

30/100

8

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 313/02

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( SEE RULE -4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI  
.....

ORDER SHEET

Original Application No : 3/3/02

Misc. Petition No.                     

Contempt Petition No.                     

Review Application No.                     

Applicant (s) A-K-Malakur

-Vs-

Respondent (s) U.O.I. Jany

Advocate for the Applicant (s) B.K. Sharma, S. Sarma, U.K. Nair

Advocate for the Respondent(s) CG Se A.K. Choudhury  
*Miss V. Das*

Notes of the Registry	Date	Order of the Tribunal
<p>76 575 270 26.9.02 27/9/02 Dy. Registrar. Steps taken along with envelops 25/9/02</p>	<p>4.10.2002</p>	<p>The matter pertains to Division Bench and accordingly put up the matter before Division Bench on 8.10.2002.</p> <p><i>ICU Sharma</i> Member</p>
	<p>8.10.02</p>	<p>On the prayer of Mr. S. Sarma, learned counsel for the applicant the case is passed over for the day. List on 9.10.2002 for admission.</p> <p><i>ICU Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

2)  
D.A. 313/2002

9.10.02

Heard Mr. B.K. Sharma, learned Sr. counsel for the applicant.

Issue notice to show cause as to why the application shall not be admitted. Returnable by ~~to~~ four weeks.

List on 13.11.2002 for admission.

*ICU Sharma*  
Member

*[Signature]*  
Vice-Chairman

mb

13.11. Due to urgent sitting at Shillong, the cases adjourned to 26/11/02

*M/o Akote*

26.11.02

Await service report. List on 16.12.2002 for admission.

mb

16.12.02

Heard Mr. U.K. Nair, learned counsel for the applicant. The respondents are yet to file reply in writing. The application thus admitted. Call for the records. Also heard Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents.

List on 20.1.2003 for orders.

*[Signature]*  
Vice-Chairman

mb

20.1.03

List again on 17.2.2003 to enable the respondents to file written statement.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

mb

*File*  
*Received to day.*  
*8/11/02*

*Notice prepared and sent to D/S for aming the Respondent No 1 to 4. By. Hamed & Regd. App.*

*S/N. 3063 to 3066*  
*DA 8/11/02*

*No. Show Cause has been filed*

*26.11.02*

*Respondent No. 2,384 received notices by hand on 8/11/02 through Despatch Rider.*

*26.11/02*

*NO W/S has been filed*

*N3*  
*17/1/03*

*14.2.03*  
*W/S submitted by the Respondent NO. 3.*

17.2.2003 Present : The Hon'ble Mr. Justice  
D.N. Chowdhury,  
Vice-Chairman.

The Hon'ble Mr. S. Biswas,  
Administrative Member.

Written statement has  
already submitted by the respondent  
No.3. The other respondents are yet to  
file written statement. List again on  
10.3.2003 to enable the respondent  
Nos.1,2 and 4 to file written state-  
ment, if any.

No written statement  
filed by The R.No-1,2  
and 4.

*By*  
*7.3.03.*

*S. Biswas*  
Member

*[Signature]*  
Vice-Chairman

mb

10.3.2002

The respondent No.3 has filed  
written statement. The other respondents  
namely, the Union of India, The state of  
Assam and the Secretary, Govt. of Assam,  
Deptt. of Personnel (A), Dispur are yet  
to file written statement.

List again on 8.4.2003 enabling  
the other respondents to file written  
statement, if any.

*[Signature]*  
Vice-Chairman

bb

8.4.03

No. 1,2 & 4 filed by  
The R.No. 1,2 & 4

Written statement is filed by respon-  
dent No.3. Other respondents chose not  
to file written statement. Accordingly  
the case is listed for hearing on  
21.5.03.

*By*  
*20.5.03*

*[Signature]*  
Vice-Chairman

pg

21.5.2003

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

The Hon'ble Mr. S.K. Hajra,  
Member (A)

*[Signature]*  
On the prayer of Mr. S. Sarma,  
learned counsel for the applicant, the case  
is adjourned. Put up again on 19.6.2003  
for hearing.

(4)

21.5.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. S.K. Hajra, Member (A).

Written statement filed on behalf of R. No-3, other respondent not yet filed.

On the prayer of Mr. S. Sarma, learned counsel for the applicant the case is adjourned. List again on 19.6.2003 for hearing.

21  
18.6.03

  
Member

  
Vice-Chairman

mb

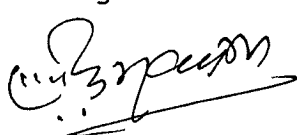
19.6.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. R.K. Upadhyaya, Member (A).


Wks filed on behalf of the R. No-3, other respondent not yet filed

On the prayer of Miss U. Das, learned counsel for the applicant the case is adjourned. Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents has no objection.

List again on 17.7.2003 for hearing.

21  
16.7.03

  
Member

  
Vice-Chairman

mb

17.7.03 present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr N.D. Dayal, Admn. Member.

On the prayer of Mr A.K. Choudhuri, learned Addl. C.G.S.C the case is adjourned to 23.7.03 for hearing.

  
member

  
Vice-Chairman

pg

Notes of the Registry	Date	Orders of the Tribunal
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23.7.2003  
§

Present : The Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman  
The Hon'ble Mr. N.D. Dayal Member (A).

Wls filed by the R.N. 3  
Other respondents not  
yet filed.

23  
19.8.03

On the prayer of Miss U. Das, learned counsel for the applicant the case is adjourned. List again on 20.8.2003 for hearing.

Member

Vice-Chairman

mb

20.8.2003

Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman  
The Hon'ble Mr. K.V. Prahalad an, Administrative Member.

24.9.03

Reminder submitted  
by the Applicant.

Heard Ms.U.Das, learned counsel for the applicant who has prayed for adjournment of the case on personal ground.

Prayer allowed. List the case on 23.9.2003 again for hearing.

Member

Vice-Chairman

bb

23.9.2003

On the prayer made by Mr.A.K. Chaudhuri, learned Addl.C.G.S.C. the case is adjourned. Mr.S.Sarma, learned counsel for the applicant has no objection.

List the case on 20.10.2003 for hearing.

Member

Vice-Chairman

bb

(6)

O.A.313/2003

Notes of the Registry

Date

Orders of the Tribunal

20.10.2003

Adjourned and again listed on  
12.11.2003 for hearing.

Written statement  
filed by the R. No. 3  
Other respondents  
~~has~~ not yet filed.

bb

*[Signature]*  
Vice-Chairman

*[Signature]*  
18.11.03

12.11.03

no Bench today.  
Adjourned to 19.11.03.

*[Signature]*  
15/0  
lan

19.11.2003

Present : The Hon'ble Smt. Lakshmi  
Swaminathan, Vice-Chairman  
The Hon'ble Sri S.K. Naik,  
Administrative Member.

Mr. M.K. Mazumdar, learned  
counsel on behalf of Mr. S. Sarma,  
learned counsel for the applicant,  
Mr. A.K. Choudhury, learned Addl.  
G.G.S.G. for the respondent No.3 and  
Mrs. M. Das, learned Govt. Advocate  
for the State of Assam for Respond-  
ent Nos. 2 and 4.

At the request of Mr. M.K.  
Mazumdar, learned counsel on behalf  
of the applicant's counsel list on  
21.11.2003 for hearing.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

mb

21.11.03

Left over. put in  
next Division Bench.

*[Signature]*  
15/0  
lan

The case is ready  
for hearing.

*[Signature]*  
23.12.03

7

24.12.03 On the prayer of the learned counsel for the parties the case is adjourned to 19.1.2004 for hearing.

*K. V. Prahlada*  
Member

*B*  
Vice-Chairman

pg

19.1.2004 Present: The Hon'ble Shri Bharat Bhushan Judicial Member.

The Hon'ble Shri K.V.Prahladan Administrative Member.

The case is ready for hearing.

*By*  
23.2.04

Ms.U.Das, learned counsel for the applicant and Mr.A.K.Chaudhuri, learned Addl.C.G.S.C.for the respondents have requested for adjournment. Accordingly list the case on 5.2.2004 for hearing.

*K. V. Prahlada*  
Member(A)

*D*  
Member(J)

bb

24.2.04 present : The Hon'ble Sri Shanker Raju, Judicial Member.

The Hon'ble Sri K.V.Prahladan, Admn.Member.

After hearing the parties O.A. stands disposed of with direction to the respondents to consider a fresh the case of the applicant for revision of the pay scale as per the explanatory memorandum as per the order passed separately.

O.A. is accordingly allowed.

*K. V. Prahlada*  
Member(A)

*h*  
Member(J)

pg

*Recd. by  
Adv. Chandra  
3/3/04*

*Received  
copy for Govt  
Advocate (Assam)  
Kumar Nava  
3-3-04*

4.3.04  
copy of the order has been sent to the office for issuing the same to the applicant as well as to the Advocate for the reply.



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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./XXX.No. 1111 313/2002 & 85/2003.

DATE OF DECISION 24.2.2004.

.....Shri Ananta Kumar Malakar, IAS & Another.....APPLICANT(S).

.....Mr.S.Sarma, Mr.U.K.Nair & Ms.U.Das.....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS-

.....Union of India & Others.....RESPONDENT(S)

.....Mr.A.K.Chaudhuri, Addl.C.G.S.C.....ADVOCATE FOR THE  
RESPONDENT(S).

THE HON'BLE MR. SHANKER RAJU, JUDICIAL MEMBER.

THE HON'BLE MR. K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

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

Judgment delivered by Hon'ble Member (J). ☒

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application Nos.313 of 2002 & 85 of 2003.

Date of Order : This , the 24th Day of February, 2004.

THE HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER.

THE HON'BLE SHRI K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Shri Ananta Kumar Malakar, IAS  
Director of Land Records, Survey etc.  
Rupnagar, Guwahati. . . . Applicant in O.A.313/2002.
2. Jones Ingti Kathar  
Secretary, Industries & Commerce  
and Hill Department  
Dispur, Guwahati-6. . . . Applicant in O.A.85/2003.

By Advocates Mr.S.Sarma, Mr.U.K.Nair & Ms.U.Das in both the cases.

- Versus -

1. Union of India  
Represented by the Secretary  
to the Government of India  
Ministry of Personnel,  
Public Grievance and Pension  
(Deptt. of Personnel and Training)  
North Block, New Delhi-1.
2. The State of Assam  
Represented by the Chief Secretary  
Government of Assam  
Dispur, Guwahati-6.
3. The Accountant General(A&E), Assam  
Maidamgaon, Beltola  
Guwahati.
4. The Secretary  
Government of Assam  
Department of Personnel (A)  
Dispur, Guwahati. . . . Respondents in both the O.A.s.

By Mr.AK.Chaudhuri, Addl.C.G.S.C. for both the Respondent Nos. 1 and 3 and Mrs. M. Das, Govt. Advocate for the Respondent Nos. 2 and 4.

O R D E R (ORAL)

SHANKER RAJU, MEMBER(J):

As the indential question of facts and law are involved in these two O.A.s, the same are disposed of by this common order.

1. We have heard Mr.U.K.Nair, learned counsel for the applicants, assisted by Ms.U.Das, learned counsel and also Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents in both the O.A.s.
2. The applicants, who had been inducted into IAS

vide notification dated 30.12.1996, have assailed the action of the respondents in downgrading the pay of the applicant as well as orders passed in January, 2002 and 18.3.2002 <sup>h</sup> rejecting the requests of upward revision of their pay in appointment of IAS.

3. The learned counsel for the applicants contends that the applicants, once confirmed in IAS after probation loose the lien in the State Service and accordingly as per Clause 4, Section I, Schedule II of the IAS (Pay) Rules, 1954 the revision of pay effected in the scale of pay drawn by the applicants in the State Service would not be applicable. Moreover, it is stated that the State revised their pay structure by notification dated 4.7.1998 whereas the applicants stood confirmed in IAS and their lien have been terminated.

4. It is further stated that in the light of the decision of the Apex Court in Bhagwan Shukla vs. Union of India & Others reported in 1998(2) SLJ 30 (SC) no downward revision of pay scale which visits a Govt. Servant with <sup>h</sup>evil consequences would be undertaken without affording reasonable opportunity to the concerned. As no prior opportunity had been accorded, the action of the respondents is not in consonance with the principles of natural justice.

5. The learned counsel for the applicants further states that as per the IAS (Pay) Fifth Amendment Rules, 1997 which had come into effect from 20.11.1997 <sup>h</sup>as per Explanatory Memorandum, which is reproduced below:-

"EXPLANATORY MEMORANDUM"

The Central Government has decided to implement the recommendations made by the Fifth Central Pay Commission relating to revision of scales of pay in respect of the All India Services with effect from the 1st January, 1996. With a view to implement those recommendations, the Indian Administrative Service (Pay) Rules, 1954 are being amended accordingly with effect from the 1st January, 1996.

It is certified that no member of the Indian Administrative Service is likely to be adversely affected by giving retrospective effect to these rules."

<sup>h</sup> no adverse affect by giving retrospective effect to the

revision would be undertaken.

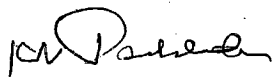
6. On the otherhand, the learned counsel for the respondents vehemently opposed the contention and stated that as the applicants were not in IAS and were promoted w.e.f. 30.12.1996, the membership of the applicants from 1.1.1996 to 29.12.1996 is to be covered by the revised pay structure of the State. Accordingly, pay slip is issued and downward revision is effected. However, when pointed out the Explanatory Memorandum, the learned counsel for the respondents could not rebut the same.

7. Having regard to the Explanatory Memorandum ibid which protects Govt. Servant from any adverse effect on retrospective revision. The aforesaid explanation has not been taken into consideration by the respondents while issuing pay slip.

8. Keeping in view of the aforesaid and after careful consideration of the rival contentions, we are of the considered view that the matter requires re-consideration. Accordingly, the O.A.s are partly allowed. The impugned pay slips issued by the respondent No. 3 and the orders, whereby the requests of the applicants for upward revision of pay were rejected, are quashed and set aside. Respondents are directed to re-consider the claims of the applicants in the light of the Explanatory Memorandum by passing a separate reasoned and speaking order within three months from the date of receipt of the copy of this order. No recovery shall be effected till then. If the claim of the applicants are acceded to, they shall be entitled to the benefits of pay revision in IAS in accordance with law.

The O.A.s stands disposed of accordingly. No costs.

Copy of this order be kept in each file.



( K.V. PRAHLADAN )  
ADMINISTRATIVE MEMBER



( SHANKER RAJU )  
JUDICIAL MEMBER

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

GUWAHATI

O.A. No. 313 of 2002

Ananta Kumar Malakar

... Applicant

- Versus -

Union of India & Ors.

... Respondents

I N D E X

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Filed by : Asha Das  
Advocate

Filed by  
the applicant through  
Alsha Das,  
Advocate  
23/9/02

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

(Application under Section 19 of the Central  
Administration Tribunal Act, 1985)

O.A. No. 313 of 2002

BETWEEN

Shri Ananta Kumar Malakar, IAS  
presently posted as Director of Land  
Records, Survey etc., Assam, Rupnagar,  
Gauhati.

... Applicant.

- AND -

1. Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Personnel, Public Grievance  
and Pension (Deptt of Personnel and  
Training) North Block, New Delhi-1.
2. The State of Assam, represented by  
the Chief Secretary, Government of  
Assam, Dispur, Gauhati-6.
3. The Accountant General (A&E), Assam,  
Maidamgaon, Beltola, Guwahati.
4. The Secretary, Government of Assam  
Department of Personnel (A) Dispur,  
Guwahati.

... Respondents

DETAILS OF APPLICATION

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

This application is directed against the  
communication dated January, 2002 issued under No.  
20015/1/2001-AIS(11) rejecting the prayer of the  
Applicant for upward revision of his pay on his  
appointment to IAS. The application is also directed  
against the arbitrary and illegal action on the part of

AK

the Respondent No. 3 in proceeding to down grade the pay of the Applicant in the IAS, without any authority and in violation of the procedure prescribed for the same.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The applicant further declares that the application is 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 he is entitled to all the rights protections and privileges gauranteed under the constitution of India.

4.2 That the Applicant was initially appointed in the Assam Civil Service (ACS) in the year 1975. Thereafter vide notification dated 30.12.96 issued by the Government of India and communicated by the Government of Assam vide notification dated 3.1.97, the Applicant was promoted to the IAS. The said promotion of the Applicant was effected with effect from 30.12.96.

A copy of the said notification dated 3.1.97 is annexed as Annexure-1.

AK

4.3 That just prior to his promotion to IAS, the Applicant was drawing his pay and other allowances in the State service in the scale of pay of Rs. 3825-5,900/- and the basic pay of the Applicant was Rs. 5200/-.

A copy of the pay slip issued by the AG, Assam under No. GE-1/PS/41 is annexed hereto as Annexure-2.

4.4 That on his promotion to the IAS, the pay of the Applicant was fixed in the next higher scale of pay available in the IAS in comparison to the pay scale enjoyed by the Applicant just prior to his such promotion, in the State Service. The Applicant was allowed the scale of pay of Rs. 4800-5700/- and he was allowed to draw a substantive pay of Rs. 5400/-. The pay structure of the Applicant on his promotion to IAS was as under :

Substantive Pay	- Rs. 5,400/-
Special Pay	- Rs. 250/-
Dearness Allowance	- Rs. 6,426/-
S. D. A.	- Rs. 675/-
Interim Relief	- Rs. 1,180/-
Conveyance Allowance	- Rs. 20/-
<hr/>	
Total	Rs.13,951/-

A copy of the pay slip dated 2.6.97 issued by the AG, Assam is annexed hereto as Annexure-3.

4.5 That vide notification bearing No. 14021/2/97-AIS(2)-A dated 16.10.97, the Indian Administrative Service (Pay) fifth Amendment Rules, 1997 were notified and the same was made effective from 1.1.96. Accordingly, the scale of pay of Rs. 4800-5700/-



enjoyed by the Applicant, stood revised to Rs. 15,100-18,300/- and the Applicant was sanctioned a substantive pay of Rs. 15,500/-. The pay structure of the Applicant pursuant to the said revision is as under :

Substantive Pay	- Rs. 15,400/-
Special Pay	- Rs. 250/-
Dearness Allowance	- Rs. 620/-
S. D. A.	- Rs. 657/-
C C A	- Rs. 20/-

Total Rs. 17,065/-

A copy of the pay slip issued by the AG, Assam incorporating the revision is annexed as Annexure-4.

4.6 That the Applicant states that on completion of one year in the IAS, the Applicant was granted one increment with effect from 1.12.97 and his substantive pay increased to Rs. 15,900/- and the total emoluments drawn by the Petitioner stood increased to Rs. 18,912/-

*On 1.12.97, the pay of the Applicant was revised to Rs. 15,900/- and the total emoluments drawn by the Petitioner stood increased to Rs. 18,912/-*

4.7 That your Petitioner states that the Assam Services (Revision of pay) Rules, 1998 came to be notified on 4.7.98. The said revision was made effective, with effect from 1.1.96. Accordingly, the pay of the Applicant in the State Service stood revised and he was issued necessary pay slip to this effect by the Respondent No. 3 for the period 1.1.96 to 29.12.96. It may be stated here that with effect from 30.12.96 the Applicant on his promotion to IAS ceased to be a member of the State Service.

A copy of the said pay slip dated 10.11.98 is annexed as Annexure-5.

