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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A/T.A No. 356/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.5

ORIGINAL APPLICATION NO. 356/2000

Shri. Avadhesh Kr. Singh, APPLICANT
versus.

Union of India &ors Respondents,

FOR THE APPLICANT(S) Mr. B.K. Sharma (2) Mr. B.K. Talukdar
ADVOCATE
Mr. U.C. Naik.

FOR THE RESPONDENT(S) C.G.S.C.

Notes of the Registry

DATE

COURT'S ORDER

25.10.00

Present: Hon'ble Mr. Justice D.N.
Choudhury, Vice-Chairman.

Heard Mr. B.K. Sharma learned counsel
for the applicant and Mr. B.C. Pathak
learned Addl.C.G.S.C for the respondents.

Application is admitted. Call for
records. Issue notice on the respondents
as to why the impugned order No. AP/AA/0/
ED(N)/95-96 dated 17.8.00 and 21.8.00
Annexure 6 and Annexure 7 order dated
03.10.2000 shall not be remain suspended.
Returnable by 6 weeks. List on 8.12.00
for orders.

In the meantime the operation of the
impugned order dated 17.8.00/21.8.00
Annexure 6 and 03.10.2000 Annexure 7 shall
remain suspended and the respondents are
restrained for making any steps for recov-
ery of the amount as mentioned in the
petition.

Vice-Chairman

1m

7-12-2000

Notice due served on 23.8.00
1m

Service report enc.

Still awaiting.
on Respondent No 1486.

30/10/2000

8.12.00

On the prayer of Mr. B.C. Pathak, learned
Addl.C.G.S.C. four weeks time is granted
for filing of written statement. List on
9.1.2001 for filing of written statement
and further orders.

Vice-Chairman

1m

No. written statement
has been filed.

10.1.2001

Four weeks time allowed for
filing of written statement on the prayer
of Mr B.C. Pathak, learned Addl. C.G.S.C
List it on 12.2.01 for orders.

By
9.1.2001

nkm


Vice-Chairman

12.2. No S.B. Add to 28.2.2001.

Mo
Abg
12.2

28.2.2001

This case has been wrongly listed today.
List it on 7.3.01 for orders.

No. written statement
has been filed.

By
5.3.01

nkm

7.3.01

List on 25.4.01 to enable the
respondents to file written statement.

No. written statement
has been filed.

1m

25.4.2001

Four weeks time allowed to the
respondents to file written statement. List
for orders on 23.5.01.

list for circuit sitting
at Kohima.

By
21/5/2001

nkm

31.5.01
(Kohima)

Mr A.Deb Roy, learned Sr.C.G.S.C
prays for four weeks time for filing
written statement. Prayer allowed.

List on 9.7.2001 for orders.

No. written statement
has been filed.

By
6/7/01

nkm

9.7.

Adjourned to 11.7.2001.

Mo
Abg
9.7.

I.C.L.S.C.
Member

Notes of the Registry	Date	Order of the Tribunal
Order dtd 11/7/01 communicated to the parties concerned with D/LN all 12/7/01.	11.7.01	Written statement has not been filed. List on 10.8.01 to enable the respondents to file written statement. In the meantime the interim order shall continue.
Written statement filed on behalf of the respondents.	1m w/s 12/7/01	Vice-Chairman
By 9.8.01	10.8.01	Written statement has been filed. List after 3 weeks for hearing. In the meantime, the applicant may file rejoinder, if any.
No rejoinder has been filed.		List on 21/9/01 for hearing.
By 20.9.01		I C Usha Member
No rejoinder has been filed.	21.9.01	On the prayer of Mr.S.Sarma, learned counsel for the applicant, the case is adjourned to 12/10/01 for hearing.
By 11.10.01		Vice-Chairman
ab	12.10.2001	Mr.S.Sarma, learned counsel appearing for the applicant prays for one week time. Prayer accepted. List the matter on 19.10.2001 for hearing.
bb	19.10.2001	I C Usha Member
bb		Request is made on behalf of Mr. B.C.Pathak, learned Addl. C.G.S.C. for a short adjournment stating that Mr.Pathak is out of station. Request is accepted. List on 19.12.01 for hearing.
bb		I C Usha Member

Notes of the Registry	Date	Order of the Tribunal
20.7.2000 W/S on behalf of Asstt. M.6 has been filed.	19.12	in due course of Mr. B.C. Pathak, Adv. C.G.S.C, the case is adjourned to 23.1.2002. M/S A.K.J. 19.12
rejoinder has been filed by the applicant at p. 26-32.	23.1.02	At the request of Mr. S. Sarma learned counsel for the applicant case is adjourned to 27.2.02 for hearing.
WB 1/2/02	1m	<u>I.C.Usha</u> Member
	1.3.02	None appears for the applicant today also. List again on 6.3.2002.
	trd	<u>Vice-Chairman</u>
Received (b) Dated 22/3/02	6.3.2002	Heard the learned counsel for the parties. Hearing concluded: Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.
	nkm	<u>Vice-Chairman</u>
Copy of the Judg has been sent to the ofc. for issuing the same to the applicant as well as to the Addl. C. Secy. for the Registry.		
15 S. N. Singh		

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 356 of 2000

6.3.200
Date of Decision.....

Awadesh Kumar Singh

Petitioner(s)

Mr B.K. Sharma, Mr S. Sarma, Mr U.K. Nair and

Mr B.K. Talukdar

Advocate for the
Petitioner(s)

- Versus -

The Union of India and others

Respondent(s)

Mr B.C. Pathak, Addl. C.G.S.C.

Advocate for the
Respondent(s)

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches

Judgment delivered by Hon'ble : Vice-Chairman

7/5/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.356 of 2000

Date of decision: This the 6th day of March 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

Awadhesh Kumar Singh,
Sub-Postmaster (HSG-II),
Mokokchung, Nagaland.

.....Applicant

By Advocates Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Nair and Mr B.K. Talukdar

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Communication,
New Delhi.

2. The Director General,
Department of Posts,
New Delhi.

3. The Chief Postmaster General,
N.E. Circle,
Shillong.

4. The Director of Postal Services,
Nagaland, Kohima.

5. The Chief Accounts Officer (IFA),
Office of the Chief Postmaster General,
N.E. Circle, Shillong.

6. The Postmaster,
Kohima Head Post Office,
Kohima.

.....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The applicant was first appointed as Postal Assistant in Nagaland Postal Division with effect from 23.3.1973. In terms of Time Bound ~~One~~ Promotion Scheme in conformity with DG, P&T letter No.31-26783-PR dated 17.12.1983, the applicant alongwith six others were promoted to the higher grade carrying a pay scale of Rs.1400-2300 with effect from 23.3.1989 vide order dated

20.11.1989. By the same order one D. Dewri, officiating PRI(P), Kohima was also promoted. There is no dispute that the applicant is senior to the said D. Dewri who was appointed in the post on 26.3.1989, whereas the applicant was appointed on 23.3.1989. The applicant made an application before the Director of Postal Services on 21.11.1989 for stepping up of his pay on the ground that the said D. Dewri who was junior to the applicant was drawing more than the applicant in the scale applicable to LSG officials. It was contended that the said D. Dewri was drawing Rs.1640/- in the scale pay whereas the applicant's pay was fixed at Rs.1440/- in the very same scale. The applicant submitted several representations before the Director, Postal Services. By order dated 28.2.1990 the applicant was allowed to draw his pay at Rs.1640/- with effect from 19.4.1989 on which date the applicant joined his duties in the cadre of Lower Selection Grade. While things rested at this stage, the Post Master (H.S. G-II), Kohima wrote to the Chief Accounts Officer (IFA) for providing post-facto concurrence in the matter of pay fixation of the applicant. In the said communication the said Post Master informed that while verifying the service book of the applicant by the Audit party during internal check/inspection it was recorded by the Audit party that the initial pay of the applicant in LSG cadre was fixed at a higher stage in terms of D.P.S., Kohima Memo dated 28.2.1990. It was also mentioned in the communication that no approval of the IFA was found recorded in the service book. Accordingly the authority was requested to regularise the pay fixation by providing financial concurrence of the IFA. By the impugned communication

No.AP/AAO/II/FIXN/95-96 dated 17.8.2000/21.8.2000 the Chief Post Master General informed that stepping up of pay of the applicant with effect from 19.4.1989 was not in order and accordingly the Post Master, Kohima H.P.O. was advised to cancel the same and directed for recovery of the over payment made to the applicant as a result of wrong stepping up of pay with intimation to the Office. The relevant part of the impugned communication is reproduced below:

"With reference to your office letter referred above, this is to inform that on comparative scrutiny of the Service-Books of Shri A.K. Singh, APM Kohima H.O. and Shri Dimbeswar Deori PA, Guwahati the following have come to light.

That, the Senior official, Shri A.K. Singh entered the Department as PA with effect from 23.03.73, while the Junior Official entered in the Department as PA with effect from 26.03.73. The pay of both the officials was fixed at Rs.260/- in the scale of Rs.260-480/- with DNI on 1st March each year. The pay of Shri A.K. Singh was subsequently fixed at Rs9276-8) (ie Rs. 284/-) with an advance increment with effect from 1.3.75 on account of his having undergone the Telegraph Mess Training as reported in your office letter referred above. Copy of the above order is not found enclosed in the Service-Book. The same may kindly be enclosed in Service-Book.

The first part of the Service-Book of Shri A.K. Singh, APM Kohima, for the period from 23.3.73 to 20.7.76 which is reported to have been wanting may kindly be reconstructed.

That, the official, Shri Dimbeswar Deori was allowed to officiate as SPM/APM Acctt/DPM etc. all along with effect from 4.8.74, but before the eligible period for TBOP scheme, while the senior official, Shri A.K. Singh worked simply as T/S Clerk upto the period of eligibility of TBOP scheme. By virtue of officiating capacity the pay of Shri Dimbeswar Deori was fixed at 1640/- on 1.2.89 in the scale of Rs(1400-2300), while the Senior official, Shri A.K. Singh was drawing pay at Rs. 1390/- with effect from 1.3.89 in the scale of Rs. (975-1660) and at Rs. 1440/- with effect from 23.3.89 in the scale of Rs. (1400-2300) in the TBOP scheme, therefore, resulting in drawal of enhanced pay by the Junior Official Shri Dimbeswar Deori. The pay of Shri A.K. Singh was finally stepped up from Rs. 1440/- to Rs. 1640/- with effect from 19.4.89 vide DPS/Kohima's letter No. B-776/Pt-III dated 28.2.90. The excess Pay drawn by the Junior official is not due to any application of FR-22(i) (a) (i)."

2. Consequently, by order dated 3.10.2000 the Post Master (HSG-II), Kohima Post Office issued an order cancelling the stepping up of pay of the applicant from Rs.1440/- to Rs.1640/- and thereby reduced his pay on 1.10.2000 from Rs.6800 to Rs.6050 and over payment made as a result of wrong stepping up of pay with effect from 19.4.1989 to 30.9.2000, amounting to Rs.85870/- was ordered to be recovered from the official. By the said communication the Post Master sought further instructions as to how the assessed amount was to be recovered from the official. The legitimacy of the aforementioned action on the respondents is thus under challenge in this proceeding as arbitrary and discriminatory.

