 on the ground that they have already received an up-gradation vide that order, and moreover they were not Govt servants.
- 6) The Association once again approached CAT Delhi (OA.No.2293/2001) seeking to quash the Speaking order of the department which had refused grant of ACP to PEXs on the ground that 25.2.1999 was to be considered as an up-gradation. **CAT**

Delhi vide its judgement dated 05.12.2002 quashed the Speaking order of the department, and held that the 25.2.1999 scale revision is not to be treated as an up-gradation for purpose of ACP as per Para. 35 of DOPT clarifications issued on 18.07.2000.

- 7) The department challenged the Judgement of CAT Delhi by way of a writ (4151/2003) in the High Court of Delhi.
- 8) While the ACP matter was sub-judice, eligible TREXs and PEXs were granted benefit of MACP entitlements (excluding benefit of ACP) from 2009 after the MACP scheme was implemented on **01.09.2008**.
- 9) However, the implementation of MACP scheme came to a halt in AIR & Doordarshan for PEXs and TREXs after 17.04.2014 and 28.05.2014 respectively on directions from MIB on the pretext that till the ACP case attains finality, MACP entitlements can't be granted and also, that the grant of MACP entitlements were extended without approval of MIB.
- 10) Again aggrieved due to the stoppage of the MACP entitlements and related benefits to the eligible TREXs and PEXs our Association had no other option but to approach the Court to seek justice. An OA was filed in the Delhi CAT on 06.08.2015 (OA.No.3046 / 2015). Subsequently, Delhi CAT passed an order dated 26.08.2015 directing the department not to pass any adverse orders. When the department once again started the re-fixation process in June 2018, another MA was filed by the Association (MA.No.2681/2018) whereby the Court directed the dept **to maintain status-quo on re-fixation and recovery**.
- 11) In a significant judgement on 13.07.2017, Delhi High Court in case of W.P. No. 4151/2003 ordered MIB / Prasar Bharati to extend the benefit of ACP scheme to TREXs and PEXs while mentioning that up-gradation in the pay scale accorded vide MIB order 25.02.1999 can't be treated as an up-gradation / promotion to offset the ACP entitlement. The judgement has also made it clear that after the gazette notification dated 09.01.2012, the reason to deprive them of the ACP entitlements on account of their not being Government servant does not arise. Accordingly, department started the process of implementing ACP entitlements to the TREXs and PEXs. However, while doing so, 2nd MACP entitlements granted earlier was off-set against the pay revision of 25.02.1999 order again by the department on the pretext that ACP was an up-gradation in the Hierarchical Grade pay but MACP is the up-gradation in the next Grade Pay, hence can be off-set.


- 12) Thereafter, department continued denying MACP entitlements to TREXs and PEXs on the pretext that the Delhi CAT has ordered for ***status quo on re-fixation and recovery and hence they can neither re-fix the pay on account of ACP nor can grant any subsequent MACP as the same will entail re-fixation also.*** However, re-fixation to lower grade pay (4800 instead of 5400) for retiring officials of the said cadre continued along with withholding of substantial amount from the retirement benefits under the premise of recovery against so-called wrongful grant of MACP entitlements. This diktat was not followed uniformly for all retiring TREXs and PEXs due to different understanding of PAO's within AIR, Doordarshan and IRLA. Besides, in process, the department even didn't grant 3rd MACP to those who have completed 30 years of requisite service (both serving and retired) on the premise that MACP matter is sub-judice. Eventually, the TREXs/PEXs who have retired even after completing 30 years of service, were not granted 3rd MACP and were made to retire two steps lower in 4800 Grade pay. There are still substantial numbers of officials who joined as Transmission Executives and are currently working as Programme Executives, Programme Executives (Adhoc) and Programme Executive (In-situ) and not been granted either ACP or MACP till date, again on the premises that the MACP matter is sub-judice.
- 13) AIR administration issued an order dated 25.04.2019 wherein it was stated that in view of the observation of the Pay & Accounts Office, DG: AIR has granted only provisional pension to the retirees of Programme cadre i.e. PEXs/ADPs. However, this order was withdrawn on 15.05.2019.
- 14) Under the above explained circumstances, the plight of Programme officers could be easily understood especially of those who have retired in recent years or who are at the verge of retirement. Unfortunately, no urgency has been noticed from the concerned officials of the department to expedite the judicial process.
- 15) **Point for consideration** : The facts brought out above clearly indicates that with wrong intensions, a group of persons in different capacities made repeated attempts in the department to give an impression to Prasar Bharati, MIB etc. that TREXs and PEXs are not eligible for the ACP/MACP entitlements on the grounds explained above.
- 16) All these years, the department has tried to establish an equation between the word "Up-gradation" mentioned in 25.02.2019 MIB order and ACP/MACP. Up-gradation in context of 25.02.1999 is a result of recognition of higher job content of posts and long due disparity of pay settled by Supreme court and has different connotation whereas ACP/MACP addresses the issue of stagnation and is granted where there

