

01/00

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Subhita
T.F. 11.17

FORM NO.4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDERSHEET

Original Application : 177/03

Mise Petition No. :

Contempt Petition No. :

Review Application No. :

Applicants:-

Rajnarajan Rai

Respondents:- Union of India Sons.

Advocate for the Applicants:- Mr. M. Chanda, Mr. G.N. Chakrabarty

Advocate for the Respondents!- Mr. S. Nali

CGSC

Notes of the Registry	Date	Order of the Tribunal
	12.8.2003	Heard Mr. M. Chanda, learned counsel for the applicant. The application is admitted. Call for the records. List on 10.9.2003 for orders.
96-158545 7-8-03 Dy. Registrar	mb	Vice-Chairman
Steps taken 1. Notice addressed 2. Sent to U/s for serving the respondent No. 1 to 5 by Regd. AIA.	10.9.2003	Present : The Hon'ble Sri K.V. Prahaladan, Member (A). List again on 25.9.2003 for orders.
8/No 1731 to 1735 Dtd 18/8/03 18/8/03	mb	K. V. Prahaladan Member

No W's has been filed.

by
10/9/03

25.9.2003 On the prayer made by Mr.A.K. Chaudhuri, learned Addl.C.G.S.C. the case is listed on 29.10.2003 enabling the respondents to file written statement.

MM
24/9/03

KV Prahadan
Member

Vice-Chairman

No. Written statement has been filed

29.10.2003

Further four weeks time is allowed to the respondents to file written statement on the prayer made by Mr.A. K.Chaudhuri, learned Addl.C.G.S.C. List the case on 3.12.2003 for written statement.

BB
28.10.03

KV Prahadan
Member

Vice-Chairman

bb

24.12.2003 Present : The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman. The Hon'ble Mr. K.V. Prahadan, Member (A).

23.1.04

W's submitted by the Respondents.

BB

mb

KV Prahadan
Member

Vice-Chairman

26.2.04

Present: Hon'ble Sri Shanker Raju, Judicial Member. Hon'ble Sri K.V.Prahadan, Administrative Member.

Learned counsel for the applicant seeks and is allowed 2 weeks time to file rejoinder.

List for hearing on 19.3.04.

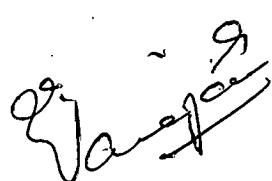
KV Prahadan
Member (A)

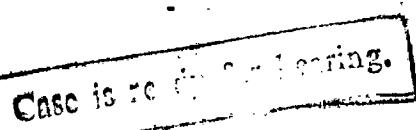
h
Member (J)

bb

23.3.2005 Present : The Hon'ble Mr. Justice
 C. Sivarajan, Vice-Chairman
 The Hon'ble Mr. K. V.
 Prahliadan, Member (A).

At the request of learned counsel
 for the parties list on 26.4.2005 for
 hearing.


 Member (A)

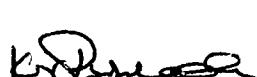

 Case is adjourned for hearing.

Vice-Chairman

7 mb

16.5.2005

Adjourned to 9.6.2005 for hearing.


 Member


 Vice-Chairman

bb

9.6.2005

Heard Mr. M. Chanda, learned counsel
 for the applicant and Mr. A. K. Chaudhuri,
 learned Addl. C. G. S. C. for the respon-
 dents.

Order is reserved.


 Member


 Vice-Chairman

bb

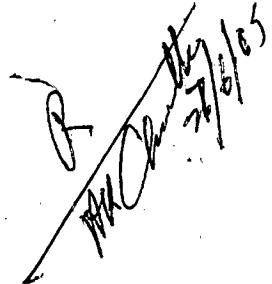
20.6.2005

Judgment delivered in open Court,
 kept in separate sheets. The applica-
 tion is partially allowed. No order as
 costs.


 Member


 Vice-Chairman

mb


 27/6/05
 C.C. of the Court
 was been collected
 by the L/Advocate
 for the applicant

AK

8.12.2004

Shillong Heard Mr M. Chanda, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C.

The claim of the applicant is that even in spite of passing the trade test he has not been promoted even though his juniors were given promotion with effect from 15.2.2002 vide order dated 13.5.2002. It appears that there is some dispute as to whether the persons shown at Sl.No.47 to 54 are juniors to the applicant for the purpose of promotion. Learned Sr. C.G.S.C. has stated that the applicant is at Sl.No.48 in the ~~seniority~~ ^{Seniority} ~~said~~ list. The said seniority list shall be placed before the Tribunal. Learned counsel for the applicant has stated that even assuming that the applicant is to be treated as juniormost by virtue of transfer on request even then the entire service has to be counted and considered for the purpose of promotion. If there are any rules applicable in this behalf, the same be placed before the Tribunal by the learned counsel for the applicant and the learned Sr. C.G.S.C.

order dt. 8/12/04
issuing to learned
advocate of both the
parties.

(See
21/12/04)

Stand over to 28.1.2005.


Member

nkm


Vice-Chairman

28.1.2005 List before the next Division
Bench.


Member (A)

mb

20-2
6
CENTRAL ADMINISTRATIVE TRIBUNAL ::GUWAHATI BENCH.

O.A. No 177 of 2003.

DATE OF DECISION: 20.06.2005

Sri Raj Narayan Rai

APPLICANT(S)

Mr. M. Chanda,

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Ors.

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. K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

- no
- yes
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?

lwd
Judgment delivered by Hon'ble Member (A).

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 177 of 2003.

Date of Order: This the 20th day of June, 2005.

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

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

Shri Raj Narayan Rai
MES No. 228527
Son of Late R.G.Rai
Fitter General Mechanic (SK)
Office of the Garrison Engineer,
Shillong.

... Applicant

By Advocate Shri M. Chanda

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Defence,
New Delhi-1.
2. The Headquarter Chief Engineer,
Eastern Command,
Fort William,
Kolkata.
3. The Command Works Engineer,
S.E. Falls, Shillong-11.
4. The Army Headquarter Engineer-in
Chief's Branch, Kashmir House,
P.O. New Delhi, New Delhi-110011.
5. The Garrison Engineer,
Shillong.

... Respondents

By Shri A.K.Chaudhuri, Addl.C.G.S.C.