4.8 That the Applicant begs to state that he was shocked and surprised to receive a pay slip dated 2.6.99 issued by the Respondent No. 3, by which the substantive pay drawn by him on his promotion to IAS as on 30.12.96 was reduced from Rs. 15,500/- to Rs. 11,300/- and from Rs. 15,900/- to Rs. 11,625/- as on 1.12.97. The said reduction in the substantive pay of the Applicant resulted in drastic reduction of the total emoluments being drawn by him, from Rs. 17,065/- to Rs. 12,697/- as on 30.12.96 and from Rs. 18,912/- to Rs. 14,852/- as on 1.12.97. It may be stated here that the said reduction of pay was effected without affording any opportunity to the Applicant to show cause.

A copy of the said pay slip is annexed as Annexure-6.

4.9 That the Applicant states that on enquiry it was revealed that the Annexure-7 pay slip came to be issued, taking into consideration the revision of pay effected in the scale of pay drawn by the Applicant in the State Service and the same was purportedly stated to have been done as per the provisions of clause 4 Section I, Schedule II of the IAS (Pay) Rules, 1954. Bare perusal of the said provision, would clearly reveal that the same is not applicable in the case of the Applicant inasmuch as at the time of notification of the Assam Services (Revision of Pay) Rules, 1998 on

4.7.98, the Applicant had severed all links that he had with the State Service and the lien he had over the post in the State Service stood severed with effect from 30.12.97 on his confirmation in the IAS. As such according to the provisions of the said Rules, the Pay of the Applicant could not have been interfered with pursuant to his confirmation in the State Service.

4.10 That the Applicant begs to state that being aggrieved by the reduction effected in his scale of pay and the consequent reduction in the emoluments being drawn by him, the Applicant approached this Hon'ble Tribunal by way of an Original Application being OA No. 267 of 1999, interalia amongst others praying for setting aside the Annexure-7 pay slip. This Hon'ble Tribunal vide order dated 25.6.2001 was pleased to dispose of the said original application with a direction to the Applicant to prefer a representation before the concerned authority, who was also directed to dispose the same by way of a speaking order.

A copy of the said order dated 25.6.2001 is annexed as Annexure-7.

4.11 That in pursuance to the directives passed by this Hon'ble Tribunal vide order dated 25.6.2001, the Applicant preferred an appeal before the authorities praying for correction of the irregularities committed in his pay. The Applicant interalia, highlighting the various provisions of law, showed the illegality committed in issuance of the Annexure-7 pay slip by the Respondent No. 3. Instead of repeating the contentions

20  
raised in the said appeal, the averments made therein be treated as a part of this original application..

A copy of the said appeal is annexed hereto as Annexure-8.  
14

4.12 That the Under Secretary to the Government of India, Department of Personnel, vide letter dated January 2002 proceeded to dispose of the appeal preferred by the Applicant, holding that the downward revision of pay effected by the Respondent No. 3 does not suffer from any vice or misinterpretation of the relevant policy.

A copy of the said letter dated January, 2002 is annexed as Annexure-9.  
14

4.13 That the Applicant begs to state that every time pay scales are revised retrospectively, a certificate is appended to the Pay (Amendment) Rules, that retrospective operation of the Rules, will not effect any officer adversely. The said certificate was also appended to the IAS (Pay) Fifth Amendment Rules, 1997. Mere perusal of the said certificate would reveal that the action on the part of the Respondent No. 3 in reducing the pay of the Applicant was without any authority.

A copy of the said amendment Rules, 1997 is annexed as Annexure-10.  
14

4.14 That the Applicant begs to state that the Respondent No. 3 and the other authorities have

AK

misconstrued the provisions of clause 4, Section I, Schedule II of the IAS (Pay) Rules, 1954. The provisions of the said clause is applicable only in the case of an officer who is on probation and has a lien on the post held by him in the State Service. In the case on hand, the Applicant stood confirmed in IAS with effect from 30.12.97 and as such no variation in the scale of pay drawing him in the IAS could have been effected on the basis of the Revision of Pay in the State Service notified on 4.7.98. Further the Applicant as on 4.7.98 had no lien on the post held by him in the State Service. As such by applying the provisions of the said clause, the pay of the Applicant could not have been reduced to his detriment.

4.15 That the Applicant states that on promotion to IAS, the pay of an officer is to be placed at the next higher stage available and the only limitation of the provisions of clause 8, Section-I, Schedule II of the said Rules, which lays down that the basic pay of the promotee officer shall not at any time exceed the basic pay he would have drawn on the IAS time scale as a direct recruit on that date if he had been appointed to the IAS on the date on which he was appointed to the State Civil Service. The pay of the Applicant was fixed keeping in view the said principle and on completion of his period of probation in IAS, the Petitioner is to be given all the benefits flowing from the revision of pay effected by the Government of India basing on the scale in which his pay was fixed at the time of his promotion to IAS.

AK

4.16 That the Applicant begs to state that the authorities have ignored the provisions of the IAS (Pay) Rules, 1956 and the IAS (Probation) Rules, 1954 while proceeding to dispose of the appeal of the Applicant vide letter dated January, 2002. The same has been disposed of without application of mind and basing on surmises and conjunctures. Further the notifications bearing No. 20011/2/93-IAS (II) dated 6.5.94 and 20011/1/950IAS(II) dated 14.7.95 which relate to protection of pay of State Civil Service officers promoted to IAS has not been taken into consideration while issuing the said letter dated January, 2002.

4.17 That your Applicant states that once his pay has been fixed in the selection grade, the same cannot be reduced to the Senior Time Scale inasmuch as the same would amount to reduction in rank and the same cannot be done without following the provisions of Article 311 of the Constitution of India. As such the action on the part of the Respondents No. 3 reducing the pay of the Petitioner having visited him with civil consequences the same could not have been issued without at least issuing a notice to the Applicant, giving him an opportunity to show cause. It may be stated here that the said Rules nowhere contemplate interim or temporary fixation of pay.

4.18 That your applicant states that although reduction in the pay of the Applicant has been effected, purportedly as per provisions of clause 4 of section-I

of Schedule II of the said Rules, no such reduction was effected in case of his batch mates, Shri Santanu Bhattacharjee, Smti Sunanda Sengupta, Bhudev Basumatary,. It may be stated here that the said persons have the same year of allotment as that of the Applicant i.e. 1990. Be it stated here that amongst the persons named above there are persons junior to the Applicant.

4.19. That in view of the facts and circumstances stated above the impugned Annexure-7 pay slip and the communication dated January, 2002 is liable to be set aside and quashed and the Applicant is entitled to draw his pay and allowances as per the fixation made vide Annexure-4 and 5.

4.20 That this application has been made bonafide for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that prima facie the action on the part of the Respondent No. 3 is proceeding to reduce the pay of the Applicant is illegal and arbitrary and the same is in violation of the provisions of the Rules holding the field.

5.2 For that the reduction in pay effected in case of the Applicant having visited him with civil consequences, the Applicant was entitled to atleast a notice before the said reduction was effected.

5.3 For that the Applicant having been confirmed in IAS

AK

with effect from 30.12.97, the revision of pay in the State Service notified on 4.7.98 could not have been used to vary his pay on the IAS and as such the action on the part of the authorities in reducing the pay of the Applicant is in clear violation of the express provisions of the said Rules.

5.4 For that the Applicant has been discriminated against inasmuch as case of persons similarly situated no such reduction was effected.

5.5 For that the authorities while disposing of the appeal preferred by the Applicant miserably failed to take into consideration the relevant provisions of the Rules and as such caused miscarriage of justice.

5.6 For that in any view of the matter the action/inaction on the part of the Respondents are not sustainable in the eye of law and same are liable to be set aside and quashed.

The Applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that they have no other alternative and efficacious remedy except by way of filing this application. He is seeking urgent and immediate relief.

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

AK



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.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the applicants pray 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 Annexure-7 pay slip.

8.2 To set aside and quash the impugned communication dated January, 2002.

8.3 To direct the Respondents to allow the Applicant to draw his pay and allowances, as per the fixation made and available in Annexure-3 and 4 pay slips issued by the Respondent No. 3.

8.4 Cost of the application.

8.5 Any other relief/reliefs to which the Applicant is entitled to under the facts and circumstances of the case and as may deemed fit and proper considering the facts and circumstances of the case.

AK

9. INTERIM ORDER PRAYED FOR :

In view of the facts and circumstances of the case the Applicant prays at this stage does not pray for any interim direction.

10. ....

The application is filed through Advocate.

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

- i) I.P.O. No. : 76 575270
- ii) Date : 20/9/02
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

AK

VERIFICATION

I Shri Ananta Kumar Malakar, aged about 55 years, son of Late Maladhar Ch. Malakar, presently working as Director of Land Records, Surveye etc., Assam, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case. I am competent to verify this case and the statements made in paragraphs 2, 3, 4'1, 4'17, 4'18 & 5 to 12 are true to my knowledge ; those made in paragraphs 4'14 - 4'16 & 4'19 are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 20th day of September, 2002.

Ananta Kumar Malakar

GOVERNMENT OF ASSAM  
DEPARTMENT OF PERSONNEL ( PERSONNEL :::A)  
ASSAM SECRETARIAT (CIVIL) DISPUR  
GUWAHATI-781006  
@XND@

## ORDERS BY THE GOVERNOR

## NOTIFICATION

Dated Dispur, the 3rd January, 1997.

NO. AAI. 32/94/311 : The following notification issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel and Training, New Delhi is republished for general information.

"Notification No.14015/4/96-AIS(I), Dated 30th December, 1996.

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (1) of Regulation 9 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, the President is pleased to appoint the following members of the State Civil Service of Assam to the Indian Administrative Service on probation with immediate effect and to allocate them to the Joint Cadre of Assam-Meghalaya under sub-rule (1) of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954 :

Sl.No.	S/Offr.
1.	Aranta Kumar Malakar
2.	Kamal Krishna Bazarika
3.	Jones Ingli Kather
4.	Ritendra Nath Sharma
5.	Laxmi Nath Tamuly and
6.	Lall Chand Singhi

Sd/- R. VAIDYANATHAN  
DESK OFFICER

Sd/- S.R.ISLAM  
Deputy Secretary to the Govt. of Assam

Memo No. AAI 32/94/311-A : Dated Dispur, the 3rd January, 1997.  
Copy to :-

1. The Accountant General (A&E)/(Audit), Meghalaya, Shillong.
2. The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-28.
3. The Chairman, Assam Administrative Tribunal, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Principal Secretaries/ Commissioners & Secretaries/ Officers to the Govt. of Assam.

Contd.....

Attested

*[Signature]*  
Advocate

7. The Chief Electoral Officer, Assam, Dispur.
8. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
9. The Agricultural Production Commissioner, Assam, Dispur.
10. All Commissioners of Divisions, Assam.
11. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.
12. The Chief Secretary to the Govt. of Meghalaya, Shillong.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
14. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
15. The Desk Officer, Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
16. The Secretary to the Governor of Assam, Dispur.
17. The PPS to Chief Minister, Assam, Dispur.
18. The Spl. Officer to Chief Minister, Assam, Dispur.
19. All Principal Secretaries of the Autonomous Councils.
20. All Deputy Commissioners/ Divisional Officers.
21. All Heads of Deptt/ All Deptt. of Assam Secretariat.
22. The Secretary, State Election Commission, Housefed Complex, Dispur.
23. The Secretary-cum-Registrar, Office of the Lokayukta, Nabinagar, Guwahati.
24. The Supdt., Assam Govt. Press, Bamunimaidan, Guwahati-21 for publication of the above notification in the Assam Gazette.
25. The PS to Chief Secretary, Assam, Dispur.
26. The PS to Addl. Chief Secretaries, Assam, Dispur.
27. All PS to Ministers/ Ministers of State.
28. Officers concerned.

En. A. K. Malakar, IAS  
 Jt Secy, E&A Deptt

By order etc.,

( S.R. ISLAM )

Deputy Secretary to the Govt. of Assam

Attested  
 by  
 Secy



statement showing the amount already drawn together with corresponding T. V. Nos. and dates and the amount to be drawn should be appended to the bill.

II—Deduction of non-practising allowance is subject to production of usual non-practising certificate.

This scale of pay is \_\_\_\_\_ increment accrues on \_\_\_\_\_ every year and in the absence of instruction to the contrary this may be drawn till the stage \_\_\_\_\_ is reached.

Note—1. It is particularly requested that the slip may be attached to the first pay Bill drawn at these rates and that No. \_\_\_\_\_ may be entered at his audit number at the top of every pay bill.

2. Deductions of fund subscriptions and recoveries of Government due as noted in the last pay certificate should be effected unless otherwise stated.  
Here state the stage at which a partner or efficiency bar operates.

Date \_\_\_\_\_

No. \_\_\_\_\_

Copy forwarded to the Treasury Officer of this Government service.

for information. He should insert the details of pay given above in any last pay certificate issued by him to the holder.

Date \_\_\_\_\_

No. \_\_\_\_\_

Copy forwarded to the Estate Officer

Executive Engineer, P. W. D. Building Division.

Signature \_\_\_\_\_

Assistant Accountant General

Accounts Officer

Signature \_\_\_\_\_

Assistant Accountant General

Accounts Officer

Signature \_\_\_\_\_

Assistant Accountant General

Accounts Officer

Amended  
1000  
Admission

# Pay/Leave Salary Slip

- 19 -

2) Pay in pursuance of By. No. 19-  
 1-1-94 till 1-1-95

ANNEXURE-3

184 (1) M.S.O. (T) 1

Office of the Accountant General, Assam, Meghalaya, etc., Shillong. Shillong, the 2-5-97.

Sr Ananta Kr. Malakar I.A.S. Joint Secretary to the Govt of Assam Education Dept. Disprn. - 6.

is informed that under No. dated (Gazette page. 19) he is entitled to draw pay leave salary and allowance at the monthly rates shown below from the dates specified less the amount already drawn.

	From 1-1-94	From 1-6-94	From 1-7-94	From 29-11-94	From 1-1-95	From 1-4-95	From 1-7-95	From 1-1-96	From 1-1-97	From 30-12-97	From	From
Substantive pay												
Officiating pay	5050/-	5050/-	5050/-		5250/-	5250/-	5250/-	5375/-	5375/-			
Joining time pay												
Special pay	250/-	250/-	250/-		250/-	250/-	250/-	250/-	250/-			
Leave Salary	-	-	-	5300/-	-	-	-	-	-			
Non-practising allowance												
Dearness allowance	2250/-	2250/-	2500/-	2500/-	2550/-	2850/-	3150/-	3550/-	3850/-			
House Rent allowance												
City compensatory allowance	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-			
Kit maintenance allowance												
Winter allowance												
Medical allowance		100/-	100/-	100/-	100/-	350/-	350/-	350/-	350/-			
Hill allowance												
Total	7570/-	7670/-	7920/-	7920/-	8420/-	8670/-	8970/-	9570/-	9870/-	NIL		

N.B. D.A admissible from ..... may be computed and claimed at the rates applicable on basic pay only as per this office General authority No. GEI/DA/State/83-84/546 dated 23rd August, 1984, 815 dated 15th November, 1984, 21/75 dated 5th March 1985, 805 dated 10th September 1985, 664 dated 3rd March 1986.

Payment is subject to production of due and drawn statement.

Admitted  
 17.6.97

pl note the no. a. Date of formation 5 JAS cadre in A/N



- 20 -

Note :-  
I-A detailed statement showing the amount already drawn together with corresponding T.V. Nos. and dates and the  
should be appended to the Bill for arrears claims.

II-Drawal of non-practising allowance is subject to production of usual non-practising certificate.  
This scale of pay is \_\_\_\_\_ increment accrues on \_\_\_\_\_ every year and in the absence  
instruction to the contrary this may be drawn till the stage\* \_\_\_\_\_ is reached.

III-Drawal of Rent is subjected to production of certificate in Annexure I or II or III whichever is applicable as pre  
in Finance Department O.M. No. F.M. 63/74/5, dated 11th June 1974/No. F.M. 85/83/11, dated 2nd September 1983 along  
the pay Bill for the month of January and July each year.

Note :- 1. It is particularly requested that the slip may be attached to the first pay Bill drawn at these rate and that No. 18/15  
may be entered at his audit number at the top of every pay bill.

2. Deductions of fund subscriptions and recoveries of Government due as noted in the last pay certificates should be certified  
unless otherwise stated.

\*Here state the stage at which a pause or efficiency bar operates.

Date.....

Signature Ch...

Assistant Accountant General  
Accounts Officer

No. SE-1/RS/

Copy forwarded to the Treasury Officer Dispen for information. He should insert the details of pay given above in any  
last pay certificate issued by him in favour of this Government servant.

Date.....

Signature Ch...

Assistant Accountant General  
Accounts Officer

No.....

Copy forwarded to the Estate Officer  
Executive Engineer, P.W.D. Building Division. for

Signature Ch...

Assistant Accountant General  
Accounts Officer

N.B. :- (1) In case of leave salary the nature of leave may be specified in columns (1) to (2) overleaf.  
(2) Where the leave salary during leave is allocable among different Government the allocation should  
should be clearly indicated.

AGP 5/89 (AG) 1,00,000

Attested  
33  
Advocate

Pay/leave Salary Slip

- 21 -

Office of the Accountant General (A & E) Assam,  
Maidamara, Guwahati-25

ANNEXURE-4

OFFICE OF THE ACCOUNTANT GENERAL (A & E) ASSAM, ETC. GUWAHATI  
No. 121/1045/228 GUWAHATI the 8.6.98 19

Shri. Ananta K. Bhattacharya, J.A.S. Labour Commissioner Assam dated                      (Gazette page                     )

It is informed that under No.                      he is entitled to draw pay leave salary and allowance at the monthly rates shown below from the dates specified less the amount already drawn:

	From	From	From	From	From	From	From	From	From	From
	20.12.96	1.97.97	1.97.97	24.6.97	1.7.97	20.7.97	1.12.97			
Comprehensive pay	15500	15500	15500	15500	15500	15500	15500			
Officiating pay	250	250	250	250	250	250	250			
Joining time pay										
Special pay										
Leave Salary										
Non-practising allowance	620	1240	1240	1240	2015	2015	2015			
Dearness allowance	20	20	20	20	20	20	20			
House-Rent allowance										
City compensatory allowance										
Kit maintenance allowance										
Winter allowance	575	675	675			675	675			
Medical allowance										
Hill allowance										
Total	17065	17325	17325	17325	17325	17325	17325			

(2) Regarding arrears necessary instruction may be obtained from Finance Dept.

N.B. D.A admissible from                      may be computed and claimed at the rates applicable on basic pay only as per this office General authority No. GEI/DA/State/S3-64/546 dated 23rd August, 1984, - 815 dated 15th November, 1984, - 2175 dated 5th March 1985, 805 dated 10th September 1985, 664 dated 3rd March-1986.

Amrita  
Wan  
Advocate.

Note :-

I-A detailed statement showing the amount already drawn together with corresponding T.V. Nos. and dates and the amount to be drawn should be appended to the Bill for arrear claims.

II-Drawal of non-practising allowance is subject to production of usual non-practising certificate.

This scale of pay is \_\_\_\_\_ increment accrues on \_\_\_\_\_ every year and in the absence of instruction to the contrary this may be drawn till the stage \_\_\_\_\_ is reached.

III-Drawal of House Rent is subjected to production of certificate in Annexure I or II or III whichever is applicable as prescribed in Finance Department O.M. No. F.M. 63/74/5, dated 11th June 1974/No. F.M. 85/83/11, dated 2nd September 1983 along with the pay Bill for the month of January and July each year.