3. The respondents in their written statement did not dispute the fact that Dimbeswar Dewri was junior to the applicant and the pay of both the officials was fixed at Rs.260/- in the scale of pay of Rs.260-480/- at the initial stage. Subsequently, however, the pay of the applicant was fixed at Rs.276+8 i.e. Rs.284 with an advance increment with effect from 1.3.1975 on account of the applicant having taken Telegraph Morse Training. Shri Dimbeswar Dewri who was junior to the applicant officiated as SPM, APM (Acct.) and Deputy Postmaster continuously with effect from 4.8.74 before completing 16 years of service for TBOP scheme while the applicant only worked as time scale clerk upto the period of eligibility of TBOP scheme. In view of the fact that Shri Dimbeswar Dewri worked in the officiating capacity in the higher grade/post his pay was fixed at Rs.1640/- on 1.2.89 in the scale of pay of Rs.1400-2300/- while the pay of the applicant who was drawing Rs.1390/- with effect from 1.3.1989 in the scale of Rs.975-1660 and Rs.1440 with

effect.....

effect from 23.3.1989 in the scale of Rs.1400-2300 in the TBOP Scheme. Due to drawal of increased pay by the junior official Shri Dimbeswar Dewri, the pay of the applicant was stepped up from Rs.1440 to Rs.1640 with effect from 19.4.1989, on representation, vide DPS, Kohima letter dated 29.2.1990 erroneously which was not in conformity with the application of FR-22(i)(a)(i). The respondents averred that in terms of FR-22(c), amongst others anomaly must arise directly as a result of application of FR-22(c) now FR-22(i)(a)(i) in the revised scale. The applicant was working as time scale clerk and his junior Dimbeswar Dewri was officiating in the posts of APM (Accts.) and Deputy Post Master and was drawing more pay in the lower cadre before promotion to the LSG cadre under TBOP scheme. As such, the difference of pay continued even during pay fixation at the time of promotion under TBOP Scheme automatically and not because of any anomaly in the fixation of pay resulting in the drawal of more pay by his junior, Dimbeswar Dewri. In the circumstances the stepping up of pay of the applicant was not justified and on scrutiny the authority detected the irregularity and ordered for recovery of the excess payment made to the applicant.

4. Mr B.K. Sharma, learned Sr. counsel for the applicant, stated and contended that conferment of higher pay to Shri Dimbeswar Dewri who was junior to the applicant created an anomalous situation and that anomaly was duly taken care of by the respondents vide order dated 28.2.1990 in conformity with FR-22(c) now FR-22(i)(a)(i). The learned Sr. counsel submitted that as per the scheme of the Fundamental Rules, the stepping up of pay of the applicant was made in the right direction and the order

dated.....

dated 28.2.1990 was arbitrarily cancelled by the impugned order dated 17/21.08.2000 without giving any opportunity to the applicant. The learned Sr. counsel for the applicant, in support of his contentions referred to the decisions of the Supreme Court in Divisional Superintendent, Eastern Railways, Dinapur and others Vs. L.N. Keshri and Others, reported in (1975) 3 SCC 1; H.L. Trehan and Others Vs. Union of India and Others, reported in (1989) 1 SCC 764 and Bhagwan Shukla Vs. Union of India and others, reported in AIR 1994 SC 2480.

5. Mr B.C.Pathak, learned Addl. C.G.S.C., referring and relying on the scheme of FR-22 submitted that there was no anomalous situation and therefore, the respondent authority fell into obvious error by acting on the representation of the applicant and directing stepping up of pay of the applicant vide order dated 28.2.1990. The said order, admittedly, was without authority, more so, without sanction of the appropriate authority. At any rate when the mistake was detected the respondents corrected the same by the impugned order. According to the learned Addl. C.G.S.C. no injustice was caused to the applicant by not giving him any notice, somuch so that the initial order conferring the benefit of stepping up of pay itself was illegal and unlawful.

6. The matter is no longer res integra. The Supreme Court in Union of India and Another Vs. R. Swaminathan, reported in AIR 1997 SC 3554 stated that stepping up of pay is subject to the following three conditions:

"(a) Both the junior and senior officers should belong to the same cadre and posts in which they have been promoted should be identical in the cadre.

(b) The unrevised and revised scale of pay of the lower and higher posts in which they are settled to draw pay should be identical and

(c) The anomaly should be directly as a result of the application of the provision of FR 22(c) now FR 22(i)(a)(i) in the revised scale....."

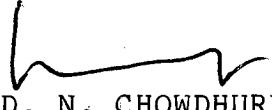
In the instant case Shri Dimbeswar Dewri received higher pay on account of his earlier officiation in the higher post because of local officiating promotions. Because of the scheme of the rule he might have earned increments in the higher pay scale of the post to which he was promoted on account of his past service and also his previous pay in the promotional post and that was taken into account in fixing his pay on promotion. The same cannot be treated as anomaly and judged in those circumstances it appears that the earlier order passed by the respondents on stepping up of the pay of the applicant was unjustified. Therefore, the respondents by the impugned order dated 17/21.8.2000 only remedied the situation. It, however, appears that the respondents in adopting this procedure failed to issue prior notice to the applicant before passing the impugned order dated 17/21.8.2000.

7. On the facts and circumstances of the case I am of the view that ends of justice would be met if the respondents provide a post decisional hearing by giving opportunity to the applicant to state his say. The respondents are directed to give an appropriate hearing to the applicant as early as possible, preferably within three months from today. Till then, the respondents are directed not to make any recovery from the applicant and make arrangement of recovery from the applicant by instalments.....

instalments thereafter upon hearing the applicant as per law.

8. The application accordingly stands disposed of.

There shall, however, be no order as to costs.


(D. N. CHOWDHURY)
VICE-CHAIRMAN

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केन्द्रीय अधिकारी न्यायिक बोर्ड
Central Administrative Tribunal

27th 24 OCT 2000

गुवाहाटी बैच
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case :

DA No. 356/2000

BETWEEN

Shri Awadhesh Kumar Singh.

... Applicants

- versus -

Union of India & Ors.

... Respondents

I N D E X

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Filed by :
Anu *[Signature]*
Advocate

Ficed By:
The Applicant
Through
A.K.Nair, Advocate.

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

D.A. No. 356 of 2000

BETWEEN

Awadhesh Kumar Singh, Sub-Postmaster
(HSG-II), Mokokchung, Nagaland.

... Applicant

AND

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Communication, New Delhi.
2. The Director General, Department of Post, New Delhi.
3. The Chief Postmaster General, N.E. Circle, Shillong.
4. The Director of Postal Services, Nagaland, Kohima.
5. The Chief Accounts Officer (IA), office of the Chief Postmaster General, N.E. Circle, shillong.
6. The Postmaster, Kohima Head Post Office, Kohima.

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The application is directed against letter No. AP(AAO)/II/FIXN/95-96 dated 17.8.2000 holding that stepping up of pay of the Applicant effected way back in 1989 is not in order and directing cancellation of such stepping up of pay and recovery thereof. The application is also directed against the consequential action thereof.

2. JURISDICTION OF THE TRIBUNAL :

The Applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The Applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India and as such is entitled to all the rights, protections and privileges guaranteed by the Constitution of India.

4.2 That the Applicant was first appointed as Postal Assistant in Nagaland Postal Division with effect from 23.3.73. Eversince his appointment, he has been discharging his duties to the best of his ability.

4.3 That the Department of Posts having regard to stagnation being faced by the employees was pleased to introduce a scheme called "Time Bound One Promotion Scheme" (TBOP) as per which an employee on completion of 16 years of service was entitled to get one promotion by way of upgradation. The Applicant on completion of 16 years of service on 22.3.89 became eligible for such promotion and accordingly was so promoted to the cadre of Lower Selection Grade Postal assistant with effect from 23.3.89 vide Memo No. B-2/Staff/One Promotion/11 dated 20.11.89.

A copy of the said Memo dated 20.11.89 is annexed as ANNEXURE-1.

4.4 That the Applicant was senior to one Shri Dimbeswar Dewri whose date of appointment was 26.3.73 was also promoted under the TBOP scheme alongwith the Applicant, but his pay was fixed at a higher stage than that of the Applicant. In the gradation list of the relevant time, the name of the Applicant appeared at Sl. No. 37 and that of Shri Dewri at Sl. No. 40.

4.5 That in view of the above anomaly towards fixation of pay of the Applicant, he has represented the case to the authorities and accordingly, after due deliberation and intimation to the Applicant, his pay was fixed at the rate of Rs.1640 with effect from 19.4.89 i.e. the date of his joining duties at the cadre of LSG.

In the above context, copies of the representations dated 21.11.89, 13.12.89, 14.2.90 and the replies thereof dated 7.4.89, 18.2.90 are annexed as ANNEXURES-2 and 3 respectively and the order dated 28.2.90 is annexed as ANNEXURE-4.

4.6 That the pay of the Applicant as aforesaid was fixed at par and in reference to his junior Shri Dewri and the same was effected 10 years back and the Applicant has all along been enjoying the fixation of said benefit without any hindrance.

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4.7 That the matter rested thus, suddenly, the Postmaster of Kohima Head Post Office by his letter dated 3.1.98 addressed to the Chief Accounts Officer (IFA) intimated that the audit party during internal check/inspection found that the pay of the Applicant was fixed at a higher stage as per order of the Director of Postal Services, but no approval of the IFA was recorded in the Service Book of the Applicant. Accordingly, by the said letter, it was requested for post-facto concurrence to regularise the pay fixation.

A copy of the said letter dated 3.1.98 is annexed as ANNEXURE-5.

4.8 That the above letter was followed by another letter No. 1-1/5-Book/97-98 dated 9.3.98 addressed to the Asstt. Director (A/Cs) justifying the pay fixation of the Applicant and as to how the audit party had taken an erroneous view of the matter. By the said letter, concurrence of the IFA was sought for. The Applicant has come to know about the issuance of such a letter and the Respondents be directed to produce the copy of the said letter dated 9.3.98.

4.9 That now the Applicant has come to know that by an order dated 17.8.2000 issued under No. AP/AAO/II/FIXN/95-96 issued by the APMG (A/Cs) on behalf of the CPMG has directed the Postmaster, Kohima HPO to cancel the earlier pay fixation of the Applicant holding that the stepping up of the Applicant was not in order and that the payment made to the Applicant as a result of such stepping up should be recovered.

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A copy of the said letter dated 17.8.2000 is annexed as ANNEXURE-6.

4.10 That the Applicant states that pursuant to the said order, the Postmaster of Kohima Post Office has intimated the APMG (A/Cs) by his letter No. A-1/PAY & ALLOWANCES/CORR dated 3.10.2000 about the action taken in the matter. As per the said letter copy of which has been endorsed to the Applicant, the impugned order has been implemented by reducing the pay of the Applicant with effect from 1.10.2000 from Rs.6800/- to Rs. 6050/- and the alleged overpayment of Rs. 85,870/- would be recovered.

A copy of the said letter dated 3.10.2000 is annexed as ANNEXURE-7.

4.11 That the Applicant states that the impugned orders are wholly arbitrary, illegal and against all canons of law inasmuch as before passing the impugned order, the Applicant was not given any notice whatsoever and he was not allowed to have his say in the matter. A fixation benefit which was effected 10 years back could not have been done away with in this manner.

4.12 That the Applicant states that the fixation benefit was extended to the Applicant as per the provisions of FR-22(C) of the FR SR by way of removal of anomaly by stepping up of pay of senior on promotion drawing lesser pay than his junior. The matter was settled long back by granting the stepping up of pay to the Applicant. It was only after eight years of such

stepping up, a point was raised regarding the concurrence of IFA for which post facto approval was sought for. Instead of granting such post facto approval, the fixation benefit granted to the Applicant 10 years back has been sought to be taken away by the impugned orders.

