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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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

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SECTION OFFICER (Judl.)

( 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. Malakar

-Vs-

Respondent (s) U. O. I. Tony

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

Advocate for the Respondent(s) CBSE A. K. Choudhury

Notes of the Registry	Date	Order of the Tribunal
<p>26 S 75270 20.9.02 Dv. Registerd 20/9/02</p> <p>steps taken alongwith envelope</p> <p>25 25/9/02</p> <p>DR</p>	4.10.2002	<p>The matter pertains to Division Bench and accordingly put up the matter before Division Bench on 8.10.2002.</p> <p>ICU Shan Member</p>
	8.10.02	<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>ICU Shan Member</p> <p>Vice-Chairman</p>

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 the four weeks.

List on 13.11.2002 for admission.

Notice prepared and sent to the for any the respondent No. 1 to 4, by Hand & Regd. A/c.

DINo. 3063 to 3066

DD - 8/10/02

ICU/Member

Vice-Chairman

mb

13.11. Due to adjournment of hearing, the cases adjourned to 26/11/2002.

No. Show cause has been filed.

26/11/02

26.11.02 Audit service report. List on 16.12.2002 for admission.

Respondent No. 2, 3, 84 received notices by hand on 8/11/02 through Despatch Rider.

26/11/02

Vice-Chairman

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.

14.2.03  
W/S submitted by the Respondent No. 3.

mb

Vice-Chairman

14.2.03

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

Sum

mb

Member

Vice-Chairman

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.

*My*  
F. B. 03.

*S. Biswas*  
Member

*Vice-Chairman*

mb

10.3.2002

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

List again on 8.4.2003 enabling  
the other respondents ~~not~~ to file written  
statement, if any.

*Vice-Chairman*

bb

8.4.03

No. 1015 filed by  
Me 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.

*My*  
20.5.03

*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)

*My*  
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.

3/8.6.03

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

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).

Written statement filed on behalf of 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.

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, Admin. Member.

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

Member

Vice-Chairman

pg

(5)

O.A. 313/2002

Notes of the Registry

Date

Orders of the Tribunal

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 respondent not  
yet filed.

*3/3  
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

*Y*  
Vice-Chairman

mb

20.8.2003

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

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.

*ICP*  
Member

*Y*  
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.

*ICP*  
Member

*Y*  
Vice-Chairman

bb

(b)

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 <del>not yet filed</del>	bb	Vice-Chairman
	12.11.03 21.11.03	No Bench today. Adjourned to 19.11.03. B70 lm
	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. C.G.S.G. for the respondent No.3 and Mrs. M. Das, learned Govt. Advocate for the State of Assam for Respondent Nos. 2 and 4.
The case is ready for hearing.	23.11.03	At the request of Mr. M.K. Mazumdar, learned counsel on behalf of the applicant's counsel list on 21.11.2003 for hearing.
	mb	<u>Deeksh</u> Member
	21.11.03	Left over. put in next division box.
		B70 lm

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

*ICV Prahla*  
Member

*B*  
Vice-Chairman

pg

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

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

*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.

*ICV Prahla*  
Member(A)

*J*  
Member(J)

bb

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

The Hon'ble Sri K.V.Prahla, Admin.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.

*ICV Prahla*  
Member(A)

*J*  
Member(J)

pg

*4.3.04*  
copy of the Indet  
has been sent to the  
S.P.C. for issuing the  
same to the respondent  
as well as to the  
L/Advocacy for the reph.

*KK*

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./XXX.No. 111 313/2002 & 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 Ingfi 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  
(Dept. 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 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 indentical 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>w</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>w</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>w</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>w</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 : Usha Das  
Advocate

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 (Dept 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

Filed by  
the applicant through  
Lokshon Das  
Advocate  
23/9/02

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 guaranteed 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.

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. 3825-5,700/- 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/-

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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. 28/-
<hr/>	
Total	Rs. 17,865/-

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/-

*2. In view of the above, the Petitioner is entitled to the following relief:*

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.

*AN*

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

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.

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.

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.

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

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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 conjectures. 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 atleast 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. GROUNDS 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

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 :**

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.

*PK*

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 Haladhar Ch. Malakar, presently working as Director of Land Records, Survey 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  
@CMOQ

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/First
1.	Arante Kumar Malakar
2.	Kamal Krishna Bazarika
3.	Jonon Tugli 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, Maidanagaon, 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/ Ministers to the Govt. of Assam.

Contd.....

Attested  
V.D.  
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, Houseford 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.

S: A.K. Malakar, IAS  
97 Secy, Exts. Deptt.

By order etc.,

*S.R.ISLAM*

( S.R.ISLAM )  
Deputy Secretary to the Govt. of Assam

AMGSL  
Advocate

2-102-46 184 (1. M. S. O. 11)

OFFICE OF THE ACCOUNTANT GENERAL, ASSAM, MECHI, DARRANGA, SAWDOH, etc.

