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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

200
13/4

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI BENCH

ORDER SHEET

Org. App/Misc. Patn/Cont. Patn/Rev. Appl..... 242/04.....

In O.A.

Name of the Applicant(s) Sankalpa Fox

Name of the Respondent(s) U.O. I Govt.

Advocate for the Applicant M. Chanda, G.N. Chakrabarty, S. Nath
Counsel for the Railway/C.G.S.C. S. Chaudhury
Counsel for the Respondent A.K. Chaudhury

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
This application is in form Filed/Recd. for Regd. No. 206/114715 Dated 11.10.04	07.10.2004	List on 10.11.2004 for admission. By order <i>Deep</i> B.C. Pathak <i>DN</i>
	26.10.2004	Heard Mr. M. Chanda, learned counsel for the applicant. Mr. B.C. Pathak, learned Addl.C.G.S.C. for the respondents was present. O.A. is admitted, call for the records, returnable by four weeks. List on 25.11.2004 for orders. <i>K. Bhattacharya</i> Member (A)
Pl. copy on dated 26/10/04. N/2 27/10/04	25.11.04	Four weeks time is granted to the respondents to file written statement. List on 25.1.05 for order. <i>K. Bhattacharya</i> Member
Notice & order sent to D/Section for issuing to resp. Nos. 1 to 6, by regd. A/D post. Class 19/11/04	pg	

24-11-04S/2 - aar-thered.

25.01.2005 List on 25.02.2005 to enable the respondents to file written statement.

K.V. Prahla
Member (A)

24-2-05No-w/s ha- been 87ed

mb

25.2.2005 Present : The Hon'ble Mr. K.V. Prahla, Member (A).

Four weeks time is given to the respondents to file written statement.

No-w/s ha- been 87ed.

List on 01.04.2005 for orders

S/2 - aar-thered.*31-3-05*

Notice duly served on resp.
Nos. 1, 2.

25/4

mb

01.04.2005 Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents seeks time for filing written statement. Post on 29.4.2005.

K.V. Prahla
Member (A)

29/4
Vice-Chairman28-4-05
No-w/s ha- been

mb

29.4.2005 Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents submits that some more time is required to file written statement. List on 31.5.2005.

11.5.05w/s filed by the
Respondent Nos. 1, 2, 3 & 4.*Par*

mb

31.5.2005 Mr. S.Nath, learned counsel for the applicant submitted that he has received the written statement and the matter can be posted for hearing. Post for hearing on 29.6.2005.

29/5
Vice-Chairmanw/s ha- been filed.*28/6/05*

bb

K.V. Prahla
Member

29/6/05
Vice-Chairman

29.6.2005

Post on 5.8.2005.

① Written statement
has been filed.

mb

By
4.5.05

Vice-Chairman

29.6.05
29.6.05

5.8.05.

Mr. M. Chanda learned counsel
for the applicant submits that the
case can be disposed of. Post the
matter on 11.8.05. for disposal.

29.6.05
Vice-Chairman

1.8.05

L. D. 2005

Rejoinder submitted
by the applicant.

lm

11.8.05 There was a reform.
Ad. to 17.8.05 3/8

17.8.05

Due to paucity of time case is
adjourned to next available Division
Bench.

Parikh
Member

29.6.05
Vice-Chairman

lm

4.10.2005

Post on 6.10.2005 at the top of the
hearing list.

Parikh
Member

29.6.05
Vice-Chairman

06.10.2005

Heard learned counsel for the
parties. Hearing concluded. Judgment
delivered in open Court, kept in
separate sheets. The application is
disposed of in terms of the order.

Parikh
Member

Vice-Chairman

mb

26/10.05
Copy of the Writ
has been sent to
the Office for
issuing the Writ
to the Applicant by
post and a copy to the
Addl. C.S.C. for the
Regd. by hand.

R. P. Chanda
4/11/05

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.**

O.A. No. 242/2004

DATE OF DECISION: 06.10.2005.

Sri Subimal Roy

APPLICANT(S)

Mr. M. Chanda, Mr. G.N. Chakrabarty

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Others

RESPONDENT(S)

Mr. A.K. Chaudhuri, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR M.K. MISRA, ADMINISTRATIVE MEMBER.

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

.....
Judgment delivered by Hon'ble Vice-Chairman.



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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 242 of 2004

Date of Order : This the 6th day of October 2005.

The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.
The Hon'ble Mr. M.K. Misra, Administrative Member.

Sri Subimal Roy,
MES No. 228303,
S/o - Late Satyabrata Roy,
Junior Engineer (Civil),
O/o - The Garrison Engineer, MES,
Silchar Division,
P.O. - Arunachal Pradesh,
Dist - Cachar, Assam. Applicant

By Advocates Mr. M. Chanda, Mr. G.N. Chakrabarty, Mr. S. Nath.

- Versus -

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Defence,
New Delhi - 110 001.
2. The E-in-C's Branch (EIC/EIR)
Army Headquarter, DHQ
New Delhi.
3. The Chief Engineer,
HQ, Eastern Command,
Engineers Branch,
Fort Willam,
Kolkata - 21.
4. The Chief Engineer,
Shillong Zone, M.E.S.,
Spread Eagle Falls,
Shillong - 793 011.
5. The Dy. Director (Admn.),
O/o - The Chief Engineer,
HQ, Eastern Command,
Fort Willam,
Kolkata - 21.
6. Department of Personal & Training,
Govt. of India,
Represented by it's Secretary,
North Bock, New Delhi - 110 001. Respondents

By Advocate Mr. A.K. Chaudhuri, Addl. C.G.S.C.

ORDER (ORAL)

SIVARAJAN. J. (V.C.)

The applicant was initially appointed as Overseer. He was promoted to the post of Superintendent, Building/Roads, Grade II on 15.01.1998. Later the post of Superintendent was re-designated as Junior Engineer (Civil). The grievance of the applicant is that though he had completed 24 years of service on 27.05.1993, he was not given benefit of ACP Scheme. The applicant made representation on 16.02.2004 (Annexure - III) before the 2nd respondent for grant of 2nd financial upgradation under the ACP Scheme. His grievance is that the 2nd respondent has not taken any decision on the said representation.

2. The Respondents have filed their written statement, wherein they have taken the stand that since the applicant has been promoted to the post of Junior Engineer and since he did not have the requisite Diploma, he cannot be granted 2nd financial upgradation until the period of 12 years from the date of promotion to the post of Junior Engineer expired.

3. We have also heard Mr. M. Chanda, learned counsel for the applicant and Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. A Division Bench of this Tribunal had occasion to consider a similar situation in a case of another employee of the same department in its order dated 21.01.2005 in O.A. No. 241/2004 and made the following observations :-

"5. As we have noted the case of the applicant for grant of second financial upgradation is based on the memorandum

. *Jpm*

dated 9.8.99 (Annexure - II) but the second respondent has not considered the effect of the 1999 ACP scheme while issuing the impugned communication dated 10.6.04 (Annexure - IX). It is true that the applicant did not satisfy the conditions stipulated in the earlier scheme or in the communication Annexure - IX. As already noted the claim of the applicant for grant of second ACP on 9.8.99 is based on Annexure - II Memorandum. In regard to the contention of the respondents the applicant is not entitled to the benefit in view of the fact but he did not pass the MES procedure examination and did not possess a diploma in civil engineering. Counsel for the applicant has relied on the decision of the Supreme Court and the decisions of different Benches of the Tribunal including one given by this Tribunal. Having considered the rival submissions, we are of the view that this application can be disposed of with directions.

6. The applicant has not projected his claim for second financial upgradation with reference to the Memorandum dated 9.8.1999 before the 2nd respondent in the earlier representation though there was a reference to the same in the representation. The claim was considered only with reference to the earlier scheme and the one time special grant referred to the Annexure IX communication. Thus the respondents did not get an opportunity to examine the claim of the applicant based on the Scheme dated 9.8.1999. Further, all the required factual details are not available in this case. In these circumstances, it will not be in the fitness of things for the Tribunal to consider the claim on merits at this stage. The matter has to be considered by the authorities themselves at the first instance.

Accordingly the applicant is directed to make a detail representation setting out his claim for grant of second financial upgradation with effect from 9.8.99 based on the scheme (Annexure - II) before the second respondent within a period of one month from today. If any such representation is made the respondents will consider the same with reference to the ACP Scheme of 9.9.99 (Annexure - II) and in the light of the decisions relied on by the applicant and referred to in this order and pass an appropriate order within four months from the date of receipt of

Jptw/

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the representation. We make it clear that we have not expressed any views on the merits of the claim made by the applicant."

4. In view of the above, we are of the view that this O.A. also can be disposed with similar direction. Accordingly, the applicant is directed to make a detail representation setting out his claim for grant of second financial upgradation with effect from 09.08.1999 based on the scheme (Annexure - I) before the second respondent within a period of one month from today. If any such representation is made, the respondents will consider the same with reference to the ACP Scheme of 09.08.1999 (Annexure - I) and in the light of paragraphs 5 and 6 of the order in O.A. No. 241/2004 extracted hereinabove and pass an appropriate order within three months from the date of receipt of the representation. We make it clear that we have not expressed any views on the merits of the claim made by the applicant.

5. Though Mr. M. Chanda, learned counsel for the applicant relied on various decisions of Courts since the matter is relegated to the authorities, it is open to the applicant to present all these decisions by making reference in the representation to be filed as directed above.

The O.A. is disposed of as above.


(M. K. MISRA)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE CHARIMAN

6 OCT 2004

গুৱাহাটী ম্যায়দৰ্শ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 242 /2004

Sri Subimal Roy.

-Vs.-
Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

27.05.1969- Applicant initially appointed as Sub-Overseer.

15.01.1998- Applicant promoted to the post of Superintendent, Building/Roads, Gr. II. The post of Superintendent B/R was subsequently re-designated as Junior Engineer (Civil) and as such the applicant is working as Junior Engineer (Civil) at present.

09.08.1999- Govt. of India introduced one welfare Scheme in the name of Assured Career Progression (ACP) Scheme. Under the said Scheme it was provided that the central Government civilian employees who do not get any regular promotion due to stagnation, will be granted two financial upgradations on completion of 12 years and 24 years of regular service during the entire tenure of their service. The applicant completed 24 years of service on 27.05.1993 and as such he is entitled for 2nd upgradation under the Scheme at least w.e.f. 09.08.99 i.e. the date on which the ACP Scheme came into being.