4.13 That the Applicant states that he was very much available in the Division and in the station and could not have been deprived of any promotion. He and Shri Dewri was promoted under the TBOP scheme by the same order of promotion and having regard to the anomaly that had occurred in the fixation of pay of the Applicant, the competent authority had ordered for stepping up of the Applicant and accordingly, his pay was stepped up and the said matter has now crystallised into a right of the Applicant and the same cannot be interfered with in the manner as has been done.

4.14 That the Applicant states that the Director of Postal Services, Kohima who is also the appointing authority to LSG-PA cadre after careful consideration of the Applicant was pleased to issue order towards stepping up of the pay of the Applicant at par with his junior at the stage of Rs.1640/- with effect from 19.4.89 and accordingly, his pay was stepped up and fixed at Rs.1640/- by the Postmaster, Kohima HPO who is also the Disbursing Officer. In this connection, it is stated that in accordance with Government of India, Ministry of Finance O.M. No. F.2(7B)-E.III(A)/66 dated 4.2.66 printed as GIO (10) before FR-22(C) in FR SR (Part-I), the pay of the Applicant was fixed at the

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stage of Rs.1640/- in the scale of Rs.1400-40-1800-EB-50-2300/- at par with his junior to remove the anomaly as a result of fixation of pay under FR-22(C) and accordingly, the DPS, Kohima passed his order dated 28.2.2000 as being fully covered under the said instruction of the Government of India. Therefore, the impugned orders are wholly unsustainable and against the aforesaid instruction dated 4.2.66.

The Applicant craves leave of this Hon'ble Tribunal to produce the aforesaid instruction dated 4.2.66 at the time of hearing of this case.

4.15 That the Applicant states that in accordance with the aforesaid instruction of the Government of India, the stepping up will be subject to the following conditions, namely :-

- (a) Both the senior and junior officers should belong to the same cadre and the same post in which they have been promoted or appointed should be identical and in the same cadre ;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical ;
- (c) The anomaly should be directly as a result of the application of FR-22(C).

In the instant case, both the Applicant as well as his junior Shri Dewri belong to the same cadre of Time scale Postal Assistant and on promotion too, both were

promoted to the identical posts of LSG-PAs in the same cadre. The scales of pay of the lower and higher posts were also identical. The anomaly arose due to fixation of pay under FR-22(C) in case of junior officer. Therefore, having fulfilled all the conditions, the Applicant was entitled to get the benefit of removal of anomaly as envisaged in the aforesaid instruction of the Government of India and accordingly, he was granted the benefit of stepping up of pay in reference to his junior's pay and to that effect orders were passed by the competent authority which cannot be interfered with after a gap of 10 years and that too with an order of recovery.

4.16 That the Applicant states that in the lower cadre viz. time scale postal Assistants, the pay of the Applicant was higher than that of all his juniors including Shri Dewri and as such on promotion to LSG-PA cadre, the Applicant could not have been placed at the disadvantage to draw less pay than his juniors for any reason which is not attributable to the Applicant.

4.17 That the Applicant states that the contention of the Respondents that the fixation of higher pay is not due to any application of FR-22(1)(a)(i) (previously FR-22(C) is totally misconceived and contrary to the principles of rules ibid inasmuch as in the lower post, the junior official viz. Shri Dewri did not draw at any time a higher rate of pay than the Applicant by virtue of grant of advance increment. Further pay on-promotion is always fixed under FR-22(C) (Now FR-22(1)(a)(i) and as such non-application does not arise at all.

CH

Therefore, the impugned orders are grossly arbitrary and illegal.

4.18 That the impugned orders having been passed in gross violation of the principles of natural justice are liable to be set aside and quashed. The Applicant states that the impugned orders have not been given effect to from 1.11.2000 and the Applicant would be paid his salary for the month of October 2000. Having regard to the facts and circumstances of the case, it is a fit case for passing an interim order as has been prayed for.

4.19 That this application has been filed bonafide and to secure the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the impugned orders having been passed in gross violation of the principles of natural justice, same is liable to be set aside and quashed.

5.2 For that the impugned orders could not have been issued after the lapse of about 10 years and that too without issuing any notice to the Applicant.

5.3 For that provisions of FR-22(C) has been misinterpreted by the Respondents but for which the impugned orders could not have been issued and accordingly, the same are liable to be set aside and quashed.

5.4 For that the whole question was as to whether post facto of the IFA was required or not and not as to whether there was anything wrong towards fixation of pay of the Applicant by way of stepping up. However, the Respondents instead of granting the post facto approval have held the fixation itself to be not in order without any proper application of mind and accordingly, the same is liable to be set aside and quashed.

5.5 For that the Applicant having enjoyed the benefit of stepping up of pay and the position having been continued for the last ten years, the Respondents could not have interfered with the same so lightly in the manner as has been done in the instant case.

5.6 For that the impugned orders having been issued in gross violation of the rules holding the field and so also the principles of natural justice, same are not sustainable and liable to be set aside and quashed.

5.7 For that in any view of the matter, the impugned orders are liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

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7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

7. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs:

8.1 To set aside and quash the impugned order dated 17/21.8.2000 (Annexure-6) issued by the Asstt.

23
Postmaster General (A/Cs) for CPMG, N.E. Circle, Shillong.

8.2 To set aside and quash the consequential order dated 3.10.2000 (Annexure-7) passed by the Postmaster, Kohima Post Office.

8.3 Cost of the application

8.4 Any other relief or reliefs to which the Applicant is entitled under the facts and circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

PP

9. INTERIM ORDER PRAYED FOR :

Under the facts and circumstances of the case, the Applicant prays for an interim order by way of suspending the impugned orders at Annexure-6 and 7 dated 17/21.8.2000 and 3.10.2000 respectively.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 29503423
- ii) Date : 18.10.2000
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....

OK

VERIFICATION

I, Shri Awadhesh Kumar Singh, aged about 50 years, son of Late Joy Mangal Singh, presently working as Sub-Postmaster (HSG-II), Mokokchung, Nagaland, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 3, 4.1, 4.2, 4.4 to 4.6, 4.8, 4.10 to 4.19 and 5 to 12 are true to my knowledge ; those made in paragraphs 4.3, 4.7, 4.9 are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 20 th day of October 2000.

Awadhesh Kumar Singh

29

Annexure-1

DEPARTMENT OF POST
OFFICE OF THE DIRECTOR POSTAL SERVICE NAGALAND: KOHIMA

Memo No.B-2/Staff/One-Promotion/11 Dated: Kohima the 29.11.89

The following Time-scale PAs and PO&RMS Accountant who have complete/completing 16 years of regular service in the grade by 30.9.99 are hereby promoted to the higher grade carrying the pay scale of Rs. 400/- to 2300/- with effect from the date shown against each name under Time Bound on Promotion Scheme in accordance with D.G. P&T letter no.31-26783-PR dated 17.12.83 and in respect of the officials against whom disciplinary cases for punishment were pending the promotion will be effects only after the period of punishment are over.

As per instruction laid down in para-8 of Dtes aforesaid letter the promoted officials inter-seniority in the power grade will remain unchanged in the gradation list in their basic cadre.

Name & designation of the officials	date of completing
1. Shri M.U. Ahmed SPM Mon.	27.5.83
2. Shri D.N.K. Sangma SPM Peren	3.2.89
3. Shri S. Boro Offg. DPM Kohima	12.3.89
4. Shri A.K. Singh Offg. ASPM Dimapur	23.3.89
5. Shri D.Dewri offg. PRI(P) Kohima	26.3.89
6. Shri R.S.Kithan P.A. Wokha s.o.	25.5.89
7. Shri M.R. Choudhury Accountant Kohima	3.9.89

The transfer and posting order of the above promoted officials will be issued separately as per Special point roster and availabilities of LSG Post in the Division.

Sd/-Illegible
(N. THADOU)
Director Postal Services
Nagaland : Kohima 797001

Copy to :

1. The Postmaster Kohima
2. The SPMs Mon/Peren/Dimapur/Wokha
3. The officials concerned
4. P.F. of the officials
5. Est, Branch of Divl. Office
6. Spare.

R was in Rs 1640

Sd/-Illegible
(N. THADOU)
Director Postal Services
Nagaland : Kohima 797001

A >> R 1440

Less 16 200

Sri N. Thadou (Director of Postal Services).

Nagaland : Kohima - 797001.

Through Proper channel

Sub:-Junior drawing higher pay than senior

-Prayer for stepping of pay

Case of Shri A. K. Singh (ASPII Elimapur SO.)

Sir,

The following on the subject aforesaid is respectfully submitted in earnest hope and fervent belief that this will receive a sympathetic consideration and elicit a most favourable decision.

(1) That I am senior to Shri D. Deori DPM Kohima HQ, but strangely enough he is drawing more pay than myself in the scale applicable to LSG officials. In other words, he is drawing Rs. 1640/- in the scale pay where as my pay has been fixed only at the stage of Rs. 1440/- in the ~~scale~~ very scale pay.

(2) That in this connection, it would be relevant to point out that in the list of seniority of PAS, as published from time to time by the division/circle, the name of Sri D. Deori appears just below me but he was allowed adhoc promotion from time to time at cost of my rightful and legitimate claims, presumably it was for this reason that his pay has been fixed in the LSG scale at higher rate. It would also be relevant to mention that he was allowed adhoc promotion earlier than me only because I happened to be a signaller and due to paucity of signaller, the department did not find in its interest to allow me adhoc promotion despite my seniority in the grade and despite my oral and written protest to the competent authority.

(3) That in the context aforesaid it may kindly be appreciated that I had been denied my legitimate claims for officiation in the higher grade for the only fault of my being a signaller.

(4) That in the context aforesaid it may kindly be appreciated to know that I have systematically been denied adhoc officiating promotion to LSG cadre for the interest of the department for that there is hardly any presumption in the rules to make me bleed through the nose at this stage when I have already been promoted to LSG cadre.

(5) That I need hardly stress that the rules as consistent with the principles of law and the principles of natural justice so strongly direct that pay of the junior should in no case be more than the pay of the seniors.

(6) That the rules further direct that if for any reason or under any circumstances, the pay of the junior has been fixed at a higher stage of the scale pay, the pay of the senior should suitably be stepped upto compare well with the pay of juniors.

(7) That FR-22 (c) (10), if perused in its correct perspective will confirm my aforesaid contention abundantly. The said FR-22 (c) (10) clearly directs that if as a result of application of FR-22 (c) the pay of a junior in the promotional cadre is fixed at a higher stage than that of his senior on the identical post, the anomaly thus created should be removed by suitably stepping up the pay of the senior to compare well with the pay of the juniors.

(8) That rule 8 of the CCS(RP) rules 1971 had also reiterated the provisions of FR-22(c) and the 4th pay commission has also made the similar recommendations which have been accepted by the government.

(9) That it pains me immensely that despite the clear provisions in the rules, my legitimate claims have so far gone in default and my apprehension is that my previous representations in this regard have presumably been cold- stored either in the HO or somewhere else causing needless pecuniary loss to me in the matter of my pay and allowances.

