

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00015/2015

Date of Order: This, the 7th Day of April, 2021

**THE HON'BLE SMT. MANJULA DAS, MEMBER (J)
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)**

Sri Rahim Uddin Barbhuiya
 Son of Late Kurwam Ali Barbhuiya
 Vill – Thup Khana, Part-I (MES Colony)
 Quarter No. P/376/B Masimpur
 P.O. – Arunachal, Dist – Cachar
 Assam, Pin Code – 788025.

... Applicant



- Versus -

1. The Union of India
 Represented by the Secretary
 To the Government of India
 Ministry of Defence
 New Delhi – 110001.
2. The Engineer-in-Chief
 Army Headquarters
 Kashmir House
 DHQ. P.O. New Delhi – 110011.
3. The Chief Engineer
 Headquarter, Eastern Command
 Fort William, Kolkata-700021.

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4. The Chief Engineer
Shillong Zone, S.E. Falls
Shillong-793011, Meghalaya.
5. The Garrison Engineer
Silchar, Masimpur
P.O. – Arunachal-788025
Dist – Cachar, Assam.
6. The Controller of Defence Accounts
Udayan Vihar, Narangi
Guwahati – 781171.

...Respondents.



For the Applicant : Sri M. Chanda, U. Dutta & S. Begum
For the Respondents : Sri S.K. Ghosh, Addl. CGSC

O R D E R (ORAL)

MANJULA DAS, MEMBER (J):-

This case has been remanded back from the Hon'ble Gauhati High Court vide order dated 19.07.2018 in WP (C) No. 3060/2017 in respect of the applicant by which the Hon'ble Gauhati High Court had directed this Tribunal to take a decision afresh after

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giving opportunity of hearing to the respondents (Petitioner in the aforesaid WP (C)). In view of the aforesaid order of the Hon'ble Gauhati High Court, this Tribunal vide order dated 07.05.2019 issued notice upon the respondents by making returnable within four weeks.

On that day, Sri S.K. Ghosh, Addl. CGSC accepted notices on behalf of all the respondents. Thereafter, matter was listed and adjourned on several occasions for filing of either written statement as well as rejoinder which are as follows:-



21.06.2019	-	Granted time for w/s
01.08.2019	-	Granted four weeks for w/s
05.09.2019	-	Granted four weeks for rejoinder
31.10.2019	-	Granted time for rejoinder
05.12.2019	-	Granted six weeks for rejoinder
08.01.2020	-	Granted four weeks for rejoinder
14.02.2020	-	Granted six weeks for rejoinder
29.01.2021	-	O.A. was admitted
11.02.2021	-	Matter was adjourned as prayed by applicant's counsel and no objection from the respondents.
02.03.2021	-	Matter was adjourned as prayed by applicant's counsel due to difficulty of her senior.
03.03.2021	-	Matter was adjourned due to non-availability of Division Bench.
07.04.2021	-	Finally heard and disposed of.

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2. Heard Sri M. Chanda, learned counsel for the applicant and Sri S.K. Ghosh, learned Addl. CGSC for the respondents, perused the pleadings and all the documents.

3. The brief fact is that the applicant was initially appointed as Driver Engine Static (SK) on 07.06.1984 in the pay scale of Rs. 260-400, under the Garrison Engineer, MES, Masimpur, Silchar, Govt. of India, Ministry of Defence. He was granted 1st ACP on 21.05.2002 and pay was fixed wrongly w.e.f. 01.01.2006 in terms of recommendation of 6th CPC. He was granted 2nd ACP on 11.12.2009 but again wrong fixation of pay has been carried out, on account of denial of higher replacement scale. He was entitled to the benefit of grade pay of Rs. 4200/-, but fixation of pay which has been carried out is erroneous. He was promoted to the grade of Master Craftsman on 26.12.2011. However, neither fixation nor re-fixation of the applicant has been



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carried out to the grade of Master Craftsman. His pay has been reduced without providing any opportunity or without issue of prior notice and the department has now proposed to recover an amount of Rs. 61,144/- from the applicant without serving any notice. The respondent department particularly Garrison Engineer, Silchar and Controller of Defence Accounts, Guwahati raising objection regarding alleged excess payment and wrong fixation of pay on account of implementation of 2008 pay rules following 6th CPC as well as for implementation of applicant's 1st ACP as well as 2nd ACP. But surprisingly, none of the aforesaid respondents have considered the fact that the present applicant has been denied the benefit of higher replacement scale of pay of Rs. 1200-1800/- (Revised Rs. 4000-6000) due to the applicant w.e.f. 01.04.1991.