01.09.1999- Department of Defence Accounts vide its letter dated 01.09.99 issued clarification

Subimal Roy

regarding fulfillment of normal promotion norms. (Annexure-IV)

14.03.2001- ✓ Office of Accountant General (A&E), Meghalaya granted second financial upgradation under ACP Scheme w.e.f the date of their completion of 24 years of regular service. (Annexure-V)

12.06.2002- The Respondents Department proposed to the Govt. for granting an one-time benefit under the ACP Scheme to those Junior Engineers (Civil) who were promoted from the lower post of Superintendent (B/R) Gr.II.

16.02.2004- ✓ Applicant submitted representation praying for grant of 2nd financial upgradation to him under the ACP Scheme but no response.

Hence this application before the Hon'ble Tribunal.

PRAYERS

Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the Hon'ble Tribunal be pleased to direct the respondents to grant 2nd financial upgradation to the applicant w.e.f. 09.08.1999 with arrear monetary benefit in the pay scale of Rs. 5,500-9000/- in terms of ACP Scheme.

Sebastien Roy

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2. Costs of the application.
3. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.
1. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

Sebastien Roy

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal

६ OCT 2004

गुवाहाटी अदालत
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No. _____/2004

Shri Subimal Roy : Applicant
-Versus -

Union of India & Others : Respondents.

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Filed by
Subrata Nabi
Advocate

Date: 06.10.04

Subrata Nabi

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 242 /2004

BETWEEN

Shri Subimal Roy,
MES No. 228303,
S/o- Late Satyabrata Roy.
Junior Engineer (Civil)
O/o- The Garrison Engineer, MES,
Silchar Division,
P.O- Arunachal.
Dist-Cachar, Assam.

...Applicant.

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Defence,
New Delhi- 110001.
2. The E-in-C's Branch (EIC/EIR)
Army Headquarter, DHQ.
New Delhi.
3. The Chief Engineer,
HQ, Eastern Command,
Engineers Branch
Fort William,
Kolkata-21.
4. The Chief Engineer,
Shillong Zone, M.E.S,
Spread Eagle Falls,
Shillong- 793011.

Subimal Roy

5. The Dy. Director (Admn.),
O/o- The Chief Engineer,
HQ, Eastern Command
Fort William
Kolkata-21.
6. Departmental of Personal & Training,
Govt. of India,
Represented by it's Secretary,
North Block,
New Delhi- 110 001.

... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made not against any particular order but against non-consideration of grant of 2nd financial upgradation to the applicant in terms of Assured Career Progression Scheme (for short ACP Scheme) framed by the Govt. of India. The applicant is entitled to 2nd financial upgradation under the ACP Scheme on completion of 24 years of service but the benefit has not been extended to him even after his rendering services for more than 35 years.

2. Jurisdiction of the Tribunal.

Debendra Roy

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

3. Limitation

The applicant further declares that this application is filed within the limitation 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 as guaranteed under the Constitution of India.
- 4.2 That your applicant was initially appointed as Sub-Overseer on 27.05.1969 in the respondent department and was thereafter promoted to the post of Superintendent, Building/Roads (Supdt. B/R) on 15.01.1998. The post of Superintendent B/R was subsequently re-designated as Junior Engineer (Civil) and as such the applicant is working as Junior Engineer (Civil) at present.
- 4.3 That pursuant to the recommendation of the Fifth Central Pay Commission, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DOPT) vide it's Office Memorandum No.35034/1/97-Estt.(D) dated 09.08.1999 introduced one Assured Career Progression Scheme (for short ACP) Scheme making provisions for

Debendra Roy

financial upgradation of the central Government civilian employees on completion of 12 years and 24 years of service as a 'Safety net' in order to provide relief against the hardships caused to such employees due to stagnation. As per the said Scheme, the Central Government Civilian employees who do not get any regular promotion due to stagnation or the categories of employees for whom there is no promotional avenues or because of the limited promotional scope, such employees will be granted two financial upgradations on completion of 12 years and 24 years of regular service during the entire tenure of their service.

(Copy of the Scheme dated 09.08.99 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-I).

4.4 That the applicant having served for long 29 years as Sub-Overseer, was promoted to the post of Supdt. B/R (now re-designated as Junior Engineer (Civil)) in 1998 only and thereafter did not get any further promotion under the regular promotional avenue and as such is stagnated in the same post for long time. The applicant has completed 35 years of regular service and during this period he has got only one promotion as stated above. As per the ACP Scheme an employee is entitled to 1st financial upgradation on completion of 12 years of service and 2nd financial upgradation on completion of 24 years of service. Since the applicant got one promotion in 1998 he is entitled for the 2nd

Deekshant Ray

upgradation in terms of the ACP Scheme and he completed 24 years of regular service on 27.05.1993. The ACP Scheme being launched on 09.08.99, the applicant is entitled to the benefit of 2nd upgradation at least w.e.f. 09.08.99 although he had completed 24 years of service much earlier i.e. in 1993. Be it stated that the applicant at present working in pay scale of Rs. 5,000-8000/- but as per ACP Scheme the applicant is entitled for financial upgradation to the scale of pay of Rs. 5,500-9000/-.

4.5 That the Ministry of Defence, Govt. of India pursuant to the judgment and order dated 31.03.95 and dated 15.06.95 of the Hon'ble Central Administrative Tribunal (CAT), Bangalore Bench issued one order dated 25.04.1996 and introduced a Scheme similar to the ACP Scheme. Under the said Scheme the Superintendents B/R Grade-II of MES was entitled to the grade higher than the entry grade on completion of 5 years of service and would further be entitled to get the next higher grade on completion of 15 years of service. The upgradation on completion of 5 years of service was made effective from 01.01.1986 and the same on completion of 15 years of service was made effective from 01.01.1991 under the said Scheme.

(Copy of the order dated 25.04.96 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-II).

4.6 That since the applicant was promoted to the grade of Superintendent B/R Grade-II in the year 1998 i.e. after

Debinal Roy

launching of the above stated scheme dated 25.04.96 and since thereafter the ACP Scheme of the Government of India was introduced w.e.f. 09.08.99 i.e. within 1 year of his promotion, so the fulfillment of the criteria of 5 years and 15 years of service for upgradation as envisaged under the above stated scheme dated 25.04.96 before 09.08.99 became an absurdity in case of the applicant and consequently he did not get any benefit under that Scheme dated 25.04.96.

- 4.7 That with the launching of ACP Scheme w.e.f. 09.08.99, the applicant became entitled to 2nd upgradation w.e.f. 09.08.99 in accordance with the scheme and as such he approached the Respondents praying for grant of 2nd financial upgradation to him in terms of ACP Scheme.
- 4.8 That it is stated that following the introduction of the ACP Scheme, the Respondents department vide it's Army HQ's letter No. B/75011/RR/JE (Civil)/CSCC dated 12.06.2002 proposed that the promotees from the lower post to the post of JE (Civil) are eligible for one time benefit under the ACP Scheme and accordingly the service particulars of the applicant were forwarded to HQ Eastern Command by the Chief Engineer, Shillong zone vide letter No. 81427/ACP/1087/EID dated 06.01.2002 of C.E (AF) Zone for grant of one time benefit under the ACP Scheme to the applicant.
- 4.9 That the applicant submitted representation through proper channel to the Respondent No.2 on 16.02.2004

Subimal Ray

praying for grant of 2nd financial upgradation under ACP Scheme but with no response. He submitted representation earlier also.

(Copy of the representation dated 16.02.2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- III).

4.10 That the applicant begs to state that for granting financial upgradation under the ACP Scheme, only the following things are required: -

- (a) The official must have completed 12 years of regular service for first upgradation and 24 years of service for 2nd upgradation, if he has not got any regular promotion.
- (b) If such official has got one regular promotion then he will be eligible for 1st upgradation after completion of 24 years of service, and
- (c) One Screening Committee constituted for this purpose shall assess the suitability of the candidate for grant of benefit under ACP Scheme.

As regards the assessment by the Screening Committee, it has specifically been spelt out in the Scheme that the Screening Committee will scrutinize the relevant service records, ACR dossiers, disciplinary/penalty proceedings, if any, to assess the fitness or otherwise of an employee for grant of financial upgradation by fixing the pay in appropriate higher pay

Sebastien Roy

scale. This is clearly evident from para 4.2 of the letter dated 01.09.99 issued by the Department of Defence Accounts under the same Ministry of Defence.

(Copy of letter dated 01.09.99 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-IV).

4.11 That the applicant most respectfully begs to state that the applicant has fulfilled all the requirements under ACP Scheme as stated in the preceding para hereinabove and as such he is entitled to get the 2nd upgradation w.e.f. 09.08.99 as provided under the Scheme.

4.12 That the ACP Scheme is a welfare Scheme launched by the Govt. of India with a noble gesture to grant the benefit of two financial upgradations to the officers who are stagnated for long. The applicant has fulfilled the criteria of the required length of service which is the sole parameter for considerations but the same has not been considered. The respondents even did not give a reply to the representation dated 16.02.2004 of the applicant which is a duty caste upon the respondents.

4.13 That all the departments including the office of the C & AG of India have been granting the benefit of financial upgradations to their employees on completion of qualifying years of service in accordance with the ACP Scheme without any special rider whatsoever.

4.14 That the applicant most humbly begs to submit that due to non-consideration for grant of second financial upgradation under the ACP Scheme, the applicant has

Sebin Lal Roy

been suffering heavy financial losses. Finding no other alternative, the applicant is approaching this Hon'ble Tribunal for protection of his rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with and protect the rights and interests of the applicant, directing the respondents to grant second financial upgradation to the applicant under the ACP Scheme w.e.f. 09.08.99.

4.15 That it is stated that the applicant came to learn that the respondents issued letter bearing No. 131841/CAT BANG/214/Engrs/EID dated 10 Jun 2004 denying the benefit of ACP Scheme on the alleged ground that the said benefit cannot be allowed to the individual who are not having the Diploma in Civil Engineering and not passed the MES procedure examination. It is submitted that there is no such condition laid down in the ACP Scheme dated 09.08.1999 and as such Comptroller General of Defence Accounts can impose such unreasonable condition for grant of ACP Scheme to the applicant and to other similarly situated employees. Be it stated that Sri M.L. Goswami is also a similarly situated J.E (Civil) working in the same department and claiming the benefit of ACP Scheme for financial upgradation.

