

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00482/2018**

Friday, this the 15<sup>th</sup> day of January, 2021

**C O R A M :**

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER  
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

1. N Sasikumar, son of Narayanan, aged 55 years, Programme Executive, All India Radio, Vazhuthacaud, Thiruvananthapuram residing at 'Saranya' KARA-108, TC-6/333(4), Karimonkulam, Vattiyoorkavu P.O., Thiruvananthapuram 695 013
2. Biju Mathew, son of I. Mathew, aged 54 years, Programme Executive, Commercial Broadcasting Service, All India Radio, Vazhuthacaud, Thiruvananthapuram residing at 52, Kalpaka Nagar, Pettah P.O., Chackai, Thiruvananthapuram 695 024
3. G.Santhosh Kumar, son of K Gopala Pillai, aged 51 years, Programme Executive (Insitu), All India Radio, Vazhuthacaud, Thiruvananthapuram residing at Sreelayam, Thettikunnu, Kundara P.O., Kollam 691 501
4. K.G.Muraleedharan Pillai, son of A Gopinathan Pillai, aged 59 years, Programme Executive, All India Radio, Vazhuthacaud, Thiruvananthapuram residing at Pothanoor Krishnakripa, Thazhakkara P.O., Mavelikkara, Alappuzha District 690 102
5. N. Vasudev, son of V.N.Unni, aged 54 years, Programme Executive, All India Radio, Vazhuthacaud, Thiruvananthapuram residing

at Parameswari, Sivaricoil Street, Fort,  
Thiruvananthapuram 695 023

6. G. Jaya, wife of E.Kunhikrishnan, aged 54 years,  
Programme Executive, All India Radio, Vazhuthacaud,  
Thiruvananthapuram residing at TC 1/2021,  
Jayamanju, Kumarapuram, Thiruvananthapuram 695 011
7. K.Usha, daughter of K C Chozhi, aged 54 years,  
Programme Executive, All India Radio, Devikulam,  
Idukki District, residing at Velleparambil House,  
Engineering College P.O., Thrissur 680 009
8. P.K.Janardanan, son of P.K.Kannan, aged 55 years,  
Programme Executive, All India Radio, Kannur,  
residing at Kadambari, Pannenpara, Chalad P.O.,  
Kannur 670 014
9. T. Vahida, wife of B Baburajan Nair, aged 54 years,  
Programme Executive, All India Radio, Vazhuthacaud,  
Thiruvananthapuram residing at Parassery, UNRAL-20,  
Udayagiri Nagar, Thirumala P.O.,  
Thiruvananthapuram 695 006
10. M.V.Sasikumar, son of M.B.Menon, aged 49 years,  
Programme Executive (Insitu), All India Radio,  
Vazhuthacaud, Thiruvananthapuram residing at  
Shreelakham, MRAT-17/ 1, Chennasseri Lane,  
Maruthainkuzhy, Kanjirampara P.O.,  
Thiruvananthapuram 695 030
11. K.V.Sarath Chandran, son of K.V.Narayanan,  
aged 51 years, Programme Executive, All India Radio,  
Pallikunnu P.O., Kannur residing at Saradam,  
Ramaram, Nileshwar P.O., Kasargod 671 314
12. T.K.Unnikrishnan, son of K.O.Rajan Nambiar,  
aged 52 years, Programme Executive,  
All India Radio, Pallikunnu P.O., Kannur,  
residing at Varnaraji, Narath P.O.,  
Kannur 670 601

13. P.A.Biju, son of K.K.Abraham, aged 50 years, Programme Executive, All India Radio, Vazhuthacaud, Thiruvananthapuram residing at Parayakulam, Thrikothamangalam P.O., Kottayam 686011
14. K.S.Pardhan, son of S.Kuttappan Nair, aged 52 years, Programme Executive (Insitu), Commercial Broadcasting Service, All India Radio, Vazhuthacaud, Thiruvananthapuram residing at Pratheeksha, T C 51/2646(1), Thelibhagam, Thirumala P.O., Thiruvananthapuram 695 006
15. Mathew Joseph, son of T. M.Joseph, aged 53 years, Programme Executive, All India Radio, Beach Road, Calicut, residing at Thekkekarottu, Kunnamangalam P.O., Kozhikode 673 571
16. John Kurian, son of P.K.Kuriari, aged 54 years, Programme Executive, All India Radio, Beach Road, Calicut, residing at Padinjarethalackal, Santhuruty Vayal, Karuvissery P0, Kozhikode 673 010
17. Leena P. Baby, wife of John Kurian, aged 54 years, Programme Executive, All India Radio, Beach Road, Calicut, residing at Padinjarethalackal, Santhuruty Vayal, Karuvissery P0, Kozhikode 673 010
18. Aswathi TV., wife of V Balakrishnan, aged 54 years, Programme Executive, All India Radio, Beach Road, Calicut, residing at Gayathri, Janatha Road, Karuvassery P.O., Kozhikode 673 010
19. K. Pratap Paul, son of K.M.Paul, aged 53 years, Programme Executive, All India Radio, Beach Road, Calicut, residing at Kollanoor Gharana, 3/435B, Pottangady Raghavan Road, Nadakkavu P.O., Kozhikode 673 011
20. Unnikrishnan, son of K. Radhakrishnan Nair, aged 49 years, Programme Executive (Insitu), All India Radio, Beach Road, Calicut,

