

## CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.211 of 2016

Date of Order: This the 23<sup>rd</sup> Day of June 2016**HON'BLR MRS MANJULA DAS, JUDICIAL MEMBER**

1. Sri Madan Mohan Mazumdar  
MES-232974  
Son of Late Monoranjan Mazumdar  
Office Superintendent  
Office of the Commander Works Engineer  
Tezpur, P.O.Dekargaon, Dist-Sonitpur  
Assam, PIN-7884501

2. Md.Nurul Islam,  
MES-265740  
Office Superintendent  
Office of the Comander Works Engineer  
Tezpur, P.O. Dekargaon, Dist-Sonitpur  
Assam, PIN-784501

3. Sri Lakhan Bhuyan,  
MES-265735  
Office Superintendent  
Office of the Commander Works Engineer  
Tezpur, P.O. Dekargaon, Dist-Sonitpur  
Assam, PIN-784501

Applicants

By Advocate Mr.M.Chanda

-AND-

1. The Union of India  
Represented by the Secretary  
to the Government of India  
Ministry of Defence  
Sena Bhawan,  
New Delhi-112.

2. The Director General (Pers)  
Engineer-in-Chief's Branch  
Integrated HQ of MOD (Army)  
New Delhi-110001.
  3. The Chief Engineer(EIC Sec.)  
HQ Eastern Command  
Engineers Branch  
Fort William  
Kolkata-700021
  4. The Commander Works Engineer,  
Tezpur  
P.O. Dekargaon-784501  
Dist.Sonitpur, Assam
  5. Assistant Accounts Officer(Pay Cell)  
Kolkata  
13 Camac Street (09<sup>th</sup> Floor),  
Kolkata-700017
  6. Assistant Accounts Officer  
Area Accounts Office  
E.M.Block, Salt Lake  
(Opposite Wipro)  
Kolkata-700091
- Respondents

By Advocate CGSC

O.R D E R

**Per Mrs. Manjula Das, Judicial Member:**

All the applicants in this application have common cause and common interest and therefore, they have prayed for permission to move this application under Rule 4 (5) (a) of CAT Procedure Rules 1987.

Prayer is allowed.

2. By this O.A. the applicants make a prayer to set aside the impugned letter dated 27.01.2015 (Annexure-9) issued from the office of the Area Accounts Office, Kolkata as well as letter dated 02.03.2015 (Annexure-10) issued from the office of the HQ Eastern Command Engineers Branch, C/O 99 APO and to re-fix the pay of the applicants on grant of 3<sup>rd</sup> MACP on the basis of revised option submitted by the applicants, with all consequential benefits thereon.

3. Mr.M.Chanda, learned counsel appearing on behalf of the applicant submitted that the applicants were initially appointed as Lower Division Clerk (LDC) w.e.f. 08.04.1983, 07.04.1983 and 09.04.1983 respectively. Subsequently they were promoted to the post of Upper Division Clerk and finally to the post of Office Superintendent. As per Office Memorandum dated 09.08.1999 issued by the Govt. of India, Department of Personnel and Training it was provided that due to lack of adequate promotional avenues, the employees of Group 'B' C' and 'D' would be entitled to get two financial up gradation on completion of their 12 years and 24 years of regular service.

4. The learned counsel further stated that the applicant No.1 got two promotions to the post of UDC and Office Superintendent in the year 1995 and 2005 respectively and as such he was not eligible for the 1<sup>st</sup> and 2<sup>nd</sup> financial upgradation under the ACP Scheme, since he was not stagnating. On the other hand, the applicant No.2 and 3 did not get any promotion and stagnating in the post of LDC. Consequently they were granted the benefits of ACP scheme. Similarly, the Applicant No.3 was granted the 1<sup>st</sup> and 2<sup>nd</sup> ACP from 09.08.1999 and 08.04.2007 respectively. Pursuant to the MACP Scheme the applicants were granted the 3<sup>rd</sup> financial upgradation on completion of their 30 years service in the department. Accordingly, option for fixation was called for. Applicant opted for fixation of pay in the upgraded scale under the 1<sup>st</sup> option i.e straight way under FR 22.(1) (a) (i) w.e.f the date of their upgradation. After forwarding the proposed pay fixation proforma on 18.02.2014 the applicants realized that they had made a mistake by choosing the 1<sup>st</sup> option as the 2<sup>nd</sup> option i.e to get their pay fixed from the date of their next increment would have been more beneficial to them. Immediately, after detecting the mistake they approached the respondent No.4 and accordingly, the office of the Respondent No.4

vide letter dated 24.02.2014 cancelled the pay fixation proposal forwarded on 18.02.2014. Thereafter the Respondent No.4 vide letter dated 26.02.2014, forwarded to Respondent No.3 a fresh Pay Fixation proforma in respect of the applicants forwarding therewith their fresh option whereby they opted for fixation of MACP pay after accrual of next increment in the lower grade w.e.f. the date immediately next to their date of effect of 3<sup>rd</sup> MACP. The learned counsel further submits that prior to grant of 3<sup>rd</sup> MACP, Grade pay of the applicants was Rs.4200/- which has to be upgraded to Rs. 4600/- on grant of 3<sup>rd</sup> MACP. But the applicants have been continuing in their existing Grade pay of Rs.4200/-anticipating and waiting for fixation of their pay on the basis of accrual of increment in the lower grade instead of straightway fixation under FR 22 (1) (a) (i) as per their revised option forwarded on 26.02.2014.

5. Learned counsel further submitted that the applicants submitted individual representation on 12.03.2015 to Respondent No.3 narrating the facts and prayed to process the fresh fixation proforma and options. But there is no response.

It is further submitted that there is no impediment under law to correct a bonafide mistake and the option initially exercised by the applicants by mistake is not incurable.

6. Learned counsel further stated that the Audit Authorities have proceeded on a wrong presumption that option once exercised is final and there cannot be any change of the same. It was stated that the said presumption has already been nullified by **this Hon'ble Bench by its judgment and order dated 15.03.2013 passed in O.A.No.176/2012 (Shri Chandan Kr. Das-Vs UOI & Ors), whereby the applicant therein Shri Chandan Kr.Das** was allowed to get his salary re-fixed on the basis of revised option. In another case, **this Hon'ble Bench vide its order passed in O.A.No.256/2014 (Shri N.K.Bhushal – Vs-UOI & Ors.)** disposed of the O.A. and directed the respondents to reconsider the case of the applicant therein on grant of 3<sup>rd</sup> MACP, on the basis of his revised option.

7. Heard learned counsel, perused the pleadings and material placed before me.

8. During arguments the learned counsel for the applicants submitted that the present applicants are similarly situated as the

applicants in aforesaid cases and therefore, their case is squarely covered by the decisions rendered by this Tribunal in the aforesaid cases.

9. Accepting the arguments advanced by the learned counsel for the applicant, I direct the respondents authority to re-consider the case of the applicants as their case deserved to be considered for extending similar benefits as granted to similarly situated applicants of the aforesaid cases. Consideration shall be made within a period of three months from the date of receipt of copy of this order. It is made clear that the respondents shall pass a reasoned and speaking order and the decision so arrived at shall be communicated to the applicant forthwith.

10. With the above observations and directions, O.A. stands disposed of accordingly at the admission stage. No order as to costs.

(MANJULA DAS)  
JUDICIAL MEMBER

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