4.16 That while all other Central Govt. Departments have implemented the ACP Scheme in case of their employees without asking for any Departmental Examination/Skill Test, it is only in the respondent department that an additional requirement of diploma and test have been

Subimal Roy

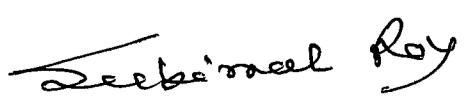
imposed in utter violation of the provisions of the scheme. It is relevant to mention here that in the Office of the Accountant General (A&E), Meghalaya 6 employees have been granted second financial upgradation under ACP Scheme w.e.f. the date of their completion of 24 years regular service without any Departmental Examination/ Test vide order No.297 dated 14.03.2001.

It is further submitted that similar issues raised in Original Application No. 1 of 2004 by the similarly circumstanced employees of the office of the Controller of Defence Accounts, Guwahati and the Hon'ble tribunal was pleased to admit the said Original Application No.1 of 2004 and the said case is now pending before this Hon'ble Tribunal.

(Copy of the order dated 14.03.2001 is annexed hereto as Annexure-V).

4.17 That it is stated that due to non-fixation of pay scale as provided under the ACP Scheme dated 09.08.1999 and also due to non-fixation of pay in the higher revised scale of pay as per existing hierarchy, the applicant is incurring huge financial loss each and every month and as such cause of action recurring in nature and arises each and every month till the benefit of ACP Scheme is granted to the applicant by re-fixing his pay in the appropriate higher scale.

4.18 That it is stated that question of possessing diploma in Civil Engineering and passing of any departmental

Debasish Roy

examination does not at all arise for grant of benefit to the Govt. employees in terms of office memorandum dated 09.08.1999 issued by Govt. of India, the condition laid down in serial No. 6 of ANNEXURE-I for grant of benefit under the ACP Scheme in fact relates to Group 'D' employee, where so far it is related to passing of the Departmental examination and also required to attain Benchmark as well as fitness for granting the benefit of ACP, it is quite clear from condition No. 1 of ANNEXURE-I that it is mere placement in the higher pay scale on completion of residency period of 12/24 years of regular service, condition No. 15 also make abundantly clear that immediately on completion of 24 years of regular service the civilian central Govt. employees should be granted 2nd financial upgradation. It is further stated specifically in condition No. 13 that the benefit of ACP Scheme should be provided in lieu of time bound promotion scheme or in-situ promotion scheme and further made it clear that the ACP Scheme cannot run simultaneously with the time bound promotion scheme or in-situ promotion scheme. It should be further evident from following decisions of learned CAT that departmental examination is not necessary.

ATJ 2003(2) 532 CAT Hyderabad Bench, G. Madhava Rao and etc. Versus Union of India and Ors.

In the view of the above discussion the learned Tribunal held that there is no requirement of passing any departmental examination and the normal promotion

Seebhau Roy

has been elaborately clarified in paragraph (vii) of C.G.D.S letter dated 01.09.1999, which is quoted below:

"(vii) Fulfillment of normal promotion norms for promotions from one grade to the other, as per extant orders i.e. analysis for last 3 years in respect of Group 'C' & 'D' employees and ACRs for last five years in respect of Gp 'B' employees, their integrity, seniority cum fitness in case of Gp 'D' employees disciplinary penalty proceedings as per the provisions of CCS (CCA) Rules 1965 etc. to assess their fitness or otherwise, as observed by a DPC, shall be ensured for grant of financial up-gradation under the ACP Scheme."

In view of the above definition regarding fulfillment of normal promotion norms it is quite clear that the DPC screening committee shall consider ACRs of the Govt. employees for last 3 years in respect of Group 'C' and 'D' employees and the ACR's for last 5 years in respect of Group 'B' employees, their integrity, seniority cum fitness, provided there is no disciplinary proceeding is pending against the central Govt. employee, in fact these are the normal promotion norms required to be satisfied for grant of benefit of ACP Scheme. Therefore passing of any departmental examination has not been prescribed by the D.O.P.T. As such, requirement of passing of departmental examination cannot be insisted upon by the departmental

Sebastion Roy

authorities where the same is not prescribed by the D.O.P.T.

As such contention of the respondents that the Govt. employee must require diploma and to pass the departmental examination for grant of ACP benefit is contrary to the Govt. policy/Scheme laid down by the Govt. of India/ D.O.P.T.

4.19 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, the Govt. of India framed rules under the ACP Scheme for grant of two financial upgradations in their full tenure of service on completion of 12 years and 24 years of regular service to the Central Government civilian employees who do not get any promotion through their normal avenues due to stagnation.

5.2 For that, the applicant has completed his 24 years of regular service way back in 1993 and as such he is entitled to get the benefit of 2nd financial upgradation under the ACP Scheme at least w.e.f. 09.08.99 i.e. the date on which the ACP Scheme came into force. He has completed 35 years of service by now.

5.3 For that, all the departments including the office of the C & AG of India have been granting financial upgradation to their employees' w.e.f. the date of

Debimal Roy

completions of 12 and 24 years of regular service in terms of ACP Scheme.

5.4 For that, the applicant did not get any benefit of upgradation under the Departmental Scheme dated 25.04.96 and he is also being denied the same benefit under the ACP Scheme.

5.5 For that, the provisions made under the ACP Scheme are conditions of service framed by the Rule making Authority and hence constitute an integral part of service rules.

5.6 For that the provisions made under the ACP Scheme are conditions of service framed by the rule making authority which cannot be altered or superseded by an executive order of any individual department.

5.7 For that the applicant submitted representations praying for grant of 2nd financial upgradation to him in terms of ACP Scheme but not replied till date.

5.8 For that due to non-consideration of grant of 2nd financial upgradation, the applicant has been incurring heavy financial losses.

5.9 For that the Respondent department admitted that the promotees from the lower post to the post of J.E (Civil) are eligible for one time benefit under the ACP Scheme.

6. Details of remedies exhausted

Subimal Roy

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the Hon'ble Tribunal be pleased to direct the respondents to grant 2nd financial upgradation to the applicant w.e.f. 09.08.1999 with arrear monetary benefit in the pay scale of Rs. 5,500-9000/- in terms of ACP Scheme.

8.2 Costs of the application.

Sebastien Roy

8.3 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. **Interim order prayed for.**

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

10.
This application is filed through Advocates.

11. **Particulars of the I.P.O.**

i) I. P. O. No.	: 20G 114715
ii) Date of Issue	: 1.10.04.
iii) Issued from	: G.P.O. Guzalvati
iv) Payable at	: G.P.O. Guzalvati

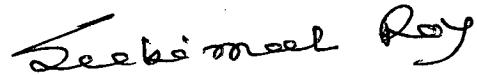
12. **List of enclosures.**
As given in the index.

See below
Re

VERIFICATION

I, Shri Subimal Roy, S/o Late Satyabrata Roy, aged about 57 years, working as Junior Engineer (Civil), MES No. 228303, in the office of the Garrison Engineer, Silchar Division, MES, P.O- Arunachal, Dist-Cachar, Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 5th day of October, 2004.



No.35034/1/97-Est(D)
 Government of India
 Ministry of Personnel, Public Grievances and Pensions
 (Department of Personnel and Training)

ANNEXURE-I

b)

North Block, New Delhi 110001
 August 9, 1999

OFFICE MEMORANDUM

**Subject:- THE ASSURED CAREER PROGRESSION SCHEME FOR
 THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.**

The Fifth Central Pay Commission in its Report has made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. The ACP Scheme needs to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Accordingly, after careful consideration it has been decided by the Government to introduce the ACP Scheme recommended by the Fifth Central Pay Commission with certain modifications as indicated hereunder:-

2. GROUP 'A' CENTRAL SERVICES

2.1 In respect of Group 'A' Central services (Technical/Non-Technical), no financial upgradation under the Scheme is being proposed for the reason that promotion in their case must be earned. Hence, it has been decided that there shall be no benefits under the ACP Scheme for Group 'A' Central services (Technical/Non-Technical). Cadre Controlling Authorities in their case would, however, continue to improve the promotion prospects in organisations/cadres on functional grounds by way of organisational study, cadre review, etc. as per prescribed norms.

**3. GROUP 'B', 'C' AND 'D' SERVICES/POSTS AND ISOLATED
 POSTS IN GROUP 'A', 'B', 'C' AND 'D' CATEGORIES**

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

....2/-

11 A.O.-A/87/CD-2
 12/3/99

Temporary
 Staff
 Associate

3.2 'Regular Service' for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules.

4. Introduction of the ACP Scheme should, however, in no case affect the normal (regular) promotional avenues available on the basis of vacancies. Attempts needed to improve promotion prospects in organisations/cadres on functional grounds by way of organisational study, cadre reviews, etc as per prescribed norms should not be given up on the ground that the ACP Scheme has been introduced.

5. Vacancy based regular promotions, as distinct from financial upgradation under the ACP Scheme, shall continue to be granted after due screening by a regular Departmental Promotion Committee as per relevant rules/guidelines.

6. SCREENING COMMITTEE

6.1 A departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.

6.2 The composition of the Screening Committee shall be the same as that of the DPC prescribed under the relevant Recruitment/Service Rules for regular promotion to the higher grade to which financial upgradation is to be granted. However, in cases where DPC as per the prescribed rules is headed by the Chairman/Member of the UPSC, the Screening Committee under the ACP Scheme shall, instead, be headed by the Secretary or an officer of equivalent rank of the concerned Ministry/Department. In respect of isolated posts, the composition of the Screening Committee (with modification as noted above, if required) shall be the same as that of the DPC for promotion to analogous grade in that Ministry/Department.

6.3 In order to prevent operation of the ACP Scheme from resulting into undue strain on the administrative machinery, the Screening Committee shall follow a time-schedule and meet twice in a financial year – preferably in the first week of January and July for advance processing of the cases. Accordingly, cases maturing during the first-half (April-September) of a particular financial year for grant of benefits under the ACP Scheme shall be taken up for consideration by the Screening Committee meeting in the first week of January of the previous financial year. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that would be maturing during the second-half (October-March) of the same financial year. For example, the Screening Committee meeting in the first week of January, 1999 would process the cases that would attain maturity during the period April 1, 1999 to September 30, 1999 and the Screening Committee meeting in the first week of July, 1999 would process the cases that would mature during the period October 1, 1999 to March 31, 2000.