In the circumstances as depicted above I would solicit the favour of your kind but effective personal intervention on my behalf with further prayer that necessary advice/directive be issued to the concerned HO to step - up my pay to compare well with my next junior Shri D. Diori for which I shall be grateful.

With regards

Yours faithfully


(K. Singh)

Dated: Dimapur the 21.11.89

ASPM Dimapur

Annexure-2 Series

From : A.K. Singh
ASPM, Dimapur
797112

D.O. No. Nil Dtd. 13.12.89

Dear,
Shri Thadou,

Your good offices was requested vide letter No. B-2/Staff/Nogaon dated 27.2.89 follows by reminders vide my D.O. letter dated 5.4.89 and representation dated 21.11.89 regarding nothing could be heard still.

Perhaps it would not be out of place to mention that the advantage of F.R.22(c)10 is not applicable in the following conditions only:-

If due to certain punishment, the official concerned has been debarred from the promotion.

or

If due to pending proceedings, junior got the opportunity of promotion.

But if the proceedings ends favour of the official, he must get the benefit of F.R.-22(c)10.

A lot of substance has been given in my previous representations also and now I feel, it would not be troublesome for you to finalise the case.

Lasting I would like request your honour to intimate the kind action taken by you soon to take further actions into the matter

With regards

To: Shri N. Thadou
IPS, Director Postal
Services, Kohima-797001

Sincerely yours
A.K. Singh

Annexure-2 series

To: Shri N. Thadou IPS
Director Postal Services,
Kohima-797001

Sub : Pay fixation by stepping-up of pay.

Ref. By representations dated 27.2.89, 5.4.89, 2.11.89 and
13.12.89.

Respected Sir,

I would like to disturb your honours esteemed attention kindly to refer the above representations and look into the case deeply so that I may get natural justice and human treatment which I owe at your hands because it is a question of my livelihood.

With regards.

Yours faithfully

Forwarded to DPST Kohima
for N/action please

(A.K. Singh)
ASPM Dimapur

Dt. 14.2.90

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ANNEXURE-3 (SERIES) *BU*

N. THADOU



DIRECTOR OF POSTAL SERVICES
KOHIMA-797001
Telephone-601

D.O. NO. B-76/Part-III

Dated Kohima, 7th April, 1989.

My dear Singh,

Please refer to your representation dated 5-4-89 regarding your transfer and posting.

I have already ordered in the file to transfer you from Nepaligaon S.O. to Dimapur S.O. as Asstt. Postmaster in the LSG cadre.

With best wishes,

Yours sincerely,

N. Thadou
(N. Thadou)

✓ Shri A. K. Singh,
Sub Postmaster,
Nepaligaon S.O.

DIRECTOR OF POSTAL SERVICES

KOHIMA-797001

Telephone - Off: 601

Res: 601

N. THADOU

D.O. NO. 376/PA/11

Dated Kohima, 18/2/90

35

My dear singh,

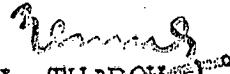
Please refer to your representation dated 14/2/90 regarding fixation of pay by way of stepping up of pay.

I had already given instruction to my office to allow you to draw the same pay as Shri D. Deori with effect from the date you officiated as LSG supervisor at Dimapur S.O.

Formal order is being issued by my office. If you are still not satisfied, please submit your representation with facts and figures.

With best wishes,

Yours Sincerely,


(N. THADOU)

Shri A.K. Singh,
Assistant Sub-Postmaster,
Dimapur Sub-Post office.

Copy to office for further action.

DIRECTOR OF POSTAL SERVICES:
NAGALAND : KOHIMA.

MEMO NO D-776/PT III DATED: KOHIMA 28/2/90

In supersession of all previous orders and in pursuance of FR-22(10)C(10) and GIMI OM NO F2(73)-3 III (9)/66 dated 4/2/66, Shri A.K. Singh officiating Assistant Sub-Postmaster Dimapur Sub-Post office is hereby allowed to draw his pay @ Rs 1640/- with effect 19/4/89 (The date of his joining duties in the cadre of Lower Selection Grade).

Sd/-

Copy to :-

(a) The Head Postmaster Kohima Head Post Office.
for information and necessary action.
(b) The official concerned.
(c to e) Spare.

Chamunda
DIRECTOR OF POSTAL SERVICES:
NAGALAND : KOHIMA.

(E)

13737
10/02/1996

2

TO

The Chief Accounts Officer (I.F.A)
O/O The Chief Postmaster General
North Eastern Circle.
Shillong--- 793001

Sub:- Request regarding concurrence--
Stepping-up case of Shri. A.K.Singh A.P.M
Kohima H.O.

Sir,

While verifying the service book of Shri A.K.Singh A.P.M Kohima HO by the Audit party during internal check inspection, it has been recorded by the Audit party that the initial pay of Shri A.K.Singh in L.S.O cadre was fixed at a higher stage in accordance with D.P.S Kohima memo no. B-76/Part III dtd 28-2-90. However no approval of I.F.A has been found recorded in the service book.

Now, to regularise the pay fixation it is essential to record the financial concurrence of the I.F.A. Therefore, kindly accord the post-facto concurrence and communicate to this office for recording in the service book.

(S.C.PAUL)

POSTMASTER (H.S.G-II)
KOHIMA (Master) NAGALAND
Post Office
Kohima-H.P.O.
Nagaland-797001

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL: N.E. CIRCLE: SHILLONG.

To,

The Postmaster,
Kohima H.P.O.,
Nagaland-797001.

No. AP/AMO/II/FIXN/95-96

Dated at Shillong the 17.8.2000.

Subject:- Regarding Stepping up of Pay of Shri A.K. Singh,
APM, Kohima H.O. with his Junior, Shri Dimbeswar
Deori, PA Guwahati.

Ref:- Your No. 1-5/Book/97-98 dated 9.3.98.

With reference to your office letter referred above,
this is to inform that on comparative Scrutiny of the Service-
Books of Shri A.K. Singh, APM Kohima H.O and Shri Dimbeswar Deori
PA, Guwahati the following have come to light.

That, the Senior official, Shri A.K. Singh entered the
Department as PA with effect from 23.03.73, while the Junior Official
entered in the Department as PA with effect from 26.03.73.
The pay of both the officials was fixed at Rs. 260/- in the scale
of Rs. 260-480/- with DNI on 1st March each year. The Pay of Shri
A.K. Singh was subsequently fixed at Rs 9276/- (ie Rs. 284/-)
with an advance increment with effect from 1.3.75 on account of
his having undergone the Telegraph Morse Training as reported in
your office letter referred above. Copy of the above order is not
found enclosed in the Service-Book. The same may kindly be enclosed
in Service-Book.

The first part of the Service-Book of Shri A.K. Singh,
APM Kohima, for the period from 23.3.73 to 20.7.76 which is reported
to have been wanting may kindly be reconstructed.

That, the official, Shri Dimbeswar Deori was allowed to
officiate as SPM/APM Acctt/DPM etc. all along with effect from
4.8.74, but before the eligible period for TBOP scheme, while the
Senior official, Shri A.K. Singh worked simply as T/S Clerk upto
the period of eligibility of TBOP scheme. By virtue of officiating
capacitely the pay of Shri Dimbeswar Deori was fixed at 1640/- on
1.2.89 in the scale of Rs(1400-2300), while the Senior official,
Shri A.K. Singh was drawing pay at Rs. 1390/- with effect from
1.3.89 in the scale of Rs. (975-1660) and at Rs. 1440/- with effect
from 23.3.89 in the scale of Rs. (1400-2300) in the TBOP scheme,
therefore, resulting in drawal of enhanced pay by the Junior Official
Shri Dimbeswar Deori. The Pay of Shri A.K. Singh was finally
stepped up from Rs. 1440/- to Rs. 1640/- with effect from 19.4.89
vide DPS/Kohima's letter No. B-776/Pt-III dated 28.2.90. The excess
Pay drawal by the Junior official is not due to any application of
PR-22(i)(a)(i).

Therefore, stepping up of pay of Shri A.K. Singh with
effect from 19.4.89 is not in order. The same should be cancelled
and over payment as a result of wrong stepping up of pay should
be recovered under intimation to this office and DA(P) Calcutta.

The Service-Book of Shri A.K. Singh APM Kohima is enclosed
for further maintenance.

This is issued in consultation with Shri T.S.P.
[Signature]

(Darliria)

Asstt. Postmaster General (A/Cs),
N.E. Chief Postmaster General,
N.E. Circle, Shillong.

A. H. K. (Mr.)
Advocate
K. K. (Mr.)
Advocate

ANNEXURE-7

- 24 -

Ref: 10/10/2000 09
10 OCT 2000

Rs. 10/-

DEPARTMENT OF POSTS, INDIA

From,

POSTMASTER
KOHIMA H.O.

TO,

THE ASSTT. POSTMASTER GENERAL (A/Cs),
O/O THE CHIEF POSTMASTER GENERAL,
N.E. CIRCLE, SHILLONG-793001.

NO. A-1/PAY & ALLOWANCES/CORR

DATED THE 03.10.2000

SUB: Regarding stepping up of pay of Shri A.K. SINGH, then APM Kohima, now SPM, Mokokchung S.O. with his junior Shri. Dimbeswar Deori, P.A. Guwahati.

Reff: Your letter no. A.P./AAO/IL/IXN/96-96 Dated 21.08.2000.

With reference to your letter no cited above, stepping up of pay of Shri A.K. SINGH, SPM/Mokokchung S.O. w.e.f. 19.4.89 from Rs. 1440/- to Rs. 1640/- have been Cancelled and as a result his pay is reduced on 1.10.2000 from Rs. 6800 to Rs. 6050 and over payment made as a result of wrong stepping up of pay w.e.f. 19.4.89 to 30.09.2000 Amounting Rs. 85870/- (Eighty five thousand eight hundred seventy) only, should be recovered from the official. Kindly instruct as to how the assesed amount will be recovered from the official. For favour of your kind information, the pay regulation w.e.f. 19.04.89 and calculation of overpayment is shown in enclosed ANNEXURE-I.

Enclosed : As above

(S.C.PAUL)
POST MASTER (HSG-II)
KOHIMA POST OFFICE,

Copy to :

1. The DA(P), Calcutta, for kind information & n/a.
2. The Director of Postal Services/Nagaland w.r.t. his letter no. B-II/Staff Pay & allowances/ Ch-II dated 12.9.2000.
3. Shri. A.K. SINGH, SPM/Mokokchung S.O for information.

(S.C.PAUL)
POST MASTER (HSG-II)
KOHIMA POST OFFICE,

Attended for
S. C. Paul
and
Advocate

For Smt. S.P. Seiagh Qtr. no-1 Postal colony Imphal 786221838

ANNEXURE - I

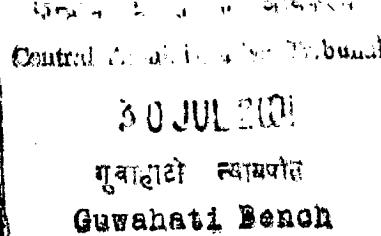
A. Regulation of pay w.e.f. 19.04.89 to 30.09.2000.