No. GEI/PB/156 Guardian 7/2/86  
St. Louis, the

Sri Amarakumar Mitalas, Acs. Joint Secretary to the Govt  
of Assam For Civil Supplies Deptt, Dispur, Guwahati

is informed that under No. \_\_\_\_\_ dated \_\_\_\_\_ (Gazette Page CL 244811-180)

He is entitled to draw his leave salary and allowances at the monthly rates shown below from the dates received. The total amount already drawn

	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955
Basic Andhra Pay	4450	4450	4450	4600	4600	4600	4600	4600	4600	4750	4750	4900	4900	4900	4900
Allowance Pay	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250
Relieving Allowance Pay	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250
Special Pay	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250
Leave Salary	4600	4600	4600	4600	4600	4600	4600	4600	4600	4600	4600	4600	4600	4600	4600
Non-Promising Allowance	1113	1150	1472	1472	1472	1472	1472	1472	1472	1758	1943	2138	2205	2205	2450
Conveyance Allowance	534	534	534	534	534	534	534	534	534	534	534	534	534	534	534
House Rent Allowance	534	534	534	534	534	534	534	534	534	534	534	534	534	534	534
City Compensation Allowance	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Kit Allowance to all ranks	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Winter Allowance	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Hill Allowance	6572	6572	6572	6572	6572	6572	6572	6572	6572	7158	7158	7158	7158	7158	7158

ANSWER

Statement showing the amount already drawn together with corresponding T. V. Nos. and dates and the amount to be drawn should be appended to this document.

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.

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 credit number at the top of every pay Bill.

2. Deductions of fund subscriptions and recovery of Government due as noted in the last pay certificate should be effected unless otherwise stated.

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Assistant Accountant General

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

Signature \_\_\_\_\_  
Accounts Officer

Copy forwarded to the Treasury Officer \_\_\_\_\_ for information. He should insert the details of pay given above in any last pay certificate issued Assistant Accountant General of this Government service.

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Assistant Accountant General

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

Signature \_\_\_\_\_  
Accounts Officer

Estate Officer

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

Signature \_\_\_\_\_  
Assistant Accountant General

Signature \_\_\_\_\_  
Accounts Officer

AMC  
100

Annex

14  
Pay/Leave Salary Slip - 19 -

2) Pay in arrears to 8/6/85-19-  
P.S. is due at Rs 50/-  
1-1-94 until now as 1-195.

ANNEXURE-3

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

Office of the Accountant General, Assam, Meghalaya, etc., Shillong. Ghy-28.  
No. GE-1/PS/165-62  
Shillong, the 2-5-97.

Sru Ananta K. Malakar, I.A.S. Joint Secretary to the Govt of Assam Education Deptt.  
dated \_\_\_\_\_ (Gazette page) Disp'n - Ghy-6.

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 1-1-96	From 1-6-94	From 29/11/84	From 1-1-95	From 1-4-95	From 1-7-95	From 1-1-96	From 1-1-96	From 30/12/94	From 1-1-95	From 1-4-95
Substantive pay											
Officiating pay	5050/-	5050/-	5050/-	5250/-	5250/-	5250/-	5375/-	5375/-	N		
Joining time pay											
Special pay	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	L		
Leave Salary			5350/-								
Non-practising allowance											
Dearness allowance	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	to		
House Rent allowance											
City compensatory allowance	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	I.A.S		
Kit maintenance allowance											
Winter allowance											
Medical allowance											
Hill allowance	10/-	10/-	10/-	10/-	10/-	10/-	10/-	10/-			
Total	7570/-	7670/-	7720/-	7920/-	8420/-	8670/-	8970/-	9170/-	9840/-	N	

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 deduction of fee and drawn account.

32

Note :-  
I-A detailed statement showing the amount already drawn together with corresponding T.V. Nos. and dates of the  
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  
instruction to the contrary this may be drawn till the stage \_\_\_\_\_ is reached.

III-Drawal P. Rent is subjected to production of certificate in Annexure I or II or III whichever is applicable as per  
in Finan. partment 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(16)  
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. SE-17/PS/

*RCG*

Copy forwarded to the Treasury Officer D.G.P.M. 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.....

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

*Chu 55*  
Signature .....  
Assistant Accountant General  
Accounts Officer

*Chu 55*  
Signature .....  
Assistant Accountant General  
Accounts Officer

*Chu 55*  
Signature .....  
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

*Arrested*  
*32*  
*Advocate*

## Pay/Leave Salary Slip

- 21 -

মহাপ্রদেশ প্রিন্সিপাল অফিস  
Office of the Accountant General (A & E) Assam  
নেতামুন্ডী, মুমুক্ষু, গুৱাহাটী-২৮  
Maidamukundi, Mumukshu, Gauhati-28

(1) ১১  
১৬২ এবং ১৮৪ (১) এন্ড.০. (৮) ।

OFFICE OF THE ACCOUNTANT GENERAL (A & E) ASSAM, I.C.C. GUWAHATI  
No. 112, Maidamukundi, Gauhati-28 GUWAHATI the 8.6.95

19

ANNEXURE-4

Shri Aronita K. Mukherjee, I.C.S. Labour Commissioner, Assam

dated \_\_\_\_\_ (Gazette page \_\_\_\_\_)

