

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.221 of 2013

Date of Order: This the 8th Day of April, 2016

HON'BLE MRS.MANJULA DAS, JUDICIAL MEMBER

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER

Shri Damodar Panda
Son of Parikhita Panda
Engineering Assistant, LPT
Nawarangpur, Odisha
Pin-

Applicant

By Advocate Mr.M.Chanda,Mrs. U.Dutta,
Mr.S.Nath, Ms.S.Sultana

-Versus-

1. The Union of India
Represented by the Secretary to the
Government of India
Ministry of Information and Broadcasting
Shastri Bhawan A'Wing
New Delhi-110001.
2. Prasar Bharati Broadcasting Corporation of India
Represented by the Chief Executive Officer
Parliament Street, New Delhi-110001
3. The Director General, Doordarshan,
Doordarshan Bhawan,
Copernicus Marg, New Delhi-110001
4. The Director
Programme Production Centre (NE)
Doordarshan, R.G. Baruah Road,
Guwahati-781024

5. Prasar Bharati Broadcasting Corporation of India
 Office of the Chief Engineer(NEZ)
 Dr.P.Kakati's Buildidng
 Near Ganeshguri Flyover
 G.S.Road, Guwahati-781006

6. The Director(E)
 Prasar Bharati
 Broadcasting Corporation of India
 Door Darshan Maintenance Centre
 Aurobindo Nagar, Parabeda
 Jeypore-764001 (Odisha)

7. The Addl.Director General (E)(NEZ)
 All India Radio & Television
 Guwahati-781006
 Dr.P.Kakoti's Building
 Ganeshguri Fly Over. Respondents

By Advocate Mr.C.Choudhury, Sr.C.G.S.C.

O R D E R

Per Mrs.Manjula Das, Judicial Member:

By this O.A, applicant makes a prayer for setting aside the order dated 22/23.05.2013 issued by respondent No.7.

2. Ms.Dutta, learned counsel appearing for the applicant submits that applicant is presently working as Engineering Assistant at Nowrangpur (Odisha). According to learned counsel, earlier applicant approached before this Tribunal vide O.A.Nos.119 of 2010 and 128 of 2011 with a prayer for granting double HRA and not to recover the transfer travelling allowances.This Tribunal vide order dated 09.12.2011

dismissed both the O.As .Applicant thereafter, did approach before the Hon'ble Gauhati High Court by filing W.P.(C) No.938 of 2012. Hon'ble High Court vide order dated 08.11.2012 allowed the Writ Petition by setting aside the order passed by this Tribunal and held that—"The permissibility of the participation of the departmental employees in the selection process as in the case in hand for appointment to a higher post in the direct recruitment quota, per se, according to us cannot denude them either of their traits as employees for the benefit of their past services in that capacity or strip them of that status and thus deny them the benefits to which they would have been otherwise entitled under the said memorandum"

3. The Hon'ble High Court further held that – "In the facts and circumstances of the case by treating him at par with the fresh direct recruits by totally ignoring the weight age to which he is entitled , in view of his past services, cannot be lightly brushed aside. Noticeably the petitioner cannot be held to be a party in any fraud or wrong doing in the process of sanction of the TTA of Rs.27,094 initially sanctioned under Rule 222 of the General Financial Rules". It was further held that "in the direct recruitment quota did not cease to be a departmental employee, we are of the unhesitant conclusion that the impugned

judgments and orders are unsustainable in law and on facts are liable to be interfered with."

4. In compliance to the order of the Hon'ble High Court, the department vide order dated 28th December 2012 implemented the order conveyed for sanction of payment of double HRA to Shri Damodar Panda i.e applicant for the period of his stay at Guwahati and entitlement of other consequential benefits. Thereafter, pay has been made by fixing the pay scale of Rs.5000-8000/- under FR 22(1) (a) (i) and pay drawn in the existing pay scale of Rs.4,500-125-7,000/- (Rs.6000/-) and in the higher post in the scale of pay of Rs.6,050/- .