DATE FROM	PAY DUE P.M.	PAY DRAWN P.M.	OVERPAYMENT P.M.
	Rs.	Rs.	Rs.
19.04.89	1440	1640	200
03.05.90	1480	1680	200
01.04.91	1520	1720	200
01.04.92	1560	1760	200
01.04.93	1600	1800	200
01.04.94	1640	1850	210
01.04.95	1680	1900	220
01.01.96	5125	5875	750
01.04.96	5250	6000	750
28.04.97	5375	6125	750
01.04.98	5500	6250	750
01.04.99	5625	6375	750
01.07.99 (B.C.R.)	5900	6650	750
01.07.00	6050	6800	750

B. Calculation of overpayment of Pay and allowances w.e.f. 19.04.89 to 30.09.2000.

PERIOD	DIFF OF PAY	DIFF OF D.A.	PERIOD	DIFF OF PAY	DIFF OF D.A.
19.04.89-30.06.89	480	139	01.01.97-30.06.97	4500	360
01.07.89-31.12.89	1200	408	01.07.97-31.12.97	4500	585
01.01.90-30.06.90	1200	456	01.01.98-30.06.98	4500	720
01.07.90-31.12.90	1200	516	01.07.98-31.12.98	4500	990
01.01.91-30.06.91	1200	612	01.01.99-30.06.99	4500	1440
01.07.91-31.12.91	1200	720	01.07.99-31.12.99	4500	1665
01.01.92-30.06.92	1200	852	01.01.00-30.09.00	6750	2565
01.07.92-31.12.92	1200	996			
01.01.93-30.06.93	1200	1104	Total	59119	21582
01.07.93-31.12.93	1200	1164			
01.01.94-03.05.94	819	851	Total Overpayment		
04.05.94-30.06.94	400	416	Pay = Rs. 59119.00		
01.07.94-31.12.94	1260	1436	D.A. = Rs. 21582.00		
01.01.95-31.03.95	630	787	S.D.A. = Rs. 5169.00		
01.04.95-30.06.95	660	825			
01.07.95-31.12.95	1320	1795	Total = Rs. 85,870.00/- (Excluding Leave period)		
01.01.96-30.06.96	4500	-----			
01.07.96-31.12.96	4500	180	Rs. Eightyfive thousand eight hundred and seventy only/-		

For Smt. S.P. Singh Otr.no.1 Postal colony Imphal. T.F-221858



File No. 301701
B. C. Pathak
(B. C. Pathak)
Adv. Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

O.A. NO. 356/2000

Shri A.K. Singh

..... Applicant

-Vs-

Union of India & Ors.

..... Respondents.

(Written Statements on behalf of the
respondent No. .

The Written Statements of the ~~above~~ abovenoted
respondents are as follows :-

1. That a copy of the O.A. No. 356/2000 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the respondents being similar, common written statements are filed for all of them.
2. That the statements made in the application which are not specifically admitted, are hereby denied by the ~~above~~ respondents.
3. That before traversing the various paragraphs of the application, a brief history of facts are given below :

The applicant, Shri A.K. Singh APM, Kohima HQ and Shri Dimbeshwar Deori now PA, Guwahati were appointed as Postal Assistant, in Nagaland Postal Division by the Director of

of Postal Services, Nagaland, Kohima. Shri A.K. Singh joined as PA on 23.3.73 and Shri Dimbeshwar Deori joined as PA on 26.3.73 and the pay of both the officials were fixed at Rs. 260/- in the scale of pay Rs. 260-480/- with next date of increment on 1st March each year. However, subsequently the pay of Shri A.K. Singh was fixed at Rs. 276+8 i.e. Rs. 284 with an advance increment w.e.f. 1.3.75 on account of having taken Telegraph Morse Training. Further, Shri Dimbeshwar Deori who was junior to Shri A.K. Singh by 3 days officiated on SPM, APM (Acct.) and Deputy Postmaster continuously w.e.f. 4.8.74 before completing 16 years of service for TBOP scheme while Shri A.K. Singh, applicant, simply worked as time scale clerk upto the period of eligibility of TBOP scheme. As such by virtue of officiating capacity in the higher grade/post the pay of Shri Dimbeshwar Deori was again fixed at Rs. 1640/- on 1.2.89 in the scale of Rs. 1400-2300/- while the pay of Shri A.K. Singh who was drawing Rs. 1390/- w.e.f. 1.3.89 in the scale of Rs. 975 - 1660/- and 1440 w.e.f. 23.3.89 in the scale of Rs. 1400-2300/- in the TBOP scheme. Due to drawal of increased pay by the junior official Shri Dimbeshwar Deori, the pay of Shri A.K. Singh applicant was stepped up from Rs. 1440/- to Rs. 1640/- w.e.f. 19.4.89 on representation vide F DPS/Kohima letter No. B-776/Pt.III dated 28.2.90 erroneously which was not in confirmity with the application of FR-22(i)(a)(i).

The following required conditions pertaining to the fixation of stepping up of the pay of the senior officer under the provision of FR 22(c) now FR 22(i)(a)(i) were not fulfilled by the applicant :

a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.

b) The unrevised and revised scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical and.

c) The anomaly should be directly as a result of the application of the provisions of FR-22(c) now FR-22(i)(a)(i) in the revised scale. For example if even in the lower post the junior officer was drawing more pay in the unrevised scale than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him the provisions contained in this decision need not be invoked to set up the pay of the senior officer. Since the applicant Shri A.K. Singh was working as time scale clerk and his junior Shri Dimbeshwar Deori was officiating in the posts of APM (a/cs) and Dy. Post master and was drawing more pay in the lower cadre before promotion to the LSG cadre under TBOP scheme. As such this difference of pay continued even during pay fixation at the time of promotion under TBOP scheme, automatically and not because of anomaly in fixation of pay resulting drawl of more pay by his junior officer Shri Dimbeshwar Deori.

Hence, the stepping up of pay scale of Shri A.K. Singh, SPM, Mokokchung SO is not found in order after thorough scrutiny by the Chief Post master General, Shillong. The irregularity was detected by the Audit during inspection of Kohima HQ and as such, recovery order of excess payment of

Rs. 85,870/- was made by the PM, Kohima on 3.10.2000. Hence this application challenging the said order has been filed in this Hon'ble Tribunal.

4. That with regard to the para 1, the respondents state that the stepping up of pay of the applicant with effect from 19.4.89 was not found in order after scrutiny by the CPMG, Shillong who ordered for cancellation and recovery of the amount of over payment made to the applicant Shri A.K. Singh.

5. That with regard to statements made in para 2, 3, 4.1 and 4.2 of the application, the respondents have no comments to offer.

6. That with regard to statements made in para 4.3, the respondents state that the applicant shri A.K. Singh was promoted under TBOP on completion of 16 years of service w.e.f. 23.3.89 vide DPS memo No. B-2/Staff/one promotion/11 dated 20.11.89 under the TBOP scheme. ✓

A copy of the said memo dated 20.11.89 is annexed as Annexure -I .

Shri Dimbeshwar Deori whose date of appointment was 26.3.73 was also promoted under the TBOP scheme with the said Shri A.K. Singh applicant,. The pay of Shri Dimbeshwar Deori was fixed at Rs. 1640/- in the higher scale pay of Rs. 1140-2300/- on 1.2.89 since he was officiating in the higher post/grade than the applicant before TBOP promotion. While Shri A.K. Singh the senior official was drawing pay at Rs. 1390/- w.e.f. 1.3.89 in the scale of pay of Rs. 975-1660 and at Rs. 1400/- w.e.f. 23.3.89 in the scale of Rs.

and at Rs. 1400/- w.e.f. 23.3.89 in the scale of Rs. 1400-2300/- in the TBOP scheme. As there was difference of pay of the officials in the lower post/grade there was no anomaly in fixation of pay of the applicant under TBOP promotion at lower pay.

7. That with regard to para 4.5, the answering respondents state that the contention that there was anomaly in fixation of pay of the applicant is not correct as mentioned above in Para 4.4. The applicant had represented the case to the then DPS, Nagaland praying for stepping up of pay at Rs. 1640/- which was drawn by Shri Dimbeshwar Deori, Postal Assistant. The pay of Shri A.K. Singh was irregularly fixed at Rs. 1640/- by the then DPS w.e.f. 19.4.89 on promotion under TBOP scheme. The stepping up of the case of Shri A.K. Singh was not applicable under the provision of FR 22(1) (a)(i).

The copies of the representations dated 21.11.89, 13.12.89, 14.2.90 and replied dated 7.4.89, 18.2.90 are annexed as Annexure - 2 & 3.

8. That with regard to para 4.6, the respondents state that the pay of the applicant as aforesaid was fixed at par with his junior Shri Dimbeshwar Deori erroneously and was wrongly enjoyed by him for the last 10 years. The fact of irregular and excess payment to the applicant was detected by the internal check Audit party during the inspection of Kohima HO and ordered for recovery of the amount of excess payment.

payment already made to the applicant Shri A.K. Singh.

9. That with regard to para 4.7, the respondents state that the Postmaster, Kohima had requested the Chief Account Officer (IFA) office of the Chief PMG, N.E. Circle, Shillong vide his letter dated 3.1.98 to give post facto concurrence for regularizing the pay fixation at a higher stage by the then DPS, Nagaland, Kohima since there was objection from Audit.

A copy of the said letter dated 3.1.98 is annexed at Annexure -4.

10. That with regard to the statements made in para 4.8, the respondents ~~not~~ state that as in para 4.7 since pay fixation of the applicant was erroneously made at a higher stage without approval/concurrence of IFA/CO Shillong, it was considered necessary to seek post facto concurrence of the IFA/CO.

11. That with regard to para 4.9, the respondents state that the APMG (Account) for CPMG, Shillong after scrutiny of the case has ordered vide his letter no. AP/AAO/11/FIXN/95-96 dated 17.8.2000 the PM, Kohima to cancel the earlier pay fixation of the applicant Shri A.K. Singh which was found not in order and to recover the excess payment made to the applicant as a result of stepping up of his pay.

A copy of the said letter dated 17.8.2000 as annexed as Annexure - 5.

12. That with regard to para 4.10, the respondents

state that the Post master, Kohima HO being the disbursing officer has implemented the order of the Chief PMG, N.E. Circle w.e.f. 1.10.2000 and intimated to the APMG (A/Cs) Shillong vide his said letter about the reduction of pay of the applicant from Rs. 6800/- and recovery of over payment of Rs. 85,870/- would be made from the pay of Shri A.K. Singh.

A copy of the PM Kohima letter dated 2 3.10.2000 is annexed as Annexure - 6-

13. That with regard to para 4.11, the respondents state that the contention of the applicant that the impugned order was wholly arbitrary, illegal and against all ~~annexures~~ cannons of law is not correct. As stepping up of the pay of the applicant was erroneously and irregularly made by the then DPS resulting in over payment of Rs. 85,870/- to the applicant, there was no provision to allow the applicant to have a say in the matter of removing the irregularity/anomaly.

14. That with regard to para 4.12, the respondents state that the contention of the applicant that his pay fixation benefit was made under the provision of FR-22(i)(a)(i) at the higher stage which was not applicable to the applicant as the conditions prescribed there in were no fulfilled by him .

15. That with regard to para 4.13, the respondents state that there was no anomaly in the fixation of pay when both the applicant and his junior Shri Dimbeshwar Deori were promoted under TBOP scheme Shri D. Deori was holding a higher post than the post held by the applicant at the time of promotion. The pay of Shri D. Deori was accordingly fixed a higher stage

than the applicant. Hence, the stepping up of pay was not justified as claimed under the provisions of FR 22(c) now FR 22(i)(a)(i) as the following essential conditions for stepping up of pay fixation were not fulfilled by the applicant Shri A.K. Singh.