6.4 To make the Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee of the current financial year within a month from the date of issue of these instructions to consider the cases that have already matured or would be maturing upto March 31, 2000 for grant of benefits under the ACP Scheme. The next Screening Committee shall be constituted as per the time-schedule suggested above.

7. Ministries/Departments are advised to explore the possibility of effecting savings so as to minimise the additional financial commitment that introduction of the ACP Scheme may entail.

8. The ACP Scheme shall become operational from the date of issue of this Office Memorandum.

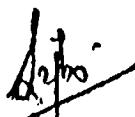
9. In so far as persons serving in the Indian Audit and Accounts Departments are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

10. The Fifth Central Pay Commission in paragraph 52.15 of its Report has also separately recommended a "Dynamic Assured Career Progression Mechanism" for different streams of doctors. It has been decided that the said recommendation may be considered separately by the administrative Ministry concerned in consultation with the Department of Personnel and Training and the Department of Expenditure.

11. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP Scheme shall be given by the Department of Personnel and Training (Establishment-D).

12. All Ministries/Departments may give wide circulation to these instructions for guidance of all concerned and also take immediate steps to implement the Scheme keeping in view the ground situation obtaining in services/cadres/ posts within their administrative jurisdiction;

13. Hindi version would follow.


(K.K. JHA)

Director(Establishment)

To

1. All Ministries/Departments of the Government of India
2. President's Secretariat/Vice President's Secretariat/Prime Minister's Office/ Supreme Court/Rajya Sabha Secretariat/Lok Sabha Secretariat/Cabinet Secretariat/ UPSC/CVC/C&AG/Central Administrative Tribunal(Principal Bench), New Delhi
3. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions
4. Secretary, National Commission for Minorities
5. Secretary, National Commission for Scheduled Castes/Scheduled Tribes
6. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi
7. All Staff Side Members of the National Council (JCM)
8. Establishment (D) Section - 1000 copies

CONDITIONS FOR GRANT OF BENEFITS
UNDER THE ACP SCHEME

1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;

2. The highest pay-scale upto which the financial upgradation under the Scheme shall be available will be Rs.14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled strictly on vacancy based promotions;

3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly;

5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;

5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;

6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;

Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;

8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme;

9. On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(I) a(1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office Memorandum No.1/6/97-Pay.I dated July 5, 1999. The financial benefit allowed under the ACP Scheme shall be final and no pay-fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade;

10. Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+2+1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1+10) of regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade;

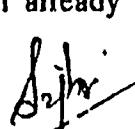
11. In the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CCA) Rules, 1965 and instructions thereunder;

12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department -- not the employees -- shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;

14. In case of an employee declared surplus in his/her organisation and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the purpose of giving financial upgradation under the Scheme; and

15. Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the scheme) shall be given at the subsequent stage (second) of financial upgradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently, they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme.


(K.K. JHA)
Director(Establishment).

ANNEXURE-II

STANDARD/COMMON PAY-SCALES

As per Part-A of the First Schedule Annexed to the Ministry of Finance
(Department of Expenditure) Gazette Notification dated September 30, 1997

[REFERENCE PARA 7 OF ANNEXURE I OF THIS OFFICE MEMORANDUM]

S.No.	Revised pay-scales (Rs)
1.	S-1 2550-55-2660-60-3200
2.	S-2 2610-60-3150-65-3540
3.	S-3 2650-65-3300-70-4000
4.	S-4 2750-70-3800-75-4400
5.	S-5 3050-75-3950-80-4590
6.	S-6 3200-85-4900
7.	S-7 4000-100-6000
8.	S-8 4500-125-7000
9.	S-9 5000-150-8000
10.	S-10 5500-175-9000
11.	S-12 6500-200-10500
12.	S-13 7450-225-11500
13.	S-14 7500-250-12000
14.	S-15 8000-275-13500
15.	S-19 10000-325-15200
16.	S-21 12000-375-16500
17.	S-23 12000-375-18000
18.	S-24 14300-400-18300

MAIN FEATURES OF THE ASSURED CAREER PROGRESSION SCHEME

The main features of the Assured Career Progression Scheme are:-

- (i) It is financial upgradation, not promotion.
- (ii) It has no relation with vacancies.
- (iii) Normal (Regular) promotion on the basis of vacancies will continue to be granted as per relevant rules, when vacancies in higher grade arise.
- (iv) Cadre Review will not cease.
- (v) The benefit is on personal basis.
- (vi) Two financial upgradations under the ACP Scheme shall be available on completion of 12 years and 24 years of regular service respectively.
- (vii) If the first upgradation gets postponed on account of the employee not found fit due to Departmental proceedings etc. this would have consequential effect on the second upgradations.
- (viii) If an employee has already got one regular promotion, he shall qualify for the first financial upgradation on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no financial benefit under the scheme shall accrue to him.
- (ix) Departmental Screening Committees (same as DPCs) to process cases.
- (x) Screening to be held twice a year - Jan and Jul in advance. First screening to be done within one month of the issue of the order for cases maturing upto 31 March 2000.
- (xi) Scheme to be operational w.e.f. 09 Aug 99.

9
3)

- (xii) Upgradation to be given to the next higher grade in accordance with existing hierarchy in the Cadre. In case of isolated posts where there is no hierarchy, upgradation should be given in the next higher scale as per standard pay scales recommended by Fifth CPC.
- (xiii) On financial upgradation, the concerned employee will continue to retain old designation and perform such duties as entrusted to the employee.
- (xiv) The ACP Scheme will be restricted to financial and certain other benefits like House Building Advance, Allotment of Government Accommodation, Advances etc. only. This will not confer any privilege related to higher status e.g. deputation to higher posts etc.
- (xv) On upgradation under ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(I)(a)(1) subject to a minimum financial benefit of Rs.100. The financial benefit allowed under the ACP Scheme shall be final and no fixation benefit will accrue at the time of regular promotion.
- (xvi) In the matter of Disciplinary Penalty proceedings, grant of benefits under the ACP Scheme will be subject to rules governing normal promotion.
- (xvii) Orders regarding reservation in promotion are not applicable to ACP Scheme.
- (xviii) Existing In Situ Promotion Scheme will not run concurrently with the ACP Scheme.
- (xix) In cases where employees have already completed 24 years of regular service with or without a promotion, second financial upgradation under the Scheme shall be granted directly.

*To be long
first
Revised*

ANNEXURE-II

(Extract)

No. EC-90237/4603/EIC (Legal)/1993/ D (Works)
Government of India
Ministry of Defence

New Delhi: dt: 25th April, 1996.

To

The Chief of Army Staff

Subject: Implementation of CAT Bangalore Bench Judgment
In O.A No. 1337 and 1364 to 1373/94, O.A No. 1338 & 1376 to 1382/94
and O.A No. 534/95, 1079 to 1086/95 and 1389 to 1393/95.

Sir,

I am directed to refer to the judgment and order of Hon'ble CAT Bangalore Bench dated 31.3.95 and 15.6.95 in the above mentioned O.A.s and to convey the sanction of the President to the grant of higher pay scales as that being paid to JEs in CPWD in the following manner to the Superintendents (BR/EM)/Surveyor Assistants Grade I and Grade II of MES:-

- (a) There will be two scales of pay for Superintendent (BR/EM)/Surveyor Assistants Grade viz. Rs. 1400-2300 and Rs. 1640-2900. The entry grade will be Rs. 1400-2300. The Superintendents/Surveyor Assistants, on completion of 5 years service in the entry grade will be placed in the scale of Rs. 1640-2900, subject to the rejection of unfit. This higher grade will not be treated as a promotional one but will be non functional and the benefit of FR 22 (I) (i) will not be admissible. While fixing the pay in the higher grade as there will be no change in duties and responsibilities.
- (b) Superintendents (BR/EM)/Surveyor Assistants, who could not be promoted to the post of Assistant Engineers/Junior Surveyor of Works, in the scale of Rs. 2000-3500, due to non-availability of vacancies in the grade of Assistant Engineers/Junior Surveyor of Works, will be allowed the scale of Assistant Engineers/Junior Surveyor of Works i.e. Rs. 2000-3500, on a personal basis, after completion of 15 years of total service as Superintendents (BR/EM)/Surveyor Assistants. This personal promotion will be on fitness

*True Copy
Smt. Savitri Adhvaryu*

basis. As and when regular vacancies in their grade of Assistant Engineer/Junior Surveyor of Works arise such officers who enjoy personal promotion will be adjusted against those vacancies, subject to observance of normal procedure.

- (i) In the matter of pay fixation, the Superintendents (BR/EM)/Surveyor Assistants who are allowed the scale of Rs. 2000-3500 on personal basis will get the benefit of FR 22 (I) (a) (i).
- (iv) On being granted personal promotion to the grade of Assistant Engineers/Junior Surveyor of Works, the Superintendents/Surveyor Assistants will continue to perform the same duties/functions of Superintendents/Surveyor Assistants.
2. The orders regarding placement in the scale of Rs 1640-2900 after 5 years of service will be effective from 01.01.1986 while those relating to personal promotion after 15 years of service will be effective from 01.01.1991.
3. This issues with the concurrence of Defence (Finance) vide their U.O. No. 826/W-I/96 dt. 26.04.96.

Yours faithfully,

Sd/- Illegible

(M.V. VIJAYAN)

DESK OFFICER.

Copy to: -

1. CGDA, New Delhi.
2. DA, SC, Pune, CDA, NC, C/O 16 APO, CE (AF) Bangalore.
3. Defence (Finance)/Works.
4. CAO/A 6.
5. E-in-C's Branch.
6. Department of Expenditure US (IC)
7. Shri A.K. Nayak, Fifth Central Pay Commission.

ANNEXURE- III

MES No. 228303,
Subimal Roy, JE (Civil)

Garrison Engineer (AF)
Elephant Falls Camp
Nonglyer Post
Shillong- 793089

16 Feb 2004.

E-in-C's Branch (EIC/E1R)
Army Headquarters
DHQ, P.O- New Delhi.

(Through proper channel)

NON FIXATION OF ACP

Respected Sir,

With due respect and humble submission, I beg to lay down the following few lines for your kind consideration please.