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 20.12.94	From 1.1.97	From 17.2.97	From 21.3.97	From 17.4.97	From 20.5.97	From 1.6.97	From 17.6.97	From 1.7.97	From 20.7.97	From 1.8.97	From 17.8.97	From 1.9.97
Contingent pay	15500	15500	X.S.	X.S.	X.S.	15500	15500	15500	15500	15500	15500	15500	15500
Officiating pay	250	250	15500	15500	15500	250	250	250	250	250	250	250	250
Training time pay													
Special pay													
Leave Salary													
Non-practising allowance	620	1240	1240	1240	2015	2015	2015	2015	2015	2015	2015	2015	2015
Dearness allowance	20	20	20	20	20	20	20	20	20	20	20	20	20
House-Rent allowance													
City compensatory allowance													
Kit maintenance allowance													
Winter allowance	5.D.A.	675	675	675	675	675	675	675	675	675	675	675	675
Medical allowance													
Hill allowance													
Total	17065	17065	17065	17065	17065	17065	17065	17065	17065	17065	17065	17065	17065

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.

Arrested  
by  
Advocate.

34

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.

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 certificates should be certified unless otherwise stated.

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

Date.....

Signature.....

Assistant Accountant General  
Accounts Officer

No. G.E. A.G. / D.A. / 229

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  
Accounts Officer

No. G.E. A.G. / D.A. / 230

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

Signature.....  
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

Advocate

8/6/98

Pay/Leave, Salary Slip  
(A & E)

- 23 -

Annexure - 5

M.S.O. (10)

Office of the Accountant General, Assam, Guwahati-29

GE-1/PS/1265

Guwahati

10/4/1998

ANNEXURE - 5

is informed that under No.

dated

(Gazette page

Guwahati-16,

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	From
Basic pay	1-1-96	1-7-96	15-12-96														
Statutory pay																	
Working time pay	1070/-	1070/-	N/-														
Ad. pay	—	—															
Leave Salary	250/-	250/-															
Practising allowance																	
Conveyance allowance	—	428/-															
Compensatory allowance	27/-	27/-															
Entertainment allowance																	
Allowances																	
Conveyance allowance																	
Conveyance allowance																	
Conveyance allowance																	
Conveyance allowance																	
Conveyance allowance																	
Conveyance allowance																	
Total	10976/-	1395/-	N/-														

Conveyance on basic pay may be drawn as per General Authority issued by this Office.

Conveyance Pay & Allowances from 1st January, 1996 to 31st July, 1998 should be credited to G.P. Fund Account via Govt. Notification No. G.P.C. 5/20/169 dated 4th July 1998.

36

..... by drawn together the corresponding I.V. Nos. and dates and the amount to be drawn should be appended to the Bill for  
..... production of usual non-purposing certificate.

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

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

..... a place of efficiency for operates.

Signature ..... *C. M. Acharya*

Assistant Accountant General

Sr. Accounts Officers

Signature ..... *.....*

Assistant Accountant General

Sr. Accounts Officers

Signature ..... *.....*

Assistant Accountant General

Sr. Accounts Officers

N.B. In case of leave service the name of leave may be specified in column (1) to (12) overleaf

C. Where the leave money during leave is allocable among different Government the allocation should be clearly indicated

ACR 1972 AG 1,000

Attested

Advocate

Pay/Leave Salary Slip  
(A & E)

O.(I)9.]

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

Office of the Accountant General, Assam, Guwahati-29

N GEA/PA/221

Guwahati the 26.9.99.

ANNEXURE - 6

Annex-6

Shri Amanta Kr. Malakar I.A.S. Sub-Divisional 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	To	From	To	From	To	From	To	From	To	From	To	From	To	From	To	From	To
Substantive pay	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300
Officiating pay	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250
Joining time pay	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250
Special pay																		
Leave Salary																		
Non-practising allowances																		
Dearness allowance	452	904	904	904	1469	1469	1469	1469	1511	1840	1860	2558	2558	2558	2558	2558	2558	2629
City compensatory allowance	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Kit maintenance allowance																		
Winter allowance	575	575	575	575	-	-	875	1413	1453	1453	1453	1453	-	1453	1453	1453	1494	
Compensatory allowance																		
Medical allowance																		
Hill allowance																		
Total	12892	20167	13149	12474	2057	13214	1415	14859	15290	1520	15981	11457	15874	16317	15651			

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

N.B.: Arrears Pay &amp; 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.

R.B. Payment in subject to deduction of Due Drawn. Stalemt

Attested  
User  
Advocate.

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

..... is subject to reduction of usual non-practising certificate.

..... increment accrues on ..... every year and in the absence of inscrip-

..... the stage ..... is reached.

..... the slip may be attached to the first pay Bill drawn at these rates and that No. 16 (S.I.Y.) may be entered at his end. sum of Rs.

..... and recoveries of Government due as noted in the last pay certificates should be effected unless otherwise stated.

..... a pause or efficiency operates.

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Signature ..... *Indebt*

Assistant Accountant General

Sr. Accounts Officers

Signature ..... *Indebt*

Assistant Accountant General

Sr. Accounts Officers

Signature ..... *Indebt*

Assistant Accountant General

Sr. Accounts Officers

8.3. (1) In case of leave salary the nature of leave may be specified in column (1) to (11) overleaf.