3 (XIV)

Note :- 1. It is particularly requested that the slip may be attached to the first pay Bill drawn at these rate and that No. \_\_\_\_\_ may be entered at his audit number at the top of every pay bill.

2. Deductions of fund subscriptions and recoveries of Government due as noted in the last pay certificates should be certified unless otherwise stated.

\*Here state the stage at which a pause or efficiency bar operates.

Date.....

No. GE. 211/21.5/1229

Copy forwarded to the Treasury Officer S. B. S. for information. He should insert the details of pay given above in any last pay certificate issued by him in favour of this Government servant.

Date.....

No. GE. 210/21.5/250

Copy forwarded to the Estate Officer S. B. S.  
Executive Engineer, P.W.D. Building Division. for i

Signature V. S.  
Assistant Accountant General  
Accounts Officer

Signature V. S.  
Assistant Accountant General  
Accounts Officer

Signature S. B. S.  
Assistant Accountant General  
Accounts Officer

N.B. :- (1) In case of leave salary the nature of leave may be specified in columns (1) to (2) overleaf.  
(2) Where the leave salary during leave is allocable among different Government the allocation should be clearly indicated.

AGP. 625/93 (AG.) 70,000

8/8/98

35  
100  
Advocate

2

10/11/89

is informed that under No. \_\_\_\_\_ dated \_\_\_\_\_ (Gazette page \_\_\_\_\_) \_\_\_\_\_

Chenille - 18

Good  
Wan  
A. H. H. H.

is subject to production of due & sworn statement.

... drawn together the corresponding T.V. Nos. and dates and the amount to be drawn should be appended to the Bill for

... production of usual non-practising certificate.

... increment accrues on ..... every year and in the absence of instruction to the

... is reached.

... may be drawn till the stage \* ..... is reached.

... may be attached to the first pay Bill drawn at these rates and that No. 18(16) may be entered at his audit number at the

... payment due as noted in the last pay certificates should be effected unless otherwise stated.

... which a pause or efficiency bar operates.

Signature *M. C. Attar*

Assistant Accountant General.

Sr. Accounts Officers

... Treasury Officer *Given* for information. He should insert the details of pay given above in any last pay certificate issued by him

... Government, etc.

Signature

Assistant Accountant General

Sr. Accounts Officers

... Officer  
... forwarded to the ..... for information.  
Executive Engineer, P.W.D. Building Division.

Signature

Assistant Accountant General

Sr. Accounts Officers

N.B. ... the nature of leave may be specified in column (1) to (12) overleaf  
... during leave is allocable among different Government the allocation should be clearly in hand.

... 1.1.1965

Attested  
*Advocate.*

**Pay/Leave Salary Slip  
(A & E)**

ANNEXURE - 6

Annex-6

0.(19.)

See paras 162 and 184 (I) M.S.O. (10)

Office of the Accountant General, Assam, Guwahati-29

N GEA/11/JAS/221

Guwahati the 2.6.99

19

Shri Amanta Kr. Malakias J.A.S. Labour Commissioner, Assam

is informed that under No. \_\_\_\_\_ dated \_\_\_\_\_ (Gazette page \_\_\_\_\_) he is entitled to draw pay leave Salary and allowance at the monthly rates shown below the dates specified less the amount already drawn.

Particulars	From	From	From	From	From	From	From	From	From	From	From	From	From	From	From	From
Substantive pay	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300
Officiating pay																
Joining time pay	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250
Special pay																
Leave Salary																
Non-practising allo.																
Dormitory allowance	452	904	904	904	1469	1469	1469	1511	1860	1860	2558	2558	2558	2558	2629	
City compensatory allowance	20	20	20	20	20	20	20	20	20	20	20	20	20	20	120	120
Kin maintenance allowance																
Winter allowance S. D. A.	675	675	675	-	-	675	1413	1453	1453	1453	1453	1453	-	1453	1453	1494
Compensatory allowance																
Medical allowance																
Hill allowance																
Total	12697	13149	13149	12744	14037	13714	14415	14857	15208	15208	15908	14453	15908	16131	16565	

I, D.A. as admissible on basic pay may be drawn as per General Authority issued by this Office.

N.B. : Arrear Pay & Allowances from 1st January, 1996 to 31st July 1998 should be credited to G.P. Fund Account vide Govt. Notification No. FPC.5/94/169 dated 4th July 1998.

N.B. (Payment) in Subject for Production of the drawn Statement.

**Attested**  
by  
**Advocate.**

amount drawn together the corresponding T.V. Nos. and dates and the amount to be drawn should be appended.

is subject to production of usual non-practising certificate.

increment accrues on ..... every year and in the absence of instruction

the stage ..... is reached.

the slip may be attached to the first pay Bill drawn at these rates and that No. 16 (XIV) may be entered at his audit number.

and recoveries of Government due as noted in the last pay certificates should be effected unless otherwise stated.  
in a pause or efficiency bar operates.

Signature .....  
Assistant Accountant General  
Sr. Accounts Officers

Copy forwarded to the Treasury Officer ..... for information. He should insert the details of pay given above in any last pay certificate issued by him in favour of this Government servant.

Date .....  
Signature .....  
Assistant Accountant General  
Sr. Accounts Officers

Copy forwarded to the Executive Officer ..... for information.  
Executive Engineer, P.W.D. Building Division.

Signature .....  
Assistant Accountant General  
Sr. Accounts Officers

N.B. (1) In case of leave salary the nature of leave may be specified in column (1) to (12) overleaf.  
(2) Where the salary during leave is allocable among different Government the allocation should be clearly indicated.

- 27 -  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

ANNEXURE - 7

Date of Order: This the 25th Day of June, 2001.

HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE CHAIRMAN  
HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Shri Lajmi Nath Tamuli (O.A.No.266 of 99) Applicant  
-Vs-  
Union of India & Ors.
2. Shri Ananta Kr.Malakur (O.A.No.267 of 99) Applicant  
-Vs-  
Union of India & Ors.
3. Jones Ingti Kather (O.A.No.336 of 99) Applicant  
-Vs-  
Union of India & Ors. Respondents.

Mr.B.K.Sharma Advocate for the  
Mr.S.Sharma Petitioner(S)

Mr.B.C.Pathak, Advocate for the  
Addl.C.G.S.C. Respondent(s)

O R D E R.

K.K.SHARMA, ADMINISTRATIVE MEMBER:

All three applications are taken together as the issue raised is the same. All the three applicants were promoted to DAS from State Civil Service on 30.12.1996.

The issue in all three applications relates to the fixation of pay by pay Slip dated 10.6.99. The facts in all the three O.A.s are similar. The facts are discussed below:-

By the Pay Slip dated 11.8.97 the pay of the applicant in O.A.No.266 of 99 was fixed as under :-

Substantive pay	Rs. 4,700.00
Special Pay	Rs. 250.00
Personal Pay	Rs. 350.00
Dearness Allowance	Rs. 5,593.00
H.R.A.	Rs. 1,040.00
C.C.A.	Rs. 20.00
S.D.A.	Rs. 587.00

Rs. 12,540.50

contd/2.

**Attested**  
*[Signature]*  
**Advocate**



Before promotion to the I.A.S. the applicant was drawing substantive pay of Rs. 5050. When the applicant objected the pay fixed as per Pay Slip dated 9.12.97 was revised by Pay Slip in dated 15.6.98 to Rs. 15100. By Pay Slip dated 24.11.98 the applicants pay in the ~~Andaman~~ Civil Service was revised w.e.f. 1.1.96 to Rs. 10,375. By pay slip dated 10699, the pay of the applicant was revised to Rs. 10,975, on 30.12.96 and Rs. 11,300 as on 1.12.97.

The applicants have challenged the re-fixation of pay and prays that the impugned pay slip dated 10.6.99 should be corrected and they be allowed to draw salary as per the re-fixation made earlier by pay slip dated 15.6.98. The impugned pay slip is challenged on the ground that pay has been re-rixed without giving any opportunity and without application of mind and will place them in a disadvantageous position in terms of status and this is clearly contrary to the Constitutional provisions apart-from causing a huge financial loss. Mr.B.K. Sharma and Mr.S. Sarma learned counsels appearing on behalf of the applicants submitted that the pay of the applicant in O.A.No.266 of 99, at the time of his promotion was Rs.5050/-. On promotion to the IAS from 30.12.96, pay was fixed at 5050/- in the pay of scale Rs.4800-5700/- (selection grade). On 17.10.97 the IAS(Pay) Fifth Amendment Rules, 1997 was published effecting revision of pay with effect from 1.1.96. The comparative pay scale in IAS is reproduced below:-

Pre-revised	Revised
i) Rs. 3200 - 4700 (Time scale)	Rs. 10,650 - 15,850
ii) Rs. 3950 - 5000(JAG)	Rs. 12,750 - 16,500
iii) Rs. 4800 - 5700(SG)	Rs. 15,100 - 18,300

contd/-

Attested  
Advocate

16 (16/11/99)

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- 27 -

As the applicant's pay was Rs. 5050/-, the Accountant General correctly fixed the pay of the applicant at Rs. 15100/- in the scale of Rs. 15100/- to 18,300/-. On 4.7.98 the pay revision of State was published effective from 1.1.96. The basic pay of Rs. 5050(Pre-revised) in ACS stood revised to Rs. 10,375(revised). On 10.6.99 the Accountant General, Assam refixed the pay of the applicant and reduced pay in the IAS grade as indicated in the pay slip from Rs. 15,1000 to Rs. 10,975 on (30-12-96) and from Rs. 15,500/- to Rs. 11,300 on (1.12.97). The downward revision of the pay scale of the applicant is contrary to Clause 4 of Section 1 of Schedule II of the IAS(pay) Rules 1954. The learned counsel referring to the Notification dated 20.11.97 notifying the IAS(pay), Fifth Amendment Rules 1997, submitted that under column Explanatory Memorandum it is mentioned that no member of the IAS should be adversely affected by giving retrospective effect to those Rules. The undertaking dated 8.6.98 given by the applicant to refund any excess payment was a routine undertaking required to be given by all such promotee officers and the said undertaking did not envisage the kind of situation now created by the impugned pay slip. They relied upon the following reported cases :-

AIR 1994 SC 2480- Bhagwan Shukla -Vs- U.O.I  
(1989) 1 SCC 765- H.P.C.L. Vs. H.L.Trehan  
(1975) 3 SCC 1.- Divn. Supdt. E.R., Vs. L.N.Keshri

to argue that pay could not be reduced without giving opportunity of being heard.

Mr. B.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of the respondents, referred to the written

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Attested  
Advocate

10/11/98

statement filed by the respondents. It was submitted that the pay of the respondents was fixed in terms of the recommendation of the 5th Pay Commission become applicable. At the time of their promotion to the IAS, the applicants were drawing the pay in the pre-revised scale. Their pay was not required to be fixed as on 1.1.96, it was to be fixed with effect from the date of their promotion. He referred to the Department of Personnel Government of India letter No.20015/1/92-AIS(II) dated 10.4.92 and argued that the applicant's pay was fixed initially in terms of this letter. The letter is reproduced below:-

"the pay of State Civil Service/Non-State Civil Service Officers inducted into the Indian Administrative Service may be fixed in the Senior scale at a stage next above their State Pay. Senior scale of Indian Administrative Service in the pre-revised scale consists of (i) Time Scale: Rs.3200-4700(ii) Junior Administrative Grade Rs. 3950-5000; and (iii) Selection Grade Rs.4800-5700. While fixing pay in such a manner, if the pay stage happens to be common to any two grades of the Senior scale, the officer has to be placed in the lower of these two grades. In addition, they may also be allowed annual increments till the attainment of the stage of Rs. 5700/- in the normal course."

As the IAS pay scales were revised with effect from 1.1.86 and are based on Consumer Price Index 608, the element of Dearness Allowance, Additional Dearness Allowance, Adhoc Dearness Allowance and Interim Relief were to be merged at the time of revision of pay scales with effect from 1.1.89 were required to be reduced, from the actual pay of the State Civil Services Officers and the resultant amount would be taken into account as pay for the purpose of pay fixation on appointment in Indian Administrative Service.

contd/-5

Attended  
10/11/92  
Advocate

10/11/92

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If the resultant amount exceeds the maximum stage of senior time scale of IAS, the pay would be fixed at such maximum and the difference in the state <sup>pay</sup> would be protected as personal pay, subject to the condition that total pay plus personal pay should not exceed Rs. 5700. The personal pay thus allowed would be absorbed in future increases of pay. On the basis of the letter the applicant's pay would require to be fixed as under :

"Indian Administrative Service was fixed as under:  
State Pay:

Indian Administrative Service Pay.

Pay scale Rs. 3825-125-4450 (1) Rs. 3200-4700/- (Time scale)  
 150-5200-175-5900/-  
 (11) Rs. 3950-5000/-

(Junior Administrative Grade)

Pay as on 30.12.96. Rs. 5050 (11) Rs. 4800-5700/- (Selection grade).

Pay as on 30.12.96 Rs. 4700/  
 (\*) Personal Pay Rs. 350/

Rs. 5050/-

(Pay Fixed in terms of Government of India letter dated 10.4.92.

<u>Total emoluments of State Pay</u>	<u>Total emoluments of Administrative Service Pay (Central)</u>
--------------------------------------	---

Rs. 10120/-

Rs. 12,540/- "

The applicants were promoted to the IAS with effect from 30th December 1996, as they were State Civil Service Officers till 29.12.96. They were authorised the benefits of arrear pay and allowances of the State Service with reference to the Assam Services (Revision of pay) Rules, 1998 with effect from 1.1.96. The pay of Sh. J. N. Tamuli (OA 266/99)

contd/-6

*Advocate*

*10/11/96*

as per the State Service Rules was Rs. 10,375 in terms of the Assam Services (Revision of pay) Rules, 1998. and his pay was re-calculated at Rs. 10,975/- in the senior scale of Indian Administrative Service in the scale of Rs. 10,650-325-15850/-. The pay slip dated 10.6.99 was issued on receipt of the Assam Services (Revision of pay) Rules 1998, which was not available at the time of issuing the Provisional pay slip dated 17.6.98. The pay of the applicant was revised from Rs. 5100/- to 15,100/- as an interim measure, in terms of IAS 5th Pay Commission amendment Rule 1997 which came into force from 1.1.96, with reference to a pre-revised State Service pay scale, the pay of the applicant was provisionally fixed at the stage of Rs. 15,100/- in the revised scale of Rs. 15,100/- to 19300/- with the applicant furnishing an undertaking as under:

"I do hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of the discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise."

At that time it was informed that their pay would be fixed on the basis of the reckonable State pay, in pre-revised IAS pay scales. The corresponding stages in the revised IAS scales would then be allowed in the component of the senior scale in which such officers happen to fall in the senior scale. The senior pay scales have been described as under :-

<u>Pre-revised</u>	<u>Revised</u>
(1) 3200-4700 Time scale	(1) 10,650-325- 15850
(2) 3950 5000 Junior Administrative Grade.	(2) 12,750-375 - 16500
(3) 4800-5700 (Selection grade)	(3) 15100-400-19300

The action of this respondents to refix his pay at a lower stage was only as per the relevant rules which lay down

that the IAS pay of such promoted officers is to be fixed at the stage next to the reckonable state pay. The applicant's pay was required to be fixed in the Sr. time scale, not in the selection grade, at the selection Grade is allowed on completion of 13 years of service. The applicant's year of allotment is 1990 and he would become eligible for selection grade only in the year of 2003. The fixation of the pay at Rs. 15,100 was only an interim measure and the pay slip issued to the applicant was a provisional one. The retrospective fixation of the pay of the applicant would not adversely affect the applicant <sup>and U</sup> is not violative of any rules. In this case as the State Pay of the applicant was <sup>respondents the</sup> revised with effect from 1.1.96. According to the applicant was not in IAS on 1.1.96 and his pay was not required to be fixed on the basis of pay revision in State service on 1.1.96. The Notification dated 17.10.97 revised the pay scales of the I.A.S. with effect from 1.1.96 when the applicant was not in the I.A.S. The said notification is to become operative in his case only from 30.12.96 onwards. The respondents deny that there has been any reduction in the applicant's rank on the downward revision of his IAS pay on the basis of his revised State pay. The applicant was not eligible for Selection Grade, in which scale his pay was provisionally fixed. The applicant's pay was required to be fixed in one of the Senior scales of IAS when the State pay was revised with effect from 1.1.96. On 4.7.98 the pay of the applicant was Rs. 10375.

The applicant's pay in the State pay scale as IAS are given below:-

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Attested  
*[Signature]*  
 Advocate

11/11/2008

Total emoluments of State Pay :

Revised State Pay

Revised Indian Administrative Service Pay.

State pay as on 30.12.96 (Senior Scales)  
(revised)

Rs. 10050-325-11025-400- (1) Rs. 10650-325-15850/-  
14625-475-15575/- (2) Rs. 12750-375-16500/-  
(3) Rs. 15100-400-19300/-

Pay fixed at Rs. 10375/- Pay fixed at Rs. 10975/-

Total emoluments of State pay.

Total emoluments in Indian Administrative Service pay scale.

Basis Pay - Rs. 10325/-

Basic pay - Rs. 10975/-

Special Pay Rs. 250/-

Special Pay- Rs. 250/-

Dearness allowance 450/-

Dearness allowance Rs. 439/-

House Rent Allowance 600/-

House Rent Rs. 1000/-  
Allowance

Compensatory Allowance 20/-

Compensatory Rs. 20/-  
Allowance

Special Duty Rs. 587.50  
Allowance

Rs. 11660/-

Rs. 13271.50/-

It is stated that there is no decrease by the emoluments of the applicant. The respondents have referred to the Circular No.2001/1/95-AIS-(II) dated 17.5.96. The relevant portion of this circular is reproduced below:-

" the pay of State Civil Service/Non-State Civil Service officers inducted into the Indian Administrative Service may be fixed in the Senior Scale at a stage next above their State Pay. Senior scale of Indian Administrative Service in the Pre-revised scale consists of (i) Time Scale Rs. 3200-4700(ii) Junior Administrative Grade Rs. 3950-5000; and (iii) Selection Grade Rs. 4800-5700. While fixing pay in such a manner, if the pay stage happens to be common to any two grades of the Senior Scale, the officer has to be placed in the lower of these two grades. In addition, they may also be allowed annual incre-

contd/-

Attested  
Advocate.  
Attested  
Advocate.

V. V. Subbarao

- 35 -

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ments till attainment of the stage of Rs. 5700/- in the normal course."