O R D E R

K.V.PRAHLADAN, MEMBER (A)

bwd
Applicant was initially appointed as a Mazdoor on 6.11.70 and regularised on 1.6.71. He was promoted as Motor Pump Attendant/Pump House Operator with effect from 25.8.77. He was

redesignated as Fitter General Mechanic (FGM) vide Government order of 6.7.94 which paved the way for the applicant and similarly situated persons for promotion as FGM HS II and FGM HS I (Annexure-II). The office of respondent No.4 issued a notification on 21.7.94 (Annexure-III). The FGM was redesignated as FMG(SK). The above office order also laid down eligibility criteria for promotion to FGM HS II and FGM HS I. For promotion of holders of redesignated posts of FMG(SK) to FGM HS II the requirement was three years experience and clearance of a trade test and DPC. As a welfare measure it was decided to allow 20% promotion to HS II and further 15% promotion to HS II level against 15% vacancies of HS I. Thus 35% (20+15) promotions were to be made at HS II level only. Trade test and DPC for these 15% vacancies one month after the full utilization of 20% vacancies. There was a deadline of 31.3.95 after which no promotion could be made to HS II level. The applicant contends that except in the North East in the other different regions the office order of 21.7.94 was implemented before the deadline of 31.3.95. The applicant claims that he is incurring financial loss since he was denied promotion with effect from 31.3.95. The applicant says that he appeared for the trade test and was declared passed vide order of 7.5.2001, as at Annexure-V. The applicant has stated that he was at serial No.98 in the trade test but has not yet been promoted to HS II whereas Shri Muktar Singh at Sl.No.101 had already been promoted on 13.5.2002 (Annexure-VI). The applicant also has claimed that in his entire career he has only got one promotion since 1970 and is therefore eligible for benefit under ACP Scheme.

19/12

2. The two grievances of the applicant as per his affidavit are denial of promotion to him while his junior was promoted and denial of ACP Scheme benefits to him.
3. The respondents claim that as per the order of 21.7.94 FGM(SK) needed three years experience after being redesignated and pass a trade test for promotion to FMG HS II. The respondents also claim that seniority of industrial workers is area based and fixed by the respective Command Works Engineer. Promotion is also area wise. Therefore, the promotion under GE(P) at Madras has no bearing on the promotion of FGM (SK) of other areas. The respondents also say that the applicant stood 48 in the seniority list and since there were only 35 vacancies, he could not be promoted to FMG HS II. The respondents also claim that promotion has been given strictly on the basis of seniority and the claim of the applicant that juniors to him has been promoted is not based on facts.
4. As far as his claim for the ACP Scheme the respondents have said that the applicant was appointed as a Mazdoor in 1971 in the Scale of 196-232, promoted as a Pump House Operator in 1977 in the scale of Rs.210-290/. The post of PHO was upgraded to the skilled category in the scale of Rs.260-400/. The upgradation of the post from semi skilled to skilled increased the responsibilities of the applicant. So the applicant has received two promotions and therefore not eligible for ACP Scheme.
5. Heard both the learned counsel for the applicant and the learned counsel for the respondents. The applicant has contended that FGM (SK) under GE(P) Madras got their promotion by 31.3.95 on the basis of the order of 21.7.94. He has not cited any other areas where such promotions have been made, though he claims that only in the

North East the order of 21.7.94 has not been implemented. The Administration is under no legal obligation to fill up vacancies. It is not for the petitioner or the Tribunal to assess the exigencies of circumstances and administrative necessity. In G.C.Dhiman vs. State of Himachal Pradesh and others, 1979(1) S.L.R. 532, the Himachal Pradesh High Court has observed that :

"A particular Select List is important only for the purpose of promotions. In other words, if in a particular year there are no promotions which could be made, the list for that year remains dormant. Mere entry of the name of an officer in the select list in a particular year does not vest in him any inalienable right to get promotion. Therefore, it follows that if for some administrative reasons select list for a particular year was not prepared, and if in that year no promotion to the higher grade post was required to be made, the officers serving in the lower grade would not be prejudiced in any manner."

Moreover the applicant is challenging the order of 21.7.94 in 2003. So his plea for parity with FGM (SK) under GE(P) Madras is hopelessly barred by limitation. Therefore on the basis of merits as well as by the law of limitation the applicant has no case in so far as his demand for parity with FMG(SK) under GE(P) Madras is concerned. As for his claim that he has not been promoted to FGM HS II inspite of his juniors being promoted, it appears that this may be due to the applicants transfer from Shillong to Silchar and then to Shillong. So it is possible that he may have been placed at the bottom of the seniority in the cadre of FMG(SK) under the Command Works Engineer, shillong. But he is entitled to promotion and cites Apex Court judgment in Union of India vs. V.N.Bhat, 2004 (2) S.L.J. 62. Relevant portion of which is extracted below:

"The well settled principle of law that even in the case where the transfer has been allowed on request, the concerned employee merely loses his seniority, but the same by itself would not lead to a

conclusion that he should be deprived of the other benefits including his experience and eligibility for promotion. In terms of the Schemes aforementioned, promotion is to be granted for avoiding stagnation only within the said parties. The said Schemes have been framed because they are beneficial ones and thus required to be implemented. The Scheme merely perused that any person having rendered 16/26 years of service without obtaining any promotion could be entitled to the benefit therefor. It is, therefore, not a case where promotion to the higher post is to be made only on the basis of seniority. Even in a case where the promotion is to be made on the selection basis, the concerned employee, even if he be placed at the bottom of the seniority list in terms of the order of transfer based in his favour, he cannot be deprived of being considered for promotion to the next higher post if he is eligible therefor. This aspect of the matter is clearly covered by the three decisions of this Court, namely, A.P. Seb v. R. Parthasarathi, 1998(9) SCC 425=1998(3) SLJ 245 (SC), Scientific Advisor to Raksha Mantri v. V.M.Joseph, 1998(5) SCC 305 and Renu Mullick v. Union of India, 1994(1) SCC 373.

The aforementioned decisions have been followed by this Court in Dwijen Chandra Sarkar and Anr. v. Union of India and Ors., 1992(2) SCC 119 in following paras :

The words "except seniority" in the 1983 circular, in our view, mean that such a benefit of a higher grade given to the transferees will in no way affect the seniority of employees in the P&T Department when the turn of the P&T employees comes up for promotion to a higher category or post. The said words "except seniority" are intended to see that the said persons who have come from another Department on transfer do not upset the seniority in the transferee Department. Granting them higher grade under the Scheme for Time-bound Promotion does not, therefore, offend the condition imposed in the transfer order. We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and the P&T Department.

On the facts of the present case and especially in view of the aforesaid decisions, we are of the view that when the transfer is in public interest and not on request, the two employees transferred cannot be in a worse position than those in the above rulings who have been transferred on request and who in those cases accepted that their names could appear at the bottom of the seniority list. Even in cases relating to request transfers, this Court has held, as

seen above, that the past service will count for eligibility for certain purposes though it may not count for seniority."

6. However, the applicant has not enclosed any document relating to the terms and conditions of his transfers or his transfer orders. The respondents have also not filed any papers on the transfer and related matters of the applicant. Due to the paucity of relevant materials relating to the applicant's transfer, it is not possible for this Tribunal to come to a definite conclusion, insofar as it relates to the applicant's grievance that his juniors have been promoted as FGM HS II. Therefore the applicant, if he so desires, may send a representation to the concerned authority listing out all his grievances, within 15 days of this order. If this authority receives such a representation, he will send a reasoned reply, keeping in view the judgment of the Apex Court cited above, within four months from the date of receipt of the representation.