(2) Where the salary during leave is allowable among different Government the allocation should be clearly indicated.

- 24 -  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUJARATI BENCH

ANNEXURE - f

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

HON'BLE MR. JUSTICE D.N.CHAUDHURY, 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. Malakar (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.	
Mr. B.K. Sharma Mr. S. Samra	Advocate for the Petitioner(s)
Mr. B.C. Pathak, Addl. C.G.S.C.	Advocate for the 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 IAS 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*  
*U.S. S.*  
*Advocate.*

*(Signature)*

Before promotion to the I.A.S. the applicant was drawing substantial pay of Rs. 5050. When the applicant obtained 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 Nagaon 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 refixation of pay and pray 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-fixed 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  
10/11/2000  
Advocate

VC (Ushma)

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.PCL 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.S.S.C. appearing on behalf of the respondents, referred to the written

contd/-4.

Arrested  
Wear  
Advocate

(111,1..)

statement filed by the respondents. It was submitted that the pay scales of the State Civil Services were revised from 1.1.86 and not from 1.1.89. The date from which the recommendation of the 5th Pay Commission became 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

LC (U Shashi)

Attested  
U Shashi  
Advocate

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 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 (i) Rs.3200-4700/- (Time scale)  
150-5200-175-5900/- (ii) Rs. 3950-5000/-

(Junior Administrative Grade)

Pay as on 30.12.96. Rs.5050 (iii) 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.

Total emoluments of State Pay

Rs. 10120/-

Total emoluments of Administrative Service Pay (Central)

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.L.N.Tamuli (OA 266/99)

contd/-6

Subhash  
N. Tamuli  
Advocate

W. (W. L. Tamuli)

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 :-

Pre-revised	Revised
(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

*Amritsar  
W.D.  
Advocate* 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, as 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 it</sup> is not violative of any rules. In this case as the State Pay of the applicant was revised with effect from 1.1.96. According to the respondents 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:-

contd/-

Attested  
V. D. D.  
Advocate.

11/11/2008

Total emoluments of State Pay 1

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/-  
Special Pay Rs. 250/-

Basic pay - Rs. 10975/-  
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) Union Administrative Grade Rs. 3950-8000; 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-

Attested  
Non  
Advocate  
Advocate

ments till attainment of the stage of  
Rs. 5700/- in the normal course." 48

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 place 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 of pay. Fixation of pay at Rs. 15,100/- was only protective measure. No infirmity as such is not discernible in the impugned action of the respondents in refixing 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  
V. S. V.  
Advocate.

Contd....10

11 (1st)

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

Subhash

Section 10(1)(c) 1970

Attested  
V. S. An  
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 )

Amritsar  
Dear  
10/10/01

( 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 )

*Attn:-  
Waran  
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 aggrieved 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**  
*W.D. Deka*  
**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, persuant 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  
N.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 )

*Amisad  
W.D.  
Adressado*

( 6 )

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

( Cont..7 )

W.D.

Adm.

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/-
<b>Total</b>	...	<b>Rs.13,951/-</b>

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**

*W.D.*

**Advocate**

Commissioner on 3.11.1997 and got the Pay Slip issued by the Accountant General vide No. GE-CETL/IAS/220 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/-
<b>Total =</b>	...	<b>Rs.17,065/-</b>

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/-
<b>Total =</b>	...	<b>Rs.18,912/-</b>

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

Amested  
D  
Annexure

( Cont..9 )

( 9 )

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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  
W.D.  
Advocate

( 10 )

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.A.*

*4.1.1998*

( 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  
W. D. M.  
Advocate.

( 12 )

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 )

*Subodh*

*Karan*

*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 )

*Amritpal  
Walia  
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  
R. D. Deka  
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 )

*Appended*  
*Viswan*  
*Advocate*

( 16 )

First State of	...	15,100.00
Selection Grade		
Two increments	...	800.00
<b>Total =</b>	<b>...</b>	<b>15,900.00</b>

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

*Accepted  
W.D.  
Advocate*

( Cont..17 )

( 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

W. S. Deka

Advocate

( 18 )

(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

( Cont..19 )

Arrested  
W.S.

( 19 )

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.

ANANT  
WON  
Advocate  
etc.

( Cont..20 )

( 20 ) ~

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 Basumatari (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

( Cont..21 )

*W.D.*  
*Arrears*

( 21 )

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 Shukla 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

W.D.

Chennai

( 22 )

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 :

Arrested

W.D.

Advocate

( Cont..23 )

( 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,

G.H.Y

3rd Oct 2001.

slv

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

Copy to :-

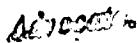
The Commissioner & Secretary to the Govt.of Assam,  
Dept.of Personnel (A),  
Assam Sachivalaya, Dispur,  
Guwahati-781006, for information.

  
( A.K. Malakar )

03/10/2001  
Labour Commissioner : Assam  
Guwahati-16

  
AMG

  
MSR

  
AS/CCB

No. 20015/1/2001-IAS(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 :-

*W.D.C.*

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Attested  
Vidya  
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 1, 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.