We have heard the parties at length. The undisputed fact is that the applicants were promoted to IAS on 30.12.96. The pay of the applicant in O.A. No. 266/99 as on 30.12.96 was Rs. 5050 in the pre-revised State Scale. The IAS pay scale as revised from 1.1.96 was not applicable to the applicant on 1.1.96 as on 1.1.96 he was not in IAS. As such fixation of his pay at Rs. 15100/- in the revised IAS scales in force from 1.1.96 on the basis of his basic pay of Rs. 5050 (pre-revised State pay) was not correct, as in terms of Ministry of Personnel, Public Grievances & Pensions circular No. 20015/1/92-IAS II, the pay of the applicants on promotion was to be fixed in the senior time scale, which was Rs. 3200-4700 (pre-revised). The fixation of pay at Rs. 4700 on 30.12.96 + personal pay of Rs. 350 would make total emoluments of the applicant Rs. 12,540/- as against Rs. 10,120 in State Service (by pay slip dated 11.8.97) on 4.7.98 on revision of State Service scales with effect from 1.1.96, the applicants pay in state service fixed at Rs. 10,375 in the scale of Rs. 10050-325-11025-400-14625-475-15575. The applicants pay in the revised IAS pay scale of Rs. 10,650-325-15650 was fixed at Rs. 10,975. The total emoluments in the revised scale in State Service worked out to Rs. 11,660 against Rs. 13271.50 in IAS. Thus there was no reduction of pay of the applicant. Prima facie, it cannot be said to be reduction <sup>of</sup> pay. Fixation of pay at Rs. 15,100/- was only proteam measure. No infirmity as such is not discernible in the impugned action of the respondents in re-fixing the pay by the impugned pay slip dated 10.6.99. This is, however, our tentative view. However, as the applicants have come directly, we are of the opinion that

**Attested**  
*[Signature]*  
**Advocate**

Contd....10

16/11/99

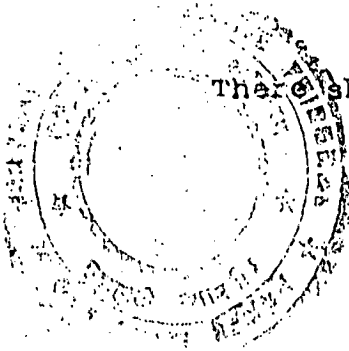


ends of justice would be met, if a direction is issued on the applicants to ventilate their grievances before the Respondent No.1 by way of a Representation so that the said Respondent can look into their grievances as per law. The applicants are accordingly directed to make a detailed Representation before the Respondent No.1 narrating their grievances within six weeks from receipt of this order. If such Representation or Representations are made, the Respondent No.1 shall examine and consider the same as per law without being influenced by way of our observations, and pass a reasoned order with utmost expedition, preferably within four weeks from the receipt of the Representation. The applicants will be free to move appropriate forum, if they still feel aggrieved on the disposal of their representations.

The applications are disposed of as above.

There shall be no order as to costs.

Sd/VICE CHAIRMAN  
Sd/MEMBER (Adm)



TRUE COPY

सिद्धांत

*Handwritten signature and date: 23/7/2021*

Section Officer  
National Commission for Women  
Government of India  
New Delhi

*Handwritten signature and date: 23/7/2021*

Attested  
Advocate.

BEFORE THE SECRETARY TO THE GOVERNMENT OF INDIA,  
 MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND  
 PENSIONS, DEPARTMENT OF PERSONNEL & TRAINING,  
 NORTH BLOCK, NEW DELHI-110001

IN THE MATTER OF

FIXATION OF PAY UNDER THE INDIAN ADMINISTRATIVE  
 SERVICE (PAY) RULES, 1954.

IN THE MATTER OF

REVISION OF PAY UNDER THE INDIAN ADMINISTRATIVE  
 SERVICE (PAY) FIFTH AMENDMENT RULES, 1997.

IN THE MATTER OF

PAY SLIP NO.GE-CELL/IAS/221 Dt. 2-6-99 ISSUED BY  
 THE ACCOUNTANT GENERAL (A&E) ASSAM, GUWAHATI-781029.

- AND -

IN THE MATTER OF

SUBMITTING REPRESENTATION IN PERSUANCE OF THE ORDER  
 DATED 25.6.2001 PASSED BY THE HON'BLE CENTRAL  
 ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH IN THE O.A.  
 NO. 267 OF 1999.

- AND -

IN THE MATTER OF

ANANTA KR. MALAKAR, IAS.,  
 LABOUR COMMISSIONER, ASSAM,  
 GOPINATH NAGAR,  
 GUWAHATI-6. †

PETITIONER

( Cont..2 )

Received  
 6/10/01  
 PA to comr  
 Personnel  
 Dpty NO 517  
 dt 6/10/2001

Amended

10/10/01

11/10/01

( 2 )

THE HUMBLE ABOVE - NAMED PETITIONER MOST RESPECTFULLY SHEWETH AS UNDER :

1. CIRCUMSTANCES OF THIS REPRESENTATION :

- 1.1. That your humble petitioner was initially appointed in the Assam Civil Service in the year 1975 and there after appointed by promotion in the Indian Administrative Service (hereafter I.A.S.) vide Govt. of India Notification No. 14015/5/96 - AIS (1) dt. 30th Dec, 1996 and joined on the same day.

A copy of the aforesaid notification republished by the Govt. of Assam is enclosed herewith which is marked as Annexure - I.

- 1.2. At the time of appointment in the I.A.S. on 30-12-96 the basic pay of the petitioner was Rs.5,200/- in the Scale of Pay Rs.3825 - 125 - 4450 - 150 - 5200 - 175 - 5900. The Accountant General Assam (Respondent No.2 as figured in OA No.267 of 99 hereinafter A.G.) in June, 97 fixed the pay of the Petitioner at Rs.5400/- (vide pay slip No. GE-1 - CELL/IAS/57-69 dt. 2-6-97) as per provision of Indian Administrative Service (Pay) Rule, 1954 (hereinafter Rules of 1954) and several Notification issued by the Govt. of India for this purpose. When the Indian Administrative Service (Pay) Fifth Amendment Rules, 1997 was published by Notification No. 14021/2/97 - AIS (II)A dt. 16-10-97 the substantive pay of the Petitioner was revised from Rs. 5400 to 15,500 in the scale of Rs. 15,100 - 4 - 18,300 by the A.G. vide Pay Slip No. GE - CELL/IAS/228 dt. 8-6-98.

A copy of the Pay Slip dt. 8-6-98 is enclosed as Annexure - 4.

( Cont..3 )

Advocate

( 3 )

The said Pay Slip also allowed your humble Petitioner to an increment w.e.f. 1-12-97 fixing his pay as on 1-12-97 at Rs.15,900/- vide Pay Slip No. GE-CELL/IAS/228 dtd. 8-6-98 marked as Annexure -4.

- 1.3. Under the Assam Services (Revision of Pay) Rules, 1998 was published on 4-7-98 the A.G. refixed the substantive pay of your humble Petitioner to Rs.11,300/- w.e.f. 30-12-96 and to Rs.11,300/- from 1-7-97 in the scale of pay of Rs.10,650 - 325 - 15,850 in the IAS reducing the substantive pay from Rs.15,500/- and Rs.15,900/- respectively vide Pay Slip No. GE Cell/IAS/221 dt. 2-6-99.

A copy of the Pay Slip dt. 2-6-99 is enclosed and marked as Annexure -6.

- 1.4. Being agrieved by the arbitrary and suo moto refixation of the substantive pay by the A.G. your humble Petitioner who did not hold any lien to the Assam Service (Revision of Pay) Rules, 1998, filed an application before the Guwahati Branch of the Central Administrative Tribunal which was registered as O.A. No. 267 of 1999 and the Hon'ble Tribunal by its orders dt. 25-6-2001 has directed as under.

As the applicants have come directly, we are of the opinion that the ends of justice would be met if a direction issued on the applicants to ventilate their grievances as per law. The applicants are accordingly directed to make a detailed Representation before the respondent No.-I narrate their grievances

( Cont..4 )

**Attested**

*u. Sen*  
**Advocate**

within 6 weeks from the receipt of the order. If such Representation or Representations are made, the Respondent No. - I shall examine and consider the same as per law without being influenced by way of our observations and pass a reasoned order with utmost expedition preferably within 4 weeks from the receipt of the Representation.

Hence, pursuant to the aforesaid direction of the Hon'ble Tribunal, your petition has submitted this Representation for the ends of justice. Though the aforesaid order was passed on 25-6-2001, the same was forwarded to your Petitioner in an address on 27-7-2001 which was received by the Petitioners office on 27-8-2001. Therefore, the Representation is within the period of limitation. Copy of the forwarding letter No. CAT/GHY/JUDL/2723 dt 27-7-2001 is enclosed herewith and marked as Annexure -9.

1.5 Since the union of India is represented by the Secretary to the Govt. of India, Ministry of Personnel, Public Grievances & Pension, Deptt. of Personnel & Training, New Delhi, was made Respondent No. I in O.A. No. 267 of 1999, hence the petition is submitted to him accordingly.

2. FACTS OF CASE :

2.1. That your humble Petitioner was initially appointed in the Assam Civil Service in the year 1975 and has worked in several capacities as member of the Assam Civil Service in the State of Assam.

( Cont..5 )

Attested  
W.D.  
Advocate

2.2. That your humble Petitioner was nominated and appointed in Indian Administrative Service vide Government of India Notification No. 14015/5/96 - AIS(1) dated 30th December, 1996 and accordingly your humble Petitioner joined IAS on 30.12.1996.

A copy of the said Notification which was re-published by Government of Assam is enclosed hereto and marked as Annexure - 1.

2.3. That at the time of appointment in the IAS your humble Petitioner was drawing the salary as per the Pay Slip issued by the Accountant General, Assm bearing No. GE-1/PS/1866 and the basic salary was Rs.5,200/-.

A copy of the said Pay Slip is enclosed hereto and marked as Annexure -2.

2.4. That the pay of the IAS Officers is guided by the Indian Administrative Service (Pay) Rules, 1954 (hereinafter referred to as Rules) and Rule 4(3) of the said Rules deals with the fixation of the initial pay of a promoted officer who has not hold a cadre post in an officiating capacity and the sub-rule 3 of the Rule 4 of the said Rules reads as under :

"The initial pay of a promoted officer who prior to the date of the appointment to the IAS Officer had not held a cadre post in an officiating capacity shall be fixed in accordance with the principles laid down in section-1 of the Schedule-II."

( Cont..6 )

Attested  
W.D.M.  
Advocate

Clause 2 of Section-1 of Schedule-II deals with the pay fixation of a promoted officer who is substantive in higher scale of the State Civil Service and your humble Petitioner being in the Senior Grade-I of the State Civil Service is naturally guided by the Clause 2 of the Section-I of the said rule in the matter of his pay fixation under the IAS Pay Rules. The Clause 2 of the Section-1 of Schedule-II of the said rules reads as under :-

"The initial pay of a promoted officer who is substantive in the higher scale of the State Civil Service shall be fixed at the stage of senior scale of the IAS next above his actual pay in the higher scale.

Provided that in a case where the pay in the senior scale of the Indian Administrative Service calculated in accordance with clause (1) is higher than that admissible under this clause, the promoted officer shall be entitled to such higher pay."

- 2.5. Thus it is very much clear that the pay of a promoted officer is to be fixed next above to his actual pay in the higher scale of the State Civil Service and the only limitation to this rule is provided for in Clause 8 of the said section which provides that the basic pay of a promoted officer shall not at any time exceed the basic pay he would have drawn on the IAS time scale as a direct recruit on that date if he had been appointed to the IAS on the date on which he was appointed to the State Civil Service which

means that the pay of a promoted officer can not exceed the pay of the direct recruit taking into account his date of entry in the State Civil Service as the entry in IAS.

2.6. Your humble Petitioner at the time of his appointment in the IAS was drawing a substantive pay of Rs.5,200/- and as such his pay was fixed in IAS by the Accountant General, Assam vide GE-1-CELL/IAS/67-69 dated 2.6.1997 as follows :-

Substantive pay	...	Rs. 5,400/-
Special pay	...	Rs. 250/-
Dearness Allowance	...	Rs. 6,426/-
S.D.A.	...	Rs. 675/-
Interim Relief	...	Rs. 1,180/-
Conveyance Allowance	...	Rs. 20/-
Total	...	Rs.13,951/-

A copy of the said Pay Slip bearing No. GE-1-CELL/IAS/67-69 dated 2.6.1997 is enclosed hereto and marked as Annexure -3 and perhaps at the instructions of the Central Government.

2.7. Your humble Petitioner had been drawing his salary in accordance with the said Pay Slip till his pay was revised in accordance with the Indian Administrative Service (Pay) Fifth amendment Rules 1997 which was published vide Notification No. 14021/2/97-AIS(2)-A dated 16.10.1997. Meanwhile your humble Petitioner joined as Labour

( Cont..8 )

**Attested**  
*[Signature]*  
**Advocate**



Commissioner on 3.11.1997 and got the Pay Slip issued by the Accountant General vide No. GE-CELL/IAS/228 dated 8.6.1998 and the pay was fixed as on 30-12-1996 :-

Substantive pay	...	Rs.15,500/-
Special pay	...	Rs. 250/-
Dearness Allowance	...	Rs. 620/-
S.D.A.	...	Rs. 657/-
C.C.A.	...	Rs. 20/-
Total =	...	Rs.17,065/-

2.8 The said Pay Slip also allowed your humble petitioner to an increment w.e.f. 1.12.1997 fixing his pay as on 1.12.1997 as under :-

Substantive pay	...	Rs.15,900/-
Special pay	...	Rs. 250/-
Dearness Allowance	...	Rs. 2,067/-
S.D.A.	...	Rs. 675/-
C.C.A.	...	Rs. 20/-
Total =	...	Rs.18,912/-

A copy of the said Pay Slip dated 8.6.1998 is enclosed hereto and marked as Annexure -4.

Amended  
N.Dan.  
Ad-recta

2.9. Your humble Petitioner has been drawing his pay in accordance with the Pay Slip issued by the Accountant General, Assam on 8.6.1998 till the date. In the meantime the pay of the Assam Civil Service to which your humble Petitioner originally belonged was revised w.c.f. 1.1.1996 in the year 1998. Since your humble Petitioner did not any more remain in the Assam Civil Service after his induction into Indian Administrative Service the Accountant General, Assam issued a Pay Slip revising his pay in the Assam Civil Service upto 29.12.1996 by a Pay Slip issued on bearing No.GE-1/P.S./1266 dt. 10.11.98.

A copy of the said Pay Slip is enclosed hereto and marked as Annexure -5.

2.10. In the said Pay Slip issued on 10.11.1998 period upto 29.12.1996 was only covered and naturally it did not and could not have covered any period beyond 30.12.1996 because on that day onwards your humble Petitioner ceased to be a member of the Assam Civil Service on his induction into Indian Administrative Service.

2.11. Surprisingly enough the Accountant General, Assam, has issued a pay slip bearing No. GE CELL/IAS/221 dated 2.6.1999 which was posted by the office of the Accountant General, Assam on 22.6.1999 and the same was received by me on 30th June, 1999. By this Pay Slip the Accountant General, Assam has reduced my substantive pay from Rs.15,500/- to Rs.11,300/- as on 30.12.1996 and from Rs.15,900/- to Rs.11,625/- as on 1.12.1997 thus bringing my total emoluments

( Cont..10 )

Advocate  
K. S. S. S.  
Advocate

reduced from Rs.17,065/- to Rs.12,697/- as on 30.12.1996 and from Rs.18,912/- to Rs.14,852/- as on 1.12.1997. This has been done in violation of all rules, regulations, norms, settled principles of law and of jurisprudence and of natural justice.

A copy of the said impugned Pay Slip is enclosed hereto and marked as Annexure -6.

2.12. Your humble Petitioner most respectfully submits that the pay of your humble Petitioner was already fixed on 30.12.1996 in accordance with the said Rules and it was only required to be revised in accordance with the principles set forth by Fifth Pay Commission and it was done by the Accountant General, Assam when the substantive pay was revised from Rs.5,400/- in the old scale to Rs.15,500/- in the revised scale. Although the benefit of revision was given w.e.f. 1.1.1996 by the Fifth Pay Commission but in case of your Petitioner the revision was effected w.e.f. 30.12.1996 i.e. the date of induction of your humble Petitioner into I.A.S.

2.13. The retrospective revision of pay can never mean reduction in the substantive pay as reduction of pay means reduction in the status of a Government servant and such a step would be contrary to the Constitutional provisions and law. As a matter of fact every time the pay is revised a certificate is appended in the Pay (Amendment) Rules that the retrospective effect given to the Rules will not affect any officer adversely. This certificate was given when the IAS Pay Rules were revised w.e.f. 1.1.1986 and also when the Fifth

( Cont..11 )

W.D. Ar  
21.12.97

( 11 )

Amendment to the IAS Pay Rules was made in the year 1997 giving retrospective effect from 1.1.1996, an Explanatory Memorandum was appended to the Fifth Amendment of the IAS Pay Rules which reads as under :-

"The Central Government has decided to implement the recommendations made by the Fifth Central Pay Commission relating to revision of scales of pay in respect of the All India Services with effect from the 1st January, 1996. With a view to implement those recommendations, the Indian Administrative Service (Pay) Rules, 1954 are being amended accordingly with effect from the 1st January, 1996.

It is certified that no member of the Indian Administrative Service is likely to be adversely affected by giving retrospective effect to these Rules."

From this memorandum it is explicitly clear that the Government of India has certified that no member of the Indian Administrative Service is likely to be adversely affected by giving retrospective effect to these Rules and this certification has been rendered false and nugatory by the Accountant General, Assam by reducing pay of your humble Petitioner in violation of every set norms, rules, regulations and law.

( Cont..12 )

**Attested**  
*[Signature]*  
**Advocate.**

A copy of the IAS (Pay) Fifth Amendment Rules, 1997 of which the said explanatory Memorandum forms a part and which has been notified by Government of India vide Notification 14021/2/97-AIS(II)-A dated 10.10.1997 and re-published by Government of Assam vide Notification AAI.19/97/40 dtd. 20.11.1997 is enclosed hereto and marked as Annexure -7.

2.14. The Accountant General, Assam has totally misconstrued and misunderstood the legal provisions relating to Pay fixation and pay revision by treating the two things as synonymous. The pay once fixed and fixed in accordance with law can not be reduced in the name of revision simply because the revision has been given retrospectively.

2.15 Your humble Petitioner thinks and feels that Accountant General, Assam has mis-construed the Clause (4) of the Section 1 of the Schedule II of the IAS (Pay) Rules, 1954 which reads as under :-

"In the case of a promoted officer appointed to the Indian Administrative Service on promotion, on any enhancement of his actual pay in the State Civil Service in which he holds a lien, as a result of an increment in the lower scale or the higher scale of that service, or in the event of confirmation in the higher scale of the State Civil Service the officer, shall, during the period of probation, be entitled to have his pay

( Cont..13 )

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Advocate

( 13 )

In the senior time scale of the Indian Administrative Service recalculated in accordance with the principles laid down in this Section on the basis of his enhanced pay in the State Civil Service, as if he was promoted to the Indian Administrative Service with effect from the date of such enhancement."

Views of the Accountant General - at Para-12 in respect of clause (4) "The applicant was in State Civil Service till 29-12-96 and the revision of the State pay was given effect from 1-1-96 is within the period of probation and accordingly in terms of the above Rule his State pay was revised as per Assam Service (Revision of Pay) Rules, 1998 effective from 1-1-96 all consequential benefit authorised to him."

The Accountant General overruled the Statutory Rules in their statement in Para-12 of their written statement - without authority.

A plain reading of the said Clause will reveal that this clause gives an "entitlement" to the officer and does not provide a sword to the Accountant General to cut and reduce the pay already fixed under the Rules. Over and above it applies only in case of an officer while he is on probation of your humble Petitioner was over on completion of one year in the Indian Administrative Service i.e. on 30.12.1997 and your humble Petitioner ceased to have any lien after the expiry of one year in

( Cont..14 )

Amended  
h. Deu  
Advocate

( 14 )

IAS and as such any revision which has not been effected during his probation period cannot affect either to the advantage or to the detriment to the interests of your humble petitioner as the said Clause 4 of the Section 1 of the Schedule II of the said Rules shall not apply in case of your Petitioner.