(a) Both the junior and senior officers should belong to the same cadre and posts in which they have been promoted should be identical in the cadre.

(b) The unrevised and revised scale of pay of the lower and higher posts in which they are settled to draw pay should be identical and

(c) The anomaly should be directly as a result of the application of the provision of FR 22(c) now FR 22(i)(a)(i) in the revised scale. For example, if even in the lower post, the junior officer was drawing more pay in the unrevised scale than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him, the provisions contained in this decision need not be invoked to set up the pay of the senior officer.

In this instant case the senior officer applicant Shri A.K. Singh was working as time scale clerk whereas his junior Shri Dimbeshwar Deori was officiating in higher posts as Asstt. Postmaster (A/cs) & Dy. Postmaster etc. in the lower cadre in the unrevised scale and was drawing more pay by virtue of officiating in higher posts grades than the applicant Shri A.K. Singh.

Hence, the stepping up the pay of Shri A.K. Singh was not justified as claimed under the provision of FR 22(i)(a)(i).

16. That with regard to para 4.14, the respondents state that the DPS, Kohima who is the appointing authority of LSG PA has erroneously stepped up the pay of the applicant at the stage of Rs. 1640/- w.e.f. 19.4.89 at par with his junior Shri Dimbeshwar Deori who was holding higher post & drawing higher pay at the time of promotion under TBOP schemes as mentioned in para 4.13 above. As such, the impugned order is sustainable and not against the provision of Ministry of Finance OM No. F2(78)-EIII(4)/66 dated 4.2.66. The stepping up of should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions which were not fulfilled the applicant Shri A.K. Singh.

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.

(b) The unrevised and revised 6 scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical and.

(c) The anomaly should be directly as a result of the application of the provisions of FR 22(c) now FR 22(i)(a)(i) in the revised scale. For example if even in the lower post, the junior officer was

drawing more pay in the unrevised scale than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him, the provision contained in this decision need not be invoked to step up the senior officer. In the instant case the senior officer, the applicant, Shri A.K. Singh was working as time scale clerk whereas his junior Shri Dimbeshwar Deori was officiating as APM(A/Cs), & Dy. P.M. etc. in the lower cadre in the unrevised scale and was drawing more pay by virtue of officiating in higher post grades/post than the applicant Shri A.K. Singh. Hence stepping up the pay of the senior official Shri A.K. Singh was irregular and ~~is~~ inapplicable under the provision of FR 22(c) now in FR 22(i)(a)(i).

17. That with regard to para 4.15, the respondents state that the stepping up of pay should be done with effect from the date of promotion of the junior officer and should be subject to the following conditions :-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) The unrevised the revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(c) The anomaly should be directly as a result of the application of the provision of FR 22(c) now FR 22(i)(a)(i) in the revised scale. For example even if in the lower post, the junior officer was drawing more pay in the unrevised scale than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him, the provisions contained in this decision need not be invoked to step up the pay of the senior officer.

In the instant case, the senior officer Shri A.K. Singh was working as time scale clerk whereas his junior Shri D. Deori was officiating higher post as Asstt. Postmaster (A/Cs) & Dy. Postmaster etc. and was drawing more pay than the applicant at the time of promotion under TBOP scheme. Hence, the pay of Shri Dimbeshwar Deori was fixed at a higher stage than the applicant. Condition pertaining to the stepping up of pay in the aforesaid instructions of Govt. of India were not fulfilled by the applicant Shri A.K. Singh as mentioned in para 4.13.

As such stepping up of pay of the applicant was not justified under the provisions of FR 22(c) now FR 22(i)(a)(i). The irregular and erroneous order of the then DPS stepping up the pay of the applicant was detected during audit inspection. When the case was referred to CO, the latter ordered for cancellation of the irregular stepping up & recovery of over payment from the applicant.

18. That with regard to para 4.16, the respondents state that as a matter of fact the pay of the applicant as well as his junior was fixed at Rs. 260/- in the scale of Rs. 260-480/- and subsequently the pay of the applicant fixed at Rs. 276 + 8 (i.e. Rs. 284/-) with an advance increment w.e.f. 1.3.75 on account of having undergone telegraph Morse training. Shri Dimbeshwar Deori his junior was allowed to officiate as SPM/APM Acctt/DPM all along w.e.f. 4.8.74 before being promoted to TBOP scheme whereas the applicant worked as T/S clerk upto the period of eligibility of TBOP scheme. As a result, the pay of Shri D. Deori his junior was fixed at Rs. 1640/- on 1.2.89 in the scale of Rs. 1400-2300 by virtue of officiating capacity while Shri A.K. Singh was drawing Rs. 1390/- in the scale of Rs. 975-1660 in the lower cadre. As such the claim of the applicant that he was drawing more pay than his junior or Shri D. Deori is wholly incorrect.

19. That with regard to para 4.17, the respondents state that Shri D. Deori was drawing higher pay at the time of promotion under TBOP scheme as mentioned in para 4.16 above. Fixation of pay under FR 22(e) now FR 22(i)(a)(i) is not applicable to the applicant as the condition prescribed under the rule were fulfilled. As such the order cancelling wrong stepping of pay under FR 22(e) FR 22(i)(a)(i) and recovery of wrong payment is in order and legal.

20. That with regard to para 4.18 and 4.19, the respondents state that the order was very much in order and did not violate the principle of natural justice. As such, the application is liable to be rejected. The respondents

re-iterate and re-assert the foregoing statements made in this written statements.

21. That with regard to the statements made in para 5.1 to 5.7 of the application, the respondents state that the grounds as shown by the applicant are no grounds in the eye of law and can not sustain in the given case of the applicant. There is no illegality in issuing the orders by the respondents the fixation of pay on promotion and there was no violation of any such Principle of natural justice as alleged. Hence the application is liable to be dismissed with cost. A benefit extended illegally can not mature as a matter of right.

22. That with regard to para 6 and 7, the respondent state that the respondents have no comments to offer.

23. That with regard to statements made in para 8.1 to 8.4 and 9 of the application, the respondents state that in view of the facts of the case and the provisions of law and rules, the applicant is not entitled to get any relief whatsoever as prayed for and hence the application is liable to be dismissed with cost as devoid of any merit.

In the premises aforesaid, it is therefore prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall further be pleased to dismiss the application with cost.

VERIFICATION

I, Shri Pradip Chakrabarty, presently working as Supdt. of Pos (HQ), Kohima, being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para 1 to 5, 8, 10, 13 to 23 are true to my knowledge and belief, those made in para 6, 7, 9, 11 and 12 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed / concealed any material fact.

And I sign this verification on this 30th day of July, 2001 at Guwahati.

Pradip Chakrabarty
Supdt. of Post Offices (HQ)
For Director of Postal Services
Nagaland : Kohima- 797001

DEPARTMENT OF POST
OFFICE OF THE DIRECTOR POSTAL SERVICES, NAGALAND: KOHIMA.

Memo. No. P-2/Staff/One-Promotion/11

Dated: Kohima the 20.11.89

The following Time-Scale PAs and PO&RMS Accountant who have completed/completing 16 years of regular service in the grade by 31.9.89 are hereby promoted to the higher grade carrying the pay scale of Rs1400/- to 2300/- with effect from the date shown against each name under Time bound the Promotion Scheme in accordance with D.G. P&T letter no. 31-26/83-Pr dated 17.12.83 and in respect of the officials against whom disciplinary cases or punishment were pending the promotion will be effected only after the period of punishment are over.

As per instruction laid down in para-3 of Dtes aforesaid letter the promoted officials inter-seniority in the lower grade will remain unchanged in the gradation list in their basic cadre. Name & designation of the officials. Date of completing 16 years.

1. Shri, M.U.Ahmed SPM Mon.	2. 15.3.
2. Shri, D.N.K.Sangma SPM Peren	2. 2.89
3. Shri, S.Joro Ofc. DPM Kohima	12.3.89
4. Shri, A.K.Singh Ofc. ASPM Dimapur	23.3.89
5. Shri, D.Dewri Ofc. PRJ (P) Kohima	24.3.89
6. Smti, R.S.Kithan P.A Wokha S.O.	25.5.89
7. Shri, M.R.Choudhury Accountant Kohima	3.6.89

The transfer and posting order of the above promoted officials will be issued separately as per Special point roster and availabilities of LSG post in the Division.

Yours

(N.THADU)
DIRECTOR POSTAL SERVICES
NAGALAND: KOHIMA 797 001.

Cc: -

1. The Postmaster Kohima h.o.
2. The S.Ms Mon/Peren/Dimapur/Wokha.
3. The officials concerned.
4. P.F. of the officials.
5. Est. branch of Divl. Office.
6. Spare.

AI/est
Supdt. of Post Office (H.O.)
For Director of Postal Services
Nagaland: Kohima 797 001.

Yours
DIRECTOR POSTAL SERVICES
NAGALAND: KOHIMA 797 001.

Sri N. Thadou (Director of Postal Services)

Nagaland : Kohima - 797001.

25 NOV 1985

Through Proper channel

Sub:-Junior drawing higher pay than senior.

-Pray for stepping of pay

Pl. Note - Case of Shri A. K. Singh (ASPM Dimapur)

Sir,

The following on the subject aforesaid is respectfully submitted in earnest hope and fervent belief that this will receive a sympathetic consideration and elicit a most favourable decision.

(1) That I am senior to Shri D. Deori DPM Kohima HO, but strange enough he is drawing more pay than myself in the scale applicable to LSG officials. In other words, he is drawing Rs. 1640/- in the scale pay where as my pay has been fixed only at the stage of Rs. 1440/- in the ~~same~~ very scale.

(2) That in this connection, it would be relevant to point out in the list of seniority of PAS, as published from time to time by the sion/circle, the name of Sri D. Deori appears just below me but he was all adhoc promotion from time to time at cost of my rightful and legitimate. presumably it was for this reason that his pay has been fixed in the LSG at higher rate. It would also be relevant to mention that he was allowed a promotion earlier than me only because I happened to be a signaller and as paucity of signaller, the department did not find in its interest to allow adhoc promotion despite my seniority in the grade and despite my oral and written protest to the competent authority.

(3) That in the context aforesaid it may kindly be appreciated I had been denied my legitimate claims for officiation in the higher grade the only fault of my being a signaller.

(4) That in the context aforesaid it may kindly be appreciated that I have systematically been denied adhoc officiating promotion to LSG for the interest of the department for that there is hardly any presumption the rules to make me bleed through the nose at this stage when I have all been promoted to LSG cadre.

(5) That I need hardly stress that the rules as consistent with principles of law and the principles of natural justice so strongly of the junior grade to no case be more than the pay of the seniority of the junior grade to no case be more than the pay of the seniority

(P. Chakraborty
Supt. of Post Office
For the time being
Nagaland)

(6) That the rules further direct that if for any reason or under any circumstances, the pay of the junior has been fixed at a higher stage of the scale pay, the pay of the senior should suitably be stepped upto compare well with the pay of juniors.

(7) That FR-22 (c) (10), if perused in its correct perspective, will confirm my aforesaid contention abundantly. The said FR-22 (c) (10) clearly directs that if as a result of application of FR-22 (c) the pay of a junior in the promotional cadre is fixed at a higher stage than that of his senior on the identical post, the anomaly thus created should be removed by suitably stepping up the pay of the senior to compare well with the pay of the juniors.