5. Learned counsel further submitted that without any reason, respondent No.7 vide clarificatory order dated 22/23.05.2013 reduced the pay fixation as Rs.6,200/-. In the said order, it was also directed that "the over payment made to him if any, may be recovered from his salary."

6. According to the learned counsel the order dated 22/23.05.2013 is not sustainable in as much as the pay was fixed in compliance with the direction of the Hon'ble High Court and it was fixed as per entitlement. But at the whims of respondent No.7,

recovery order was made, that too, without opportunity which prejudiced to the applicant. As such, the order dated 22/23.05.2013 is not sustainable under the law.”

7. Mr.C.Choudhury, learned Sr.C.G.S.C. appearing on behalf of the respondents filed their written statement and submitted that the applicant being a departmental qualified candidates applied for the post of through proper channel for the post of Engineering Assistant. He appeared in the competitive direct recruitment examination held on 28.10.2007. In the appointment letter dated 10.3.2008 one of the conditions to the departmental candidates was that the applicant might be reverted to subjective posts in case of dissatisfactory performance during probation period. It was submitted that prior to his appointment, the applicant was a Technician. As per recruitment rules the Technician are promoted to the post of Sr. Technician based on the eligibility. The applicant's appointment in the post of E.A.in direct recruitment against the direct recruitment quota. In the appointment letter it was clearly mentioned that he will not be entitled for travelling Allowance and not any other allowances like transfer grant etc.,

8. It was further submitted by the learned counsel that the

appointment and joining of the applicant in the post of EA in the office of CE (NEZ) AIR, Doordarshan Guwahati was purely at his own interest and not in the interest of public.

9. Mr.Choudhury, further submitted that since the applicant was appointed to the post of EA in the scale of pay of Rs. 5000-15-8000 p.m. by recruitment and he had joined the said post on 3.4.2008 his pay was duly fixed at Rs.6050 on 3.4.2008 in accordance with the relevant rules as communicated vide the impugned letter dated 22/23/5/2013.

10. He further submitted that all representations submitted by the applicant for higher revised pay scale has not borne any legal force and disposed of because applicant was a direct recruit EA in the scale of pay of Rs.5000-150-8000(pre-revised). On the date of reporting as EA his pay as Sr.Technician was Rs.6000/- in the scale of pay of Rs.4500-125-7000(Pre-revised). Hence his pay on the date of appointment as EA under direct recruitment may be fixed at Rs.6050/- on 3.4.2008 in the scale of Rs/ 5000-150-8000(Pre-revised) and the next increment date shall be 1.4.2009 raising his pay to Rs.6200. Therefore, he is not entitled the benefit due to direct recruitment.

11. Learned counsel further submitted that the applicant was

qualified in the direct recruitment examination for the post of EA and he was given the scale of pay of Rs.5000-8000. The scale of Rs.6500-200-10500 is for existing incumbent as on 15.2.1999 or for those who qualify the departmental Examination for EAs.

12. On reply to the arguments advanced by Mr.C.Chaudhury, learned counsel for the applicant vehemently argued that the Hon'ble High Court in its judgment dated 8.11.2012 vide W.P.(C) No.938 of 2012 and 948 of 2012 while the cases were allowed filed by the applicant held that the applicant was a departmental employee having been appointed to a higher post and that his posting in the North Eastern Region was by way of transfer or promotion.

13. Learned counsel further argued that vide letter dated 13.1.2009, the department views that as the applicant qualified direct recruitment examination for the post of EA and he was offered the scale of pay of Rs.5000-8000/-. The scale of Rs.6500-200-10500/- is for existing incumbent as on 25.2.1999 or for those who qualify the Departmental Examination for EAs. Since the present applicant is holding the identical post of Engineering Assistant and discharging the same duties and responsibilities, as such the applicant cannot be

denied the upgraded scale of Rs.6500-10,500/- as given to the incumbents holding the same post who were recruited prior to 25.02.1999, otherwise action of the respondents is violative of Article 14 and 16 of the Constitution of India.