Amritsar  
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 Shukila 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

WPA  
ADVISER

ADMINISTRATIVE SECRETARIAT (CIVIL) DISPUR  
GUWAHATI- 781006

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ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 20th November, 1997

NO. AAI. 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 FOR AMENDMENT OF THE INDIAN ADMINISTRATIVE SERVICE (PAY) RULES, 1954"

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) 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.

1. 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);

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- 2 -

(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... .

Attestation  
Under  
Affidavit

and continuation shall not be

exercises an option under the proviso to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis, for the time being in force, in that case, 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;

Contd.....

MS/ln  
26/11

Amended  
WS/ln

(a), for a member of the Service drawing pay from the 5th upto the 8th stage in the existing scale, should - 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

It by skipping over the pay of a member, the pay of a member of the committee of the state to the revised scale which is higher than the *utage* in the revised scale at which the pay of a member of the

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Classification  
Urgent  
Safeguard

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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 day 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 upto 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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Advocates

W.D. D  
Advocates

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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 Pragya 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 of 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.26000" 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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Attested  
W. D. S.  
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 ) 16.10.97  
Director  
(No. 14021/2/97-AIS(II)-A)

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Attested  
N. D. D.  
Advocate.

- 12 -

Note:- The principal rules were published vide G.S.R. 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	58	405(E)	16.6.1976
5.	186(E)	25.4.1974	59	406(E)	23.7.1976
6.	664	29.6.1974	60	1157	7.8.1976
7.	725	13.7.1974	61	786(E)	31.8.1976
8.	773	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	65	849(E)	15.10.1976
12.	976	14.9.1974	66	859(E)	1.11.1976
13.	979	14.9.1974	67	947(E)	24.12.1976
14.	1013	21.9.1974	68	954(E)	27.12.1976
15.	1066	5.10.1974	69	125	29.1.1977
16.	427(E)	16.10.1974	70	165	1.2.1977
17.	430(E)	17.10.1974	71	52(E)	2.4.1977
18.	1202	16.11.1974	72	473	9.7.1977
19.	467(E)	15.11.1974	73	863	10.7.1977
20.	458(E)	15.11.1974	74	531(E)	29.7.1977
21.	469(E)	15.11.1974	75	545(E)	3.8.1977
22.	1260	30.11.1974	76	549(E)	23.8.1977
23.	1300	7.12.1974	77	655(E)	1-10.1977
24.	1348	21.12.1974	78	1206	25.8.1977
25.	92	25.1.1975	79	655(E)	4.1.1978
26.	176	8.2.1975	80	45	6.5.1978
27.	48	18.1.1975	81	5(E)	11.2.1978
28.	309	8.3.1975	82	215	29.7.1978
29.	185(E)	2.4.1975	83	952	27.5.1978
30.	281(E)	16.5.1975	84	586	27.5.1978
31.	278(E)	13.5.1975	85	666	22.7.1978
32.	293(E)	23.5.1975	86	923	16.9.1978
33.	296(E)	26.5.1975	87	1127	14.10.1978
34.	305(E)	28.5.1975	88	1236	28.10.1978
35.	752	21.6.1975	89	1281	28.10.1978
36.	345(E)	25.6.1975	90	1278	11.11.1978
37.	433(E)	31.7.1975	91	1326	8.12.1978
38.	453(E)	22.11.1975	92	575(E)	5.2.1979
39.	472(E)	29.8.1975	93	159	31.3.1979
40.	2661	15.11.1975	94	472	28.4.1979
41.	2557	25.1.1976	95	628	10.5.1979
42.	1	3.1.1976	96	291(E)	10.5.1979
43.	8(E)	1.1.1976	97	200(E)	9.6.1979
44.	74	17.1.1976	98	771	16.6.1979
45.	26(E)	17.1.1976	99	812	11.8.1979
46.	61(E)	31.1.1976	100	1038	4.9.1979
47.	197	14.2.1976	101	1016	24.12.1979
48.	73(E)	10.2.1976	102	591(E)	17.11.1979
49.	234(E)	17.3.1976	103	1372	27.11.1979
50.	236(E)	17.3.1976	104	657(E)	17.11.1979
51.	207(E)	6.4.1976	105	629(E)	30.4.1979
52.	603	1.5.1976	106	597(E)	26.1.1979
53.	330(E)	11.5.1976	107	77	30.1.1979
54.	900	26.6.1976	108	24(E)	30.1.1979