2.16. The Accountant General, Assam by issuing the impugned Pay Slip has violated the Indian Administrative Service (Pay) Rules, 1954 and the Indian Administrative Service (Probation) Rules, 1954. The Accountant General, Assam has not even cared to refer and rely the certificate given in the explanatory memorandum to the Fifth Amendment of the Pay Rules whereby it has been certified that no existing IAS Officer will be adversely affected by retrospective effect of the Amendment. The impugned Pay Slip has been issued carelessly, if not with malice and with ulterior motive. Before issuing the impugned Pay Slip the Accountant General, Assam ought to have given an opportunity to your humble Petitioner to place and explain the legal provisions in this regard but by not doing so the Accountant General has put at bay all the established canons of Natural Justice.

2.17. Your humble Petitioner further submits that the impugned Pay Slip reducing the pay of your humble Petitioner will have the effect of reducing the status of your humble Petitioner and will affect your humble Petitioner adversely and will place him in a disadvantageous position in terms of status and this is clearly contrary to the Constitutional provisions apart from causing a huge financial loss.

Attested

*[Signature]*

Advocate

( Cont..15 )

( 15 )

2.18. Your humble Petitioner begs to refer to the Notification issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training bearing No.20011/2/93-IAS(II) -A dated 6.5.1994 and 14.7.1995. The latest Notification was issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training on 14.11.1996 (i.e. one and half month) prior to the appointment of your humble Petitioner in IAS bearing No. 20011/1/95-IAS (II) which relates to protection of pay of the State Civil Service Officers promoted to IAS in this Notification the Government of India has clearly stated that if the initial pay of an Officer gets fixed somewhere in the Sr. Time Scale Extended upto of Rs.4800 - 5700, he gets further annual increments till he reaches the stage of Rs.5700/- and also a maximum of three stagnation increments if he happens to stagnate thereafter. The pay of your Petitioner in the State Civil Service at the time of his induction in IAS was Rs.5,200/- and as such he was given the selection grade scale (Rs.4800 - 5700) and accordingly the Accountant General, Assam issued the Pay Slip referred to as Annexure -3 fixing substantive pay of your humble Petitioner at Rs.5400/-. Once the pay was fixed in the selection grade it cannot be refixed in a lower scale. The selection grade scale of Rs.4800-5700 was substituted under the Amendment Rules of 1997 as 15,100 - 400 - 18,300 and as such the increments availed by your humble petitioner in the old scale of 4800 - 150 - 5700 should have been added while revising your humble Petitioner's pay and as such his pay ought to have been fixed in the following manner :

( Cont..16 )

Received  
Advocate



( 16 )

First State of	...	15,100.00
Selection Grade		
Two increments	...	800.00
Total =	...	15,900.00

The Accountant General, Assam has therefore erred in fixing the pay of your humble Petitioner vide Annexure-4 at Rs.15,100/- in place of Rs.15,900/- as on 30.12.1996. Accordingly the pay ought to have been Rs.16,300/- as on 1.12.97 in place of Rs.15,500/-

2.19. Your humble Petitioner further submits that once the pay is fixed under the selection grade it can not be reduced to Senior Time Scale as it will mean reduction in the status of your humble petitioner. The reduction of the pay of your humble Petitioner is therefore, illegal, violative of Rules and Regulations and contrary to the Government Notification already issued by the Ministry of Personnel, Pension & Public Grievances Deptt of Personnel & Training.

Your humble Petitioner begs to quote clause (9) of Section (1) of Schedule (II) of the Rules of 1954 as follows ;

"Notwithstanding anything contained in any clause of the Section, the pay of a promoted officer whose pay has been fixed in the Senior Scale of Indian Administrative Service prior to the date of Publication in the Official Gazette of the Indian

( Cont..17 )

Admitted  
W.D.  
Advocate

( 17 )

Administrative Service (Pay) Eleventh Amendment Rules, 1976, in accordance with the existing provisions of the Indian Administrative Service (Pay) Rules, 1954, shall not be fixed in the revised Senior Scale of the Indian Administrative Service under the Section at a stage lower than the pay fixed earlier."

But the learned Accountant General, Assam has repeatedly asserted that the impugned Pay Slip dtd. 2-6-99 (GE CELL/IAS/221) was issued on the basis of the publication of the Assam Service (Revision of Pay) Rules, 1998 on 4-7-98 which is barred by the provision of clause (9) above.

2.20. Recording the reasons for re-calculation or re-refixation of the petitioner's substantive pay reducing from Rs.15,500/- to Rs.11,300/- the A.G. has repeatedly declared in their written statements that :

(A) "At that time, the State pay of the applicant was under revision and as the applicant was in the State Service till 29.12.96, he was not entitled the benefit of central pay revision, as the benefit of revision is applicable to those All India Service/Central Service Officers, who were on All India Service or on Central Service on 01.01.96" (Para-15).

( Cont..18 )

Attested  
[Signature]  
Admitted

(B) "Pay revision benefit was not applicable to the applicant since he was not in the Indian Administrative Service post on 01.01.96" (Para-15).

(C) "The applicant was in the State Civil Service till 29.12.96. Thus he is not entitled to get the Indian Administrative Service (Pay) Fifth Amendment Rules, 1997 benefits, which have come into force on the 1st day of 1996 (that is only an officer who was in the Indian Administrative Service on 01.01.96 is entitled to the pay revision benefits)". (Para-17)

These statements of the A.G. need no further clarifications or explanations as to their understanding and appreciation of the existing rules and guidelines in fixing and revising substantive pay in terms of the IAS (Pay) Fifth Amendment Rules, 1997. These quoted statements of the A.G. have asserted that officers who were neither in the IAS nor in the Central Service on or before 1.1.96, they are not entitled to the benefits of the IAS (Pay) Fifth Amendment Rules, 1997.

2.21. Your humble petitioner begs to submit that in order to protect the protections provided by various rules and guidelines, the Government of India has been issuing a Certificate along with the pay rules amendments after publication of each Pay Commission Report. Similar certificate is also appended to the IAS (pay) Fifth

Attested  
12/01/96

Amendment Rules, 1997, with title of Explanatory Memorandum, vide Notification No. 14021/2/97-AIS(II)-A, dated 16.10.97 which is as hereunder :

"The Central Government has decided to implement the recommendations made by the Fifth Central Pay Commission relating to revision of scales of pay in respect of the All India Services with effect from the 1st January, 1996. With a view to implement those recommendations, the Indian Administrative Service (Pay) Rules, 1954 are being amended accordingly with effect the 1st January, 1996."

"It is certified that no member of the Indian Administrative Service is likely to be adversely affected by giving retrospective effect of these rules."

This certificate has been rendered nullity and nugatory by A.G. by refixing and reducing the substantive pay of the petitioner by the impugned pay slip dated 20-6-1999 has adversely affected the petitioner both financially as well as in the rank and status in terms of scales of pay.

2.22. The A.G. has again repeatedly contended that the revision of the substantive pay from Rs.5,400/- to Rs.15,500/- was made "provisionally" and as an "interim measure", vide Para 9, 10, 11, 13 & 16 of their written statements.

Your humble petitioner begs to submit that there is no provision for fixing pay and issuing pay slip either "provisionally" or as "interim measure" in the IAS (Pay) Rules, 1954 or in the Notification dated 16.10.97 publishing the IAS (Pay) Fifth Amendment Rules, 1997 or any Notifications issued thereunder. As the pay of the petitioner is guided by the aforesaid Rules & Notifications, the contention of provisional pay slip and interim measure is baseless and misleading.

2.23. Your humble petitioner beg to state that (1) Shri Santanu Bhattacharjee (SCS-1990) (2) Smti Sunanda Sengupta (SCS-1990) (3) Shri Bhudev Dasumatari (SCS-1990) (4) Shri Anup Kumar Daolagupu (SCS-1990) etc. are my batch mates and the year of allotment of the I.A.S. Cadre is same and in receipt of the scale of Pay (Rs.15,100 - 18,300). But the learned A.G. has reduced my scale of Rs.(10,650 - 15,850) by a stroke of pen on 2-6-99 which is discriminatory, unconstitutional and violative of all provision of rules and regulations and therefore a fit case to set aside the impugned pay slip dt. 2-6-1999.

A copy of Govt. Notification No. AAI-6/87/378 dt. 24-3-2000 enclosed as Annexure -8.

2.24. Your humble petitioner begs to submit that the A.G. has refixed his substantive pay by reducing from Rs.15,500/- to Rs.11,300/- with retrospective effect whereby it has reduced his rank and status as in the IAS promotion is effected not from post to post but from one scale to another scale of pay bracketed with Grade and all these had been done by the A.G. without offering the opportunity to the

petitioner to defend his case before the impugned pay slip was issued. This was a gross violation of the principles of natural justice. In Bhagawan Shukila Vs. Union of India & Others, the Hon'ble Supreme Court had ruled as follows :

"There is also no dispute that the basic pay of the applicant was reduced to Rs.181/- p.m. from Rs.190/- in 1991 retrospectively w.e.f. 18.12.1970 the applicant has obviously been vitiated with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect on an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since that was not done, the order dated 27.7.1991, which was impugned

( Cont..22 )

Attested

*[Signature]*  
*[Signature]*

before the Tribunal, could not certainly be sustained and the Central Administrative Tribunal fell in an error in dismissing the petition of the appellant. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.93 as well as the order impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant." (AIR 1994 SC2481).

Your humble Petitioner begs to submit further that your petitioner's case is almost identical with that of the appellant and the judgement quoted above. Even if a concerned statute or statutory rules is silent on the pre-decisional hearing of the affected person suffering civil consequences, any decision without offering the opportunity of hearing such person would result in the miscarriage of justice.

In view of the above decision of the apex court of the country, your petitioner would like to pray the government to set side the impugned pay slip dated 2.6.1999 (Annexure-6).

3. RELIEF PRAYED FOR :

In view of the factual position and statutory provisions, stated hereinabove from Para 2.1 to 2.24, your humble petitioner earnestly prays that :

Attested  
W.D.W.  
Advocate

( Cont..23 )

- (i) Necessary order may be issued for fixation of pay of the petitioner at the stage of Rs.5,400/- in the pre-revised scale of pay and at Rs.15,500/- in the revised scale w.e.f. 30.12.96 in accordance with the IAS (Pay) Fifth Amendment Rules, 1997 ;
- (ii) The impugned pay slip No.GE.CELL/IAS/221, dated 2.6.1999 may be set aside.
- (iii) The A.G. may be directed to issue fresh pay slip with all consequential benefits ; and
- (iv) Direction may be given to provide any other relief/ benefits to the petitioner as the government of India may deem entitled and legal.

Yours faithfully,

GC HY

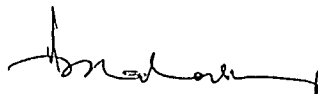
3rd Oct 2001.



( A.K. Malakar )  
Labour Commissioner : Assam  
Guwahati-16

Copy to :-

The Commissioner & Secretary to the Govt. of Assam,  
Deptt. of Personnel (A),  
Assam Sachivalaya, Dispur,  
Guwahati-781006, for information.



( A.K. Malakar ) 03/10/2001  
Labour Commissioner : Assam  
Guwahati-16

Attended  
10/10/2001  
A/c



No. 20015/1/2001-AIS(II)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel and Training

...  
New Delhi, Dated : January, 2002.

To

The Chief Secretary  
Govt. of Assam  
Department of Personnel (Personnel A)  
Assam Secretariat (Civil)  
Dispur, Guwahati.

Subject : Pay fixation of Sh. Ananta Kumar Malakar, IAS (SCS:90) - O.A. No. 267/99 filed in CAT, Guwahati Bench - Representation regarding.

Sir,

I am directed to say that we have received a representation made by Sh. Ananta Kumar Malakar, a promoted IAS officer, dated 03.10.2001 subsequent to the directions of the CAT, Guwahati Bench in O.A. No. 267/99 dated 25.06.2001 on the above subject. Sh. Malakar, alongwith two other promoted officers, had gone to the CAT against their pay revision in the IAS as a consequence of the retrospective State pay revision effected from 1.1.96. On his appointment in the IAS from 30.12.96, the IAS pay of Sh. Malakar was first fixed in the pre-revised Selection Grade on the basis of his State pay drawn in a substantive capacity which had not been revised till that time. When the State pay scales were later on revised in 1998 and made effective from 1.1.96, his IAS pay had again to be revised on the basis of the revised State pay being drawn by him at the time of his appointment in the IAS. Necessary action was accordingly taken by the A.G. but it turned out that his pay was brought downwards to the Senior Time Scale. Aggrieved by this, Sh. Malakar moved the CAT who is now stated to have pronounced in their judgement dated 25.06.2001 that Sh. Malakar would first make a detailed representation to Respondent No. 1 who would examine and consider the same as per law and would pass a reasoned order preferably within a period of 4 weeks from the date of receipt of representation. Accordingly, Sh. Malakar has now made a representation in this regard on 3.10.2001, a copy of which has also been sent to the State Govt.

2. The representation of Sh. Malakar has been examined in detail. It is found that the action taken by the A.G. in reducing the pay of Sh. Malakar subsequent to the retrospective State pay revision was in order and well in accordance with the relevant rules and instructions. The position as per rules, is as follows :-

*ad*

- (i) As per the provisions contained in Schedule II of the IAS (Pay) Rules, 1954 by which Sh. Malakar is governed for the purpose of pay fixation in the IAS, the IAS pay is to be fixed on the basis of the substantive State pay of the officer concerned. Such pay has to be further revised during the period of probation of the officer in the IAS if there is any increase in the substantive State pay during this period. Sh. Malakar was drawing the State pay in a substantive capacity at the stage of Rs.5200/- at the time of his promotion in the IAS on 30.12.96. He was accordingly eligible for pay fixation in the IAS at the stage of Rs.10650-325-15850.

As per the provisions contained in Schedule II of the IAS (Pay) Rules, 1954, the IAS pay is to be fixed on the basis of the substantive State pay of the officer concerned. Such pay has to be further revised during the period of probation of the officer in the IAS if there is any increase in the substantive State pay during this period. Sh. Malakar was drawing the State pay in a substantive capacity at the stage of Rs.5200/- at the time of his promotion in the IAS on 30.12.96. He was accordingly eligible for pay fixation in the IAS at the stage of Rs.10650-325-15850. The IAS pay scales were revised from 1.1.96 on the basis of the recommendations of the Fifth Pay Commission. As his pre revised IAS pay fell in the Selection Grade, the revised IAS pay was also fixed in the same revised grade. On issuance of the revised pay scales, the provisional pay of Sh. Malakar, as fixed above, was re-fixed in the revised IAS pay scales at the stage of Rs.15500 in the Selection Grade from 30.12.96, with the next date of increment being 01.12.97 raising his pay to Rs.15900. These pay fixations were however provisional and therefore subject to adjustments, if necessary, on subsequent revision of the State pay scales. This was also made clear in his pay fixation order and it was also indicated that in case some overpayments had been made on his initial pay fixation, the same would be recovered.

- (ii) The State pay scales were later on revised in 1998 and were given a retrospective effect from 1.1.96. As Sh. Malakar was in the State Service on 1.1.96 and till 29.12.96, his State pay had to be revised. This was done and on the basis of his revised State pay as on 29.12.96, his IAS pay was re-fixed from 30.12.96. This time, however, the stage of the IAS pay happened to fall within the revised Sr. Time Scale of the IAS and he was accordingly placed in this grade. On the basis of his revised State pay of Rs.10700 on that date, he was eligible for pay fixation in the IAS at the stage of Rs.10975 in the Sr. Time Scale of Rs.10650-325-15850, with the benefit of relaxation at the stage of Rs.11300 from 1.7.97 under Clause 4, Section 1, Schedule II of the IAS (Pay) Rules, 1954.

Attested  
*[Signature]*  
 Advocate

- (iii) The above action was well in accordance with the relevant rules and instructions. It has also been clarified in our letter dated 14.1.98 (copy enclosed) that in case the pay scales of the State Services had not been revised from 1.1.96 on the central pattern, the promoted officers would be allowed the equivalent stages of the replacement pay scales in the IAS. This was to be only provisional and upto the time the State pay scales were revised. The action taken by the A.G. in this case is thus in accordance with this position.
- (iv) If the IAS pay of a promoted officer is revised and the same happens to be at a lower level, as in the present case, the same cannot be construed as a punishment or a reduction in the substantive pay. The original and provisional pay fixation on induction into IAS was actually a case of higher pay - which was not due but was allowed due to non revision of the State pay scales, when the IAS pay scales had already been revised. Later, when State pay scales were revised, the provisional pay fixed in IAS had to be revised (and corrected).
- (v) With reference to para 2.13 of the representation, it is stated that the certificate of retrospectivity that an order passed would not adversely affect any officer by its retrospective application, as given in the notification revising the IAS pay scales, is not relevant in the case of the petitioner. He was not in the IAS on 1.1.96 from when the IAS pay scales were retrospectively revised. At that time, he was only in the State Civil Service. Only if it is found that when the State pay scales were retrospectively revised from 1.1.96, his State pay was brought to a lower level or his total emoluments came down, the said certificate - if issued by the State Govt. at the time of the revision of their State pay scales - can be invoked against the State Government's pay fixation for the period when he was an SCS officer.
- (vi) As regards the contention made in para 2.19 of the representation, Clause 9, Section I, Schedule II of the IAS (Pay) Rules is also not relevant in this case. This clause talks of the IAS (Pay) 11<sup>th</sup> Amendment Rules, 1976, which is not attracted in this case as his IAS pay has not been fixed prior to the date of publication of the said amendment.
- (vii) The Central Govt. is not aware of, with reference to para 2.23 *ibid*, the higher IAS pay having been granted to some other promoted officers, as contended. It would be for the State Govt. of Assam to check up the position and to ensure that the said officers have not been allowed a pay which is not their due and is not in accordance with the relevant rules.

Attested  
Advocate

24 JAN 2002

(viii) Regarding para 2.24 ibid, there is no provision of offering any opportunity to any such promoted IAS officer whose pay has been reduced in the said manner. Sh. Malakar therefore cannot ask for an opportunity as a matter of right.

(ix) As regards the Supreme Court's judgement in Bhagawan Shukla Vs. Union of India and Others quoted in the same para, we are not aware of the facts of that case and are not sure whether the case of Sh. Malakar is similar and can be dealt with in a similar fashion. If this analogy is sought to be drawn, it would first be necessary to have the full facts of that case so as to enable us to examine it further.

3. It would be evident from the above that the action taken by the A.G., Assam, in refixing the pay of Sh. Ananta Kr. Malakar subsequent to the retrospective revision of the State pay scales was fully in accordance with the relevant rules and policy in the matter. This action has not been found to be suffering from any vice, malafide or misinterpretation of the relevant policy. It has accordingly been decided that there is no case for an upward revision of the pay of Sh. Malakar on his appointment in the IAS. The action taken by the A.G. in this case is in order and the same does not need any further change.

Yours faithfully,

(Y.P. Dhingra)

Under Secretary to the Government of India

Copy for information to :

- ✓ 1. Sh. Ananta Kr. Malakar, Labour Commissioner, Gopinath Nagar, Guwahati-6.
2. Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-781029, in the context of his letter no. GE-Cell/AIS/306 dated 26.9.2000.

(Y.P. Dhingra)

Under Secretary to the Government of India

SECRETARIAT (CIVIL) DISPUR  
GUWAHATI- 781006  
@@@@@

ORDERS BY THE GOVERNOR  
NOTIFICATION

Dated Dispur, the 20th November, 1997

NO. AAT. 19/97/46: The following notification issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi is republished for general information.