7. As far as ACP is concerned the applicant says that he has received only one promotion to the post of Motor Pump Attendant/Pump House Operator vide order dated 5.8.77. He claims that upgradation from semi-skilled to skilled category with pay scales going up from Rs.210-290/- to Rs.260-400/- with effect from 16.10.81 is not promotion but an upgradation in pay scales. In Director General, Rice Research v. K.Vasudeva Mayya (AIR 1995 SC 122) the Apex Court has observed :

(b/w)
"Promotions as is generally understood means, the appointment of a person of any category or grade of a service or class of service to a higher category or grade or such service or class."

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In State of Rajasthan vs. Fateh Chand Soni, (1996) 1 SCC 562, the Apex Court has observed :

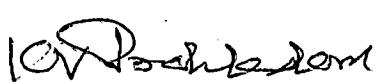
"In the literal sense the word 'promote' means "to advance to a higher position, grade or honor". So also 'promotion' means "advancement in preferment in honour, dignity, rank or grade". 'Promotion' thus not only covers advancement to a higher position or rank but also implies advancement to a higher grade. In service law also the expression "promotion" can be either to a higher pay scale or to a higher post."

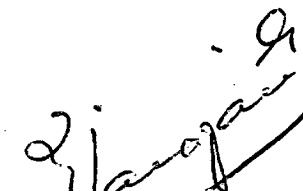
As per Government of India, DOP&T, OM No. 35034/1/97-Estt.(D), dated 9.8.99 the Government decided to implement the ACP Scheme recommended by the V Pay Commission "to deal with the problem of genuine stagnation and hardship faced by employees due to lack of adequate promotional avenues." The 260-400 pay scale granted to the applicant with effect from 16.10.81 became 950-1500 with effect from 1.1.86 and 3050-4590 with effect from 1.1.96 on the basis of IV and V Pay Commission recommendations respectively. So he cannot be said to stagnating and facing hardship since his pay has nowhere reached near the upper limit of his pay scale, i.e. 4590/-.

8. In the two Apex Court judgments, promotion has been defined as appointment or advancement to a higher grade. The applicant has gone from 950-1500 to 3050-4590 with effect from 16.10.81. He had earlier been promoted from a Mazdoor to a Pump House Operator in 1977. Therefore, effectively, he has had two promotions as there has been an advancement in his pay scale twice in his career. And he has

[Signature]

not been stagnating either, but drawing regular yearly increments. He is, therefore, not eligible for any benefit under the ACP Scheme. The O.A is therefore partially allowed. No order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(G.SIVARAJAN)
VICE CHAIRMAN

pg

11th AUG 2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O. A. NO. 177 2003

RAJ NARAYAN RAI

... APPLICANT

- VERSUS -

UNION OF INDIA & OTHERS

... RESPONDENTS

LIST OF DATED AND SYNOPSIS OF THE CASE

- 06.11.1970 - Applicant was initially appointed as Mazdoor.
- 01.06.1971 - Applicant was regularized as Mazdoor.
- 25.08.1977 - Applicant was promoted as Motor Pump Attendant/PHO vide Order dated 05.08.1977 (Annexure-I).
- 06.07. 1994 - Post of Pump House Operator (PHO) was re-designated as Fitter General mechanic (FGM) vides Annexure-II.
- 21.07.1994 - Policy for promotion of FGM to FGM (HS-II & I) was issued vide Annexure-III.
- 31.03.1995 - FGM (Sk) working under GE, Madras were promoted as FGM (HS-II) with all benefits.
- 09.08.1999 - Office Memorandum on Assured Career Progression was issued.
- 07.05.2001 - Applicant appeared in the Trade Test for consideration of his promotion to the post of FGM (HS-II) and was declared passed vide Annexure-V.
- 13.05.2002 - Applicant's juniors who had appeared in the Trade Test along with the applicant were declared passed and promoted vide Annexure-VI, however, the applicant was not considered.
- 21.03.2002 - Applicant submitted representation to the Respondent No. 3 for consideration of his promotion to the post of FGM (HS-II) vides Annexure-VII.
- 06.04.2002 - The respondent no. 5 turned down the representation of the applicant vide Annexure-VIII.

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RELIEF (S) SOUGHT FOR

1. To direct the respondents to consider promotion of the applicant to the post of FGM (HS-II) with all consequential service benefits including seniority and monetary, at least with effect from the date of promotion of his immediate juniors.
2. To declare the applicant eligible for financial up gradation under the Assured Career Progression Scheme and also entitled to the said benefit of financial up gradation with all consequential service benefits including arrear monetary benefit as provided in the list of the instructions contained in the O.M. dated 9.8.1999.

11th AUG 2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

filed by the Applicant
For
Subeata Rai,
Advocate
Sark.
10.08.03

Title of the case : O. A. No 177 /2003

Sri Raj Narayan Rai : Applicant

- Versus -

Union of India & Others: Respondents.

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Filed by

Sark.
Advocate

Date 10.08.03

Raj Narayan Rai

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 177 /2003

BETWEEN

1. Sri Raj Narayan Rai
MES No. 228527
Son of Late R.G.Rai
Fitter General Mechanic (SK)
Office of the Garrison Engineer,
Shillong

Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India, Ministry of Defence,
New Delhi.
2. The Headquarter Chief Engineer
Eastern Command,
Fort William
Kolkata
3. The Command Works Engineer
S.E.Falls, Shillong-11
4. The Army Headquarter Engineer-in
Chief's Branch, Kashmir House,

Raj Narayan Rai

P.O. New Delhi, New Delhi-110011.

5. The Garrison Engineer

Shillong

Respondents.

DETAILS OF THE APPLICATION

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

This application is made praying for a direction upon the respondents to consider the case of the applicant for promotion to the post of Fitter General Mechanic (HS II) at least from the date of promotion of his immediate juniors with all consequential service benefits including seniority or under the Assured Career Programme Scheme and also against the impugned letter dated 06.04.2002 issued by the Respondent no.5.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

The applicant further declare that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

Raj Narayan Ra

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. The applicant is presently working as Fitter General Mechanics, (in short FGM) (SK) under the Garrison Engineer (P), MES, Shillong.

4.2 That your applicant was initially appointed as Mazdoor on 6.11.1970, however, his service was regularized as Mazdoor on 1.6.1971. The applicant thereafter promoted to the post of Motor Pump Attendant/ PHO with effect from 25.8.1977 vide G.E.Silchar Part II Order No. 36 dated 5.8.1977.

Copy of the promotion order dated 5.8.1977 is annexed as Annexure-I.

4.3 That it is stated that the post of Pump House Operator (PHO) subsequently re-designated as Fitter General Mechanic following the order of the Government of India issued under letter No. 6(I)/94/D(W-II) dated 6th July, 1994. In the said letter dated 6th July 1994 the Government of India, Ministry of Defence, New Delhi further stated that the re-designation as stated above would be entitled to these categories for promotion to highly skilled grades as per the present bench mark percentage. It is further contended in the said letter that E-in-C's Branch will initiate action to amend the recruitment rules accordingly and detail administrative instructions regarding training of the tradesman and

Raj Narayan Ray

their deployment trade tests for considering suitability/eligibility for higher grades etc. shall be issued by the E-in-C's Branch. It is further stated that with the concurrence of Ministry of Defence (Finance Division) and the aforesaid letter dated 6.7.1994 was duly circulated by the Government of India, Ministry of Defence to all the Commands for further necessary action.