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G.S.R.No.	Date	S.No.	G.S.R.No.	Date
109.	159	9.2.1980	167.	708(E)
110.	220(E)	21.4.1980	168.	792
111.	222(E)	21.4.1980	169.	919
112.	238(E)	21.4.1980	170.	1141
113.	290(E)	5.6.1980	171.	884(E)
114.	447(E)	24.7.1980	172.	38
115.	770	26.7.1980	173.	98
116.	952	20.9.1980	174.	218
117.	530(E)	8.9.1980	175.	226
118.	523(E)	8.9.1980	176.	378
119.	572(E)	7.10.1980	177.	766
120.	120	8.11.1980	178.	885
121.	701(E)	17.12.1980	179.	1068
122.	703(E)	17.12.1980	180.	22
123.	47(E)	15.2.1981	181.	90
124.	230	28.2.1981	182.	284(E)
125.	295	21.3.1981	183.	471
126.	293(E)	15.4.1981	184.	615
127.	295(E)	15.4.1981	185.	796(E)
128.	529	6.6.1981	186.	767
129.	489	23.6.1981	187.	842
130.	615	4.2.1981	188.	902
131.	640	11.7.1981	189.	260
132.	800	5.9.1981	190.	962
133.	926	19.10.1981	191.	685(E)
134.	945	24.10.1981	192.	52
135.	422	8.5.1982	193.	295
136.	420	8.5.1982	194.	297
137.	510	5.6.1982	195.	654(E)
138.	610	17.7.1982	196.	761(E)
139.	617	24.7.1982	197.	659
140.	619	24.7.1982	198.	831(E)
141.	777	18.9.1982	199.	745
142.	619(E)	20.10.1982	200.	1223(E)
143.	631(E)	29.10.1982	201.	1004
144.	933	20.11.1982	202.	1108
145.	958	4.12.1982	203.	80(E)
146.	764(E)	18.12.1982	204.	336(E)
147.	18(E)	10.1.1983	205.	111(E)
148.	971(E)	10.12.1983	211.	869
154.	901(E)	20.12.1983	212.	870
155.	910(E)	24.12.1983	213.	1044(E)
156.	35	21.1.1984	214.	263
157.	400	21.4.1984	215.	394
158.	470	10.5.1984	216.	4
159.	1356	13.10.1984	217.	503
160.	1240	15.12.1984	218.	507
161.	40	19.1.1985	219.	648
162.	107	2.2.1985	220.	726
163.	250	9.3.1985	221.	493
164.	639	5.7.1985	222.	621
165.	637	6.7.1985	223.	68
166.	569(E)	15.7.1985	224.	106
			225.	107

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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.	3436(E)	9.5.1994
229.	226	16.5.1992	254.	310	27.7.1994
230.	239	23.5.1992	255.	334	23.7.1994
231.	405	12.9.1992	256.	382	30.7.1994
232.	407	12.9.1992	257.	443	30.7.1994
233.	413	19.9.1992	258.	357	29.7.1995
234.	449	10.10.1992	259.	434	30.1.1995
235.	480	31.10.1992	260.	473	10.11.1995
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.	84	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	15.7.1997
244.	535(E)	6.8.1993	269.	205	12.7.1997
245.	447	11.9.1993	270.	207	12.7.1997
246.	590(E)	8.9.1993			
247.	657(E)	15.10.1993			
248.	658(E)	15.10.1993			
249.	6	1.1.1994			
250.	29	15.1.1994			

Sd/-

16.10.97

( 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, Beltola, 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

Contd....

Attested  
by  
Advocate.

1/11/1997  
11/11/1997

1. All Commissioners of Divisions, Assam,
1. The Agriculture Production Commissioner, Assam, Dispur.
2. The Chief Secretary to the Govt. of Meghalaya, Shillong.
3. The Under Secretary to the Govt. of India, Ministry of Personnel, PG & Pensions, Deptt. of Personnel & Training, New Delhi.
4. The Under Secretary to the Govt. of India, Ministry of Personnel, PG & Pensions, Career Management Division, New Delhi.
5. All Principal Secretaries of the Autonomous Councils.
6. All Deputy Commissioners.
7. The Secretary to the Governor, Assam, Dispur.
8. The PPS to Chief Minister, Assam, Dispur.
9. The PS to Chief Secretary, Assam, Dispur.
10. The PS to Addl. Chief Secretaries Assam, Dispur.
11. All PS to Ministers/ Ministers of State.

By order etc.,

( S.R.ISLAM )

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

S.R.ISLAM  
28/11/97

Attested

W. S. Khan  
Advocate

Central Administrative Tribunal  
GUWAHATI BENCH  
GUWAHATI

In the matter of OA No. 313 of 2002

Ananta Kumar Malakar

----Applicant.

----VS----

Union of India

----Respondent.

**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

Filed by:-

Accountant General (A+E)

- Report No. 3

through -

Anup Kumar Chawdhury

14.2.03

M.M. Section 202  
Standing Orders

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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the State Civil Service on 1.1.96 and appointed to IAS on 30.12.96. The revision of State pay fixation of the applicant was done as follows :-

**Fixation no.1.**

<u>Pre-revised State pay scale ( p/257)</u>	<u>Revised State pay scale</u>
Rs.3825-5900/-	Rs.10,050-15,575/-
Pay as on 1.1.96	Rs.5375/-
DA as on 1.1.96	Rs.3550/-
IR as on 1.1.96	Rs.0350/-
	<u>Total Rs.9275/-</u>
<u>Add 25% of pay</u>	<u>Rs.1344/-</u>
	<u>Total Rs.10,619/-</u>
	Pay fixed at Rs.10,700/- with DNI on 1.1.97 (Promoted to IAS on 30.12.96)

**Fixation no. 2 as IAS after State pay revision.**

<u>Revised State pay</u>	<u>Revised IAS Pay (senior scale)</u>
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/-

7. That with regard to the statement made in para 4.6 of the application the respondent states that the applicant was allowed one increment after completion of one year service as IAS on 1.12.97 and the applicant officiating pay (not Substantive pay) was increased to Rs.15,900/-.