residing at Shravanam, PVS Park,  
Rose Garden, Kuthiravattom P.O., Kozhikode 673 016

21. C.Krishna Kumar, son of M. Vasudeva Menon, aged 52 years, Programme Executive (Insitu), All India Radio, Beach Road, Calicut, residing at Kizhakkemadom, Kallai P.O., Kozhikode 673 003
22. P.V.Prasanth Kumar, son of V.V.Balakrishnan Nambiar, Programme Executive, All India Radio, Pallikunnu P.O., Kannur residing at Pranava Pooja, Kanathur Temple Road, Pallikunnu P.O., Kannur 670 004
23. R.Anitha Varma, wife of K Kerala Varma, aged 55 years, Programme Executive, All India Radio, Devikulam, Idukki, residing at Haritham, Koratty East P.O., Thrissur 680 308
24. Venugopalan C.B., son of C.V.Balari, aged 57 years, Programme Executive, All India Radio, Thrissur, residing at Chettakulam House, Vellanikara P.O., Thrissur 680 654
25. Ravindran K P, son of K.C.K.Raja, aged 54 years, Programme Executive, All India Radio, Devikulam, Idukki, residing at Saleramom, Kolazhy, Thrissur 680 010
26. Lekha Gopal, wife of R.C.Gopal, aged 56 years, Programme Executive, RABM, All India Radio, Vazhuthacaud, Thiruvananthapuram residing at Thiruvonam, Vanchiyoor-Pattoor Road, Temple Lane, Thiruvananthapuram 695 035
27. B.Vijayakumar, son of Balakrishna Pillai, aged 59 years, Programme Executive, All India Radio, Va.zhuthacaud, Thiruvananthapuram residing at TC 14/1642-1, Padmaragam, Forest Office Lane (D-29), Vazhuthacaud, Thycaud P0, Thiruvananthapuram 695 014

28. Sandhiyarani P., wife of K Madhusoodanan, aged 52 years, Programme Executive, Doordarshan Kendra, Thiruvananthapuram, residing at TC 19/911(7), Green, South Road Lane, Thamalam, Poojapura P.O., Thiruvananthapuram 695 012
29. V.S. Kumari Geetha, wife of K. Sundar Rajan, aged 57 years, Programme Executive, Doordarshan Kendra, Thiruvananthapuram, residing at Kunnil House, TC 9/1239, CPGP Lane, Sasthamangalam, Thiruvananthapuram 695 010
30. Prasad Balakrishnan, son of late D Balakrishnan, aged 58 years, Programme Executive, All India Radio, Kavaratti, Union Territory of Lakshadweep, permanently residing at 3/543-4, Thejus, Aagosham Corner, Padukkad, Viyyur P.O., Thrissur 680 010
31. Udayakumar, V, son of late T.R.V.Nair, aged 54 years, Programme Executive, All India Radio, Rarnavarmapurarn, Thrissur, residing at Pranavam, House No. 41, Karunya Nagar, Pulinchodu, Ramavarmapuram P.O., Thrissur 680 631

...Applicants

(By Advocate Mrs.Rekha Vasudevan)

**v e r s u s**

1. Union of India, represented by the Secretary to Government of India, Ministry of Information and Broadcasting, A Wing, Shastri Bhavan, New Delhi 110 001
2. Prasar Bharati (Broadcasting Corporation of India), represented by its Chief Executive Officer, Prasar Bharati Secretariat, Prasar Bharati House, Copernicus Marg, New Delhi 110 001
3. The Secretary, Department of Personnel & Training, Ministry of Personnel, P G and Pensions, North Block, New Delhi - 110 001