4. Applicant stated that in this matter, the authority is arbitrary without providing any opportunity to the

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applicant refixation of pay carried out vide part II order No. 52 dated 30.12.2013. he submitted a detail representation on 15.04.2014 but the respondents did not taken any action regarding restoration of his pay, which was reduced vide impugned Part-II order dated 30.12.2013, and in fact, said Part-II order dated 30.12.2013 got implemented through impugned voucher dated 11.03.2014 and thereby pay of the applicant has been reduced to the extent of Rs. 1,195/0 in the month of March, 2014. The applicant did make representation before the authority but the department did not taken any action regarding restoration of his pay. The applicant approached before this Tribunal vide O.A. No. 188 of 2014 where this Tribunal vide order dated 04.06.2014 disposed of the said O.A. directing the respondent Nos. 5 & 6 to treat this O.A. as comprehensive representation and pass necessary order within a period of 2 months. While passing the said order, this Tribunal also directed the respondents not to

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make any recovery from the salary or reduction of pay till the decision arrives. Thereafter, the respondent authority vide order No. 70222/OA No. 188/2014/42/El(Legal) dated 11.10.2014 rejected the prayer of the applicant. The applicant further stated that in a similarly situated staff/employee namely, Shri Tushar Kanti Das, respondent authority granted benefit of that scale of pay of Rs. 1200-1800 w.e.f. 01.04.1991. However, the case of the applicant was rejected. Action of the respondent authority is a discriminatory.



5. The authority had extended higher scale of pay to the employees working in different trades under the respondent department. Sri M. Chanda, learned counsel appearing for the applicant vehemently submitted that Shri Tushar Kanti Das, who is a junior employee and was working in the cadre of Upholster, has been given the benefit of higher replacement scale of Rs. 1200-1800, since the trade of upholster also

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included in the Government Order dated 10.06.1993.

But the said order dated 10.06.1993 not circulated in the office of the Garrison Engineer, Silchar. As a result, the benefit of the order dated 10.06.1993 was not extended to the present applicant and the applicant was kept in dark about the higher scale of pay of Rs. 1200-1800/- as extended to the Driver Engine Static (SK). According to Sri Chanda, due to denial of extension of benefit and higher replacement scale of pay of Rs. 1200-1800/-, the applicant is incurring huge financial losses each and every month and as a result suffering from irreparable losses.

6. Sri Chanda further submitted that the applicant was granted first ACP on 21.05.2002 in terms of GOI order dated 09.08.1999 and the basic pay of the applicant was fixed as Rs. 4000-6000/- on 21.05.2002 on account of 1st ACP without any change in the scale of pay. The applicant is entitled to the benefit of 1st ACP in



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the higher scale of pay of Rs. 5000-8000/-. A Board was constituted for grant of 2nd ACP on account of completion of 24 years of service of the applicant and the board recommended the case of the applicant and accordingly granted the applicant grade pay of Rs. 4000/- in the Pay Band of Rs. 9300-34800 (Pre-revised scale of Rs. 5000-8000/-) w.e.f. 07.06.2008. According to the learned counsel, this fixation was also carried erroneously because the applicant was entitled to the benefit of grade pay of Rs. 4200, in the pre-revised scale of Rs. 5000-8000 w.e.f. 09.08.1999 on account of 1st ACP as per O.M. No. 35034/197-Estt (D) dated 09.08.1999 as well as in terms of Army HQ letter dated 10.10.2003 and as such, aforesaid fixation on account of 2nd ACP is also wrong.

7. Sri S.K. Ghosh, learned Addl. CGSC appearing for the respondents, by referring para 12 of the written statement submitted that since Driver Engine Static (SK)

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(DES in short) has no promotional avenue and to bring the DES (SK) into promotional hierarchy, the DES (SK) has been re-designated as FGM which is a promotional post without change in pay structure in terms of Army HQ, E-in-C's Branch letter No. 91026/FGM/E1C(3) dated 21.07.1994. He also referred para 15 of the written statement and submitted that in terms of para 10 and 11 of GOI, DoPT Office Memorandum No. 35034/3/2008-Estt (D) dated 19.05.2009, it has been elaborately clarified that no stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP scheme. No past cases would be re-opened. Further, while implementing the MACP scheme, the difference in any pay scales on account of grant of financial upgradation under the old ACP Scheme (of Aug 1999) and under the MACP scheme within the same cadre shall not be construed as an anomaly.