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-I/PS/I266-67 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.

12. That with regard to statement made in para 4.13 of the application the respondent states that the Assam service (Revision of Pay) Rules, 1998 has come into effect retrospectively from 1.1.96. Since the applicant was in the State Service on 1.1.96 and up to 29.12.96, the revision of the Substantive pay of the applicant in the State Service on 1.1.96 could not be denied. The State pay of the applicant was revised as under :-

<u>Pre-revised State pay scale on 1.1.96</u>	<u>Revised State pay scale on 1.1.96</u>
Rs.3825-125-4450-150-5200-175-5900/-	<u>Rs10,050-325-11025-400-14625-475-15575/-</u>
Pay as on 1.1.96	Rs.5375/-
DA as on 1.1.96	Rs.3550/-
I.R. as on 1.1.96	<u>Rs.0350/-</u>
	Total Rs.9275/-
Add 25% of basic pay	Rs.1344/-
	Total Rs.10,619/-
<b>Total emoluments in the pre-revised Scale was Rs.9545/- on 1.1.96. (P/188)</b>	<b>Total emoluments in the revised Scale was Rs.10,970/- on 1.1.96.(P/258)</b>
As follows:-	
Pay Rs.5375/- (Pre-revised state pay)	Pay Rs. 10,700/- (revised State pay )
Spl. pay Rs.0250/-	Spl. pay Rs.00250/-
D.A Rs.3550/-	<u>CA Rs.00020/-</u>
IR Rs.0350/-	
<u>C.A Rs.0020/-</u>	
Total Rs.9545/-	Total Rs.10,970/-

It would be seen from the above Revision that the Substantive pay of the applicant in the State Service was increased after the State Pay Revision effective from 1.1.96.. Hence, the retrospective operation of the pay revision of State Service has not adversely effected the applicant in any way and the revision was done as per rules, regulations and proper Authority.

13. That with regard to the statement made in para 4.14 of the application the respondent states that clause (4) of Section I of the Schedule II of IAS (pay) Rules 1954 rules states that 'in 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 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 IAS 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." (P/665)

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

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 (Dept. 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 recknoable 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 *	-----	<u>Rs.2160/-</u>

Total Rs.14,194/-

\*(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/-	Revised pay fixed at Rs.10,700/-
I.R. as on 1.1.96	Rs.0350/-	on 1.1.96.
Total Rs.9275/-		

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:-

<u>Revised State pay</u>	<u>Revised IAS Pay (senior scale)</u>
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:-

<u>Pre-revised State pay Scale</u>	<u>Pre-revised IAS pay scale</u>
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/-
(+) mager of DA upto 31.12.95	-----	Rs.5994/-
(+)Interim relief upto 31.12.95	-----	Rs.0640/-
(+)40% of basic pay *	-----	<u>Rs.2160/-</u>
Total Rs.14,194/-		

\*(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 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)

GOVERNMENT OF ASSAM

DEPARTMENT OF PERSONNEL (PERSONNEL ::::A)  
ASSAM SECRETARIAT (CIVIL) DISPUR  
GUWAHATI-781006  
034666

## NOTIFICATION

Dated Dispur, the 3rd January, 1997.

HO. ANO. 32/96/511 : The following notification issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel and Training, New Delhi is re-published for general information.

"Notification No. 14015/4/96-ATS(f), 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 15 of the Indian Administrative Service (Cadre) Rules, 1954:

## Sl. No. S/No.

1. Manohar Kumar Mukherjee
2. Hemanta Krishna Barakar
3. Jyoti Jagati Rathor
4. Utkarsh Nath Sharma
5. Laxmi Nath Tamuli and
6. Lal Chandra Singh

Sd/- R. VARADYANATHAN  
DESK OFFICER

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

Home No. 32/96/511-A, Dispur, the 3rd January, 1997.  
Copy to :-

1. The Accountant General (AG)/(Audit), Meghalaya, Shillong.
2. The Accountant General (AG), Assam, Mymensingh, Daltola, Guwahati-781006.
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/ Commissioners to the Govt. of Assam.

Contd. ....

Attested  
M.C.

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

13 ANNEXURE B ANNEXURE P2

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 etc., Shillong, G.O. No. GEI/PS/156  
Shillong, the 2-5-77

Sri Ananta K. Mukherjee, I.A.S. Joint Secretary to Govt of Assam Education Dept.

informed that under No. dated (Gazette page) D. I. P. No. 6  
he is entitled to draw pay/leave/salary and allowance at the monthly rates shown below for the dates specified  
less the amount already drawn.

	From	From								
Substantive pay	-1-76	1-76	1-76	1-76	1-76	1-76	1-76	1-76	1-76	1-76
Officiating pay	5050/-	5050/-	5050/-	5250/-	5250/-	5250/-	5250/-	5250/-	5250/-	5250/-
Joining time pay	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-
Special pay										
Leave Salary				5360/-						
Non-practising allowance										
Dearness allowance	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-
House Rent allowance		20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-
City compensatory allowance	20/-									
Kit maintenance allowance										
Winter allowance										
Medical allowance										
Hill allowance	1R			100/-	100/-	100/-	100/-	100/-	100/-	100/-
Total	7570/-	7670/-	7720/-	7920/-	8420/-	8670/-	870/-	9540/-	18450/-	11/-

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, 215 dated 5th March 1985, 805 dated 10th September 1985, 664 dated 3rd March 1986.