A copy of the Government of India's letter dated 6th July 1994 is annexed as **Annexure-II**.

4.4 That, pursuant to the order dated 6th July, 1994 the Army Headquarter Engineer-in-Chief's Branch, New Delhi further issued detail instruction/policy for promotion of existing Fitter General Mechanics to the cadre of F.G.M. H.S.II and as well as FGM HS-I, vide letter bearing No. 91026/FGM/EIC(3), dated 21st July 1994. In the aforesaid letter dated 21st July 1994 detail procedure of promotion has been laid down so far categories of re-designated FGM are concerned.

A copy of the letter dated 21st July 1994 issued by the army Headquarter, New Delhi is annexed as **Annexure-III**.

4.5 That it is stated that in the letter dated 21st July 1994, more particularly in paragraph 2.2, it is specifically directed to lower formations to notify the 'Re-designation' in the respective unit Part II orders as a first step without any further delay. The Re-

Raj Narayan Rao

designation should be "Fitter General Mechanic (SK) with effect from 6.7.1994 without changes in pay structure.

In paragraph 5 of the letter dated 21.7.1994 it is further stated that with the Re-designation of the above trades, the personnel will be eligible for Fitter General Mechanic HS II promotion subject to passing of Trade Test and having rendered a minimum of three years service.

It is relevant to mention here that in paragraph 7 of the aforesaid letter it is also stated that the existing ratio as per fitment policy is 65% (SK), 20% (H.S.-II), 15% (HS-I). However, with the introduction of re-designated trade i.e. FGM (SK), it has now been decided to allow a total of 35% (20+15) promotions would be made at HS - II level only in the event of completion of requisite years of service as per recruitment rule subject to passing of Trade Test as a Welfare Measure. The relevant portion of paragraph 7 of letter dated 21.7.1994 is quoted below :

7. Promotion to Fitter Gen Mech (SK), HS II and HS I.

The existing ratio as per Fitment Policy is 65% (SK) : 20% (HS II) : 15% (HS I). However, with the introduction of re-designated Trade i.e. Fitter General Mech (SK), a few personnel will initially become eligible for promotion to HS II after passing Trade Test.

Raj Narayan Rai

Skilled personnel thus promoted to HS II will eventually become eligible for promotion to HS I only after completion of requisite years of service as per Recruitment Rules subject to passing of Trade Test. As a welfare measure, it has been decided to allow :

- i) 20% promotions to HS II Level
- ii) and further 15% promotion to HS-II level against 15% vacancies of HS-I

Thus, total of 35% (20+15) promotions would be made at HS II Level only. The promotion of 15% against the vacancy of HS I would be made as one time measure as a special case before 31st Mar 95. TT and DPC for these 15% vacancies shall be conducted after a clear gap of one month of full utilization of 20% vacancies. After this deadline i.e. 31.3.95 / no promotion at HS II Level against the vacancies of HS I would be made under any circumstances. Attention of CES Command is hereby drawn to Rule 43 of FR according to which excess appointment in a lower rank/Gde may be made against vacancies left unfilled in a higher rank/Gde. For each vacancy in a higher rank/Gde only one extra appointment in a lower rank/Gde is admissible.

8. Inter se seniority

Ran Narayan D...

Consequent on re-designation of the above Trades, a doubt may arise as to how the Inter-se seniority is to be fixed between these trades. It is clarified that inter-se seniority will reckon from the date of their placement in the scale of Rs. 260-400 (pre revised). In case the date happens to be similar for two or more individuals, seniority will count on the basis of length of service in the next below grades. If this also happens to be the same the date of birth will be the criteria. In case of a tie up between a direct recruit and a promotee, the promotee will be the senior. The basis of fixing inter-se-seniority as aforesaid will equally apply to respective Mate (SS) Trades. A combined seniority as per their placement be maintained for the purpose of promotion."

It is quite clear from the Army Headquarter's letter dated 21.7.1994 that total of 35% (20+15) promotion would be made at HSG-II level only and the promotion 15% against the vacancy of H.S. I would be made as an one time measure as a special case before 31st March 1995. It is further made clear in the aforesaid letter that Trade Test and DPC for these 15% vacancies should be conducted after a clear one month of full utilization of 20% vacancies and after this deadline i.e. 31st March, 1995 no promotion at H.S. II

Raj Narayan Rai

level against the vacancies of H.S. I would be made under any circumstances.

It is stated that the aforesaid instruction contained in the letter dated 21.7.1994 was not followed in this Region as in the manner indicated in the letter mentioned above for the reasons best known to the respondents. As a result of non implementation of the order contained in the letter dated 21.7.1994 in time the present applicant have suffered loss in the matter of seniority, promotional prospect and also financial loss in the cadre of FGM H.S. II. Be it stated that in all other regions of the country, except the N.E. Region the order contained in the letter dated 21.7.1994 had been implemented in time and the promotion orders were also effected within the time scheduled as stipulated in the letter dated 21.7.1994.

✓ However, the applicant is denied his promotion to the post of F.G.M., H.S. II even after passing the trade test when his juniors were given promotion with effect from 15.5.2002 vide order dated 13.5.2002. In this connection it may be stated that in the office of the Garrison Engineer (P), Madras all eligible FGM (SK) were promoted to the cadre of FGM H.S. II vide letter bearing No. 1033/178/EIB dated 3rd June, 1995. However, the promotion of the 16 eligible FGM (SK) were given benefit of promotion with effect from 31st March' 95 and also to other similarly circumstanced employees was also given the benefit of promotion with effect from

31.3.1995 and fixation of pay benefit also were accordingly given in the pay scale of Rs. 1200-1800/- . But the present applicant were denied the said benefit of promotion with effect from 31.3.1995 and as a result, denial of promotion the present applicant is incurring huge financial loss each and every month since 31.3.1995 and the applicant is also loosing the benefit of Annual increments since 31.3.1995.

The denial of the promotional benefit to the cadre of FGM HS II with effect from 31.3.1995 is highly arbitrary, unfair and illegal and the same is violative of Article 14 of the Constitution of India.

Copy of the promotion order dated 3rd June 1995 is annexed as **Annexure-IV.**

4.6 That it is stated that the present applicant had attained the eligibility for promotion of FGM HS II long back in terms of clause-V of the letter dated 21.7.94 wherein it is stated as follows :

5. Highly skilled Grades for Fitter General Mechanic.

With the re-designation of the above trades, the personnel would be eligible for promotion to Fitter Gen Mechanic HS II subject to passing Trade Test and having rendered a minimum of three years service. Similarly, the existing Mazdoor, Chowkidar and Safaiwala could be eligible for promotion to Mate

Fitter Gen Mech (SS) subject to passing of trade test, and having rendered a minimum of three years service in the grade subject to availability of vacancies.