"NOTIFICATION NO. 19/97/46, DATED 20.11.1997, FOR THE  
REPUBLIC OF INDIA"

In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government after consultation with the Governments of the States concerned, hereby makes the following rules further to amend the Indian Administrative Service (Pay) Rules, 1954, namely:-

1. (1) These rules may be called the Indian Administrative Service (Pay) Fifth Amendment Rules, 1997.
- (2) They shall be deemed to have come into force on the 1st day of January, 1996.

2. In the Indian Administrative Service (Pay) Rules, 1954 (hereinafter referred to as the said rules), in rule 3,-

- (a) for sub-rule (1), the following shall be substituted, namely :-

"(1) Scales of Pay - The scales of pay admissible to a member of the Service and the dates with effect from which the said scales shall be deemed to have come into force, shall be as follows :-

Junior Scale - Rs.8000-275-13500 (with effect from the 1st day of January, 1996).

- (i) Time Scale - Rs.10650-325-15850 (with effect from the 1st day of January, 1996);

Contd.....

**Noted**  
*WDM*  
**Advocate**

(ii) Junior Administrative Grade-

Rs. 12750-375-16500 (non-functional) with effect from the 1st day of January, 1996;

Provided that a member of the Service shall be appointed to the senior time scale on his completion of four years of service, subject to the provisions of sub-rule 2 of rule 6A of the Indian Administrative Service (Recruitment) Rules, 1954 and to the junior administrative grade on completion of nine years of service.

Note - The four years and nine years of service in this rule shall be calculated from the year of allotment assigned to him under rule 3 of the Indian Administrative Service (Regulation of Seniority), Rules, 1987.

(iii) Selection Grade- Rs. 15100-400-18300. (with effect from the 1st day of January, 1996).

Supertime Scale - Rs. 18400-500-22400 (with effect from the 1st day of January, 1996).

Above Supertime Scales -(i) Rs. 22400-525-24500

(ii) Rs. 26000 (Fixed)

(iii) Rs. 30000 (Fixed)

(with effect from the 1st day of January, 1996).

Provided that a member of the Service may opt to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale. The option shall be exercised in accordance with such orders as may be issued by the Central Government in this behalf.

Explanation 1- The option to retain the existing scale under the proviso to this rule shall be admissible only in respect of one existing scale.

Contd.....

Attested  
W.D. Arora  
Advocate

shall not be

exercises an option under the provision to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis, for the

scale, his substantive pay shall be the substantive pay which he would have drawn had he retained the existing scale in the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher."

(b) for sub-rule (3), the following shall be substituted, namely:-

"(3) The initial pay of a member of the Service who opts or deemed to have opted, in accordance with these rules, to be governed by the revised scale on and from the 1st day of January, 1996 or from a later date, shall be re-fixed as from that date separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely:-

(A) in the cases of all members of the Service -

(i) an amount representing forty per cent of the basic pay in the existing scale shall be added to the 'existing emoluments' of the member of the Service;

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(11) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed.

Provided that:-

(a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;

(b) if the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale:

Provided further that where in the fixation of pay, the pay of a member of the Service drawing pay at more than four consecutive stages, in an existing scale gets bunched, that is gets fixed in the revised scale at the same stage, the pay in the revised scale of such member of the Service who is drawing pay beyond the first four consecutive stages, in the existing scale shall be stepped up to the stage where such bunching occurs, by the grant of increment(s) in the revised scale in the following manner, namely :-

(a) for a member of the Service drawing pay from the 5th upto the 8th stage in the existing scale - by one increment;

stage - by two increments;

(c) for a member of the Service drawing pay, from the 13th upto the 16th stage in the existing

scale - by stepping up of the pay to the stage in the revised scale at which the pay of a member of the

Contd.....

Attested  
WDA

Advocate

15/11/11  
20/11



Service, who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be stepped up to the extent by which it falls short of that of the former.

Provided also that the fixation thus made shall ensure that every member of the Service shall get at least one increment in the revised scale of pay for every three increments [Inclusive of stagnation increment(s), if any] in the existing scale of pay.

Explanation - For the purpose of this clause, "existing emoluments" shall include-

- (a) the basic pay in the existing scale;
- (b) dearness allowance appropriate to the basic pay admissible at index average 1510 (1960 = 100), and

- (c) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale;

(B) in the case of a member of the Service who is in receipt of special pay component with any other nomenclature in addition to pay in the existing scale, such as personal pay for promoting small family norms, Central (deputation on tenure) Allowance, etc., and in whose case the same has been replaced in the revised scale with corresponding allowance or pay at the same rate or at a different rate, the pay in the revised scale shall be fixed in accordance with the provisions of clause (A) above.

In such cases, the allowance at the new rate as recommended, shall be drawn in addition to pay in the revised scale of pay.

Note 1- Where the increment of a member of the Service falls on 1st day of January, 1996, he shall have an option to draw the increment in the existing scale or the revised scale.

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- Note 2- Where a member of the Service is on leave on the 1st day of January, 1996, he shall become entitled to pay in the revised scale of pay from the date he resumes duty. In case of a member of the Service under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings.
- Note 3- Where the existing emoluments as calculated in accordance with clause (A) or clause (B), as the case may be, exceed the revised emoluments in the case of any member of the Service, the difference shall be allowed as personal pay to be absorbed in future increases in pay.
- Note 4- Where in the fixation of pay under these rules, pay of a member of the Service who in the existing scale was drawing immediately before the 1st day of January, 1996, more pay than another member of the Service junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior.
- Note 5- Where a member of the Service is in receipt of personal pay on the 1st day of January, 1996, which together with his existing emoluments as calculated in accordance with clause (A) or clause (B) as the case may be, exceeds the revised emoluments, then, the difference representing such excess shall be allowed to such member of the Service as personal pay to be absorbed in future increases in pay.

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Attested  
W.D. M.  
Advocate

W.D. M.  
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Note.6- Where a senior member of the Service promoted to a higher post before the 1st day of January, 1996 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1996, the pay of the senior member of the Service shall be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up shall be done with effect from the date of promotion of the junior member of the Service subject to the fulfilment of the following conditions, namely :-

- (a) both the junior and the senior member of the Service shall belong to the same cadre and the post in which they have been promoted shall be identical in the same cadre;
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay shall be identical;
- (c) the senior member of the Service at the time of promotion has been drawing equal or more pay than the junior; and
- (d) the anomaly shall be directly as a result of the application of the provisions of this sub-rule. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior member of the Service.

The order relating to re-fixation of the pay of the senior member of the Service in accordance with the above provisions shall be issued under the relevant rules and the senior member of the Service shall be entitled to the next increment on completion of his required qualifying service with effect from the date of re-fixation of pay.

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Note 7- Subject to the provisions of sub-rule (1), if the pay as fixed in the officiating post under this sub-rule is lower than the pay fixed in the substantive post, the former shall be fixed at the stage next above the substantive pay.

Note 8- In the case of a member of the Service who is in receipt of personal pay for passing Hindi Pragma and such other examinations under the "Hindi Teaching Scheme" prior to the 1st day of January, 1996, while the personal pay shall not be taken into account for purposes of fixation of initial pay in the revised scale, he shall continue to draw personal pay after fixation of his pay in the revised scale on and from the 1st day of January, 1996 or subsequently for the period for which he would have drawn it but for the fixation of his pay in the revised scale. The quantum of such personal pay shall be paid at the appropriate rate of increment in the revised scale from the date of fixation of pay for the period for which the member of the Service would have continued to draw it.

Explanation - For the purpose of this Note, "appropriate rate of increment in the revised scale" means the amount of increment admissible at and immediately beyond the stage at which the pay of the member of the Service is fixed in the revised scale.

(c) Fixation of pay in the revised scale subsequent to the 1st day of January, 1996. - Where a member of the Service continues to draw his pay in the existing scale and opts for revised scale from a date later than the 1st day of January, 1996, his pay from the later date in the revised scale shall be fixed under these rules and for this purpose, his pay in the existing scale shall have the same meaning as of existing

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emoluments as calculated in accordance with clause (A) or clause (B), as the case may be, subject to the conditions that the basic pay to be taken into account for calculation of those emoluments shall be the basic pay on the later date and where the member of the Service is in receipt of special pay, his pay shall be fixed after deducting from those emoluments an amount equal to the special pay at the revised rates appropriate to the emoluments so calculated.

3. In rule 5 of the said rules, for sub-rule (3A), the following shall be substituted, namely:-

"(3A) The next increment of a member of the Service whose pay has been fixed in the revised scale in accordance with rule 3 shall be granted on the date he would have drawn his increment had he continued in the existing scale:

Provided that where the pay of a member of the Service is stepped up in accordance with the second proviso or Note 4 or Note 6 to sub-rule (3) of rule 3, the next increment shall be granted on the completion of qualifying service of twelve months from the date of stepping up of the pay in the revised scale:

Provided further that in other cases the next increment of a member of the Service whose pay is fixed on the 1st day of January, 1996 at the same stage as the one fixed for another member of the Service junior to him in the same cadre and drawing pay at a lower stage than him in the existing scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier:

Provided also that in case a member of the Service had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 1996, the next increment in the revised scale shall be allowed on the 1st day of January, 1996."

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4. In rule 9 of the said rules, in sub-rule (7), for the word and figures "Rs.8000", the word and figures "Rs.25000" shall be substituted.

5. In rule 9C of the said rules, for the words and figures "Rs.4500-150-5700" wherever they occur and "Rs.6150", the words and figures "Rs.14500-400-18300" and "Rs. 18750" shall be respectively substituted.

6. In the said rules, in Schedule II,  
(i) for the words and figures "first day of January, 1986", wherever they occur, the words and figures "1st day of January, 1996" shall be substituted;  
(ii) in SECTION I, in the explanation (i) to clause (1), for the word and figures "Rs.100", the word and figures "Rs. 325" shall be substituted.

7. In the said rules, in Schedule III,  
(a) in parts A and C, for the words and figures  
"Rs.8000", "Rs.7300-100-7600",  
"Rs.5900-200-6700", "Rs.4800-150-5700",  
"Rs.3950-125-4700-150-5000", and  
"Rs.3200-100-3700-125-4700", wherever they  
occur, the words and figures "Rs. 26000",  
"Rs.22400-525-24500", "Rs.18400-500-22400",  
"Rs.15100-400-18300", "Rs.12750-375-16500" and  
"Rs.10650-325-15350" shall respectively be  
substituted.

(b) in parts B and C, for the word and figure  
"Rs. 6150" wherever they occur, the word and  
figure "Rs. 18750" shall be substituted.

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*M. S. 10/11/2011*  
**Attested**  
*W. S. 10/11/2011*  
**Advocate.**

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EXPLANATORY MEMORANDUM A

The Central Government has decided to implement the recommendations made by the Fifth Central Pay Commission relating to revision of scales of pay in respect of the All India Services with effect from the 1st January, 1996. With a view to implement those recommendations, the Indian Administrative Service (Pay) Rules, 1954 are being amended accordingly with effect from the 1st January, 1996.

It is certified that no member of the Indian Administrative Service is likely to be adversely affected by giving retrospective effect to these rules. A

Sd/-

( A.K.SARKAR )

Director

16.10.97

(No.14021/2/97-AIS(II)-A)

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Attested

*W.D.*  
Advocate.

Note:- The principal rules were published vide GSR No. 158, dated the 4th September, 1954 and subsequently amended vide

Sl.No.	G.S.R.No.	Date	Sl.No.	G.S.R.No.	Date
1.	22	12.1.1974		417(E)	22.6.1976
2.	51(E)	26.2.1974		426(E)	25.6.1976
3.	52(E)	28.2.1974		911	10.7.1976
4.	272	16.3.1974		405(E)	16.6.1976
5.	186(E)	25.4.1974		465(E)	23.7.1976
6.	664	29.6.1974		1137	7.8.1976
7.	725	13.7.1974		786(E)	31.8.1976
8.	778	27.7.1974		789(E)	7.9.1976
9.	374(E)	26.8.1974		1368	25.9.1976
10.	376(E)	26.8.1974		822(E)	31.8.1976
11.	378(E)	26.8.1974		849(E)	15.10.1976
12.	976	14.9.1974		859(E)	1.11.1976
13.	979	14.9.1974		947(E)	24.12.1976
14.	1013	21.9.1974		954(E)	27.12.1976
15.	1066	5.10.1974		125	29.1.1977
16.	427(E)	16.10.1974		45	28.1.1977
17.	430(E)	17.10.1974		52(E)	1.2.1977
18.	1202	16.11.1974		473	2.4.1977
19.	467(E)	15.11.1974		863	9.7.1977
20.	458(E)	15.11.1974		531(E)	19.7.1977
21.	469(E)	15.11.1974		545(E)	29.7.1977
22.	1260	30.11.1974		549(E)	3.8.1977
23.	1300	7.12.1974		655(E)	23.8.1977
24.	1348	21.12.1974		1286	1.10.1977
25.	92	25.1.1975		655(E)	25.8.1977
26.	176	8.2.1975		45	4.1.1978
27.	48	18.1.1975		5(E)	6.5.1978
28.	309	8.3.1975		215	11.2.1978
29.	185(E)	2.4.1975		952	29.7.1978
30.	281(E)	16.5.1975		586	27.5.1978
31.	278(E)	13.5.1975		666	27.5.1978
32.	293(E)	23.5.1975		923	22.7.1978
33.	296(E)	26.5.1975		1127	16.9.1978
34.	305(E)	28.5.1975		1236	14.10.1978
35.	752	21.6.1975		1281	28.10.1978
36.	345(E)	25.6.1975		1278	28.10.1978
37.	433(E)	31.7.1975		1326	11.11.1978
38.	458(E)	22.8.1975		575(E)	8.12.1978
39.	472(E)	29.8.1975		159	3.2.1979
40.	2661	15.11.1975		472	31.3.1979
41.	2557	25.10.1975		628	28.4.1979
42.	1	3.1.1976		291(E)	10.5.1979
43.	8(E)	1.1.1976		200(E)	10.5.1979
44.	74	17.1.1976		771	9.6.1979
45.	26(E)	17.1.1976		812	16.6.1979
46.	61(E)	31.1.1976		1038	11.8.1979
47.	197	14.2.1976		1016	4.8.1979
48.	73(E)	10.2.1976		501(E)	24.10.1979
49.	234(E)	17.3.1979		1372	17.11.1979
50.	236(E)	17.3.1979		650(E)	27.11.1979
51.	207(E)	6.4.1976		629(E)	17.11.1979
52.	603	1.5.1976		507(E)	30.1.1979
53.	330(E)	11.5.1976		77	26.1.1980
54.	900	26.6.1976		24(E)	30.1.1980



G.S.R.No.	Date	S.No.	G.S.R.No.	Date	
109.	159	9.2.1980	167.	708(E)	3.8.1985
110.	220(E)	21.4.1980	168.	792	24.8.1985
111.	222(E)	21.4.1980	169.	919	5.10.1985
112.	288(E)	21.4.1980	170.	1141	14.12.1985
113.	290(E)	5.6.1980	171.	884(E)	4.12.1985
114.	447(E)	24.7.1980	172.	38	18.1.1986
115.	770	26.7.1980	173.	98	8.2.1986
116.	952	20.9.1980	174.	218	22.3.1986
117.	530(E)	8.9.1980	175.	226	29.3.1986
118.	523(E)	8.9.1980	176.	378	31.5.1986
119.	572(E)	7.10.1980	177.	766	20.9.1986
120.	120	8.11.1980	178.	835	18.10.1986
121.	701(E)	17.12.1980	179.	1068	13.12.1986
122.	703(E)	17.12.1980	180.	22	10.1.1987
123.	47(E)	5.2.1981	181.	90	14.10.1987
124.	230	28.2.1981	182.	234(E)	13.1.1987
125.	295	21.3.1981	183.	471	20.6.1987
126.	293(E)	15.4.1981	184.	615	15.8.1987
127.	295(E)	15.4.1981	185.	796(E)	18.9.1987
128.	529	6.6.1981	186.	767	17.10.1987
129.	489	23.6.1981	187.	842	15.11.1987
130.	615	4.2.1981	188.	902	5.12.1987
131.	640	11.7.1981	189.	960	26.12.1987
132.	800	5.9.1981	190.	962	26.12.1987
133.	926	19.10.1981	191.	685(E)	14.12.1987
134.	945	24.10.1981	192.	52	23.1.1988
135.	422	8.5.1982	193.	295	16.4.1988
136.	420	8.5.1982	194.	297	16.4.1988
137.	510	5.6.1982	195.	654(E)	26.5.1988
138.	610	17.7.1982	196.	761(E)	31.6.1988
139.	617	24.7.1982	197.	659	20.8.1988
140.	619	24.7.1982	198.	831(E)	2.8.1988
141.	777	18.9.1982	199.	745	24-9.1988
142.	619(E)	20.10.1982	200.	1223(E)	28.12.1988
143.	631(E)	29.10.1982	201.	1004	31.12.1988
144.	933	20.11.1982	202.	1108	31.12.1988
145.	958	4.12.1982	203.	80(E)	3-2-1988
146.	764(E)	18.12.1982	204.	336(E)	1.3.1989
147.	18(E)	10.1.1983	205.	341(E)	
148.					
149.					
150.					
151.					
152.					
153.					
154.	901(E)	20.12.1983	211.	869	25.11.1989
155.	918(E)	24.12.1983	212.	870	25.11.1989
156.	35	21.1.1984	213.	1044(E)	6.12.1989
157.	400	21.4.1984	214.	263	5.5.1990
158.	470	10.5.1984	215.	394	30.6.1990
159.	1006	13.10.1984	216.	503	18.8.1990
160.	1240	15.12.1984	217.	507	18.8.1990
161.	49	19.1.1985	218.	648	20.10.1990
162.	107	2.2.1985	219.	726	8.12.1990
163.	250	9.3.1985	220.	493	7.9.1991
164.	639	5.7.1985	221.	621	26.10.1991
165.	637	6.7.1985	222.	68	22.2.1992
166.	563(E)	15.7.1985	223.	106	7.3.1992
			224.	107	7.3.1992
			225.		

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Sl.No.	G.S.R. No.	Date	Sl.No.	G.S.R. No.	Date
226.	194	9.5.1992	251.	395(E)	12.2.1994
227.	199	9.5.1992	252.	343(E)	29.3.1994
228.	224	16.5.1992	253.	436(E)	9.5.1994
229.	226	16.5.1992	254.	310	2.7.1994
230.	239	23.5.1992	255.	334	23.7.1994
231.	405	12.9.1992	256.	302	30.7.1994
232.	407	12.9.1992	257.	443	3.8.1994
233.	413	19.9.1992	258.	357	29.7.1995
234.	449	10.10.1992	259.	434	30.7.1995
235.	480	31.10.1992	260.	476	18.11.1995
236.	588	26.12.1992	261.	569	30.12.1995
237.	527	28.11.1992	262.	69(E)	25.1.1996
238.	20	9.1.1993	263.	232	8.6.1996
239.	21	9.1.1993	264.	235	8.6.1996
240.	34	13.2.1993	265.	311	27.7.1996
241.	126	6.3.1993	266.	455(E)	27.9.1996
242.	238	15.5.1993	267.	555	14.12.1996
243.	259	29.5.1993	268.	277	5.7.1997
244.	535(E)	6.8.1993	269.	285	12.7.1997
245.	447	11.9.1993	270.	287	12.7.1997
246.	598(E)	8.9.1993			
247.	657(E)	15.10.1993			
248.	655(E)	15.10.1993			
249.	6	1.1.1994			
250.	29	15.1.1994			

Sd/-

15.10.97

( A.K.SARKAR )  
Director

Sd/- S.R.ISLAM

Deputy Secretary to the Govt. of Assam  
Personnel (A) Department, Dispur

Memo No. AAI. 19/97/46-A :: Dated Dispur, the 20th November 1997  
Copy to :-

1. The Accountant General (A&E),/(Audit), Meghalaya, Shillong,
2. The Accountant General (A&E), Assam, Maidamgaon, Beltoola, Guwahati.
3. The Chairman, Assam Administrative Tribunal, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Principal Secretaries/ Commissioners & Secretaries/ Secretaries to the Govt. of Assam.
7. The Chief Electoral Officer, Assam, Dispur.
8. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi
9. The Commissioner & Secretary to the Chief Minister, Assam, Dispur

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Attested  
W.S.