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8. It is noted that after exploring all records in details, the respondent authorities vide order dated 11.10.2014 passed a speaking order and rejected the case of the applicant by observing that – “*Since the scale of 1200/- to 1800/- of situ promotion is not applicable to you as your pay scale still stand at 950/- to 1500/- during 1993. Hence the revision of pay fixation thereafter is not tenable*”.



9. The respondents also at para 3 of their written statement mentioned that as per GOI letter No. DOA/29009/OTP/E1C(V) 2516/D(W-II) dated 10.06.1993 referred to paragraph 3 of GOI letter No. 10/1/ER-III/88 dated 13.09.1991 on account of career Advancement of Group ‘C’ & ‘D’ employees for grant of higher pay scale to Group ‘C’ employees for in situ promotion where promotional grade not available. The ibid in situ promotion is granted in terms of GOI letter dated 13.09.1991 under the following conditions:-

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- (i) Employees who are directly recruited to a Group 'C' & 'D' post.
- (ii) Employees whose pay on appointment to such a post is fixed at the minimum of the scale.
- (iii) Employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post.

10. In para 3 of the speaking order dated 11.10.2014 stated that – “Since you had not fulfilled the terms and conditions (i.e. not reached in the maximum of the scale of the post) for in situ promotion in terms of GOI letter dated 13 Sep 1991 and 10 Jun 1993, the said policy is not applicable to you.”

11. For coming to a logical conclusion, we are in hand the O.M. No. DO. A/29009/OT/EIC (V)/2516/D (W-II) dated 10.06.1993 issued by the DESK Officer, Govt. of India, Ministry of Defence, New Delhi on the subject of 'Career Advancement of GP 'C' & 'D' Employees, Grant of Higher Pay scale to GP 'C' Employees For In Situ Promotion where Promotional Grade not Available'.

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Said letter which is very much relevant in the instant case, being extracted below:-

Sl. No.	Name of the Post	Existing Scale	Scale Accepted
1	Mechanic Precision Instrument (SK)	950-1500	1200-1800
2	Boiler Attendant (SK)	950-1500	1200-1800
3	Driver Engine Static (SK)	950-1500	1200-1800
4	Pump House Operator (SK)	950-1500	1200-1800
5	Upholster (SK)	950-1500	1200-1800
6	Mechanic Petrol & Diesel Engine (SK)	950-1500	1200-1800
7	Operator Earth Moving Machinery (SK)	950-1500	1200-1800
8	Driver Mobile Plant (SK)	950-1500	1200-1800
9	Civilian School Master	950-1500	1200-1800
10	Instructor Foreman (Trade)	1200-2040	1400-2300



12. From the above letter dated 10.06.1993, it is noted that the pay scale of 10 categories of posts including the post of the applicant i.e. DES (SK) was enhanced from 950-1500/- to 1200/-1800/- (Pre-revised). Further said scale of Rs. 1200/-1800/- was revised to the corresponding scale of Rs. 4000-6000 w.e.f. 01.01.1996 following recommendation of the 5th CPC. It is not disputed by the respondents that said enhanced scale of Rs. 1200-1800/- (pre-revised) in the corresponding revised scale of Rs. 4000-6000/- in terms of the aforesaid

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order dated 10.06.1993 was granted to the Upholsterer (SK) posted in the office of the Garrison Engineer, Silchar automatically without raising such question of Trade Test etc. However, said enhancement/revised scale of Rs. 4000-6000/- w.e.f. 01.01.1996 has been denied to the applicant.



13. It was also not disputed that in the case of similarly situated Upholsterer (SK) working under Garrison Engineer, Shillong namely **Sri Tushar Kanti Das** in O.A. No. **34 of 2013**, who was junior to the present applicant, the respondent authorities had extended the benefits of higher pay scale of Rs. 1200-1800/- w.e.f. 01.04.1991 in terms of Govt. of India, Ministry of Defence dated 10.06.1993. In the case of the instant applicant, the respondents are not disputed that said O.M. dated 10.06.1993 was not circulated in the office of the Garrison Engineer, Silchar. As a result, the benefit of the O.M. dated 10.06.1993 was not extended to the present

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applicant and the applicant was kept in dark about the higher scale of pay of Rs. 1200-1800/- as extended to the Driver Engine Static (SK).

14. We further noted that Govt. of India, Ministry of Personnel, Public Grievances and Pensions vide O.M. No. 35034/1/97-Estt (D) dated 09.08.1999 provides benefit of 1st ACP and 2nd ACP in the absence of any regular promotion within a span of 12 years and 24 years respectively. As per the said O.M., the applicant had attained eligibility for grant of 1st ACP w.e.f. 09.08.1999 and 2nd ACP w.e.f. 07.06.2008.