(8) That rule 8 of the CCS(RP) rules 1971 had also re-iterated the provisions of FR-22(c) and the 4th pay commission has also made the similar recommendations which have been accepted by the government.

(9) That it pains me immensely that despite the clear provisions in the rules, my legitimate claims have so far gone in default and my apprehension is that my previous representations in this regard have presumably been cold- stored either in the HO or somewhere else causing needless pecuniary loss to me in the matter of my pay and allowances.

In the circumstances as depicted above I would solicit the fav of your kind but effective personal intervention on my behalf with further prayer that necessary advice/directive be issued to the concerned HO to step - up my pay to compare well with my next junior Shri D. Deori for which I shall be grateful.

With regards

Yours faithfully

A. K. Singh
(A. K. Singh)

ASPM Dimepur

Dated at Dimepur the 26.11.92.....

Supt.

1 P. Chakrabarty
Supt. of Posts & Telecommunications

Subject: Inquiry into the
allegation of corruption
against Mr. Singh
From : Mr. A.K. Singh
(Officer-in-Charge)
Date : 25/11/89
To : Mr. P. K. Bhattacharya
Re : Mr. Bimal Bhattacharya

Answer to your question

D.D. No. 10101111, D. 12.09 13.12.89.

Q. Your good office was requested under P.U.O. No. B.
2/Staff/Miscn. dated 27.11.89 to look into the conduct of Mr.
D.O. letter dated 24.11.89 and representation made on 21.11.89
regarding nothing could be heard of it.

Ans. Perhaps, it would not be out of place to mention that
the advantage of P.U.O. is not applicable to the
alleged wrong conduct of D.O.

If due to certain circumstances, the D.O. concerned
has been deprived from his professional
guidelines and has committed a gross

error, then the D.O. concerned
in such a case the pending proceedings, should not be
discontinued or suspended.

But if the proceedings ends favour of the official, he
must get the benefit of P.U.O. 12.09.

Ans. A lot of sub-aside has been done in the previous
representations also and now I only ask you not to be
misled by me, as you are fully aware.

Ans. I would like request you to make an intimate
of the kind letter which you soon take further actions
against the matter.

With regards

To : Mr. Bimal Bhattacharya
IPS, Officer-in-Charge
Kohima, Nagaland 797001

Answer to your question
D.D. No. 10101111

A. K. Singh
A. K. Singh
Superintendent of Police
For Director of Posts & Telegraph Services
Nagaland, Kohima 797001

Answers Ex 2 long division 1 Ans Answers R 2 Ex 3

To Shi N. Thadou 7.f.s.

117

Director Postal Services,
Kohima-791001

Ques:- Pay fixation by stepfixing
of pay.

(Ref):- Try the presentations of (td 27-2-89).

5-1-89, 2-11-89 and 13-12-89.

Respected Sir,

Respected Sir,
I would like to disturb your honour
I deemed attention kindly to refer the above
representation and look into the case deeply
so that I may get natural justice and human
Treatment which I owe at your hands because
it is a question of my livelihood. With regard

With regard

~~Ms. A. 2.2
2/2/90~~

115.

Application for award
of S.P. Rollins for
N.F.D. Please

1936-1937 West African

100-1000-111
Serial 10512892

(H. K. Singh)

Ms. B. 1. 1 v.

60

Alleged
Chatterbox
Support our
For Director
National
Services
1960

N. THADOU

20

Annexure 3 (Series)

DIRECTOR OF POSTAL SERVICES
KOHIMA-797001
Telephone-601

D.O. NO. 1170/Par/1/1

Dated Kohima 7th April, 1989.

7.4.89.

60

My dear Singh,

Please refer to your representation dated 24-4-89 regarding your transfer and posting.

I have already ordered in the file to transfer you from Nopalgaoen S.O. to Dimapur S.O. as Assistant Postmaster in the LSC cadre.

With best wishes,

Yours sincerely,

(N. Thadou)

✓ Venk. A. K. Singh,
Asst. Postmaster,
Nopalgaoen S.O.

All set
S. P. Chakraborty
Supt. of Post Office (AO)
For Director of Postal Services
Nagaland, Kohima-797001

N. THADOU

Annexure 3 (Sectns)
-21-
DIRECTOR OF POSTAL SERVICES
KOHIMA-797001
Telephone: Off: 601
Rev: 601
D.O. NO. 13/76/1/pt. 1
Dated Kohima, 18/2/90

My dear singh,

Please refer to your representation dated 14/2/90 regarding fixation of pay by way of stepping up of pay.

I had already given instruction to my office to allow you to draw the same pay as Shri D. Deori with effect from the date you officiated as LSG supervisor at Dimapur S.O.

Formal order is being issued by my office. If you are still not satisfied, please submit your representation with facts and figures.

With best wishes,
Yours sincerely,

N. THADOU
(N. THADOU)

Shri A.K. Singh,
Assistant Sub-Postmaster,
Dimapur Sub-Post office.

Copy to office for further action.

DIRECTOR OF POSTAL SERVICES:
NAGALAND : KOHIMA,

21/2/90
S.P. Chatterjee
For Director of
Nagaland, Kohima, 797001

..... on receipt before duly receipted
.....
(Dathliria)
Asstt. Postmaster General (A/Cs),
S/o Chief Postmaster General,
N.E. Circle, Shillong.

ANNEXURE A

A/5

131

10/11/96

2

TO

The Chief Accounts Officer (I.F.A.)
O/O The Chief Postmaster General
North Eastern Circle.

No- I-1/5, Book/97-98 at at Kohima te 3/1/98.

Sub:- Request regarding concurrence-

Stepping-up case of Shri. A.K.Singh A.P.M.

Kohima H.O.

Sir.

While verifying the service book of Shri A.K.Singh A.P.M. Kohima H.O. by the Audit party during internal check inspection, it has been recorded by the Audit party that the initial pay of Shri A.K.Singh in L.S.G cadre was fixed at a higher stage in accordance with D.P.S Kohima memo no. B-76/Partirii dtd 28-2-90. However no approval of I.F.A has been found recorded in the service book.

Now, to regularise the pay fixation it is essential to record the financial concurrence of the I.F.A. Therefore, kindly accord the post-facto concurrence and communicate to this office for recording in the service book.

(S.C.PAUL)
POSTMASTER (H.S.G-II)
KOHIMA, NAGALAND
Post Master (I.F.P.S)
Kohima-797001
Nagaland-797001

ALL GST
S.C. Chakrabarti
Sunder Chakrabarti
For Director of Posts & Telecommunications
Nagaland: Kohima-797001

DEPARTMENT OF POSTS, INDIA.
OFFICE OF THE CHIEF POSTMASTER GENERAL, N.E. CIRCLE, SHILLONG.

To,

The Postmaster,
Kohima H.P.O.,
Nagaland-797001.

No. AP/MO/II/FIXN/95-96

Dated at Shillong the 17.8.2000.

21.08.2000

Subject:- Regarding Stepping up of Pay of Shri A.K. Singh,
APM, Kohima H.O with his Junior, Shri Dimbeswar
Deori, PA Guwahati.

Ref:- Your No. 1-5/Book/97-98 dated 9.3.98.

With reference to your office letter referred above,
this is to inform that on comparative Scrutiny of the Service-
Books of Shri A.K. Singh, APM Kohima H.O and Shri Dimbeswar Deori
PA, Guwahati the following have come to light.

That, the Senior official, Shri A.K. Singh entered the
Department as PA with effect from 23.3.73, while the Junior Official
entered in the Department as PA with effect from 26.3.73.
The pay of both the officials was fixed at Rs. 260/- in the scale
of Rs. 260-480/- with DNI on 1st March each year. The pay of Shri
A.K. Singh was subsequently fixed at Rs 276.8 (ie Rs. 284/-)
with an advance increment with effect from 1.3.75 on account of
his having undergone the Telegraph Morse Training as reported in
your office letter referred above. Copy of the above order is not
found enclosed in the Service-Book. The same may kindly be enclosed
in Service-Book.

The first Part of the Service-Book of Shri A.K. Singh,
APM Kohima, for the period from 23.3.73 to 20.7.76 which is reported
to have been wanting may kindly be reconstructed.

That, the official, Shri Dimbeswar Deori was allowed to
officiate as SPM/APM Acctt/DPM etc. all along with effect from
1.8.74, but before the eligible period for TBOP scheme, while the
Senior official, Shri A.K. Singh worked simply as T/S Clerk upto
the period of eligibility of TBOP scheme. By virtue of officiating
capacity the Pay of Shri Dimbeswar Deori was fixed at 1440/- on
1.2.89 in the scale of Rs(1400-2300), while the Senior official,
Shri A.K. Singh was drawing pay at Rs. 1390/- with effect from
1.3.89 in the scale of Rs. (975-1660) and at Rs. 1440/- with effect
from 23.3.89 in the scale of Rs. (1400-2300) in the TBOP scheme,
therefore, resulting in drawal of enhanced Pay by the Junior Official
Shri Dimbeswar Deori. The Pay of Shri A.K. Singh was finally
stepped up from Rs. 1440/- to Rs. 1640/- with effect from 19.4.89
vide DPS/Kohima's letter No. B-776/Pt-III dated 28.2.90. The excess
Pay drawn by the Junior official is not due to any application of
FR-22(i)(a)(i).

Therefore, stepping up of Pay of Shri A.K. Singh with
effect from 19.4.89 is not in order. The same should be cancelled
and over Payment as a result of wrong stepping up of Pay should
be recovered under intimation to this office and DA(P) Calcutta.

The Service-Book of Shri A.K. Singh APM Kohima is enclosed
and for further maintenance.

This (is) official in consultation with Asstt. P.M.

Chakraborty

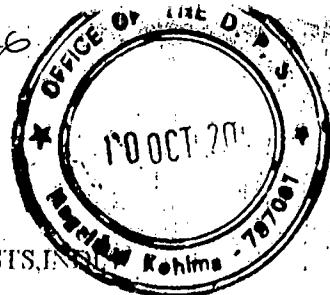
(Dakkhira)
Asstt. Postmaster General (A/Cs),
SAC Chief Postmaster General,
N.E. Circle, Shillong.

AP/Post Office
For Director of Posts
Nagaland: Kohima-797001

RE 3527

Annexure-6

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DEPARTMENT OF POSTS, INDIA

Staff Accts

From,

POST MASTER
KOHIMA (O)

TO,

THE ASSTT. POSTMASTER GENERAL (A/Cs),
O/O THE CHIEF POSTMASTER GENERAL,
N.E. CIRCLE, SHILLONG-793001.

NO. A-1-PAY & ALLOWANCES/CORR

DATED THE 03.10.2000

SUB: Regarding stepping up of pay of Shri A.K.SINGH, then APM, Kohima, now SPM, Mokokchung S.O, with his junior Shri. Dimbeswar Deori, P.A. Guwahati.

Reff: Your letter no. A.P.MAO-I/PIXN/96-96 Dated 21.08.2000.

With reference to your letter no cited above, stepping up of pay of Shri. A.K. SINGH, SPM Mokokchung S.O. w.e.f. 19.4.89 from Rs. 1440/- to Rs. 1640/- have been cancelled and as a result his pay is reduced on 1.10.2000 from Rs.6800 to Rs.6050 and over payment made as a result of wrong stepping up of pay w.e.f. 19.4.89 to 30.09.2000 Amounting Rs. 85870/- (Eighty five thousand eight hundred seventy) only, should be recovered from the official. Kindly instruct as to how the assesed amount will be recovered from the official. For favour of your kind information, the pay regulation w.e.f. 19.04.89 and calculation of overpayment is shown in enclosed ANNEXURE-I.