Sir, I was enrolled in the department as Sub-Overseer in the year 1969 and during 15 January 1998 I was promoted as JE (Civil) on completion of 29 years of regular service.

This is to inform you that ACP was approved in Aug 99 and initiation has not yet been done in my case even after lapse of 4 years.

As per Army HQ E-in-C's Branch letter No. B/75001/PF/JE (Civ) CSCC, March 2002, every promotee are eligible for one time benefit of ACP who was promoted from lower post. Hence I am entitled for 2nd upgradation. Special sanction from Govt. is required. My service particular have already been forwarded to your IIQ vide CE (AF) Shillong Zone's letter No. 81427/ACP/1087/E1D dt 06 Jan 2002.

It is for your information that CAT Bangalore has also been directed for this benefit.

Therefore, requested your good self to look into the matter especially for my legitimate benefit.

I shall remain grateful to you for this act of kindness.

Thanking you Sir,

Yours faithfully

(Subimal Roy)
JE (Civil)

True copy
for
Advocate

BY SPEED POST / Copy cl.

राजीव नियंत्रक
Controller of Categories Accounts (B.R.)

S.D.C. 1999

रामेश्वर नायर, मई दिल्ली
Rishabh House, New DelhiMost ImmediateNo AN/X/11051/ACP
Office of the CGDA,
West Block-V, R.K.Puram,
New Delhi-69Dated :- 1st September '99The CDA (B & R)
New Delhi

Sub:- The assured career progression scheme for the Central Govt. Civilian Employees.

The Vth C.P.C. in its report made certain recommendations relating to assured career progression (ACP) scheme for Central Govt. Civilian Employees in all Ministries/Departments. The said scheme has now been accepted by the Govt. with certain modification vide the Govt. of India, Min. of Personnel, Public Grievances and pension (Deptt. of Personnel & Trg.) O.M. No. 35034/1/97-Estt-(D) dated 9th August 99 (Copy enclosed).

Salient features of the ACP scheme:-

2. Broad details of the ACP scheme have been given in the above mentioned OM dated 9.8.99. However the salient features of the scheme as also the parameters to be observed for its implementation in the Department are as under:-

- (i) The financial benefits under the ACP scheme will be granted from the date of completion of the eligibility period prescribed under the scheme or from the date of issue of these instructions i.e. 9-8-1999 whichever is later.
- (ii) Two financial up-gradations under the ACP shall be available to group 'B' & 'D' employees, if no regular promotions have been availed during the prescribed periods in their grade, on completion of 12 years and 24 years of

regular service respectively. The first financial up-gradation under the scheme shall be allowed after 12 years of regular service and second up-gradation after 12 years of regular service from the date of first financial up-gradation subject to the fulfillment of prescribed conditions. The ACP scheme does not cover Group 'A' i.e. IDAS officers in the Deptt in terms of para 2.1 of DOPT's OM dated 9-3-99.

(iii) In case the first up-gradation gets postponed on account of employee not found fit or due to departmental proceedings etc., the same would have consequential effect on the second up-gradation and the same would also get deferred accordingly.

(iv) Regular service for the purpose of ACP scheme is interpreted to mean the eligibility service counted for regular promotion in terms of relevant service/recruitment rules. Further the regular service for the grant of benefit under this scheme shall be counted from the grade in which an employee was appointed as direct recruit.

(v) Two financial up-gradations under the said scheme in the entire Govt. service carrier of an employee shall be counted against regular promotions including insitu promotion (granted in terms of Min. of Fin. Deptt. of Expr. OM No. 10/1/1-11/88 dated 13th Sep'91) and fast track promotions availed through limited departmental competitive examinations, from the grade in which the employee was appointed as direct recruit. Briefly, two financial up-gradations are assured in the Govt. service carrier under the scheme. If an employee has already got one promotion, he/she will qualify for second financial up-gradation only on completion of 24 years of regular service. In case an employee has completed 24 years of regular service without any promotions two financial up-gradation will be given as per provisions contained in para 4,5,1 and 15 of Annexure I of above mentioned OM dated 9-8-99. In case two promotions have already been received by an employee, no benefit under scheme shall accrue to him/her.

Vacancy based regular promotion, as distinct from financial up-gradation under the ACP scheme, shall continue to be granted after due screening by regular D.P.C. as per relevant rules/regulations. The introduction of the ACP scheme, in no case, affect the normal (regular) promotional avenues.

(vii) Fulfillment of normal promotion norms for promotions from one grade to the other, as per extant orders i.e. analysis of ACRs for last 3 years in respect of Group 'C' & 'D' employees and ACRs for last five years in respect of Gp 'B' employees, their integrity, seniority cum fitness in case of Gp 'D' employees disciplinary/penalty proceedings as per the provisions of CCS(CCA) Rules 1965 etc to assess their fitness or otherwise, as observed by a DPC, shall be ensured for grant of financial up-gradation under the ACP scheme.

(viii) The financial up-gradation under the said scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of post without creating any new post for the purpose as laid down in para 7 of Annexure I and Annexure II to OM dated 9-8-1999.

(ix) The financial up-gradation under the scheme shall be purely personal to the employee for the stated purposes and restrictions of ACP scheme for financial and other benefits shall have no relevance to his seniority position, he/she will continue to hold the old designation and that the same will not amount to actual/functional promotion of the employee. There shall be no additional financial up-gradation for the senior employee on the ground that junior employee in the grade has got higher pay scale under the ACP scheme (Para 6, 7 & 8 of Annexure-I to OM dated 9-8-99 refer).

(x) Reservation orders/roster shall not apply to the ACP scheme in terms of para 12 of Annexure-I of DOPT's OM dt 9/8/99.

(xi) Under the ACP Scheme, the pay of an employee, on up-gradation, shall be fixed under the provisions of FR-22(1) a (1) subject to minimum financial benefit of Rs. 100/- as per DOPT OM No. 1/6197, Pay- dt 5/7/1996 as referred to in para 9 of Annexure-I to OM dated 9-8-99. The financial benefit allowed

Under this scheme shall be final and no pay fixation benefit shall accrue at the time of regular promotion against a functional post in the higher grade.

vii) Grant of higher pay scale under the ACP scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his/her unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he/she refuses to accept the regular promotion, it would entail forfeiture of the period of debarment towards the qualifying service for the next financial up-gradation in accordance with the provisions of para 10 of Annexure-I to OM Dated 9/8/99 referred to above.

iii) The regular service of an employee in his/her previous organisation where he/she was declared surplus, shall be counted along with his/her regular service in the Department for the purpose of financial up-gradation under the scheme in terms of Para 14 of Annexure-I to DOPT's OM (19/8/99).

iv) The ACP scheme has become operational w.e.f. 9/8/99 i.e. date of issue of DOPT's OM mentioned above.

Application of the ACP Scheme in DAD.

The deep analysis of the recruitment rules pertaining to Group 'B', 'C' and 'D' employees in the department and their mode of recruitment reveal that the benefit of the ACP Scheme will accrue to the following grades under the following groups:

Group 'B'

1. Indi Officer

In case of direct recruitment.

Group 'C'

2. Senior Auditors

Directly recruited Auditors in the department and who did not receive promotion in the selection grade

3. Librarian/Information Assistant (if any)

In case of direct recruitment

The insitu promotion w.r.t. Govt. of India, Ministry of Finance, Department of Expenditure OM No. 10(1) E III/88 dated 13/9/91 has been given in respect of some of the marginally timed grades. Hence the same will have to be kept in view in implementing the ACP Scheme. In case, a Gp 'D' employee got his/her promotion first to Dastri's grade and then to Record Clerk, he/she will not be eligible for any financial up-gradation. So far as DAD is concerned the scheme of 'in situ' promotions introduced w.e.f 1-4-91 under the above referred OM shall cease to be operative w.e.f. 01-08-99.

Screening Committee

With a view to implement the ACP Scheme in the department it has been decided that a departmental screening committee may be constituted at your end for the purpose of processing the cases in respect of various groups of employees, as mentioned in para 6.3 above, for grant of financial upgradation as provided for in the said scheme. The composition of the screening committee shall be the same as that of the TCC prescribed under the relevant recruitment/Service Rules for regular promotion to the higher grade. The screening committee, so constituted, will consider the cases that have already been matured or would be maturing upto 31st March 2000 for grant of benefit under the scheme.

It has also been decided with reference to Para 6.3 and 6.4 of Department of Personnel and Training OM dt 9/8/99 that the controllers may also constitute the screening committee for smooth implementation of the ACP scheme in the department. The screening committee may meet twice in a financial year preferably in the first week of January and July for advance processing of the cases. Cases maturing during the period (April to Sept.) of a particular financial year for grant of benefits under the

and scheme shall be taken up for consideration by the screening committee meeting in the first week of Jan. of the previous financial year. Similarly, the screening committee meeting in the first week of July of any financial year shall assess the case that would be maturing during the second half (Oct. to March) of the same financial year.

4.2. The screening committee will scrutinise the relevant service records, ACR dossier, disciplinary/penalty, proceedings, if any, etc. minutely to assess the fitness or otherwise of an employee for grant of financial up-gradation.

4.3. As the basic parameter of the ACP Scheme is to ensure at least two financial up-gradations in the entire service career, screening committee will ensure, with reference to the individual's service book etc. regarding; the eligibility of Two/One financial up-gradations or otherwise with reference to promotion(s) already received by him/her, as noted in his/her service book. In case one promotion has been availed of, the individual will be entitled for only one more financial up-gradation on completion of 24 years of service.

As the scheme is required to be introduced immediately, Controllers may require that the screening committees complete their work by 30th September '99. The complete details of the employees who have been recommended for financial up-gradation within the parameters of ACP Scheme by the screening committee will be furnished to the HQs office by 10th October '99 in the proforma enclosed at Annexure I.

The recommendations made by the screening committee before their transmission to HQs office, are required to be put up to the Chief Controllers/Controllers for their acceptance. The cases of Hindi Officers and Sr. Auditor shall be sent to AN-II Section and AN-XI Section respectively, which deal with the promotions of the respective grades. The cases in respect of the other grades, Record Clerk and all the grades of Group 'D' identified in para 3 above shall be sent to AN-XII Section, which deals with promotions of those grades. AN-II, AN-XI and AN-XII Sections will put up the cases for clearance/approval by the screening committee constituted in HQs office.