It is relevant to mention here that the applicant is found eligible by the respondent Union of India for appearing in the Trade Test for consideration of his promotion to the post of FGM HS II. Accordingly, the applicant was asked to appear in the trade test in the year 2001 by the respondents. The applicant appeared in the said Trade Test and was declared pass in the said trade test vide P.T. No. 19 dated 7.5.2001.

A copy of the P.T. No. 19 dated 7.5.2001 is annexed as Annexure-V.

4.7 That it is stated that many of his juniors who appeared in the trade test along with the applicant and declared passed were promoted to the post of FGM HS II vide GE, Shillong part II order NO. 19 dated 13.05.2002, in the light of the instructions contained in the letter dated 21.07.1994. Therefore, it could be presumed that the present applicant is eligible for promotion to the cadre of FGM HS II on the date of issuance of letter-dated 21.07.1994. But most surprisingly no promotion order was issued in favour of the present applicant for the reasons best known to the respondents Union of India. Non-consideration of his promotion to the post of FGM HS II is highly arbitrary, unfair and illegal

and the said action of the respondents is violative of Article 14, more so in view of the fact that the applicant had passed the trade test and attained the eligibility.

A copy of the promotion order in respect of the applicant dated 13.5.2002 is annexed as

Annexure-VI

- 4.8 That it is stated that the Govt. of India, Ministry of Personal, Public Grievances and Pension (Department of Personal) vide O.M. No.35034/1/97-Estt. (D) dated 9.8.1999 issued the Assured Career Progression Scheme to provide financial up-gradation to the Civilian Central Government Employees. In the instant case the present applicant after his initial appointment to the cadre of Mazdoor has only once promoted during his service career vide order dated 5.8.1977 to the post of Pump House Operator with effect from 25.8.1977. As such, the applicant could not avail any promotion during the last more than 25 years in his service career, the applicant is attaining 26 years on 25.8.2003. The applicant has attained eligibility for promotion/financial up-gradation in terms of the O.M. No.35034/1/97-Estt(D) dated 9.8.1999 issued by the Government of India but the respondents did not take any action either for promotion to the post of FGM HS II in terms of Ministry of Defence letter dated 21.7.1994 or in terms of O.M. dated 9.8.1999 issued by the Government of India for Assured Career Progression.

As a result, the applicant's promotion prospect has adversely affected and the same has caused irreparable loss and injury as well as huge financial loss in each and every month.

- 4.9 That your applicant submitted representation addressed to the Commander Works Engineer, Shillong on 21.3.2002 wherein the applicant inter alia prayed for his promotion to the post of FGM HS II and promotion also under ACP Scheme. The applicant in his representation dated 21.3.2002 also made a mention that he had passed trade test for promotion to the post of FGM HS II but even then his case was not considered for promotion. The said representation of the applicant in fact turned down by the Garrison Engineer, when the same was routed through GE Shillong. However G.E. Shillong vide impugned letter No. 1013/17/ACP/889/EIE dated 06.04.2002 informed the applicant since the applicant was appointed on 1st June, 1971 as Mazdoor unskilled and subsequently promoted to PHO on 25.8.1977 as such applicant as semi skilled grade to skilled grade, i.e. two promotions, one from unskilled to semiskilled and the other from semiskilled to skilled, hence the applicant is not eligible for granting ACP financial up gradation and his application for granting ACP financial up gradation was returned accordingly. It is stated that in the said impugned letter it was mentioned that for his promotion he may apply or represent separately. The contention of the GE Shillong

is quite contrary to the service records of the applicant and the allegation of the GE that the applicant has already availed two promotion is not true as per service record. As such, the contention of the GE is quite wrong. In this connection it may be stated that during the entire service career the applicant availed only one promotion on 25.08.1977 to the post of PHD. Therefore, he is eligible for grant of ACP financial up gradation. Moreover, GE has no jurisdiction to turn down the representation of the applicant for promotion to FGM HS II when the same was addressed to the Commandar Work Engineer, Shillong and on that score alone the impugned letter dated 06.04.2002 is liable to be set aside and quashed.

Copies of the representation dated 21.03.2002 and impugned letter dated 06.04.2002 are annexed as Annexure - VI and VII respectively.

4.10 That it is stated in the facts and circumstances ^M stated above the applicant addressed the authorities for redressal of his grievances but to no result and as such approaching this Hon'ble Tribunal for protection of his valuable right for consideration of his promotion to the post of FGM HS II, specially in view of passing of the Trade test by the applicant and also on the ground that many of his juniors were promoted to FGM HS II and further on the ground that the applicant has attained eligibility for consideration of financial

benefit in the light of the ACP Scheme issued by the Government of India.

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

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

5.1 For that, many of the juniors of the applicant have already been promoted to the post of FGM HS II in supersession of the claim of the applicant vide Part II order dated 13.05.2002.

5.2 For that, the applicant declared passed in the trade test vide PTO dated 17.05.2001 and in terms of the instruction contained in the Ministry of Defence letter dated 21.7.1994 along with his juniors who were subsequently promoted to the post of FGM HS II with effect from 15.02.2002 ignoring the claim of the applicant.

5.3 For that, non-consideration of promotion of the applicant to the post of FGM HS II even after passing of the trade test when similarly situated persons were promoted is violative of Article 14 of the Constitution.

5.4 For that, the applicant attained eligibility for financial up gradation under A.C.P. Scheme issued by the Government of India but the said benefit of

financial up gradation was denied to the applicant without any justifiable reason.

5.5 For that, contention of the Garrison Engineer, Shillong as reflected in the impugned letter dated 06.04.2002 is contrary to the service records of the applicant.

5.6 For that, non-promotion of the applicant to the post of FGM HS II lead to Civil consequences and the applicant is incurring huge financial loss as well as promotion to the cadre of FGM HS I.

5.7 For that rejection of the representation of the applicant vide letter dated 06.04.2002 is without any jurisdiction of Garrison Engineer, Shillong as became the same was addressed to Commandar Works Engineer, Shillong.

6. Details of remedies exhausted.

That the applicant states that they had exhausted all the remedies available to them 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 declare that they had not previously filed any application, Writ Petition or Suit

Raj Narayan Rai

Raj Narayan Rai

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 promote the applicant to the post of FGM HS II at least with effect from the date of promotion of the applicant's immediate juniors to the applicant with all consequential service benefits including seniority and monetary benefit.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant has attained eligibility for financial up gradation under the Assured Progression Scheme and also entitled to the said benefit for financial up gradation with all consequential service benefits including

arrear monetary benefit in the list of the instructions contained in the O.M. dated 9.8.1999.

8.3 Costs of the application.

8.4 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 make an observation that the pendency of this application shall not be a bar for the respondents to consider the case of the applicant.

10.

This application is filed through Advocate.

11. Particulars of the I.P.O.

- i) I. P. O. No. : 9G 158545
- ii) Date of Issue : 7-08-2003.
- iii) Issued from : G.P.O, Guwahati
- iv) Payable at : G.P.O, Guwahati

12. List of enclosures.

As given in the index.