15. The applicant was granted 1st ACP on 21.05.2002 and also 2nd ACP on 07.06.2008. It is further noted that while granting the 2nd financial upgradation to the applicant, the departmental authority not taken into consideration the accepted replacement pay scale as circulated on 10.06.1993 while the applicant was entitled for his placement in higher pay replacement



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basic of Rs. 1200-1800/- instead of Rs. 950-1500/-. Thus, accordingly the applicant made grievances for fixing the scale while giving upgradation by taking note of Annexure 1 dated 10.06.1993 which was not done in the present case. Thus it is easily discernible that there is some wrong in fixation at the very time that the department has not taken note of the replacement w.e.f. 01.04.1991 which was very much existence and applicable to the applicant.



16. Vide letter No. A/GE/SIL/6th CPC/84/II dated 12.09.2011, the A.O., GE, Silchar requested respondent No. 5 to prepare an exhaustive list of such industrial personnel whose pay had been wrongly fixed in the grade pay of Rs. 4200/- instead of Rs. 2800/- and to take expedient action to recover the same under intimation to the Office of the A.O., GE, Silchar. The name of the applicant was included in the said list. Thereafter, the name of the applicant was included in the said list.

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Thereafter, vide order dated 30.12.2013, re-fixation of applicant's pay was carried and as a result of such re-fixation, the applicant's pay was reduced by an amount of Rs. 1195/- in the month of March 2014 and also proposed to recover an amount of Rs. 61,144/- from the applicant vide voucher No. 02/CV/295/STL dated 11.03.2014 from the monthly salary of April 2014 onwards ignoring and overlooking Government of India, Ministry of Defence letter dated 01.12.2010 communicated vide Office of CGDA, New Delhi letter dated 15.12.2010.



17. We have also noted that in one case namely O.A. No. 153 of 2013 wherein the applicant, Shri Ashik Uddin Barbhuiya, working in the same department and holding the post of Carpenter (SK) who was initially appointed as Upholsterer which was subsequently redesignated as Upholsterer (SK), this Tribunal vide order dated 02.04.2014 observed as hereunder:

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"Undoubtedly, applicant was very much in the post of Upholsterer at that relevant time in the year 1993 where the notification came into effect from 01.04.1991. In our view, it is illogical not to give the benefit of pay scale of Upholsterer to the applicant w.e.f. 01.04.1991 in view of the above notification dated 10.06.1993. Accordingly, we direct the responsibility authority to grant the revised as well as corresponding scale to the post of Upholsterer to the applicant from 01.04.1991 till the next date of acceptance by the department for his option for changing the trade to Carpenter."



18. Similarly, in the case of Shri Tushar Kanti Das, who was also Upholsterer (SK) and had approached this Tribunal vide **O.A. No. 34/2013**, where the respondents department fixed the replacement scale of Rs. 1200-1800/- w.e.f. 01.04.1991 vide order dated 30.10.2013 which is a conclusive evidence about the granting of replacement scale of Rs. 1200-1800/- in terms of Government of India, Ministry of Defence letter DOA/29009/OTP/E1C(V)/2516/D(W-II) dated 10.06.1993.

19. In our opinion, on the basis of the letter dated 10.06.1993 circulated by the Ministry of Defence

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containing the trades including Driver Engine Static (SK) which post was held by the applicant at the relevant time, the applicant is also entitled to get the replacement scale of Rs. 1200-1800/- against the replacement scale of Rs. 950-1500/-, we do not see any logic in the statement of the respondents that – “since the scale of Rs. 1200-1800/- of in situ promotion is not applicable to you as your pay scale still stand at 950/- to 1500/- during 1993. Hence the revision of pay fixation therefore is not tenable” and the subsequent recovery of the alleged excess amount is not at all acceptable in view of the discussions made in the foregoing paragraphs as the applicant is similarly situated with the said Tushar Kanti Das who has already been granted the benefit in view of the circular dated 10.06.1993 of the Ministry of Defence.

20. Taking into consideration the entire conspectus of the case and since the benefit has already been

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extended to other similarly situated employees, we accordingly direct the respondent authorities to extend the benefit of the replacement scale which is accepted as Rs. 1200-1800/- w.e.f. 01.04.1991 to the applicant and thereafter, fix the appropriate pay scale as admissible by taking into account the replacement scale of Rs. 1200-1800/- and thereafter the corresponding scale.



21. With the above observations and directions, O.A. stands disposed of. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB

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