5. A certificate will be endorsed by the screening committee at the end of the Annexure I that the service books/ACRs dossier have been examined by the

Screening Committee and that no facts relevant to the financial up-gradation, as recommended by them, have been omitted. It will also be certified that no case of eligible employee in that grade has been left.

Para 1. The controllers are aware, a *in situ* promotion scheme was introduced by the Government of India Ministry of Finance, Department of Expenditure OM No. 10(1)/E-13/88 dated 1.3.88 as circulated under our letter No. AN/XII/12409/Gp C&D dated 15th Aug '82. Various employees falling in Gp 'C' & 'D' in our Department have been given *in situ* promotion. As this promotion will have to be taken into account for the purpose of implementation of the ACP Scheme, the screening committee must ensure that if any such *in situ* promotion has been granted, the same has been taken into account by them.

This may please be accorded "Top Priority" and the screening committee's report duly accepted by the Chief Controller/Controller must reach the Headquarters office by due date, as mentioned above.

Please acknowledge receipt.

W
By CGDA (AN)

Copy to:-

1. CGDA (AN),
Li-charge AN-IV.

For similar action in respect of Group 'B', 'C' & 'D' employees serving in the HQs office

So far as the cases of H.Os are concerned.

So far as the cases of RCs and the group 'D' employees are concerned, as identified in para 2

W
By CCDA (AN)

ANNEXURE- V

OFFICE OF THE ACCOUNTANT GENERAL (A&E) MEGHALAYA ETC: SHILLONG

Estt-I (M) Order No. 297

Dated 14-3-2001

In pursuance of the govt. of Indian Ministry of personnel, public grievances and pensions (Department of Personnel and Training) New Delhi O.M No. 350 34/1/97 Estt (D) dated 9-8-99, the following Group 'C' Officials (Senior Accountants) whose name are shown below and drawing pay in the scale of Rs. 5000-150-8000/- of both the offices of the A.G (A&E) Assam Guwahati and the A.G (A&E) Meghalaya etc. Shillong, have been granted second financial upgradation in the higher scale of pay of Rs. 5500-175-9000/- under assured career progression scheme with effect from the date of their completion of 24 years of regular service vide mentioned against their names.

SL. NO.	Name of the Officials & Designation	Office to which attached.	Effective date of ACPS.
1.	Smti Sumitra (Das) Dey, Sr. Acctt	O/o the AG (A&E) Megh., etc., Shillong	13-03-2001
2.	Smti Sabita (Chakraborty) Bhattacharjee (II), Sr. Acctt.	-DO-	21-10-2000
3.	Shri Anadi Shankar Choudhury, Sr. Acctt.	O/o- the AG (A&E) Assam, Guwahati.	16-10-2000
4.	Smti Anusua (Dutta) Gupta, Sr. Acctt.	-DO-	19-10-2000
5.	Smti Nirupama Bhuiyan, Sr. Acctt.	-DO-	26-03-2001
6.	Smti Arup Ratan Dutta, Sr. Acctt.	-DO-	24-11-2000

2. The grant of financial benefits is subject to the following conditions.

- (i) The ACP Scheme envisages merely placements in the higher pay scale/ grant of financial benefits (through financial upgradation) only to the Govt. servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose.
- (ii) The Financial benefits under ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of Issue of the govt. of India O.M dated 9.8.99 whichever is later.

Tone (G)
Smti
Advocate

(iii) The Financial upgradation under the ACP Scheme in the entire service career of an employee shall be counted against regular promotions (including in situ promotion and fast track-promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradation under the ACP Scheme shall be availed only if no regular promotions during the prescribed periods,

(12 and 24 years) have been availed by an employee, if an employee has got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotion on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.

(iv) Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit.

(v) Fulfilment of normal promotion norms (bench mark, departmental examination, seniority-cum-fitness in the case of group 'D' employees etc) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with the retention of old designations, financial upgradations as personal to the incumbent for the stated purpose and restriction of the ACP Scheme for financial and certain other benefits (house building advance, allotment of govt. accommodation, advance etc) only without conferring any privileges, related to higher status (e.g. invitation to ceremonial functions deputation to higher posts, etc.) shall be ensured for grant of benefits under ACP Scheme.

(vi) Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a grade/category of posts without creating new posts for the purpose.

(vii) The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the

ground that the junior employee in the grade has got higher pay scale under the ACP Scheme.

(viii) On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of F.R. 22 (I) (a) (1) subject to a minimum financial benefit of Rs. 100/- as per the Department of Personnel and training Office Memorandum No. 1/6/97- Pay. 1 dated 5-7-99. The financial benefit allowed under the ACP Scheme shall be final and no pay fixation allowed under the ACP Scheme shall be final and no pay fixation benefit shall accrue at the time of regular promotion, i.e. posting against a functional post in the higher grade.

(ix) Grant of higher pay scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular grade. However, as and when he accepts the regular promotion thereafter he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose.

3. On their placement in the higher scale of pay under the ACP Scheme they are required to exercise option, if any, in terms of F.R. 22 (I) (a) (1) within one month from the date of issue of order.

Sd/-

Sr. Deputy Accountant General (Admn)

Cont.....

Memo No. Estt-I (M)/1-24/2000-2001/5580-91

Dated 14-3-2001

Copy forwarded for information and necessary action to:-

1. The Principal Director of Audit, N.F. Railway, Maligaon, Guwahati-11.
2. The DAG (Admn) Office of the A.G (A&E)
Assam, Maidamgaon,
Beltola, Guwahati-29.
3. The Sr. AO (Admn) alongwith 15 spare copies.
4. The Private Secretary to the A.G (A&E), Meghalaya etc. Shillong.
5. The Steno to the Sr. DAG (Admn), Shillong.
6. P.A O (Local).
7. The AAO/Confidential cell (Local)
8. The SO/Estt-2 (M) section alongwith 5 spare copies.
9. The gradation list Group, pay fixation and service Book Group,
Budget Group of Estt-I (M) Section.
10. Office order Book.
11. Persons concerned of Shillong office only.
12. Notice Boards.

Sd/-

Establishment Officer.

True Copy
Smt. Arinicate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: : GUWAHATI

Union of India & ors.
- Respondents
Shri Subimal Roy ...Applicant
-Versus-
Union of India & Ors.
... Respondents

Addl. Central Govt. Standing Counsel
C. A. T. 11.5.05
Guwaahati

WRITTEN STATEMENTS FOR AND ON BEHALF OF
RESPONDENT NO.1, 2, 3 & 4.

I, SATENDRA SINGH, Garrison
Engineer, Office of GE Silchar Division, PO-Arunachal
Dist-Cachar (Assam) do hereby solemnly affirm and say
as follows :-

- 1) That I am the Garrison Engineer, Silchar Division, PO-Arunachal, Dist-Cachar, Assam and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statement may be deemed to have been denied. I am authorised to file the written statement on behalf of all the respondents.
- 2) That the respondents have no comments to the statements made in paragraph 1, 2, 3, 4.1, 4.2 and 4.3 of the application.
- 3) That with regard to the statements made in paragraph 4.4 of the application, the respondents beg to state that not agreed. Individual was promoted as JE(Civ) on 15 Jan 1998 i.e. after serving 28 years and 07 months as a Sub Overseer to Supdt. B/R Gde-II (later re Designated as JE(Civ) without having any technical Qualification which is a prime requirement for Direct entry candidate as JE. Therefore, his appointment from Sub-Overseer to JE(Civ) to be termed as absorption basis. And as per point No.6 of DOPT's OM No. 35034/1/97-Estt(D) (Vol-IV) dtd 10 Feb 2000, such appointment shall be treated as direct recruitment and past service promotion shall not count for benefits under ACP. Hence granting of second ACP to the individual if any would be due on 15 Jan 2010 ie, on completion of 12 years on this new appointment and NOT on 1993 as

(2)

mentioned. Further, Govt of India, Ministry of Finance, Department of Expenditure vide their UO No.12/24/2001 IC dtd. 14 Aug 01 has kindly approved scale of Rs.5000-8000 to non-diploma holders JEs from 01 Jan 1996 as one time measure where minimum technical qualification for entry is Diploma in Engineering. And based on this order, pay of the individual was fixed while he was promoted as JE(Civ) from Sub Overseer being non-diploma holder. Further revision of scale of these categories has not been announced yet by Govt. of India.

4) That with regard to the statements made in paragraph 4.5 of the application, the respondents beg to state that as individual is not having any technical qualification therefore, he is not entitled for any financial relief under Govt. of India, Min of Def letter No. EC-90237/4603/E1C(Legal)/1993/D(Works) dtd. 25 Apr 1996.

5) That with regard to the statements made in paragraph 4.6 of the application, the respondents beg to state that as the order envisaged vide Govt. of India, Ministry of Defence letter No. EC, 90237/4603/E1C(Legal)/1993/D(wks) dtd 25 April 1996 is only applicable for direct entry individuals who possess required technical qualification and hence this order is not applicable to the applicant.

6) That with regard to the statements made in paragraph 4.7 of the application, the respondents beg to state that individuals plea is not in order as per comments offered in para 3 above.

7) That with regard to the statements made in paragraph 4.8 of the application, the respondents beg to state that no comments as matter lies with HQCE (AF) Zone Shillong.

8) That the respondents have no comments to the statements made in paragraph 4.9 of the application.

9) That with regard to the statements made in paragraph 4.10
(a) are not correct as 2nd upgradation is due on completion of 12 years from first upgradation/promotion.

10) That with regard to the statements made in paragraph 4.10
(b) are not correct due to reasons stated at para 9 above.

11) That the respondents have no comments to the statements made in paragraph 4.10(c) of the application.

12) That with regard to the statements made in paragraph 4.11 of the application are not correct due to reasons stated in para 3 above.

13) That the respondents have no comments to the statements made in paragraph 4.12 and 4.13 of the application.

14) That with regard to the statements made in paragraph 4.14 of the application, the respondents beg to state that individual case do not attract any provision for grant of 2nd ACP as called for.

15) That the respondents have no comments to the statements made in paragraph 4.15 of the application.

16) That with regard to the statements made in paragraph 4.16 are not correct as all instructions for implementation of ACP are based on Govt of India, Min of Personnel, Public Grievance & Pensions (Department of Personnel Training) and not on any organization basis as alleged by the applicant.