14. To substantiate his arguments , the learned counsel for the applicant relied the decision of the Hon'ble Supreme Court in the case of **P.Savita and others Vs.Union of India, Ministry of Defence (Department of Defence Production) New Delhi and others reported in 1985 (Supp.) SCC 94.**

15. The learned counsel further relied the decision rendered by the Hon'ble Delhi High Court, **vide its judgment and order dated 07.09.2010 in W.P(C) No.2071/2007, 2094/2007, 2095.2007, W.P.(C) No.3410/2010.**

16. Heard Mrs. U.Dutta, learned counsel for the applicant and Mr.C.Chaudhury, learned Sr.C.G.S.C. for the respondents, perused the pleadings and materials placed before us.

The points to be decided as to whether for deciding as to whether the applicant is entitled to get upgradation scale of pay of Rs. 6500-200-10,500(Pre-revised) consequent upon his appointment to the

post of Engineering Assistant w.e.f. 03.4.2008 as provided by the Government of India, Ministry of Information and Broadcasting order dated 25.02.1999, instead of scale of pay of Rs. 5000-150-8000/- .

17. The applicant initially joined as Technician at AIR, Jeypore, Orissa in the year 1993. While serving as Technician, the applicant applied for the post of Engineering Assistant pursuant to an advertisement issued by the office of the Chief Engineer, North East Zone, Guwahati, in the year 2007. The applicant was declared successful in the departmental examination held on 28.10.2007. The applicant thereafter was offered of appointment to the post of Engineering Assistant vide order dated 10.3.2008. The said order contained in Clause 6 that he will not be entitled to any travelling allowance for joining the post only he is holding a substantive appointment under the Government or is employed under the Central Government in temporary capacity who has completed the probation period satisfactorily.

18. The applicant did join in the said post on 3.4.2008 in the office of the CE (NEZ) AIR DDK at Guwahati. The applicant earlier approached before this Tribunal vide O.A.No.119 of 2010 with a prayer

for claim to double HRA in terms of Government of India's O.M. dated 24.9.2003 and also filed O.A.No.128 of 2011 against the order of recovery of transfer allowance in connection with his posting as Engineering Assistant.

19. This Tribunal vide order dated 16.11.2010 in O.A.No.119 of 2010 disposed of the O.A. directing the respondents to examine the applicant's claim for double HRA in terms of Government of India, Ministry of Finance O.M. dated 24.9.2003.

19 (A). This Tribunal vide order dated 9.12.2011 in O.A.No.128 of 2011 dismissed the O.A. by rejecting the claim for double HRA made by the respondents on his appointment to the post of Engineering Assistant in the N.E zone as per advertisement published on 13.7.2007.

20. The applicant thereafter, challenged the decision of this Tribunal dated 9.12.2011 before the Hon'ble High Court vide W.P.(C) No.948 of 2012 and 938 of 2012 where Hon'ble High Court vide Judgment and order dated 08.11.2012 allowed the Writ Petitions by setting the order of this Tribunal.

The Hon'ble High Court while passing the judgment

observed in para 15 in its judgment which reads as here under:-

“The petitioner on his appointment as Engineering Assistant in the posse initiated by the advertisement dated 7-13.7.2007 in the direct recruitment quota did not cease to be a departmental employee, we are unhesitant conclusion that the impugned judgments and orders are unsustainable in law and on facts and are liable to be interfered with.”

The department, thereafter, vide order dated 28.12.2012 in compliance with the Hon’ble High Court order made payment of double HRA to the applicant for the period of his stay at Guwahati and entitlement of other consequential benefits.