4. The Director General, All India Radio, Akashvani Bhavan, Parliament Street, New Delhi 110 001
5. The Station Director, All India Radio, Bhakti Vilasam, Vazhuthacaud, Thiruvananthapuram, Kerala 695014
6. The Director, Doordarshan Kendra, Kadappanakunnu, Thiruvananthapuram, Kerala 695 043

....Respondents

(By Advocate : Mr.N.Anilkumar, SCGSC)

This application having been heard through video conference on 22.12.2020, this Tribunal on 15.01.2021 delivered the following :

### **ORDER**

#### **HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER**

The applicants are working as Programme Executives in All India Radio at various stations in Kerala. They are aggrieved by the decision of the respondents to count the upgradation of pay scales granted in pursuance of the implementation of 5<sup>th</sup> CPC as one of the financial upgradation against the three upgradation under MACP scheme and to refix their pay and recover the excess amount thereof from the applicants which is produced as Annexures A-23 and A-24. According to the applicants, the Ministry of Information and Broadcasting had upgraded the scales as per Annexure A3 order dated 25.2.1999. The Ministry issued orders upgrading the pay scales of 11 posts under Prasar Bharati. The ACP scheme was not implemented in Prasar Bharati which grants two financial upgradations on completion of 12 and 24

years without promotion. The Programme Staff Association of All India Radio and Doordarshan filed O.A 835/2001 seeking grant of ACP Scheme. The Principal Bench directed the respondents to consider the representation within 6 weeks on 9.4.2001. On 28.5.2001, the 2<sup>nd</sup> respondent rejected the representation stating that the Transmission Executives and Programme Executives have already been granted upgradation in pay scales. The Programme Staff Association has challenged the said order dated 28.5.2001 before the Principal Bench by filing O.A 2293/2001. The Principal Bench, after hearing, allowed the O.A and directed the respondents to hold the screening committee to consider granting of 1<sup>st</sup> and IIInd ACP as per scheme. The respondents filed W.P 4151/2003 challenging the order of Principal Bench. The said W.P was disposed of on the basis of the communication of D.G, All India Radio dated 12.7.2017 granting two ACPs. In the meanwhile, MACP Scheme was introduced by replacing the ACP scheme and it was made applicable to All India Radio and Doordarshan employees as per Annexure A-9 order dated 29.5.2009. The granting of MACP to those 11 categories who were granted upgraded higher scales were considered by the 2<sup>nd</sup> respondent Board in its 109<sup>th</sup> meeting dated 6.8.2012.

2. The second respondent decided to implement the MACP and issued a letter allowing MACP to all officials appointed in Prasar Bharati till 5.10.2007 (vide Annexure A12). On 8.9.2014, the first respondent informed respondent no.2 that the DoP&T had opined as follows:

" As the benefits under the MACP scheme are allowed in the grade pay heirarchy, any upgradation availed during their career would be counted against the 3<sup>rd</sup> upgradation permissible under MACP scheme. "

3. The Ministry of Information and Broadcasting on 31.1.2018 has issued a clarificatory order regarding admissibility of MACP to Transmission Executives and other cadres of Programme and Engineering Staff holding that:

"The upgraded scales granted to 11 categories of employees of subordinate engineering and programme cadre of Prasar Bharati is to be treated as one upgradation against the three upgradations allowed under MACP scheme and accordingly Prasar Bharati may take necessary action urgently in terms of DoP&T O.M dated 2.3.2016 on recovery of wrongful/excess payments made to Government servants in pursuance of Hon'ble Supreme Court judgment dated 18.12.2014 in the case of ***State of Punjab & Ors v. Rafiq Masih*** (White Washer) etc. in CA No.11527 of 2014 arising out of SLP(C) No.11684 of 2012. "

4. The Ministry of information and Broadcasting had also passed impugned order dated 5.2.2018 as per the direction of the C.A.T Chennai Bench in O.A No.691/2013 rejecting the recommendations of COJS and held that upgraded pay scales granted by the Ministry of Information and Broadcasting will be counted as financial upgradation against the three upgradations admissible under MACP scheme and recovery if any will be regulated as per DoP&T O.M dated 2.3.2016 issued after ***Rafiq Masih's*** case (vide Annexure A-24).