17) That with regard to the statements made in paragraph 4.17 are not correct as applicant is not entitled for any amount on this account as on date.

18) That with regard to the statements made in paragraph 4.18 are not correct as being a Govt. India's policy. Further comments on specific judgement on Hon'ble Tribunal case as referred could not be furnished due non-availability of relevant documents.

19) That the respondents have no comments to the statements made in paragraph 4.19 and 5.1 of the application.

20) That the respondents have no comments to the statements made in paragraph 5.2 of the application.

21) That with regard to the statements made in paragraph 5.3 are not correct as orders of C & AG applicable to employees of his department and do not implies automatically to all organization.

22) That the respondents have no comments to the statements made in paragraph 5.4, 5.5, 5.6, 5.7 of the application.

23) That with regard to the statements made in paragraph 5.8 are not correct as applicant is not yet entitled for 2nd upgradation under ACP scheme.

24) That the respondents have no comments to the statements made in paragraph 5.9, 7.8, 8.1, 8.2, 8.3 and 9.1 of the application.

25) That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

V E R I F I C A T I O N

I, SATENDRA SINGH presently working as Garrison Engineer, Office of the GE Silchar Division, PO-Arunachal Dist-Cachar, Assam being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1 to 2 of the application are true to my knowledge and belief, those made in paragraphs 3 - 24 being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 09th day of May 05 at Guwahati.

SM
DEPONENT
 (SATENDRA SINGH)
 (SATENDRA SINGH, IDSE)
 Executive Engineer
 Garrison Engineer Silchar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

78
filed by the applicant
through: Subimal Roy
Advocate
4/8/05

In the matter of:

O.A. No. 242/2004

Shri Subimal Roy.

.....Applicant.

-Vs-

Union of India & Ors.

.....Respondents.

-AND-

In the matter of:

Rejoinder submitted by the applicant
against the written statement submitted
by the respondent No. 1, 2, 3 and 4.

The humble applicant abovenamed most respectfully begs to state as follows; -

1. That the applicant category denies the statements made in para 3, 6 and 12 of the written statement and begs to state that the respondents have admitted in the said paras that the applicant was "promoted" as J.E (Civil) on 15.01.98 but immediately thereafter the have averred in the same para that his appointment as J.E. (Civil) to be termed as "absorption basis" and have pleaded that such promotion be treated as direct recruitment to the post of J.E. (Civil) and as such have denied to count his past services for benefit under the ACP Scheme. As such their contentions are inconsistent in as much as that when the applicant's case was a case of clear "promotion" to the post of J.E. (Civil), it cannot be treated as "absorption" thereafter and his past services cannot be washed off only with the intention of depriving him of the benefit of ACP Scheme. This apart, the question of technical qualification as stated by the Respondents is irrelevant here since such requirements of

qualification for grant of financial upgradation has nowhere been envisaged under the ACP Scheme. The respondents have rightly averred that technical qualification is a prime requirement for "direct entry candidate as JE" and as per settled laws, the criteria of qualification is relevant only in case of recruitment/promotion. But in the instant case it is neither a new recruitment nor a promotion and it is merely a financial upgradation under the ACR Scheme solely on the basis of qualifying years of service stipulated in the scheme, without involving any change of duties and responsibilities whatsoever. As such the question of technical qualification is irrelevant in the instant case, more so when the applicant has been discharging the same duties and responsibilities as that of a directly recruited JE having so called higher qualifications.

2. That in the reply to the statements made in para 4 and 5 of the written statement, the applicant begs to state that the applicant has not prayed for any relief under the provisions of Govt. of India's Ministry of Defence's letter dated 25.04.96 as averred by the respondents in the instant case but the issue herein is the grant of 2nd financial upgradation to the applicant under the ACP Scheme dated 09.08.99 launched by the Govt. of India.
3. That in reply to the statements made in para 9, 10, 17 and 23 of the written statement, the applicant begs to state that as per the ACP Scheme, the 1st upgradation is due on completion of 12 years of regular service and 2nd financial upgradation is due on completion of 24 years of regular service. The applicant has completed 24 years of regular service way back on 27.05.1993 but since the ACP Scheme was launched w.e.f 09.08.99, so the applicant is entitled to get his 2nd upgradation under the ACP Scheme w.e.f. 09.08.99, no matter as to when he got his first promotion. It is only the qualifying years of service stipulated under the ACP Scheme as stated above which governs the grant of benefit under the said scheme and no other whatsoever, and as such the applicant is entitled for 2nd upgradation w.e.f. 09.08.99.

4. That the applicant categorically denies the statements made in para 14, 16, 18 and 21 of the written statement and further begs to submit that while all other central Govt. departments have granted financial upgradations to their employees solely on the basis of qualifying years of service as stipulated in the ACP Scheme, without asking for any higher qualification or departmental test etc; it is only the respondents which has sought to improve such a rider in the instant case in utter violation of the provisions of he said scheme which the Govt. Of India professed as a noble gesture for the welfare of the employees. No where in the said ACP scheme the requirements of the qualification for grant of financial upgraation have been mentioned and it is more relevant in as much as that the financial upgradation under the said scheme is neither a recruitment nor a promotion, nor it involves any change of duties and responsibilities of the concerned employee. The respondents, by their wrong executive instruction have sought to override the statutory provisions which suffers from lack of jurisdiction.

Further, all the J.E s under the respondents irrespective of whether they are promoted or directly recruited or whether they are promoted or directly recruited or whether they are diploma holders or not, are discharging the same duties and responsibilities in their respective categories which is evident from the circular no. 70762/1/P/523(EICI) dated 16.08.1999 (duties of junior engineers) issued by the respondent department. Further, as stated in para 5 of the said circular, a J.E appointed in the entry grade has been debarred from having independent duty during his probationary period and has been entrusted to assist the other JE's which amply indicates that a promoted JE even inspite of having no diploma, is considered to be more efficient and capable of overseeing the works of a directly recruited JE who is a diploma holder. As such there cannot unreasonable classification on the basis of the qualifications for the purpose of granting benefit under he ACP scheme.

Further, due to non granting of 2nd upgradation to the applicant in terms of the ACP scheme and granting of such upgradation to some other employees, those employees even being junior to the applicant have been getting the same scale of pay as that of the applicant. To cite instance, it is submitted that in part II under dated 13.05.2002, one Mr. K.D.Thapa, sub-oversear whose name appears at Sl. No. 5 in the said order, has been granted 1st up gradation under the ACP scheme as a result of which he ha been granted the same scale (Rs. 5000-8000/-) as that of the applicant although the applicant is at higher post than that of Mr Thapa and the applicant joined as back as on 27.05.1969 as against Mr. Thapa who joined on 15.03.1973 only but the applicant has been denied his 2nd upgradation under the ACP scheme. This is a sheer discrimination and such actions of the respondents are arbitrary, malafide, illegal and in clear violation of the ACP scheme.

(Copy of the circular date 16.08.1999 ad part II order dated 13.05.2002 are annexed hereto as Anexures- A and B respectively).

5. That the applicant categorically denies the statements made in para 25 of the written statement and begs to reiterate that he is entitled to all the reliefs prayed for, in this application.
6. That in the facts and circumstances stated above, the original application deserves to be allowed with costs.

VERIFICATION

I, Shri Subimal Roy, S/o Late Satyabrata Roy, aged about 57 years, working as Junior Engineer (Civil), MES No. 228303, in the office of the Garrison Engineer, Silchar Division, MES, P.O- Arunachal, Dist-Cachar, Assam, do hereby verify that the statements made in Paragraph 1 to 7 are true to my knowledge and legal advice and I have not suppressed any material fact.

And I sign this verification on this the 1st day of August, 2005.

Subimal Roy

Tele : 6015

Headquarters: Chief Engineer
Shillong Zone
Spread Eagle Falls
Shillong - 793 011

70762/1/p/ *523* /EIC(I)

16 Aug 99

Pre-Silchar
(All CGWE, GEs and AGES (I))

DUTIES OF JUNIOR ENGINEERS

1. A copy of E-in-C's Branch letter No 41917/Pol/E2W(PPC) dated
02 Aug 99 is fwd herewith for disseminating the same to all concerned
at your end.

(O Khongwir)
AO I
for Chief Engineer

Internal

(All Section/Notice Board)

Copy of E-in-C's letter No 41917/pcd/E2W(PPC) at 02 Aug 99.

AS ABOVE

- Reference Govt of India, MOD letter No PC 90237/4603/EIC(Legal)/1993/D(Works) dated 25 Apr 1996 and Govt of India, MOD letter No PC 85605/RR/B&R I&II/CSCC/2742/D(Works) dated 09 July 1999 circulated vide E-in-C's Br letter No 85605/RR/B&R I&II/CSCC dt 27 July 1999.
- Under MOD letter dated 09 July 99, the Supdts B&R Gde I/II and Supdts E&M Gde I/II and Surveyor Assistants Gde I/II have been redesignated as Junior Engineer (Civil), Junior Engineer (Electrical and Mechanical) and Junior Engineer (Quantity Surveying and Contracts) respectively in the following three grades :-

(a) Entry Grade	-	Rs. 5000-8000
(b) After 5 Years	-	Rs. 5500-9000
(c) After 15 Years	-	Rs. 6500-10500

- As per MOD letter dated 25 Apr 96 the duties of Supdts/Surveyor Assistants in three grades are same in their respective categories.
- Consequent to redesignation mentioned above, duties of Junior Engineers in MES are fixed as under :-

Affected
by
advocate

(a) Junior Engineer (Civil)

Same as those of Supdt B&R Gde I as laid down in Para 53 and Table 'M' of RMES.

(b) Junior Engineer (Electrical & Mechanical)

Same as those of Supdt E&M Gde I as laid down in para 54 and Table 'M' of RMES.

(c) Junior Engineer (Quantity Surveying and Contracts)

(i) General : To take off quantities prepare estimates, squaring and abstracting dimensions and pricing and moneying out of bills of quantities. He may also be required to take measurements of small services and to carry out such other technical duties relating to contracts and bills as he may be directed to perform.

(ii) JE(Q&C) Posted in GE's Office :

(a) Prepare tender documents (except specifications and drawings) for work services within GE's powers for entering into contract.