Raj Narayan Rai

VERIFICATION

I, Shri Raj Narayan Rai, Son of Late R.G.Rai, aged about 50 years, Working as FGM (SK) in the office of the Garrison Engineer, MES, Shillong, applicant in the instant application, accordingly I declare 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 which I believe to be true. I have not suppressed any material fact.

And I sign this verification on this the 26th day of Aug, 2003.

Raj Narayan Rai

Raj Narayan Rai

GE SILCHAR PART II ORDER NO.36 DATED 5.8.77

P.GE-5 of 6

1 2 3 4 5 6 Part IV (b)(Contd)

PT APPOINTMENT (AMENDMENT)

17.288802 SHRI SIRAJUDDIN
BARBHUIYA Maz REF PTO NO.33/21/77
(Ty) Under Col.2
FOR MES No.228341"

READ "MES No.228802

PROMOTION

Authy:- CWE Shillong letter No. 1301/1869/EI
dated 18.8.77

19. 228484 SIIRI. KANAI LAL
MALAKAR Chow 20.8.77 Reported Arrival from
(Pt) Agartala to AGE B/R (MES)
V/Man Kumbirgram and promoted from
(Design) Chowkidar to V/Man
(prob) and placed in position
wef same date on probation
for 6 (Six) months.

Authy :- CWE Shillong No. 1301/1767/EI dated
13.6.77

15.0.77
SERVICE VERIFICATION

20. 228774 SHRI A. C. PAUL (Now under GE Shillong)	PHO (Ty)	<u>Ref PTO 33/10/77</u>	From the paid Pay Bils & PTO s upto 31/7/77
21. 228300 SHRI. INSAN ALI LASKAR	V/Man (Ty)	<u>Ref PTO 33/11/77</u>	
22. NYA HEMANTA KUMAR CHETTIA	Mate (Ty)	<u>Ref PTO No.33/12/77</u>	

TRADE TEST (INDUSTRIAL PERSONAL)
AMENDMENT

23. 228744 SHRI . N ISLAM BARBUIYA PHO Ref PTO NO.33/67/77
Under Col 4
FOR "PHO (T y)"
READ "PHO (Pt)"

LEAVE

B. S. O.

Contd.... 6/-

Attested
J. M. Advocate
01.08.2003

Annexure- II

No. 6 (1)/94/D (W-II)
Government of India
Ministry of Defence
New Delhi the 6th July 1994

To

The Chief of Army Staff

Subject: Grant of promotional prospects to industrial workers of MES.

Based on the decision taken by the Government in pursuance of the orders of CAT Bombay Bench in O.A. No. 704/90 filed by Shri T. Narayana Murthy & Others, I am directed to convey the sanction of the Government to the following:

1) Redesignation of the following jobs as Fitter General Mechanic:

- (a) Pump House Operator
- (b) Driver Engine Static
- (c) Mechanic Petrol & Diesel Engines
- (d) Driver Mobile Plant
- (e) Operator Earth Moving Machinery
- (f) Operator Pneumatic Tools
- (g) Boiler Attendant
- (h) Lift Mechanic (Existing incumbents only)

The redesignation as above will entitle these categories for promotion to Highly Skilled Grades as per the present bench mark percentage.

(ii) The Upholsterer may be allowed option for induction in Carpenter's trade subject to his passing provide promotional avenues to Caneman which is the feeder category for Upholsterer.

2. No fresh recruitment as Lift Mechanic will be made.

3. E-in-C's Branch will initiate action to amend the Recruitment Rules accordingly.

4. Detailed administrative instructions regarding training of the tradesman their deployment trade tests for considering suitability/eligibility, for higher grades etc. shall be issued by E-in-C's Branch.

5. The expenditure involved shall be debitable to the respective Head of the Defence Services Estimates.

Attested
[Signature]
Adm't
[Signature]

6. The orders will take effect from the date of issue.
7. This issues with the concurrence of Ministry of Defence (Finance Division) vide their ID No. 1248/DFA(WORKS) of 1994.

Sd/- Illegible

(D.R.Dhankani)

Under Secretary to the Government of India

Copy to :

CGDA, New Delhi - 2 copies

DADE, New Delhi - 2 copies

Dy. Director of Audit Defence Services - Calcutta/Pune/
Meerut/Dehradun/Patna (2 copies each)

Controller of Defence Accounts Eastern Command 2 copies

" " " Central Command (one copy

" " " Western Command signed in
" " " ink)

" " " Southern Command

" " " Northern Command

" " " Bangalore

" " " Gauhati

S-in-C's Branch/Army HQs - 50 copies

Finance Division

Attested
S. C.
Advocate
01.08.63.

Annexure 'N'

Army Headquarters
Engineer-in-Chief's Branch
Rashtrapati Bhawan
Dak P. O., New Delhi - 110 011

No. 91026/EGM/310(3)

21 Jul 94

Chief Engineer
SC Pune - 1
SC Calcutta
SC Chandigarh
SC Lucknow
SC S/o 56 APD

Comdt CME Pune
MEG & Centre, Bangalore
BEG & Centre, Roorkee
BEG & Centre, Kirkee

ITEMS OF INDUSTRIAL WORKERS IN MESS :
LEFT OUT CATEGORIES

1. A copy of Government of India Min of Defence letter No.5(1)/94/D(-II) dt 06 Jul 94 as amended it 08 Jul 94 accordingly Govt sanction for certain left out categories in Fitment Policy, as a result of a C-T case is forwarded herewith. Implementation orders are enclosed in the succeeding parts :-

2.1 Redesignation of Trades

Consequent to issue of above Govt letter, the following Trades have been redesignated as Fitter General Mechanic.

- a) Pump House Operator
- b) Driver in the Static
- c) Mechanic Petrol & Diesel Engine
- d) Driver Mobile Plant
- e) Operator Earth Moving Machinery
- f) Operator Pneumatic Tools
- g) Boiler Attendant
- h) Lift Mechanic (Existing incumbents only)

2.2 CGs Commands are advised to issue directions to lower formations to notify the 'Redesignation' in the respective Unit Part II Orders as a first step without any further delay. The Redesignation should be 'Fitter General Mechanic (SG)' w.e.f. 6.7.94, without change in pay structure.

3.1 Option to allow Upholsterer for induction in Carpenter's Trade

The existing Upholsterer may be allowed option for induction in Carpenter's Trade subject to passing of Trade Test of Carpenter (SG) so that the Upholsterer (SG) after induction to Carpenter (SG) will continue to be considered for promotion upto Carpenter As I level subject to passing of Trade Test at various level. The Upholsterer (SG) when inducted to Carpenter (SG) will be considered as redesignation only and not Promotion, without change in pay structure.

contd... 2/-

Attested
Sanjiv Adhvaryu
1/8/94

- 2 -

3.2. Cabinet

Similarly the Cabinet (S5) Grade which is already a feeder Category for Upholsterer (SK) could be considered for promotion to Carpenter (SK) after promotion to Upholsterer (SK) and passing the Trade Test for Carpenter (SK).