21. It is noted that vide order dated 10.6.2008 the pay of the applicant in scale of Rs. 5000-8000 has been fixed under FR 22 (1) (a) (i) w.e.f. 03.04.2008 as per his option dated 11.4.2008 his pay was fixed in the higher post of scale of pay as hereunder:-

“PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
OFFICE OF THE CHIEF ENGINEER (NEZ)
AIR & TV:GUWAHATI
No.CE(NEZ)/16(2)/2007-S/18147
Dated 10.06.2008

ORDER

Consequent upon his appointment to the post of Engineer Assistant w.e.f. 3.4.2008, the pay of Shri Damodar Panda in the pay scale of Rs.5,000-150-8000/- is fixed under FR 22(1) (a) (i) as per his option dated 11.4.2008:-

1. Pay drawn in the existing pay scale of RS.4,500-125-7,000/- as on 3.4.2008	Rs.6,000/-
2. Pay in the higher post in the scale of pay of Rs.5,000-150-8,000-on the date of promotion on 3.4.2008	Rs.6,050/-
3. Pay in the lower post with increment as on 1.5.2008	Rs.6,125/-
Pay after adding notional increment of Rs. 125/-	Rs.6,250/-
4. Pay fixed at the next stage in the higher post & scale pay Rs.5,000-150-8,000/- w.e.f.. 1.5.2008"	Rs.6,350/-

22. The applicant submitted a representation dated 18.08.2008 with a prayer for upgradation of pay scale of Rs.6500-10,5000 by

quoting the Circular dated 25.2.1999. The said representation has been forwarded to the Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi vide letter dated 25.8.2008.

23. Thereafter, the respondents authority i.e Deputy Director Admn (E) for Director General of India, All India Radio, New Delhi vide letter dated 12/13.01.2009 (Annexure 9 to O.A) intimated the Deputy Director (Admn) office of the CE(NEZ) All India & Doordarshan, Guwahati the case of the applicant was examined in the Directorate and it was informed that the request of the applicant, Engineering Assistant could not be exceeded to in view of Recruitment Rules. Since the letter further contained as hereunder:-

“Since Shri Damodar Panda qualified the Direct Recruitment Examination for the post of EA and he was offered the scale of pay of Rs.5000-8000/. The scale of Rs.6500-200-10500/- is for existing incumbent as on 25.2.1999 or for those who qualify the Departmental Examination for EAs.”

24. It is noted that Vide letter dated 22.1.2009 the Deputy Director(A) for Chief Engineer NEZ has clarified vide Directorate's letter No.3/11/2008-SIV(A) 16 dated 15.1.2008 intimated to the Head of Office the HOO/DDK, Guwahati and HOO, AIR, Chandmari, Guwahati that upgradation of pay scale of RS.5000-8000/- to 6500-200-10500/-

was intimated to the Head Office DDK, Guwahati , All India Radio, Chandmari respectively that the upgradation of pay of the applicant from the scale of Rs.5000-150-8000 to 6500-200-10500/- is not possible as the upgradation is for incumbent existed as on 25.2.1999 as per recruitment rules.

25. Further noted that the respondent No.7 vide impugned clarificatory letter dated 22/23/5/2013 intimated the Head of Office Doordarsan Maintenance Centre, Jeypore, Orissa, on the subject of clarification on the fixation of pay of the applicant as here under:-

"Shri Damodar Panda was a direct recruit EA in the scale of pay of Rs.5,000-150-8,000/- (Pre-revised). On the date of reporting as EA his pay as Sr.Tech was Rs.6,000/- in the scale of pay of Rs. 4,500-125-7,000/-(pre-revised). Hence, his pay on the date of appointment as EA under direct recruitment may be fixed at Rs.6,050/- on 3.4.2008 in the scale of Rs.5,000-150-8,000/- (pre-revised) and the next increment date shall be 1.4.2009 raising his pay to Rs.6,200/-. As per his request vide letter dated 11.4.2008, he was inadvertently given the benefit of option which he was not entitled due to direct recruitment.