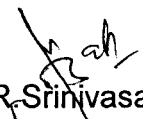
are no promotions available. Department of Legal Affairs (DOLA), Ministry of Law and Justice had put on records while dealing a matter related to ACP/MACP concerning certain categories of employee in AIR and Doordarshan that higher scales granted vide MIB order dated 25.02.1999 are in continuation of 5th CPC recommendations which created disparity and the same were removed/restored by 25.02.1999 order. DOLA had further stated that the distinction is clear and treating the word 'Up-gradation' in 25.02.1999 order for purpose of depriving ACP/MACP benefits to eligible persons on the premise that they have already "availed financial up-gradation" or "ACP is in-built in 25.02.1999 order" appears to be erroneous. While quoting the phrase from a court observations that in the instant matter *the word "Up-gradation" is a misnomer*, at one place in the noting, DOLA had also mentioned that it is not understood as how a nexus was established between word "Up-gradation" as occurring in order dated 25.02.1999 and ACP which came into existence on 09.08.1999 (later in time). The authorities were also apprised time and again by the Associations that even order No. 310/15/93-B (D) dated 15.05.1995 issued by Ministry of Information and Broadcasting in pursuance of Supreme Court judgement dated 18.11.1994 used the word "Revised Pay Scale" to Engineering Assistants (EAs) working in AIR and Doordarshan (one of the order which formed the basis on which the order dated 25.02.1999 came into existence). Finally, Associations' point of view/interpretation was vindicated by the Delhi High Court's judgement on 13.07.2017 in the case of W.P. No. 4151/2003.

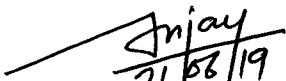
- 17) The higher pay scales as per the 25.02.1999 order to TREXs were granted notionally from 01.01.1978 and TREXs who had joined on 01.01.1978 or after that date, the granted higher Pay Scales became effective for them from the date of their joining in the service (for clarity please refer Point 2 above). The concerned authorities have been apprised repeatedly that there is no provision in the MACP scheme which allows to off-set any of the MACP against the up-gradation of pay scale granted from the date of joining the service.
- 18) As far as PEXs are concerned, the higher pay scales to them as per the 25.02.1999 order were granted from 01.01.1996 (Please refer Point 2 above). Delhi High Court in the case quoted above has already settled the issue while stating that the ACP entitlements cannot be off-set against the up-gradation granted vide 25.02.1999. By no stretch of imagination one can logically conclude that the aforesaid order of Delhi High Court doesn't hold good for the MACP entitlements as same being the extension / modification of the ACP scheme. DOPT in its office memorandum {F.No. 35034/1/97-Estt (D) (Vol. IV)} dated 18.07.2001 had clarified with regard to ACP at point 35 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 is not be treated as promotion/up-gradation. Where, however, rationalisation/restructuring involves creation of a number of new hierarchical grades in the rationalised set up and some of the incumbents in the pre-rationalised 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-rationalised grade, then this will be taken as promotion / upgradation. Thereafter, after the rolling-out the MACP scheme, DOPT at no point of time has put any rider or issued any clarification contrary to the above-mentioned clarification at point 35, thereby, meaning that if in the eyes of law, ACP entitlements cannot be off-set against the up-graded pay scales granted vide order dated 25.02.1999 then how can MACP entitlements be off-set against the Up-graded scales granted vide order dated 25.02.1999?

- 19) In View of above, it is requested that cognisance of the aforesaid facts may please be taken for a considered review of the matter related to MACP. **We request you to kindly initiate review of the decision taken by DOPT and speaking order dated 05.02.2018 (Paras.13 & 14) from Ministry of Information and Broadcasting at the earliest. It is also requested that directions may please be given to the concerned authorities to grant 3rd MACP to eligible TREXs and PEXs who have completed requisite years of service as the sub-judice MACP matter is concerning only 2nd MACP entitlement.**


(Dr.S.K.Nahar)
Vice-President


(R.Srinivasan)
General Secretary


21/08/19
(Sanjay Kumar)
President