5. The applicants herein seeks the following reliefs:

*"a. Quash Annexure A23 order dated 31.01.2018 and Annexure A 24 order dated 5.2.2018 issued by the 1<sup>st</sup> respondent.*

*b. Declare that the upgradation of pay scales granted as per Annexure A3 OM dated 25.2.1999 to the Transmission Executives and Programme Executives is not promotion and the same cannot be adjusted against the financial upgradations under the ACP and MACP scheme.*

*c. Direct the respondents to grant the applicants financial upgradations under the ACP Scheme and MACP Scheme from their eligible dates reckoning their service from the date of entry in service and to revise and refix their pay accordingly and to disburse them the arrears of pay thereof within a time frame.*

*d. To grant such other reliefs as may be prayed for and the court may deem fit to grant, and*

*e. Grant the cost of this Original Application."*

6. The respondents appeared and filed a reply statement and admitted the upgradations granted to 11 categories of employees in Prasar Bharati with conditions. It also admitted the issuance of Annexure A23 and A24. According to them, similar cases were filed by the employees association before the Principal Bench. They filed M.A 1073/2018 stating that respondents are moving a petition to transfer their case also to the Principal Bench and sought adjournment. The respondents had produced a copy of this order in O.A 2449/2018 dated 1.8.2019 in a similar case filed by the ***Association of Akashwani and Doordarshan and Others v. Union of India, Ministry of Information and Broadcasting and Others*** wherein the same question came up for consideration. The Principal Bench had upheld the impugned orders Annexures A23 and A24 and issued the following directions:

" (i) The amounts paid to the applicants and similarly situated persons towards arrears as are mentioned in the order dated 25.02.1999, shall not be recovered;

(ii) The difference of the pay scale extended to them through the said order shall be adjusted towards the MACP that becomes due for them;

(iii) If the MACPs are yet to accrue to them, the recovery shall be deferred till the same is extended to them;

(b) If inspite of exercise referred to above, any recovery becomes inevitable, the principle laid down by the Hon'ble Supreme Court in State of Punjab and others v. Rafiz Masih (White Washer) etc., (2015) 4 SCC 334, shall be followed.

(c) The pay scales of the applicants shall be re-determined in the light of the above, within a period of four weeks from the date of receipt of a certified copy of this order, subject to the conditions referred to above. In the course of implementation of the impugned orders, the respondents shall ensure that the applicants and similarly situated employees are not in a condition disadvantageous to the one compared to the employees of similar category working in the other establishments with similar avenues of promotion.

(d) So far as the reliefs (ii), (iii), (iv) and (v) in the O.A are concerned, they are rejected leaving it open to the applicants to pursue the remedies, in accordance with law. "

7. We have heard the counsels appearing for both sides. The decision of the Principal Bench covers the question involved in this case also. We do not find anything to have a different view on the subject matter. The counsel for the applicants submits that they had approached the Hon'ble Delhi High Court against the order passed by the Principal Bench and the law will be finally settled only when the Delhi

High Court passes an order on it.

8. According to the respondents, the Hon'ble Delhi High Court is seized of this matter in WP(C) No.9890/2019 and the operation of the order of Principal Bench is stayed. In this circumstance, we are of the opinion that there is no purpose in keeping this Original Application indefinitely.

**9. Hence we are disposing of this Original Application by directing the respondents to consider the grievances raised by the applicants herein also as they are similarly placed if the W.P(C) 9890/2019 pending in the Hon'ble Delhi High Court goes in favour of the applicants in this case.**

10. The Original Application is disposed of accordingly. No costs.

11. M.A Nos.180/790/2020 and 180/950/2019 are closed.

**(K.V.EAPEN)**  
**ADMINISTRATIVE MEMBER**

**(P.MADHAVAN)**  
**JUDICIAL MEMBER**

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**List of Annexures**

Annexure A1 - Annexure A1- True copy of the Letter dated 25.07.1996 addressed by the 1st respondent to the Member Fifth Pay Commission

Annexure A2 - True copy of the letter No. 45011/80/97-B(A) dated 18.11.1997 issued by the 1St respondent

Annexure A3 - True copy of the Order No. 310/173/97-B(D) dated 25.02.1999 issued bythe 1st respondent

Annexure A4 - True copy of the O.M.F.No. 35034/1/ 97-Estt(D)(Vo1.IV) dated 18.07.2001 issued by the DoPT along with the relevant pages of clarification

Annexure A5 - - True copy of the order dated 09.04.2001 in O.A.No. 835 of 2001 of the Principal Bench of this Honourable Bench

Annexure A6 - True copy of the Letter No. 6(38)98-SI(B)/267 dated 28.05.2001 issued by the 2nd respondent to the President, Programme Staff Asscn of AIR & Doordarshan