The over payment made to him if any, may be recovered from his salary.”

26. Now the point is to be decided as to whether the applicant is entitled for upgradation of pay scale of Rs.6,500-200-10500/- in terms of Government of India, Ministry of Information and Broadcasting , New Delhi letter dated 25.2.1999 under No.310/173/97-B(A).

27. To arrive at the concrete decision, we are in hand the above referred Circular dated 25.2.1999 issued by the Government of India, Ministry of Information and Broadcasting , New Delhi on the subject of upgradation of pay scale of certain categories of employees working in Prasar Bharati. The said circular incorporated some conditions for granting the revised pay scale where Clause (1) (ii) stipulates as here under:--

“(1) (ii) Upgraded pay scales would be effective from 1.1.1996 but payment of salary to employees as per upgraded scales of pay will be made with effect from 1st March, 1999.”

Clause 4 of the condition contained as here under:-

“4. The benefit of upgraded pay scales will be available to existing incumbents only and those new direct recruits who join after issuance of these orders will not be entitled to these scales, but will be governed by pay scales recommended

by the vth Pay Commission. However, all promotions of existing incumbents shall be made in upgraded scales only.”

28. As per recruitment Rule enclosed to the Annexure 9 page 39 for the post of Engineering Assistant of the Prasar Bharati and All India Radio, the pay scale provided as here under:-

(Translated from Hindi)

“(i) Rs.5000-150-8000

*Rs.6500-200-10500 for the employees who

were on serving on 25.2.1999 in the said post

Or

Also, those who were in the said post promoted on 25.2.1999 on promotion

OR

Alternately those who given their option to serve in the Prasar Bharati at the time of offering the option.”

29. It is noted that a process of recruitment of Engineering Assistant was initiated by the Advertisement dated 7/13.7.2007. Pursuant to an advertisement in Employment News issued by the office

of the Chief Engineer, NEZ, All India Radio, DDK, Guwahati, the Departmental candidates who had put in at least 3 years continuous service as on 10.8.2007 in All India Radio and Doordarsan and other Media unit under the Ministry of Information and Broadcasting in the post of Technician/Sr.Technician or equivalent post were also permitted to participate in the process.

30. **The Hon'ble Gauhati High Court in its judgment dated 08.11.2012 in W.P.(C) No.938 of 2012 one of the case of applicant in Para 14 observed as here under:-**

“14. On a cumulative consideration of the attending facts reinforced by the administrative orders referred to hereinabove, we have not been able to persuade ourselves to sustain this plea of the respondents. The permissibility of the participation of the departmental employees in the selection process as in the case in hand, for appointment to a higher post in the direct recruitment quota, per se, according to us cannot denude them either of their traits as employees for the benefit of their past services in that capacity or strip them of that status and thus deny them the benefits to which they would have been otherwise entitled under the said memorandum. This is more so, in absence of any indication to the effect either in the advertisement or in the office Memorandum contemplating such an eventuality.”

31. Operative portion of the said judgment is hereunder:-

“15. In the face of the determination made by this Court holding that the petitioner on his appointment as Engineering Assistant in the process initiated by the advertisement dated 7-13 July, 2007 in the direct recruitment quota did not cease to be a departmental employees, we are of the unhesitant conclusion that the impugned judgments and orders are unsustainable in law and on facts and are liable to be interfered with.”