(b) Technically check all deviation orders, rates and contractor's bills before payment and muster rolls after payment.

(c) Carry out such other technical duties relating to contracts and bills as he may be directed to perform.

(iii) JE(Q&C) Posted in CWE/CE's offices : Duties as laid down in table 'N' of RMES.

Note 1 : Where a JSW/ASW has been posted in a GE's office a JE (Q&C) shall assist him in carrying out the tasks given above.

Note 2 : If no JSW/ASW is posted in GE's office, the Seniormost JE (Q&C) in the GE's office will be in-charge of Contract Section (E8) and other JEs (Q&C) will assist him in carrying out the tasks given above.

5. A Junior Engineer appointed in the entry grade may not be given independent duty during his probationary period and may be asked to assist other Junior Engineers in performance of their duties at the discretion of his Controlling officer.

6. Action to amend IES Regulations is being taken separately.

Sd/-x-x-x-x-x-

(SII Gupta)

Addl CE

Offg DDG&I (P.C.)

(A) Shillong Part II Order No 19 dated 13 May 2002

Page 2 of

2 3 4 5

Strength/Increase

MES/228303 Shri JE 22 Apr Reported arrival on permanent
subimal Roy (Civ) 02(FN) posting from GS Silchar in the
interest of State and TOs w.e.f.
the same date 11 Apr 2002 to
21 Apr 2002 treated as joining/
Journey period HKA/HCA as
admissible from time to time.

Authy: HQ Eastern Command Kolkata
Posting Order No 131322/2/2000/
JE(Civ)/76/Angrs/EIC(I) dated
07 Dec 2000 and GS Silchar
M.O No 1004/448/EIC dated
5 Mar 2002 & 1004/452/EIC dated
13 Mar 2002.

4. MES/223769 Shri B/S The under mentioned PTOs are hereby
Lakshman Chandra Cancelled and published fresh as
Bhowal under (a) & (b).
(Retired on
31 Jan 2002)

(a) PTO No 11/3/01 dated 12 Mar 2001.

(b) PTO No 48/3/01 dated 12 Nov 2001.

31 Jan Retired from service and placed
on Pension list on attaining
the age of superannuation.

Service verified from 01 Apr
2000 to 31 Jan 2001 from paid
pay bills and PTOs.

Auth: GS (A) Shillong P/2479/
03/EI (Pen) dated 31 Jan 2001.

Permitted to avail Usual Privileges
on Retirement

L/8tn Shillong

H/Stn Parual Denga

P.O Nasaret Pur

Dist. Barddwan (W.B)

NRS Samudraganj

Family Details

Self- One, Wife - One Mother - One

Contd. P/S.

..... 2/4

Affected
by
Row Rate

Unit : GS (AF) Shillong

Part II Order No 19

Station : Shillong

Dated 13 May 2002.

(LAST PART II ORDER NO 18 DT 06 MAY 2002)

Sl. No. MGS/ No. Name Designation Date Particulars

PART - I

Nil

PART - II

1. MGS/268312 Shri JE Sain Tarafdar (QS&C) 14 Jan Gtd 34 days EL wef 14 Jan 2002 02(FN) to 16 Feb 2002.
18 Feb Rejoined duty 02(FN) (17 Feb 2002 being Sunday)
08 Apr Gtd 20 days EL wef 03 Apr 2002 02(FN) to 27 Apr 2002.
29 Apr Rejoined duty 02(FN) (28 Apr 2002 being Sunday).

2. MGS/208557 Shri JE Debasish Roy (Siv) Permitted to avail Home Town LTC for dependant members only for both inward/outward Journey during the Block Year 2002-2003 (Home Town)
Date of Commencement - 07 Apr 2002 of Journey.
Date of Completion - 19 Apr 2002 of Journey.
L/Stn - Calcutta (W.B)
NRS - Howrah (W.B)

Details of Family
Wife - One
Father - One
Mother - One

"Certified that this concession has not been/will not be availed by the individual during the Block Year 2002-2003 (Home Town)"

BSO.

Contd. P/2.

PART II ORDER

At : CC (AF) Shillong
Station : Shillong
Part II Order SI No : 32
Dated, 06 Aug 2001
(Last Part II Order SI No 31 dt 30 Jul 2001)

SI MEC No & Name Designation Particulars
No. No. Date
1. MEC/225704 Shri UDC 01 Aug 2001
PK Daimarynizam (02/07/2001) Otd annual increment of Rs 100/- raising his pay
from Rs 4400/- to 4500/- in the scale of pay
req to 150/- i.e. Rs 4500/- 100 - 6000/-
Auth : Sanctioned PIC dt 01 Aug 2001.

1. MEC/225704 Shri UDC 01 Aug 2001
PK Daimarynizam (02/07/2001) Otd annual increment of Rs 100/- raising his pay
from Rs 4400/- to 4500/- in the scale of pay
req to 150/- i.e. Rs 4500/- 100 - 6000/-
Auth : Sanctioned PIC dt 01 Aug 2001.

2. MEC/228101 Shri UDC 01 Aug 2001
DP Danapani (01/07/2001) Otd annual increment of Rs 150/- raising his pay
from Rs 6050/- to 6200/- in the scale of pay
req to 150/- i.e. Rs 6200/- 150 - 6300/-
Auth : Sanctioned PIC dt 01 Aug 2001.

3. MEC/243372 Shri UDC 23 Feb 2001
TK Bhattacharjee (01/07/2001) Opted for ACP Scheme and rendered un-qualified
undertaking for accepting regular promotion on
occurrence of vacancy subsequently
vacant in the concerned post.
Auth : Sanctioned PIC dt 23 Feb 2001.

4. MEC/202352 Shri UDC 17 Aug 2001
SK Chose (01/07/2001) Opted for ACP Scheme and rendered un-qualified
undertaking for accepting regular promotion on
occurrence of vacancy subsequently

5. MEC/228004 Shri Sub 02 Aug 2001
KB Thapa (01/07/2001) Opted for pay fixation straightway under
FR 22(1)a(i) wef 02 Aug 2001.
Auth : Sanctioned PIC dt 02 Aug 2001.

Auth for Ccr No 3 & 4 : HQ CCCC letter No 131041/ACP/277/Engrs/ED dt 12 Jul 2001.

(Part II ends with Ccr No 4).

PART III ORDER

6. MEC/228004 Shri Sub 02 Aug 2001
KB Thapa (01/07/2001) Consequent on implementation of ACP Scheme (1st
upgrade) pay fixed @ Rs 3150/- with ODI
01/07/2000 in the scale of pay Rs. 5100-150-3000.

Auth : AAC Shillong letter No Pay/Tech/42(I)/ACP/MEC dt 06 Aug 2001.

Auth : Sanctioned PIC dt 01 Aug 2001. Otd annual increment of Rs 150/- raising his pay
from Rs. 5150/- to 5300/- in the scale of pay
req to 150/- i.e. Rs 5300/- 150 - 5450/- PIC already sanctioned
during this period is cancelled.

7. MEC/228004 Shri Sub 01 Aug 2001
KB Thapa (01/07/2001) Otd annual increment of Rs 150/- raising his pay
from Rs. 5300/- to 5450/- in the scale of pay
req to 150/- i.e. Rs 5450/- 150 - 5600/-

Auth : Sanctioned PIC dt 01 Aug 2001.

Unit : GE(AF) Shillong, PTC No 32 dt 06 Aug 2001 (Page 2 of 2)

1	2	3	4	5
1.	MEC/228971 Chri Sub BH. Dewan Ji Over seer	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 150/- raising his pay from Rs 5300/- to 5450/- in the scale of pay Rs 5000 - 150 - 5300.
				Auth : Sanctioned PIC dt 01 Aug 2001.
2.	MEC/222410 Chri CMO Tuman Singh Thapa	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 75/- raising his pay from Rs 3800/- to 3875/- in the scale of pay Rs 3800-75-3875-00-4500.
				Auth : Sanctioned PIC dt 01 Aug 2001.
3.	MEC/229640 Chri do Raj Bahadur Thapa	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 80/- raising his pay from Rs 4110/- to 4190/- in the scale of pay Rs 3050-75-3050-80-4500.
				Auth : Sanctioned PIC dt 01 Aug 2001.
4.	MEC/NYA Chri S/Wala Paritesh Chanda	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 60/- raising his pay from Rs 2720/- to 2780/- in the scale of pay Rs 2550-55-2660-60-3200.
				Auth : Sanctioned PIC dt 01 Aug 2001.
5.	MEC/NYA Chri S/Wala Amil Tantia	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 60/- raising his pay from Rs 2720/- to 2780/- in the scale of pay Rs 2550-55-2660-60-3200.
				Auth : Sanctioned PIC dt 01 Aug 2001.
6.	MEC/NYA Chri Chowdhury Francis Rynjiah	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 60/- raising his pay from Rs 2720/- to 2780/- in the scale of pay Rs 2550-55-2660-60-3200.
				Auth : Sanctioned PIC dt 01 Aug 2001.
7.	MEC/NYA Chri Chowdhury Gul Singh Sankli	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 60/- raising his pay from Rs 2720/- to 2780/- in the scale of pay Rs 2550-55-2660-60-3200.
				Auth : Sanctioned PIC dt 01 Aug 2001.
8.	MEC/228372 Chri Mtr Dr. Chettri	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 100/- raising his pay from Rs 4000/- to 4100/- in the scale of pay Rs 4000-100-4100.
				Auth : Sanctioned PIC dt 01 Aug 2001.
9.	MEC/222622 Chri Chowdhury Sar Tai	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 60/- raising his pay from Rs 2960/- to 3020/- in the scale of pay Rs 2550-55-2660-60-3200.
				Auth : Sanctioned PIC dt 01 Aug 2001.
10.	(Part II ends With Ser No. 14)			<u>PART IV</u>
11.	MEC/220584 Chri Plect OK Day	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 100/- raising his pay from Rs 5100/- to 5200/- in the scale of pay Rs 4000-100-5000.
				Auth : Sanctioned PIC dt 01 Aug 2001.
12.	MEC/220574 Chri Plect OK Day	01 Aug 01(FN)	01 Aug 01(FN)	Gtd annual increment of Rs 100/- raising his pay from Rs 5100/- to 5200/- in the scale of pay Rs 4000-100-5000.
				Auth : Sanctioned PIC dt 01 Aug 2001.