4. No Fresh Recruitment in the trade of Lift Mechanic

The above Govt order now invites that the existing Lift Mechanic may be redesignated as Fitter General Mechanic (SK). Recruitment of Lift Mechanic has been dispensed with from 05.7.94. CES Command are advised to issue specific directive in this regard to all Units not to recruit/promote Lift Mechanic from 05.7.94.

5. Highly skilled Grades for Fitter General Mechanic

With the redesignation of the above trades, the personnel would be eligible for promotion to Fitter Gen Mechanic as HS II subject to passing of Trade Test and having rendered a minimum of three years service. Similarly, the existing Mazdoor, Chowkidar and Sainiks could be eligible for promotion to Mts Fitter Gen Mech (S5) subject to passing of trade test, and having rendered a minimum of three years service in the grade subject to availability of vacancies.

6. Trade Test

Till the revised Rs and revised syllabi for Mts Fitter Gen Mechanic (S5), Fitter Gen Mech (SK), HS II and HS I are issued, CES Command are advised to frame their own syllabi, keeping in view the job requirement. Simultaneously CES Command are requested to forward Draft Syllabi for the above Trade Test to this HQ by 31 Aug 94.

7. Promotion to Fitter Gen Mech (SK), HS II and HS I

The existing ratio as per Recruitment Policy is 65% (SK): 20% (HS II) : 15% (HS I). However, with the introduction of redesignated Trade i.e. Fitter General Mech (SK), a few personnel will initially become eligible for promotion to HS II after passing Trade Test. Skilled personnel thus promoted to HS II will eventually become eligible for promotion to HS I only after completion of requisite years of service as per Recruitment Rules subject to passing of Trade Test. As a welfare measure, it has been decided to allow :

- i) 20% promotions to HS II : Level
- ii) and further 15% promotion to HS II Level against 15% vacancies of HS I.

Thus a total of 35% (20+15) promotions would be made at HS II Level only. The promotion of 15% against the vacancy of HS I would be made as one time measure as a special case before 31 Mar 95. If and PC for these 15% vacancies shall be conducted after a clear gap of one month of full utilisation of 20% vacancies. After this cut off date i.e. 31.3.95 no promotion at HS II Level against the vacancies of HS I would be made under any circumstances. Attention of CES Command is hereby drawn to Rule 43 of R.R according to which excess appointment in a lower rank/rde may be made against vacancies left unfilled in a higher rank/rde. For each vacancy in a higher rank/rde only one extra appointment in a lower rank/rde is admissible.

contd... 5/-

Albert Sath
Advocate
01.08.03

8. Inter-Se-Seniority

Consequent on redesignation of the above Trades, a doubt may arise as to how the Inter-Se-seniority is to be fixed between these trades. It is clarified that inter-se-seniority will reckon from the date of their placement in the scale of S.260-400 (pre-revised). In case the date happens to be similar for two or more individuals, seniority will count on the basis of length of service in the next below grades. If this also happens to be the same the date of birth will be the criteria. In case of a tie up between a direct recruit and a promotee, the promotee will be the senior. The basis of fixing inter-se-seniority as aforesaid will equally apply to respective Mate (SS) Trades. A combined seniority as per their placement be maintained for the purpose of promotion.

9. New Recruits :

Future entry into Trade, made after exhausting the promotional and other avenues, will be as Fitter Gen Mech (SK) at semi-skilled level with Iff qualification in terms of GOI Min of Def letter No. 3810/DS(O'M)/Civ-I/84 dt 15.10.84. The newly inducted direct recruits if any will be recruited in the Semi-skilled Gde and on satisfactory completion of 2 years of Service in that Gde will be considered for promotion to the skilled Grade by DPO. Please refer para 3 of this HQ letter No.90270/39/E1C dt 11 Jan 85.

10. Posting as per CPD 73/72

Personnel posted from one CCE to another will have seniority from the date of TD in new Unit (under different CCE) for the purpose of promotion only. Past service rendered in the former CCE area, will not repeat nor, count for the purpose of promotion since Industrial Personnel are on the area based seniority.

11. Effective date of promotions:

The subject Govt orders are effective from 06 Jul 94. All the existing tradesmen referred to in Para 2.1 above will be redesignated as Fitter Gen Mech (SK) from 06 Jul 94. However, effective date of their further promotions to HS II would be on the date of assuming new appointment. Under no circumstances the effective date would be given as 06 Jul 94 for the new assumption promotion.

12. CAT Cases

In the past there have been many CAT cases due to wrong implementation of Three Grade structure. Further, in certain cases the new recruits were given directly the skilled Grade instead of inducting them at the Semi-skilled Grade for 2 years. As such strict instructions be issued by CEs Command for the implementation of the above orders meticulously, without any deviation. Any lapse on the part of officials responsible will be viewed seriously and stern action taken against them. In case of any doubt, the unit may refer the cases to respective CEs Command/CD Zone who in turn will refer such cases (if not resolved at their level) to this HQ for a decision.

contd.../-

Attested
Smt.
Advocate
01.08.03

13. Deployment of Personnel after redesignation

There will be no change in the existing deployment of above personnel, even after their redesignation as Fitter Gen Mech for the time being. However, in due course of time all Fitter Gen Mech are expected to perform any of the duties of the tradesman mentioned in para 2.1 above irrespective of their original/old trades. Initial difficulties during transition-stage will have to be borne without sacrificing the functional efficiency. As such CEs Command are requested to impress upon their lower formations in deployment during the transformation stage as per the local and functional requirement.

14. Training

Now as per the redesignated post, the above tradesmen are expected to know the job in various trades referred to above for assignment of job as per functional requirement. In order to have adequate skill in the trades, CEs Command are requested to formulate necessary Training Programmes for considering suitability/eligibility for higher grades.

sd/-xxxxxx

(MH Buch)

Col

Dir EIC

for S-in-C

Copy to :-

CSCC - Alongwith a copy of Govt letter No. 5(1)/94/0(4-11) dt. 06.7.94 and dt 08.7.94. CSCC section is requested to issue necessary amendment to Rds. Draft. It may please be shown to EIC(3) before processing the case to MOD.

E2 (EIC) - for comments if any

E4 (Utility)

Tele : 402077

Garrison Engineer (I)
 Thomas Mount
 Barrack No 2 Main Gate
 Puliyuram, Madras

1033/ 17/ /E1B

3 Jun '95

AGM E/M Mount

TEMPORARY PROMOTION : INDUSTRIAL
PERSONNEL

1. It has been intimated by CME Madras vide their letter No : 11930/6905/E1R(DPC) dated 24 May '95 that the undermentioned individuals are selected for promotion to the post as shown against each and posted to the battalions indicated against their names, in the interest of service.