32. Learned counsel relied the decision of the **Hon'ble Delhi High Court's Judgments dated 07.09.2010 in W.P(C) Nos. (Supra)** in Para 11 is held that :

“The issue of equal pay for equal work and employees holding same posts under the same employer requiring same pay scales to be applied is no longer res integra. We eschew reference to various authorities where parity is claimed by employees in different departments under the Union, for the reason different issues arise for consideration therein, but note only two decisions where employees in the same department were sought to be placed in different scales of pay, notwithstanding the employees holding identical posts and doing same jobs. In the decision reported as 1987 (1) SCC 582 **Telecommunications research Centre Scientific Officers(Class-1) Association & Ors.Vs. UOI & Ors.**

33. Learned counsel also referred the Judgment of **Hon'ble Supreme Court Judgment in the case of Union of India Vs.Dineshan**

K.K. in 2008(1) SCC,586 where in Para 27 the Hon'ble Apex Court held that

“27. Thus the short question requiring our consideration is whether having admitted in their affidavit referred to hereinabove, the apparent disparity “and “anomaly “in the pay scales of Radio Mechanics, the administrative authorities, the petitioners herein, could be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in pre-revised and revised scales of the personnel of Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other paramilitary forces. In our considered opinion, in view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the impugned decision of the Government was clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution.”

34. The denial of upgradation of pay scale of the applicant from Rs.5000 -8000-6500-200-102500 by the respondents authorities on the ground that the applicant is a direct recruited employee in the post of Engineering Assistant of the respondent department.

35. For coming to a logical conclusion after discussing in detailed

in the forgoing paragraphs, we are again taking in hand the enclosure Annexure 1 to the Circular dated 25.2.1999 issued by the Ministry of Information and Broadcasting, where from it reveals the Engineering category on strength (No. of post), pay scale granted as per 5th Pay Commission (CPC) and upgraded the scale of pay Rs.6500- 10500 as hereunder:--

S.NO	Category of posts	No.of posts	Pay Scale granted as Per vth Pay Commissions (Rs.)	Upgraded scale of pay (Rs)
1.	Assistant Engineers(including AEs in CCW)	1756 (+322)	65100-10500	7500-12000
2.	Sr.Engineering Assistant	2054	5500-9000	7450-11500
3.	Engineering Assistant	4246	5000-8000	6500-10500
4.	Senior Technician	1680	4500-7000	5000-9000
5.	Technician	2946	4000-6000	4500-7000

Further as per Recruitment Rule for cadre of Engineering Assistant the criteria for recruitment (English Translated) provided as hereunder :-

- i) Whether the recruitment - Not Selection basis on the basis of merit or Seniority

36. On the other hand as per the said circular dated 25.2.1999 the benefits of upgraded pay scale is available to existing incumbents only and not for new direct recruit who joined after issuance of the Circular.

37. We noted that the applicant entered in the post of Engineering Assistant through the selection process in pursuance of advertisement made in 2007 on being allowed to participate from Technician. Presumption taken by the respondent authorities by trying to hold the applicant as direct recruit to the post of EA and denied the claim of the applicant, to some extent in our view not infirmity either through the conditions incorporated in circular dated 25.2.1999 or Recruitment Rule of the Prasar Bharati for the post in question.

38. In the present case, we further noted that the applicant's appointment to the post of Engineering Assistant not on the basis of promotion but on through selection as much the promotional hierarchy of the post from Technician is Sr.Technician and then Engineering Assistant. Thus we are hesitating to accept apropos recruitment to

the post of Engineering Assistant of the applicant on the basis of promotion.

39. In the present case the applicant sought benefit of upgradation of pay as per the Circular dated 25.2.1999 [(Annexure-5) (Enclosure-1)]

By taking abreast the above Circular dated 25.2.1999 and the Recruitment Rule for the post of Engineering Assistant where three criterias has been incorporated for upgradation of scale of pay in reference to Circular dated 25.2.1999 and the method of recruitment to the said post specified as non selection on the subject of whether recruitment on the basis of merit or seniority.

Conditions 4 of the Circular dated 25.2.1999 discussed above, contained “ all promotions of existing incumbents shall be made in upgraded scales only”. As we have earlier discussed that the applicant’s recruitment to the post of EA, not by maintaining the promotional hierarchy but on the making application in pursuance of advertisement and after selection of the applicant was appointed as Engineering Assistant.