SD
(S.C.PAUL)

POST MASTER (HSG-II)
KOHIMA POST OFFICE,

Enclosed : As above

Copy to :

1. The DA(P), Calcutta, for kind information & wa.
2. The Director of Postal Services/Nagaland w.r.t. his letter no.B-ii/Staff/Pay & allowances/ Ch-II dated 12.9.2000.
3. Shri. A.K. SINGH, SPM/Mokokchung S.O for information.

SD
(S.C.PAUL)
POST MASTER (HSG-II)
KOHIMA POST OFFICE,

All staff Accts
S.P.M. Chakrabarty
Supt. of Post Office
For Director of Postal Services
Nagaland (Kohima-793001)

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ANNEXURE - 1

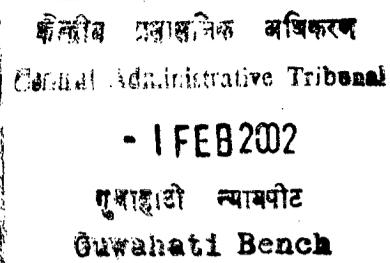
A. Regulation of pay w.e.f. 19.04.89 to 30.09.2000

DATE FROM	PAY DUE P.M. Rs.	PAY DRAWN P.M. Rs.	OVERPAYMENT P.M. Rs.
19.04.89	1110	1640	200
03.05.90	1180	1680	200
01.01.91	1520	1720	200
01.04.92	1560	1760	200
01.01.93	1600	1800	200
01.01.94	1640	1850	210
01.04.95	1680	1900	220
01.01.96	5125	5875	750
01.04.96	5250	6000	750
28.01.97	5375	6125	750
01.04.98	5500	6250	750
01.04.99	5625	6375	750
01.07.99 (B.C.R.)	5900	6650	750
01.07.00	6075	6800	750

B. Calculation of overpayment of Pay and allowances w.e.f. 19.04.89 to 30.09.2000.

PERIOD	DIFF OF PAY	DIFF OF D.A.	PERIOD	DIFF OF PAY	DIFF OF D.A.
19.04.89-30.06.89	480	139	01.01.97-30.06.97	4500	360
01.07.89-31.12.89	1200	108	01.07.97-31.12.97	4500	585
01.01.90-30.06.90	1200	456	01.01.98-30.06.98	4500	720
01.07.90-31.12.90	1200	516	01.07.98-31.12.98	4500	990
01.01.91-30.06.91	1200	612	01.01.99-30.06.99	4500	1440
01.07.91-31.12.91	1200	720	01.07.99-31.12.99	4500	1665
01.01.92-30.06.92	1200	852	01.01.00-30.09.00	6750	2565
01.07.92-31.12.92	1200	996			
01.01.93-30.06.93	1200	1104	Total	59119	21582
01.07.93-31.12.93	1200	1164			
01.01.94-30.05.94	819	851	Total Overpayment		
04.05.94-30.06.94	400	416	Pay = Rs. 59119.00		
01.07.94-31.12.94	1260	1436	D.A = Rs. 21582.00		
01.01.95-31.03.95	630	787	S.D.A = Rs. 5169.00		
01.04.95-30.06.95	660	825			
01.07.95-31.12.95	1320	1795	Total = Rs. 85,870.00/- (Excluding Leave period)		
01.01.96-30.06.96	4500	-----			
01.07.96-31.12.96	1500	180	Rs. Eightyfive thousand eight hundred and seventy only/-		

Allied
S. P. Chakraborty
Sub. Dir. of Post & Tel. (1/1/2)
For Director (P.T. & T. 1/1/2)
Nagaland : Kohima : 27/10/2001



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 356/2000

Shri A.K. Singh

Versus

U.O.I. & Ors.

Rejoinder to the Written Statement filed by the respondents.

1. That the applicant has received the copy of the Written Statement and gone through the same. Save and except the statements which are not specifically admitted herein below, rests may be treated as total denial.
2. That as regards para 1,2,5,22,23 the applicant has nothing to comment as these are mere submission by the respondents.
3. That as regards para 3 it is submitted that the applicant is senior to Shri D.Dewri, Postal Assistant, Nagaland division by 3 days as the applicant was appointed in the time scale Postal Clerk w.e.f. 23.03.73 while the said Shri D.Dewri was appointed w.e.f 26.3.73. Further the applicant by virtue of completing Morse Telegraph Training earned an additional/advance increment on 01.03.75. Therefore the pay of the applicant was more by one increment in the cadre of Time Scale Postal Clerk than the said Shri D.Dewri. As per written statement of the respondent, the pay of the applicant in the cadre of time scale postal clerk as on 01.03.89 was Rs.1390/- i.e. including one advance increment for Morse Telegraph training. So, naturally the

pay of said Shri D.Dewri who was junior to the applicant in the cadre of Time Scale Postal Assistant and also who did not earn any advance increment for Telegraph Morse training should be Rs.1360/- i.e. below one advance increment for which the said Shri D.Dewri was not entitled.

4. It is pertinent to mention here that officiating appointment/promotion to a higher cadre has nothing to do with the proforma pay of the parent cadre. Here it is to asserted that the said Shri D.Dewri was never promoted to any higher cadre during the period from 26.3.73 (i.e. the date of appointment) to 25.3.89 (i.e. the date for promotion to higher grade) through any valid DPC by virtue of his efficiency and superiority over the applicant. The respondents have stated that the pay of the applicant was Rs.1390/- as on 1.3.89 in the cadre of Time Scale Postal Clerk. But the respondent has intentionally and purposefully failed to mentioned the pay of said Shri D.Dewri as on 1.3.89 in the cadre of Time scale Postal clerk which he actually belonged. Therefore, the respondent have intentionally suppressed a vital information which was the whole and sole basic for fixation of pay in the higher cadre.

5. That for fixation of pay in the higher cadre it is essential to take into consideration the pay actually drawn in the parent cadre (in the instant case i.e. the cadre of Time Scale Postal clerk). Therefore, the contention of respondent that the pay of said Shri D.Dewri was fixed at the stage of Rs.1640/- w.e.f 1.2.89 with reference to officiating capacity in the higher cadre/post has nothing to

affect the claim of the applicant. As per memo No.B-2/Staff-IF/II dated 26.11.89 attached as Annexure R-1 to the Written Statement of the respondent Shri D.Dewri the then Offg.PRI(P) Kohima was promoted to the higher grade carrying the pa scale of Rs.1400-2300/- w.e.f 26.3.89. And in such case, when the respondent had fixed the pay of said Shri D.Dewri w.e.f. 1.2.89 (i.e. prior to actual date of promotion) , it can not subvert the applicant from admissible claim of getting full benefit under Rule 22(1)(a)(i).

6. That as regards application of FR 22(1)(a)(i), the applicant submitted that the case of the applicant is very much within the proviso to FR 22(1)(a)(i) and as such the contention of the respondent regarding erroneous fixation or non confirmation of the rule ibid are totally vague. Because the applicant and the said Shri D.dewri belonged to the cadre of time scale postal clerk from Mar 1973 to Mar 1989 and both were promoted to the same higher grade vide annexure R-1. Therefore the proviso (i) to FR 22(1)(a)(i) was cent percent fulfilled.

Secondly, the unrevised and revised scales of pay of both the lower and higher post were not only identical but also same. Therefore the second proviso is also fulfilled.

Thirdly, the anomaly between the applicant and the said Shri D.Dewri arrived directly as a result of application of FR 22(1)(a)(i). Shri D.Dewri was not drawing more pay than the applicant in the cadre of time scale

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postal assistant as on the date of his promotion to the higher grade and even in the higher grade, the said Shri D.Dewri was junior to the applicant by 3 days. Therefore the third proviso is also fulfilled.

As the respondents utterly failed to quote the rule under which the pay of Shri D.Dewri was fixed at a stage higher than the applicant the contention of the respondents by merely saying that the fixation was done under normal rules is a vague term and can not be accepted.

Therefore under above conditions and facts, the stepping up of pay of applicant was imminent to remove anomaly that his junior namely Shri D.Dewri was getting more pay than the applicant as on the date of promotion of the applicant to the higher grade (i.e. on 26.03.89). There was also no irregularity in the fixation of pay including stepping up of the applicant to give him equal footing with his junior. The pay of the applicant was stepped up in April 1989 by the competent authority (i.e. Director Postal Services, Kohima) and no objection thereafter was raised either by the audit or by higher authorities or disbursing authority till Oct.2000. The objection was raised by the audit only for not obtaining the covering IFA concurrence in Oct.2000. This aspect was the sole responsibility of the authority and for their failure to issue covering concurrence: the applicant should not be made to suffer in any way.

7. That as regard para 4, it is submitted that stepping up of pay of the applicant w.e.f. the date of promotion of his junior was very much within proviso of FR 22(1)(a)(i) (earlier FR 22-C) and as such neither the CPMG-

Shillong nor any other authority could not take any arbitrary action either to cancel the order of stepping up or to recover any amount as over payment of otherwise.

8. That as regard para 6, the applicant has already clarified that both the applicant and said Shri D.Dewri was promoted to higher grade by the same order (i.e. Memo No.B-2/Staff/one promotion/II dated 20.11.89). As per the said order said Shri D.Dewri was promoted to higher grade carrying the scale of pay of Rs.1400-2300/- w.e.f. 26.03.89. Therefore fixation of pay of said Shri D.Dewri w.e.f 01.02.89 i.e. the date prior to his promotion can not be a cause to deny the legitimate benefit entitled to the applicant under FR 22(1)(a)(i) (earlier FR 22-C).

9. That as regard para 7, it is submitted that the respondents in one hand has admitted that the pay of said Shri D.Dewri (who is junior to the applicant) as on 26.03.89 was Rs.1640/- and the pay of the applicant was 1400/- and on the other hand denies any anomaly between the above fixation which is nothing but a vague and meaningless argument.

10. That as regard para 8, it is submitted that the applicant has been made scape goat for his no fault. The applicant is fully entitled to draw pay equal to his junior w.e.f. the promotion of his junior i.e. 26.03.89.

11. That as regard para 9, 10, 11 and 12, it is submitted that applicant can not suffer the burns of lapse of administrative authorities for not obtaining of administrative approval/ financial concurrence of concerned

authority in time. This was the responsibility of the disbursing authority i.e. Postmaster, Kohima to obtain administrative financial concurrence of required authority as soon as the order of stepping up of pay for removal of anomaly was issued by the competent authority i.e. the Director Postal Services, Kohima. If the concerned authority had failed to exercise his duty as per normal rules, , the applicant can not be in any case be targeted after the lapse of about 13 years.

12. That as regards para 13 to 21 it is submitted that the claim of the applicant is totally within proviso of FR 22(1)(a)(i) (earlier FR 22-C) and just. The reasons have already been explained in para 2 above.

In view of the above facts and circumstances the applicant prays that Your Lordships would graciously be pleased to allow the OA with cost.

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VERIFICATION

I, Shri Awadhesh Kumar Singh, son of J.M. Singh aged about 52 years, at present working as Sub Postmaster (HSG-II), Mokokchung, Nagaland, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 12 are true to my knowledge and those made in paragraphs are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this, the Verification on this the 31st day of Jan of 2002.

Awadhesh Kumar Singh