Signature

*[Signature]*  
15/11/97

1. All Commissioners of Divisions, Assam,
2. The Agriculture Production Commissioner, Assam, Dispur.
12. The Chief Secretary to the Govt. of Meghalaya, Shillong.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, PG & Pensions, Deptt. of Personnel & Training, New Delhi.
14. The Under Secretary to the Govt. of India, Ministry of Personnel, PG & Pensions, Career Management Division, New Delhi.
15. All Principal Secretaries of the Autonomous Councils.
16. All Deputy Commissioners.
17. The Secretary to the Governor, Assam, Dispur.
18. The PPS to Chief Minister, Assam, Dispur.
19. The PS to Chief Secretary, Assam, Dispur.
20. The PS to Addl. Chief Secretaries Assam, Dispur.
21. All PS to Ministers/ Ministers of State.

By order etc.,

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28/11/97

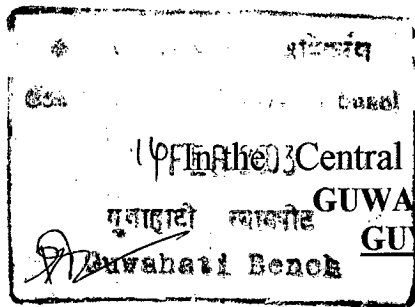
( S.R. ISLAM )

Deputy Secretary to the Govt. of Assam  
Personnel (A) Department, Dispur

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28/11/97

Attested

*[Handwritten signature]*  
Director



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In the matter of OA No. 313 of 2002

Ananta Kumar Malakar

----Applicant.

----VS ----

Union of India

----Respondent.

Filed by:-  
Accountant General (A+E)  
- Regd. No. 3  
Through:-  
Anup Kumar Choudhary  
14.2.03  
M.L. Central Govt  
Standing Counsel

**Written Statement for & on behalf of the respondent No. 3.**

I, Smti. Debolina Thakur, Deputy Accountant General (ADMN.) office of the Accountant General (A&E), Assam, Maidamgoan, Beltola, Guwahati-29, do hereby solemnly affirm and say as follows:-

1. That I am the Deputy Accountant General (Admn) in the office of the Accountant General (A&E), Assam, Guwahati and as such fully acquainted with the facts and circumstances of the Case. I have gone through copy of the application and have understood the content thereof. Save and except whatever is specifically admitted in the written statement, the other contentions and statement may be deemed to have been denied and the applicant should be put to strict proof of whatever they claim to the contrary. I am authorised and competent to file this written statement on behalf of the Respondent No.3.
2. That the answering respondent has no comments to the statement made in the paragraphs 1,2,3 & 4.1.

3. That with regard to the statements made in para 4.2 of the application, the answering respondent states that prior to the appointment to IAS, the applicant was in the Assam State Civil Service. The applicant has been appointed to IAS on 30.12.1996 vide GOI notification No.14015/4/96-AIS(I) dated 30.12.96 and communicated by the Govt. of Assam vide Notification no. AA/32/94/311 dated 3.1.97.

A copy of the said notification dated 3.1.97 is annexed as Annexure - A.

4. That with regard to the statement made in para 4.3 of the application the respondent states that prior to the appointment to IAS, the basic pay of the applicant was Rs.5,375/- in

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the State Civil Service in scale of pay Rs.3,825 - 5,900/- authorised vide pay slip no. GE-1/PS/165-166 dated 2.5.97.

A copy of the pay slip dated 2.5.97 is annexed as Annexure - B.

5. That with regard to the statement made in para 4.4 of the application the answering respondent states that the applicant was a State Civil Service Officer till 29.12.96 and on his appointment to IAS on 30.12.96 the **Officiating** pay (not Substantive pay) of the applicant was fixed **provisionally** at Rs.5400/-in the third component of the Senior Scale of IAS in the Scale of pay Rs.4800- 5700/-in terms of GOI order issued vide letter no.20011/95/1/AIS(II) dated 17.5.96. The above pay was authorised vide pay slip no .GE-Cell/IAS/67 dated 2.6.97.

A copy of the pay slip is annexed as Annexure - C.

6. That with regard to the statement made in para 4.5 of the application the answering respondent states that the applicant was appointed to Indian Administrative Service on promotion w.e.f., 30.12.96 and the pay of the applicant was fixed at Rs.5400/- in the pre-revised Scale of IAS pay in terms of GOI order No.20011/95/1 AIS(II) dated 17.5.96 (Copy of the order annexed as annexure "D"). The fixation was done as follows:-

Pre-Revised ACS-I- Sr. Grade  
Scale Rs. 3825-5900/-

Pay as on 30.12.96 Rs.5375/-

Pre-revised IAS Senior Scale  
(Selection Grade)  
Scale Rs.4800-5700/-  
Pay fixed at Rs.5400/-(next higher stage)  
With D.N.I on 1.12.97

After the Notification of the IAS(Pay) fifth Amendment Rules,1997 which has been given effect from 1.1.96, the pay of the applicant was revised in the corresponding revised scale of pay of the third component of the Senior Scale of IAS provisionally, as an interim measure in terms of GOI clarification issued vide notification No.20015/4/97-AIS (II) Dt.14<sup>th</sup> January '98 which states that " the pay of promoted officers would first be fixed on the basis of the reckonable State pay in the pre -revised IAS pay scales unless this has been already done. The corresponding stages in **the revised IAS scales would then be allowed in the component of the Senior Scale** in which such officers happen to fall in the pre-revised IAS pay scales. This has to be done till the State pay scales are revised by the respective State Govt. at CPI 1510 which is the base for the revision of IAS scales from 1.1.96.(Copy of the order is annexed as annexure "E"). The fixation was done as follows :-

Pre-revised Senior Scale  
of IAS

Rs.4,800- 5700/-

Pre-revised pay as  
on 30.12.96 Rs.5400/-

Corresponding Revised Senior  
Scale of IAS (third component)

Rs.15,100-18,300/-

Revised pay fixed at Rs.15,500/-  
on 30.12.96.

On receipt of the Govt. of Assam ( Revision of Pay) Rules,1998 which was given effect from 1.1.96, the State pay of the applicant has been revised as the applicant was in

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Pre-revised State pay scale ( p/257)

### Revised State pay scale

Rs.10,050-15,575/-

DA as on 1.1.96      Rs.3550/-

IR as on 1.1.96                      Rs.0350/-

**Total Rs.9275/-**

Add 25% of pay	Rs.1344/-
----------------	-----------

Total Rs. 10,619/-

Pay fixed at Rs.10,700/-

with DNI on 1.1.97

(Promoted to IAS on 30.12.96)

Revised State pay

Revised IAS Pay (senior scale)

Rs.10,650 – 15,850/-

Pay as on 30.12.96 Rs.10,700/-

Pay fixed at RS.11,300/-

8.. That with regard to the statement made in para 4.7 of the application the respondent states that after the notification of Assam Service (Revision of pay) Rules, 1998 on 4.7.98 which was given effect from 1.1.96, the Substantive State pay of the applicant has been revised as the applicant was on State Civil Service on 1.1.96 till 29.12.96 (A.N). The applicant was on Probation for one year from the date of joining i.e. up-to 30.12.97 and hence the applicant's membership in the State service cannot be ceased during the period of probation. The arrears of pay for the period from 1.1.96 to 29.12.96 therefore, was authorised to the applicant vide pay slip no. GE-1/PS/1266-67 dated 10.11.98.

9. That with regard to the statement made para 4.8 of the application the respondent states that after the notification of the IAS (Pay) fifth Amendment Rules 1997, the applicant was allowed provisionally Rs.15,500/-, the corresponding stage of pre-revised IAS Senior Scale pay of Rs.5400/-, in the third component of revised Senior Scale. This has been done in terms of GOI's clarification issued vide letter no20015/4/97 – AIS (II) dated 14<sup>th</sup> January 1998 to the Chief Secretaries of all State Governments and the Accountants General. It was thereby clarified that in case the pay scale of the State Civil Services have not been revised, the pay of the promoted officers would first be fixed on the basis of the reckonable State pay in the pre-revised IAS pay scale. The corresponding stages in the revised IAS scale would then be allowed in the component of the Senior scale in which such officers happen to fall in the pre-revised IAS pay scale. This was to be done till the State pay scale are revised by the

respective State Government at CPI 1510 which is the base for the revision of the IAS pay scale from 1.1.96. This was done as an interim measure and the pay of the applicant was provisionally fixed at the stage of Rs.15,500/- in the revised Scale of Rs.15,100-400-18,300/- of Indian Administrative Service and the pay slip dated 15.6.98 was issued obtaining Undertaking from the applicant as under :-

'I do hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of the discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise. (Copy annexed as annexure "F")

Subsequently, on receipt of the State ROP'98 which was given effect from 1.1.96, the substantive State pay of the applicant was revised at Rs.10,700/- on the basis of the above ROP as the applicant was a State Civil Service officer on 1.1.96. Thereafter, the Officiating pay of the applicant in the IAS service has finally been fixed at Rs.11,300/- p.m.w.e.f., 30.12.96 (Revised State pay to revised IAS pay) and the pay slip dated 10.6.99 was issued in regularization of the provisional pay slip issued vide no. GE-Cell/IAS/228 dated 8.6.98. This was in accordance with the existing rules and regulations. While doing so, none of the rules or norms were violated and in such cases, there is no provision of giving prior notice to the concerned applicant.

10. That with regard to the statement made in para 4.9 of the application the respondent states that the applicant was on State Civil Service till 29.12.96 and as such the applicant was entitled to get the benefits of State pay revision of his Substantive pay in State Civil Service which was given effect from 1.1.96. The applicant was on Probation for one year from the date of joining i.e. up-to 30.12.97 and hence the applicant's membership in the State service cannot be ceased during the period of probation. The arrears of pay for the period from 1.1.96 to 29.12.96 therefore, was authorised to the applicant vide pay slip no. GE-1/PS/1266-67 dated 10.11.98. Clause (4), Section I of Schedule II of the IAS (PAY) Rules, 1954 which states that "In case of a promoted officer to the Indian Administrative service on promotion, on any enhancement of his actual pay in the State Civil Service in which he holds a lien, **as a result of an increment** in the lower scale or the higher scale of that service, or in the event of confirmation in the higher scale of the State Civil Service the officer shall, during the period of probation, be entitled to have his pay in the senior time scale of the Indian Administrative Service recalculated in accordance with the principles laid down in this Section on the basis of his enhanced pay in the State Civil Service, as if he was promoted to the Indian Administrative Service with effect from the date of such enhancement." Thus the above quoted Clause is not applicable in the instant case. The State pay of the applicant was revised in terms of the rules and regulation of the State ROP'98. Necessary arrears pay slip was also could not be denied to the Applicant as per the said rules. Thus, in no way the applicant's regular pay in the IAS Service was interfered.

11. That with regard to the statement made in para 4.10, 4.11 & 4.12 the respondent has no comments.

The applicant was in the State Civil Service till 29.12 96 and the revision of Assam State pay was given effect from 1.1.96 that is within the period of his Probation and accordingly, in terms of the above rules his State pay was revised as per the Assam Services (Revision of pay) Rules, 1998 effective from 1.1.96 and all consequential benefits were



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ab

authorized to him. The respondent, therefore, not debarred any benefit of the applicant while he was in the State Civil Service.

14. That with regard to the statement made in para 4.15 of the application the respondent states that the pay of the applicant was fixed in terms of the Government of India, Ministry of Personnel, Public Grievance and Pension (Deptt. of Personnel and Training) letter no. 20011/1/95-AIS-II dated 17.5.96 relevant portion of which is as follows :-

“the pay of the State Civil Service/Non-State Civil Service officers inducted to IAS may be fixed in the Senior Scale at a stage next above their State pay. Senior Scale of IAS in the Pre-revised Scale consisting of (i) Time Scale: Rs.3200 – 4700/- (ii) Junior Administrative Grade Rs.3950 – 5000/- and Selection Grade Rs.4800-5700/-. While fixing the pay in such manner, if the pay stage happens to be common to any two Grades of the Senior Scale, the officer has to be placed in the lower of the two grades. In addition, they may also be allowed annual increments till the attainment of the stage of Rs.5700/- in the normal course”.

The applicant was drawing State pay of Rs.5375/- (pre-revised) before appointment to IAS on 30.12.96 and his pay was fixed as follows:-

Pre-Revised  
State pay Scale;-3825-5900/-

Pre-Revised  
Senior Scale of IAS

1. Rs.3200-4700/- (Time Scale)
2. Rs.3950-5000/-(Junior Admn.Grade)
3. Rs.4800-5700/- (Selection Grade)

State Pay of the applicant  
on 30.12.96 Rs.5375/-

Pay fixed at Rs.5400/-

Since the next higher stage of the State pay of Rs.5375/- of the applicant was available only in the third component of the Senior Scale of IAS, the pay of the officer was fixed in the third component that is Selection Grade of IAS in the pre-revised pay scale of Rs.4800-5700/-.

On receipt of the All India Service /Central Service Revised Pay Scale effective on 1.1.96 (On the recommendation of the 5<sup>th</sup> Central Pay Commission), this office was to authorise pay to the applicant. At that time the State pay of the applicant was under Revision and as the applicant was in State Service till 29.12.96, he was not entitled the Central/ IAS Pay revision benefits as the benefits of said revision is applicable only those officers, who

were on Central/IAS Service on 1.1.96. Thus, he has been authorised Rs.15,500/-, the corresponding stage of pre-revised IAS pay of Rs.5400/- as an interim measure in terms of Govt. of India's letter no. 20015/4/97-AIS(II) dated 14<sup>th</sup> January, 1998 the relevant portion of which is as follows:-

"The State/non-State Civil service officers who have been promoted to IAS after 1.1.96, the pay of such promoted officers would first be fixed on the basis of the reckonable State pay in the pre-revised IAS pay scales unless this has been already done. The corresponding stages in the revised IAS scales would then be allowed in the component of the Senior Scale in which such officers happen to fall in the pre-revised IAS pay scales. This has to be done till the State pay scales are revised by the respective State Govt. at CPI 1510 which is the base for the revision of IAS scales from 1.1.96.

The corresponding stage of pay of Rs.15,500/-which was allowed to the applicant as an interim measure includes as follows:-

Pre-revised IAS pay as on 1.1.96	----	Rs.5400/-
(+) margin of DA upto 31.12.95	----	Rs.5994/-
(+) Interim relief upto 31.12.95	----	Rs.0640/-
(+) 40% of basic pay *	----	Rs.2160/-
		<u>Total Rs.14,194/-</u>

\*(Benefit given on the recommendation of 5<sup>th</sup> Central Pay Commission). The revised pay fixed at Rs.15,500/-. The above pay revision benefits was not applicable to the applicant since the applicant was not in the Indian Administrative Service on 1.1.96. This was authorised pending the final outcome of the State Pay Revision as per Govt. of India's letter dated 14.1.98 as a temporary measure.

15. That with regard to the statement made in para 4.16 of the application the respondent states that while the applicant was appointed to IAS on 30.12.96 his substantive pay in the State Civil Service was Rs.5375/- in the pre-revised State pay scale of Rs.3825 - 5900/- and the pay in the IAS was fixed at Rs.5400/- in the next higher stage of pre-revised IAS pay Scale of Rs.4800-5700/- as follows :-

ACS Sr. grade (I)

IAS on promotion

Scale:-Rs.3825-5900/- (pre-revised)

Scale:- 4800-5700/- (pre-revised)

Pay as on 30.12.96 Rs.5375/-

Pay fixed at Rs.5400/- (next higher stage)

Again, after pay revision of the State Government with effect from 1.1.96 the applicant's State pay was revised at Rs.10,700/- (since the applicant was a State Civil service Officer on 1.1.96) as follows:-

Pre-revised State pay scale on 1.1.96

Revised State pay scale on 1.1.96

Rs.3825-125-4450-150-5200-175-5900/-

Rs.10,050-325-11025-400-14625-475-15575/-

Pay as on 1.1.96	Rs.5375/-
DA as on 1.1.96	Rs.3550/-
I.R. as on 1.1.96	Rs.0350/-

Total Rs.9275/-

Revised pay fixed at Rs.10,700/-  
on 1.1.96.

Add 25% of basic pay Rs.1344/-  
Total Rs.10,619/-

and his pay in the IAS was re-fixed at Rs.11,300/- as follows:-

Revised State pay

Revised IAS Pay (senior scale)

Rs.10,050-15,575/-

Rs.10,650 – 15,850/-

Pay as on 30.12.96 Rs.10,700/-

Pay fixed at RS.11,300/-(next higher stage of State pay)

Thus, it would be seen that the pay of the applicant was well protected in both the occasions( i.e., pre-revised State pay to Pre-revised IAS pay and revised State pay to revised IAS pay.)

16. That with regard to the statement made in para 4.17 of the application the respondent states that immediately after the promotion of the applicant to IAS on 30.12.96, the pay was fixed in terms of GOI order issued vide letter no.20011/95/1/AIS(II) dated 17.5.96 relevant portion of which is as follows:-

“the pay of the State Civil Service/Non-State Civil Service officers inducted to IAS may be fixed in the Senior Scale at a stage next above their State pay. Senior Scale of IAS in the Pre-revised Scale consisting of (i) Time Scale: Rs.3200 – 4700/-(ii) Junior Administrative Grade Rs.3950 – 5000/- and Selection Grade Rs.4800-5700/-. While fixing the pay in such manner, if the pay stage happens to be common to any two Grades of the Senior Scale, the officer has to be placed in the lower of the two grades. In addition they may also be allowed annual increments till the attainment of the stage of Rs.5700/- in the normal course.”

17. The applicant was drawing State pay of Rs.5375/-(pre-revised) before being appointed to the Indian Administrative Service on 30.12 96 and his pay was fixed as follows:-

Pre-revised State pay Scale

Pre-revised IAS pay scale.

Rs.3825-5900/-

1.Time scale:- Rs.3200-4700/-

2.Junior Administrative Grade :- Rs.3950-5000/-

3.Selection grade:- Rs.4800-5700/-

State pay of the applicant as on 30.12 96 was Rs.5375/-

Since the next higher stage of the State pay of Rs.5375/- of the applicant was available only in the third component of the Senior scale of Indian Administrative Service, the pay of the applicant was fixed in the third component of the Senior Scale that is selection Grade of Indian Administrative Service Pre-revised Pay scale (Rs.4800-5700/-).