Annexure A7 - True copy of the order dated 05. 12.2002 in O.A. No. 2293 of 2001 of the Principal Bench of this Honourable Tribunal

Annexure A8 - - True copy of the Clarification dated 24.12.2006 addressed by the 1st respondent to the 2d respondent

Annexure A9 - True copy of the Circular File No. B-121017/7/2008-WL dated 29.05.2009 issued by the Directorate General, All India Radio of the 4th respondent

Annexure A10 - - True copy of the Office Order F.No. 5/18/2009-SI(B) dated 20.01.2010 issued by the 3rd respondent

Annexure A11 - True copy of the Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2011

Annexure A12 - True copy of the letter F No. Misc-1/30/2012-PPC dated 10.10.2013 issued by the Director of the 2d respondent along with the relevant portion of the Minutes of the 109th Meeting of the 2nd respondent Board

Annexure A13 - True copy of the Letter No.M1/128/2014-PPC dated 17.10.2014 addressed by the 2<sup>nd</sup> respondent to the 4th respondent

Annexure A14 - True copy of the Letter No. M1/128/2014-PPC/PBRB (Part I) dated 22.10.2014 addressed by the 2nd respondent to the 1st respondent

Annexure A15 - True copy of the judgment dated 27.10.2014 in W.P.(C).No. 18034/2004 of the Honourable High Court of Delhi

Annexure A16 - True copy of the Letter F.No. 1601/16/2016-B.A (E) dated 08.02.2016 issued by the CPIO of the 1st respondent along with the opinion rendered by the Ministry of Law and Justice

Annexure A17 - True copy of the order dated 31.03.2016 of the Principal Bench of this Honourable Tribunal in OA 1118/2015

Annexure A18 - True copy of the Speaking Order No. M-1/128/2014-PPC dated 03.06.2016 issued by the 3rd respondent

Annexure A19 - True copy of the Order dated 09.01.2017 in O.A. No.691 of 2013 of the Madras Bench of this Honourable Tribunal

Annexure A20 - True copy of the Letter F No. 4513/ 15/2009-BAP(Vol.II) dated 12.07.2017 addressed by the 1st respondent to the 4th respondent

Annexure A21 - True copy of the Order dated 13.07.2017 of the Honourable High Court of Delhi in W.P.(C). No. 4151 of 2003

Annexure A22 - True copy of the Letter F NO 503/5/2014-BA(E) dated 28.12.2017 issued by the 1st respondent to the 4th respondent

Annexure A23 - - True copy of the Letter F No 503/05/2014-BA(E) dated 31.01.2018 issued by the 1st respondent

Annexure A24 - True copy of the Speaking Order F.No. A-56013/21/2017-BAP dated 05.02.2018 issued by the 1st respondent

Annexure A25 - True copy of the letter No. PAO/AIR/CHN/PEN/2018-2019/51 dated 06.04.2018 issued by the Pay and Accounts Officer, Chennai to the Deputy Director (E) AIR Kannur

Annexure A26 - True copy of the Letter F No. 16/2/20 18-S.IV(B)/305 dated 04.05.2018 issued by the 4th respondent

Annexure A27 - True copy of the final order dated 06.09.2012 in OA. 870 of 2011 of this Honourable Tribunal

Annexure A28 - True copy of the order dated 10.12.2012 in RA No. 51 of 2012 of this Honourable Tribunal

Annexure A29 - True copy of the judgment dated 04.07.2013 in OP (CAT)No. 919 of 2013 of the Honourable High Court of Kerala

Annexure A30 - True copy of the order dated 06.02.2018 in Civil Appeal No. 2941-2942 of the Honourable Supreme Court.

Annexure R-1 - True copy of DoPT's ID No.47539/13/CR dated 10.07.2013

Annexure R-2 - True copy of the OA No.3046/2015 filed by Programme Staff Association of AIR and Doordarshan, before the Hon'ble Principal Bench, CAT, New Delhi

Annexure R-3 - True copy of the reply to OA No.3046/2015 filed by Programme Staff Association of AIR and Doordarshan, before the Hon'ble Principal Bench, CAT, New Delhi

Annexure R-4 - True copy of M.A in OA No.3046/2015 filed by Programme Staff Association of AIR and Doordarshan, before the Hon'ble Principal Bench, CAT, New Delhi

Annexure R-5 - Copy of order dated 01.08.2019 of the Hon'ble CAT, Principal Bench, New Delhi .

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