On the other hand as per Recruitment Rule the method of recruitment to the post of Engineering Assistant not either merit or seniority.

Further the applicant along with other recruitment to the post of Engineering Assistant seems to be on the basis of "selection" with due advertisement whereas undisputed recruitment rule in Column -4 provides "non-selection".

Thus we are unable to convince in situations submissions made by either the applicant or the respondents apropos the upgraded scale of pay of the existing incumbents.

40. In view of, we deem fit and proper to remit back the matter to the department i.e. Respondent No.3 (Director General, Doordarshan, Doordarshan Bhawan,Copernicus Marg, New Delhi) to decide the matter afresh.

Accordingly, we direct the respondents, more particularly Respondent No.3 (Director General, Doordarshan, Doordarshan Bhawan,Copernicus Marg, New Delhi) to decide the matter afresh by taking note the Circular dated 25.2.1999 along with enclosure-1 as well as the Recruitment Rule of the post of Engineering Assistant with due opportunity of being heard of the applicant to substantiate

his case.

It is needless to mention that the Respondent No.3 shall pass a speaking and reasoned order with due consideration the matter as a whole within a period of 4 months from the date of receipt of this order. The decision so arrived, shall be intimated to the applicant forthwith.

41. With the above observations and directions the O.A. is disposed of. No order as to costs.

(MOHD HALEEM KHAN)
ADM INISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

LM

O.A.No.221 of 2013

32. The denial of upgradation of pay scale of the applicant from Rs.5000 -8000-6500-200-102500 by the respondents authorities on the ground that the applicant is a direct recruited employee in the post of Engineering Assistant of the respondent authority.

33. For going to a logical conclusion after discussing in detailed in the forgoing paragraphs, we are taking in hand the Annexure 1 dated 25.2.1999 enclosure of circular dated 25.2.1999 issued by the Ministry of Information and Broadcasting , Shastri Bhawan,'A' Wing ,New Delhi. The said annexure revels that the Engineering category by referring the strength (No. of post), pay scale granted as per 5th Pay Commission (CPC) and upgraded the scale of pay Rs.6500- 10500 as hereunder:--

S.N0	Category of posts	No.of posts	Pay Scale granted as Per vth Pay Commissions (Rs.)	Upgraded scale of pay (Rs)
1.	Assistant Engineers(including AEs in CCW)	1756 (+)322	65100-10500	7500-12000
2.	Sr.Engineering Assistant	2054	5500-9000	7450-11500
3.	Engineering Assistant	4246	5000-8000	6500-10500
4.	Senior Technician	1680	4500-7000	5000-9000
5.	Technician	2946	4000-6000	4500-7000

Further as per recruitment Rule the criteria for recruitment says as :-

- ii) Whether the recruitment - Not Selection basis on the basis of merit or seniority

On the other hand as per the said circular dated 25.2.1999 the benefits of upgraded pay scale is available to existing incumbents only and not for new direct recruit who joined after issuance of the order will not be entitled to the said upgraded scale.

Thus it emerges that the appointment to the post of Engineering Assistant not only by Direct Recruit and the upgraded scale will be available those who are already serving at Prasar Bharati. More so, the Hon'ble High Court while taking up the case of the applicant in W.P.(C) No.938 of 2012 and W.P.(C) No.948 of 2012 observed that the permissibility of the participation of the departmental employees in selection process as in the case in hand, for appointment to a higher post in the direct recruitment quota, per se, according to us cannot denude them either of their traits as employees for the benefit of their past services in that capacity or strip them of that status.

We noted that the applicant entered in the post of Engineering Assistant from through the selection process in pursuance of advertisement made in 2007 on being allowed from Technician, presumption taken by the respondent authorities by trying the applicant as direct recruitment and denied the claim of the applicant, to some extend .. in our view not infirmity either through the conditions incorporated in circular dated 25.2.21999 or Recruitment Rule of the Prasar Bharati.