On receipt of the All India Service/Central Service Revised Pay Scale which was effective from 01.01.96 (on recommendation of the fifth Central pay Commission ), **this office has authorised the pay and allowances to the applicant in the corresponding revised scale of pay provisionally without doing fresh fixation from State pay as an interim measure in terms of GOI order dated .....** as at that time the State pay of the applicant was under revision. He was not entitled to the benefits of AIS/ Central pay Revision because the benefit of revision is applicable to those All India service/Central Service officers , who were on All India Service or on Central Service on 1.1.96. Thus, he has been authorised Rs.15,500/- ( the third component of Senior scale) provisionally which includes as follows:-

Pre-revised IAS pay as on 1.1.96	-----	Rs.5400/-
(+) marger of DA upto 31.12.95	-----	Rs.5994/-
(+)Interim relief upto 31.12.95	-----	Rs.0640/-
(+)40% of basic pay *	-----	Rs.2160/-
		<u>Total Rs.14,194/-</u>

\*(Benefit given on the recommendation of 5<sup>th</sup> Central Pay Commission).Revised pay fixed at Rs.15500/-. The above pay revision benefit was not applicable to the applicant since he was in the State Service as on 1.1.96 and not in the Indian Administrative Service post on 1.1.1996.This was authorised as an interim measure pending the final outcome of the State pay Revision 1998, which was under process with Govt. of Assam at that time. The position was also best known to the officer for which he has given an Undertaking as follows:-

"I do hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of the discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise."

Thus the pay slip issued vide no. GE Cell/IAS/221 dated 2.6.99 was the regularization of earlier pay slip issued vide no. GE Cell/IAS/228 dated 8.6.98 which was issued as an interim measure in terms of GOI letter no 20015/4/97-AIS(II) the relevant portion of which was as follows:-

"State Civil Service /Non State civil Service officers promoted after 1.1.96, the pay of the promoted officers after the Pay Revision of IAS pay would first be fixed on the basis of the reckonable State pay in the pre-revised IAS pay scale. The corresponding stages in the revised IAS scale would then be allowed in the component of the Senior scale in which such officers happen to fall in the pre-revised IAS pay scale. This was to be done till the State pay scale are revised by the respective State Government at CPI 1510 which is the base for the revision of the IAS pay scale from 1.1.96."

The pay fixation of the applicant done subsequently after the State Pay Revision was therefore, as per Rules & orders.

18. That with regard to the statement made in para 4.18 of the application the respondent states that Shri Santanu Bhattacharjee ,Smti Sunanda Sengupta , and Shri Bhudev Basumatari , are senior to the applicant and appointed to IAS on 24.3.95. Hence, they were entitled to the benefits of IAS (Pay) fifth Amendment Rules ,1997 effective from 1.1.96. But on that day the applicant was in the State Civil Service and hence he was entitled to get t the benefit of State Pay scale revision benefits effective from 1.1.96 which has been authorised to him.

19 That with regard to the statement made in para 4.19 & 4.20 of the application the respondent have no comments.

20 That with regard to the statement made in para 5.1 & para 5.2 of the application, the respondent states that after the IAS(pay) fifth Amendment Rules, 1997 which has been given effect from 1.1.96, the pay of the applicant was fixed in the IAS selection Grade scale in terms of GOI clarification issued vide No.20015/4/97-AIS(II) dated 14<sup>th</sup> January 1998 as an interim measure till the State pay is revised and pay slip was issued obtaining undertaking from the applicant to the effect that excess payment, if any, detected subsequently, will be refunded. Hence, the provisional arrangement will not confer any right on the applicant.

21 That with regard to the statement made in para 5.3 of the application the respondent states that after the notification of Assam Service (Revision of pay) Rules, 1998 on 4.7.98 which was given effect from 1.1.96, the Substantive State pay of the applicant has been revised as the applicant was on State Civil Service on 1.1.96 till 29.12.96 (A.N). The applicant was on Probation for one year from the date of joining i.e. up-to 30.12.97 and hence the applicant's membership in the State service cannot be ceased during the period of probation. The arrears of pay for the period from 1.1.96 to 29.12.96 therefore, was authorised to the applicant vide pay slip no. GE-1/PS/1266-67 dated 10.11.98. The action therefore, was taken as per existing Rules and orders and no violation of Rules was made.

22. That with regard to the statement made in para 5.4 of the application the respondent states that the officer who were allowed the corresponding stage of pay in the IAS revised pay as an interim measure in terms of the GOI order dated 14.1.98, the regularization pay slip have been issued on the basis of State ROP'98.

23. That with regard to the statement made in para 5.5 & 5.6 of the application the respondent has no comments.


24. That with regard to the statement made paras 6 & 7 of the application the respondent has no comments.

25. That with regard to the statement made in paras 8, 8.1, 8.2, 8.3, 8.4, 8.5, and para 9 of the application the respondent has no comments.

## VERIFICATION

I, Smti. Debolina Thakur, Deputy Accountant General, o/o the Accountant General (A&E), Assam, Beltola, Guwahati-29 being authorised and competent to sign this verification, do hereby solemnly affirm and state that the statement made in this written statement are true to my knowledge and belief, and those made in paragraphs being matters of records and are true to my information derived therefrom and those made in the rest are humble submission before the Hon'ble Tribunal.

And I sign this verification on this 30<sup>th</sup> day of January, 2003 at Guwahati.

  
(Debolina Thakur)

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ANNEXURE- A

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GOVERNMENT OF ASSAM  
DEPARTMENT OF PERSONNEL ( PERSONNEL : : : A)  
ASSAM SECRETARIAT (CIVIL) DISPUR  
GUMPHATI-781006  
60740300

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 3rd January, 1977.

HO. AD. 32/94/511 : The following notification issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel and Training, New Delhi is republished for general information.

"Notification No. 14015/4/96-ATS(I), Dated 30th December, 1976.

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (1) of Regulation 9 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, the President is pleased to appoint the following members of the State Civil Service of Assam to the Indian Administrative Service on probation with immediate effect and to allocate them to the Joint Cadre of Assam-Mizoram under sub-rule (1) of Rule 9 of the Indian Administrative Service (Cadre) Rules, 1954 :

- | Sl. No. | Name                    |
|---------|-------------------------|
| 1.      | Aranta Kumar Talakur    |
| 2.      | Ramesh Krishna Bazarika |
| 3.      | Jones Ingli Kabbar      |
| 4.      | Ritendra Nath Sharma    |
| 5.      | Laxmi Nath Tamuly and   |
| 6.      | Lall Chand Singh        |

Sd/- R. VADYANATHAN  
DESK OFFICER

Sd/- S.R. ISLAM  
Deputy Secretary to the Govt. of Assam

HO. AD. 32/94/511-1 : Dated Dispur, the 3rd January, 1977.  
Copy to :-

1. The Assistant General (AG) (Audit), Meghalaya, Shillong.
2. The Assistant General (AG) (Assam), Imphal, Imphal, Guwahati.
3. The Chairman, Assam Administrative Tribunal, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Principal Secretaries/ Commissioners & Secretaries/ Officers to the Govt. of Assam.

Contd. ....

*Attested  
M. Chandra*

4.8 and 4.10 of the application, the answering respondent have no comments.

# 13 ANNEXURE-B ANNEXURE-B

M.S.O. (1) 9.]

[See paras 162 and 184 (1) M.S.O. (T)]

Pay/Leave Salary Slip

Office of the Accountant General, Assam, Meghalaya, Shillong, Chy-28  
No. SE-1/PS/185-69 Shillong, the 2-5-77 1977

Sr. Ananta Kr. Malakar, I.A.S. Joint Secretary to Govt of Assam Education Dept

is informed that under No. dated (Gazette page) Disputes Chy-6  
he is entitled to draw pay leave salary and allowance at the monthly rates shown below from the dates specified less the amount already drawn

	From	From	From	From	From	From	From	From	From	From	From
	1-1-76	1-6-76	1-7-76	1-11-76	1-1-75	1-4-75	1-7-75	1-1-76	1-6-76	1-7-76	1-11-76
Substantive pay											
Officiating pay	5050/-	5050/-	5050/-		5250/-	5250/-	5250/-	5300/-	5375/-	N	
Joining time pay											
Special pay	250/-	250/-	250/-		250/-	250/-	250/-	250/-	250/-	L	
Leave Salary				5360/-							
Non-practising allowance										promoted	
Dearness allowance	2250/-	2250/-	2250/-	2500/-	2250/-	2250/-	2250/-	2250/-	2250/-	to	
House Rent allowance											
City compensatory allowance	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	1.A.S	
Kit maintenance allowance											
Winter allowance											
Medical allowance											
Hill allowance		100/-	100/-	100/-	150/-	350/-	350/-	350/-	350/-		
Total	7570/-	7670/-	7920/-	7920/-	8420/-	8670/-	8970/-	9570/-	9840/-	NIL	

N.B. D.A admissible from ..... may be computed and claimed at the rates applicable on basic pay only as per this office General authority No. GEI/DA/State/83-84/546 dated 23rd August 1984, 815 dated 15th November 1984, 2175 dated 5th March 1985, 805 dated 10th September 1985, 664 dated 3rd March 1986.

Payment is subject to production of due and drawn statement.

Attached  
Addl. Control Copy  
Standing Counsel



# ANNEXURE-C

- 1) 1/4 month (92) ...
- 2) ...
- 3) ...
- 4) Holding same Post ...

Retirement

M. S. O. (T)-9.

[See paragraph 162 and 184(I) M. S. O. (T)]

(92)

## PAY/LEAVE SALARY SLIP

Office of the A.G. (S.G.) Assem

No. ... The ... 19...

... informed that under No. ... (Gaz. ... ) he is entitled to draw pay leave salary and allowan ... rates shown below from the dates specified less the amount already drawn.

Particulars	From	From 2	From	From 4
Substantive Pay				
Officiating Pay				
Special Pay				
Leave Salary				
Dearness Allowance				
House Rent Allowance				
City Compensatory Allowance				
Total—				

Attached  
AKC

Received  
17/6/97  
(in ...)

B.—D.A. ... k, are nomissible as per Gener. l. authorities.

P.T.O.

New Delhi, dated the 17 May, 1936

Answer 2

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Attested

सहा. लेखा अधिकारी  
Asstt. Accounts Officer,  
महालेखाकार का कार्यालय ( )  
O/O the Accountant General,  
मेदामांगी, नैनीताल, उत्तरांचल प्रदेश  
Maidamangai, Nainital, U.P.

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The notification dated 6.5.1994 and 17.7.1995 may be fixed in the Senior Scale at a stage above the State pay. Senior Scale of the P.A.S. consists of (i) Grade Rs. 200-4700, (ii) Junior Administrative Grade Rs. 3550-5000 and (iii) Subordinate Grade Rs. 4900-5700. While fixing pay for such a person, if the pay stage happens to be common to any two grades of the Senior Scale, the officer has to be placed in the lower of these two grades. In addition, they may also be allowed annual increments till the attainment of the stage of Rs. 5700/- in the normal course. No further increments or pay fixation in the next higher scale, viz. Superintendent Scale (Rs. 5900-6700), would be available to them till they are actually promoted in this grade. Stagnation increments would of course be admissible to them if they happen to stagnate at the stage of Rs. 5700/- before being promoted in the Superintendent Scale.

4. The benefits on the above points would be actually available from 9.5.1994 which is the date of effect of the Notification dated 6.5.1994 mentioned above and no arrears for the past periods would be admissible. The promoted officers would of course get notional benefits of the same from 14.7.1995 in accordance with the Notification dated 14.7.1995.

5. The above principles will apply MUTATIS MUTANDIS in the case of the members of the Indian Police Service and the Indian Forest Service.

6. It is requested that the contents of this letter may be brought to the notice of all concerned. Cases where pay has already been fixed may be reopened and modified accordingly.

Yours faithfully,

(Sd/-) (Signature)  
Deputy Officer.

Copy with 25 spare copies each, for information and necessary action to:

1. MHA, IFS-II Section.
2. MHA, IFS.
3. Ministry of Environment & Forests, IFS II Branch.

Copy also to:

Finance II, Ministry of Home Affairs.

Spare copies - 200.

New Delhi, dated 14 January, 1998.

1. The Chief Secretaries of  
all State Governments &  
Union Territories.

2. All Accountants General.

Subject: -IAS (Pay) Rules, 1954 - fixation of pay of  
SCS/non-SCS officers promoted in the IAS -  
revision of pay scales from 1.1.96 -  
clarifications regarding.

Sir,

I am directed to say that subsequent to the revision of the pay scales for the Indian Administrative Service w.e.f. 1.1.1996, a question has been raised in regard to the mode of pay fixation of the SCS/non-SCS officers promoted in the IAS, in case the pay scales of the respective State/non-State Civil Services have not yet been revised. It is clarified in this connection that in these cases, the pay of such promoted officers would first be fixed on the basis of the reckonable State pay in the pre-revised IAS pay scales unless this has been already done. The corresponding stages in the revised IAS scales would then be allowed in the component of the Senior Scale in which such officers happen to fall in the pre-revised IAS pay scales. This has to be done till the State pay scales are revised by the respective State Governments at CPI 1510 which is the base for the revision of IAS pay scales from 1.1.96. Illustrations in this regard are appended with this letter.

2. The above clarifications will apply mutatis-mutandis to the promoted officers of the Indian Police Service and the Indian Forest Service.

Yours faithfully,

(Y.P. Dhingra)  
Desk Officer

Copies also to:-

1. MHA(UTS Section) (with 5 spare copies).
2. MHA (IPS-II)(with 20 spare copies).
3. Ministry of Environment & Forests (IFS-II)  
(with 20 spare copies).

Spare copies - 200.

(Y.P. Dhingra)  
Desk Officer

Attended  
H.A. Chandra  
S.M. Chandra  
S.M. Chandra  
S.M. Chandra

## UNDERTAKING

I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.

Date : 6-6-58  
Station: GHY.

Signature A. K. Malakar

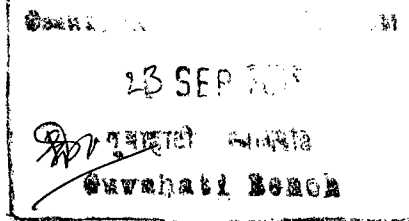
Name A. K. MALAKAR

Designation LABOUR COMMR  
ASSAM.

Geopimath Nagare.  
GHY - 16

Attested  
A. K. Malakar  
Addl. Central Govt  
Standing Commr

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Filed by  
the applicant through  
Usha Das  
Advocate  
23/9/03

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

OA No. 313/2002

Ananta Kr. Malakar, IAS

-VS-

Union of India & Ors.

REJINDER TO THE WRITTEN STATEMENT FILED BY THE RESPONDENT  
NO.3.

1. That the applicant has received the copy of the written statement filed by the Respondent No.3 and has gone through the same. Save and except the statement which are not specifically admitted herein below, other statement made by the respondents in the written statement may be treated as total denial and the Respondent No.3 is put to the strictest proof thereof.

2. That with regard to the statement made in para 1 and 2 the applicant offers no comment on it.

3. That with regard to the statement made in para 3 of the written statement the applicant begs to state that although his case was required to be considered for promotion to IAS, in the year 1993 itself, but due to the lapses on the part of respondents matter is still pending before the higher authority. It is pertinent to mention here that his promotion pertaining to IAS in the years 1992-1993 and 1993-1994 was the subject matter of OA No.176/2001 which was allowed by the Hon'ble Tribunal by its judgment and

order dated 8.8.2003 directing the respondents to review the case of the applicant for promotion to IAS as of 1992 -1993 and 1993-1994 by convening review DPC.

4. That with regard to the statement made in para 4, 5, 6 & 7 the applicant while reiterating and reaffirming the statement made above as well as the OA, denies the correctness of the same and the respondents are put to the strictest proof thereof. It is further stated that under no circumstances all India Service Officers having same year of equal pay. In this context, it is worth mentioning that most of the juniors to the applicant and fellow officers having same year of allotment are enjoying the higher pay scale without the reduction as has been sought to be done in the instant case. The respondents while implementing the rules belatedly, has put the applicant in hardship and same has adversely affected as it was made effective retrospectively. It is under those circumstances, the rule itself clarified that there should not be any instance of officers being affected adversely by retrospective implementation of rules. However, in the instant case apparently because of the retrospective implementation of rules. However, in the instant case apparently because of the retrospective implementation of the rules affected the applicant adversely. It is further stated that the rules as mentioned above are not applicable in case of the applicant as he severed the lien from state service immediately on his promotion to IAS. Apart from that, the officers having same year of allotment are presently drawing higher pay scale without any such reduction. At the same time, since there being reduction in pay scale, the respondents ought to have

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followed the principle of natural justice while effecting such reduction. The respondents being a model employer ought to have followed the settled principle of law and the rules guiding the field before passing the impugned orders reducing the pay of the applicant. On this score alone, the impugned pay slips as well as the impugned orders are liable to be set aside and quashed.

5. That with regard to the statement made in para E of the written statement the applicant while reiterating and reaffixing the statement made above as well as in the OA begs to state that the interpretation given by the respondents regarding "probationary period" as well as holding of membership in State Service is baseless and contrary to the Rules guiding the field. After the appointment of the applicant to I.A.S. on promotion, he immediately cease to be a member of the State Service and he severed his lean in the post held by him in State Service. The respondents have misinterpreted the said Rules and passed the impugned orders and as such same are liable to be set aside and quashed.

6. That with regard to the statement made in para 9 of the written statement, the applicant while denying the contentions made therein begs to state that the Rules quoted by the respondents itself provided relief to the applicant but the said respondent deliberately omitting these para "Explanatory Memorandum" only with a sole purpose to harass the applicant. Rules in question was notified in official Gazzete but same was never implemented in time and Govt. of India knowing fully well that it would take time to



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implement the same protections have been provided to the employees like the present applicant. Since the applicant severed his lean over the state service no question of giving retrospective effect of such Rules, putting him in great financial hardship.

It is stated that the undertaking submitted by the applicant is an inconsiderable contract having no legality and force. On the other hand such undertaking cannot override the provision of Rules framed by the constitution of India and the Laws framed thereunder.

It is further stated that the Rules even it is silent on the point of principles of natural justice, it is obligatory on the part of the authority to adhere to the said principle without fail. However, if the said Rules restricts or prevents the respondents from complying provisions of the principles of natural justice, the applicant begs to challenge the same on the ground of same being unconstitutional. In case of down gradation of pay, the mandatory requirement of law is prior notice and to follow principles of natural justice but in the instant case there has been a couple good bye to the all these settled provisions of law and hence same are liable to set aside and quashed.

7. That with regard to the statement made in para 10 and 11 of the written statement the applicant while reiterating and reaffirming the statements made above as well as in the OA begs to state that the interpretation given by the respondents regarding the Rules is not correct.

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The rules itself provides protection to the officers likely to be effected and hence there is no question of violating these rules.

8. That with regard to the statement made in para 12, to 25 the applicant while reiterating and reaffirming the statement made above as well as in the DA begs to state that under no circumstances the retrospective operation of the Rule should not effect adversely the pay of the applicant more so when the officers of same year of allotment are presently drawing the higher pay. It is also pertinent to mention here that the Rules were made applicable in the year 1998 where as the applicant got confirmed in IAS w.e.f. 30.12.97 and as such there should not have been any difficulty on the part of the respondent to grant the prayer of the applicant.

9. That in any view of the matter the action/inaction on the part the respondents are not at all sustainable and liable to be set aside.

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VERIFICATION

I, Ananta Kr. Malakar, aged about 54 years, son of late Holodhar Malakar, Presently working as Director, Land Records Survey etc. Guwahati, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2 and 9 ..... are true to my knowledge and those made in paragraphs 3 to 8 ..... 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 17th day of Sept. of 2003.

Signature.

*Ananta Kr. Malakar*  
(A.K. MALAKAR)