Payment is subject to production of leave and drawn certificates.

Printed  
by  
D.A. Control  
Standing Committee

103

## ANNEXURE-C

- 1) 4 people in one car  
2) 1 big freshwater air tank  
3) The station is ready. <sup>104</sup>  
4) Holding same Port

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

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

PAY/LEAVE SALARY SLIP

Office of the A.G. (S&T) Assam

..... informed that under No ..... (Gaz. of India, 1911) he is entitled to draw payable salary and allowances at the rates shown below from the dates specified less the amount already drawn.

B.-D.A. & S.K. are nonmissible as per Gen. I. authorities.

212

Government of India in regard to Protection of Public Grievances and Petitions  
New Delhi dated the 17th May, 1996.

Annexure 2

105

The Chief Secretary of  
all the State Govts. and  
Union Territories  
Subject: Protection of pay of State Civil Service  
Non-State Civil Service officers appointed  
to the I.A.S. on promotion, regarding.

It is directed to refer to the Ministry of  
Personnel P.G. a Personel Department of Personnel &  
Training, Notifications No. 20011/2/93-AES(CT)-A, issued on  
the above subject on 6th May 1993 and 14th July, 1995 under  
which the pay drawn by the I.A.S. officers in  
the State Governments is protectable to the extent of  
Rs. 5700/- i.e., the maximum of the Selection Grade which  
is the third and the last component of the seniority scale of  
I.A.S. This benefit is available on national basis from  
1.1.96, i.e., the date from which the revised pay scales  
for the I.A.S. come into being on recommendations of the  
Central Pay Commission, and on actual basis from  
01.5.1994 i.e., the date of effect of the notification issued on 21.1.1993. Accordingly, if the pay is fixed  
at the same stage of I.A.S. which is equal to their state  
for irreversibly, or whether the officers concerned are  
eligible for placement at such a level by virtue of their  
seniority or not, and no further increments are allowed  
until they become eligible for Selection Grade on  
completion of 13 years service calculated from their  
dates of allurement.

It has been brought to notice that this very manner  
of pay fixation especially freezing of pay at the same  
stage in I.A.S. and not allowing any further increments  
of pay irreversibly causes certain  
disabilities and financial hardship to the promoted officers.  
It has been found that under the new method of pay  
fixation, an officer promoted earlier in the I.A.S., whose  
pay is fixed and frozen at the same stage, begins to draw  
I.A.S. subsequently after earning one or more increments  
from the State Payscale. In this way, as seniority has  
been delinked from pay in such cases, whereas pay of the  
officer is frozen at a particular stage, the stage in the  
pay fixed, which is comparatively higher, stage in the  
increments, which is equivalent to his State Pay including the  
allowances, borne by him while remaining in the State  
Service, subsequently to promotion of the senior in I.A.S.  
This causes heartburning. Besides the financial hardship to  
the officers who are promoted in the I.A.S. earlier.

The matter of removal of such anomalies has been  
sparking attention of the Government. After careful  
consideration, it has been decided that, keeping in  
view the anomalies made in the I.A.S.

Attested  
Ranuji P.D.  
Asstt. Accounts Officer  
O/o the Accountant General  
Matale, 17th May, 1996  
Maidamgao,



New Delhi, dated 11 January, 1998.

16

R.G.O.X

44

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 (IES-II) (with 20 spare copies).

Spare copies - 200.

(Y.P. Dhingra)  
Desk Officer

Attended  
A.M. Goyal  
Stamping Compt.

## UNDERTAKING

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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.

Signature.....

Name..... A. K. MALAKAR

Designation..... LABOUR COMMR.  
ASSAM.

Gopinath Nagree.

GCHY - 16

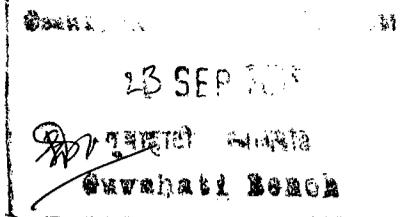
Date : 6-6-98

Station: GCHY.

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

507 GCHY  
61. put up  
25.5.98

215/98



109  
Filed at  
the office of  
the Appellant  
through  
Advocate  
Abulsha Das  
23/9/2002

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

DA No. 383/2002

Ananta Kr. Malakar, IAS

-VS-

Union of India & Ors.

REJOINDER 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 DA 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 some 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

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 8 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 Gazette 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 inconsinable contract having no legality and force. On the other hand such undertaking cannot overside 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 pars 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.

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 OA 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.

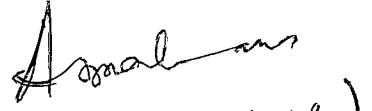
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VERIFICATION

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 17<sup>th</sup> day of Sept: of 2003.

Signature.

  
(A.K. MALAKAR)