Ser No.	MES No.	Name and Designation	Promoted to	Present from	Post to	Mount to
S/Phri						
1.	MES-361548	B Narasimhalu, FCM (SK)	FCM HS II	GE (P) (I) A & D Mount	In with order line	
2.	MES-408623	MSP Pillai	FCM HS II	GE (P) Thomas Mount	In with order line	
3.	MES-15856	CS Dhanapal, FCM (SK)	-do-	-do-	In S. C.	
4.	MES-135764	PR Rajagopalan, FCM (SK)	-do-	-do-		
5.	MES-104299	VS Benedict, FCM (SK)	-do-	-do-		
6.	MES-135972	C Sankaralingam, FCM (SK)	-do-	-do-		
7.	MES-135919	K Arjunan, FCM (SK)	-do-	-do-		
8.	MES-112452	R Genesan, FCM (SK)	-do-	-do-		
9.	135865	M S Sridharan, FCM (SK)	-do-	-do-		
10.	108817	AT Vasudevan, FCM (SK)	-do-	-do-		

Attested
 Smt.
 Advocate
 08/08/03

Ser No.	MES No, Name and Designation S/Shri	Promoted to	Present from	Posted to	Move to be completed by
11.	420005 PS Ravindra Kurup, FGM (SK)	FGM HS (II)	OR (I) THOMAS Mount	In 11th	-
12.	183882 AJ Xavier Raj, FGM (SK)	-do-	-do-	-do-	-
13.	170250 R Muralidharan, FGM (SK)	-do-	-do-	-do-	-
14.	134616 V Palanivelu, FGM (SK)	-do-	-do-	-do-	-
15.	189030 K Kalaiselvam, FGM (SK)	-do-	-do-	-do-	-
16.	135980 A Santiago, FGM (SK)	-do-	-do-	-do-	-

2. Attention of promotees will be drawn to C of I, M of D, Delhi letter No 25(18)/66/3409/S/DP(upto) dt 17 Dec 79, No 22 (17)/66/139/S/D(upto) dt 20 Apr 78 and Min of Home Affairs, Deptt of Pers and Admin Reforms Om No 22034/3/81/Eatt(D) dt 01 Oct 81. According to which declining/refusal or promotion or acceptance to appointing authority will result in the individual effect for a promotion for a period of 01 year from the date of declining/refusal in accepted by the competent authority. The individual on eventual promotion will loose seniority vis-a-vis their erstwhile juniors promoted into higher grade earlier than. In case the reasons are not acceptable, disciplinary action may be taken as provided in CCS(CC&A) Rules, 1965 for refusing promotion as clarified vide E-in-C's Br. Amt letter No 43319/DP/Gen. dt 01.7.77.

3. They will be placed in position wef 31 Mar 95 and seniority in the higher grade will also be effective from 31 Mar 95.

UJ

(JK Panjwani)
Major
Garrison Engineers (I)

Copy to :-

CWE Madras - For information the individuals promoted in the letter cited at reference have not been involved in any disciplinary case/court of enquiry.

Internal

EIR Section - For information and further necessary action.

*Abhijit
Gang.
Advocate
01/08/03*

(P) ST. THOMAS MOUNT, PVM, BTO. NO. 7 Dt 15/12/95 Sh. No. 4 of
 2 3 4 5 6

PART IV(i)(i) Contd.

9. 112496 R Balakrishnan F/Pipe. 15/12/95 Com. leave 1 day
 (CK) on MC debit able to 2 days HPL.
 16/12/95 Rejoined duty.
 28/12/95 Com. 2 days
 30/12/95 Rejoined duty.
 Bal FPL:23 HPL:228
10. 112451 PR Sethilingam FGM (SK) 21/12/95 FPL 2 days
 23/12/95 Rejoined duty
 28/12/95 Com. leave 40 days
 on MC debit able to 30 days HPL.
 07/01/96 Rejoined duty (Shift)
 Bal FPL:46 HPL:151
- FIXATION OF PAY
 11. 112452 R Ganesan FGM HS 31/3/95 Pay fixed at Rs.1290/-
 II 31/3/95 with DNI 1/3/96 in the scale of Rs.1200-30-1440-30-1800/- provided no non qualifying service intervened.
 Authy: Pay fixation approved by RAO (MES) Madras letter No.RAM/GEF/242/GC dt 2/1/96 received under CE SC Pune letter No. 170101/152/518/E1R(P/E/Gp-I) dated 3/2/95.
12. 108817 AT Vasudevan FGM HS 31/3/95 Pay fixed at Rs.1290/-
 II 31/3/95 with DNI 1/3/96 in the scale of Rs.1200-30-1440-30-1800/- provided no non qualifying service intervened.
 Authy: Pay fixation approved by RAO (MES) Madras letter No.RAM/GEF/242/GC dt 2/1/96 received under CE SC Pune letter No. 170101/152/517/E1R(P/E/Gp-I) dated 3/2/96.
13. 135919 K Arjunan FGM HS 31/3/95 Pay fixed at Rs.1290/-
 II 31/3/95 with DNI 1/3/96 in the scale of Rs.1200-30-1440-30-1800/- provided no non qualifying service intervened.
 Authy: Pay fixation approved by RAO (MES) Madras letter No.RAM/GEF/242/GC dt 2/1/96 received under CE SC Pune letter No. 170101/152/515/E1R(P/E/Gp-I) Dt 3/2/96.
14. 408628 MS Parthan Pillai FGM HS 31/3/95 Pay fixed at Rs.1290/-
 II 31/3/95 with DNI 1/3/96 in the scale of Rs.1200-30-1440-30-1800/- provided no non qualifying service intervened.
 Authy: Pay fixation approved by RAO (MES) Madras letter No.RAM/GEF/242/GC dt 2/1/96 received under CE SC Pune letter No. 1710101/152/514/E1R(P/E Gp-I) dt 3/2/96.

Attn'd
 Dr. Sankar
 Advocate
 01/08/03

GE(P)ST.THOMAS MOUNT, PVM, FTO.No.7 Dated 12/1/93. Schedule 5 of
 1. 2. 3. 4. 5. 6.
 PART IV(A)(i) Contd.

15. 135865 NP Subramani

FGM HS 31/3/95 Pay fixed at Rs.1200/-
 II Lon W.e.f 31/3/95 with

Authy: Pay fixation approved by RAO(MES)
 Madras letter No.RAM/GEF/242/GC dt 2/1/96
 received under CE SC Pune letter No.
 1710101/152/513/ E1R(P/E Gp-I)dt 3/2/96.

DNI/3/95 in the
 scale of Rs.1200-30-
 1440-EB-30-1800/-
 provided no non
 qualifying service
 intervened.

16. 361548 B Narasimhalu

FGM HS 31/3/95 Pay fixed at Rs.1200/-
 II Lon W.e.f 31/3/95 with

Authy: Pay fixation approved by RAO(MES)
 Madras letter No.RAM/GEF/242/GC dt 2/1/96
 received under CE SC Pune letter No.
 1710101/152/512/E1R(P/E Gp-I) dt 3/2/96.

DNI/3/95 in the
 scale of Rs.1200-30-
 1440-EB-30-1800/-
 provided no non
 qualifying service
 intervened.

17. 135980 A Santiago

FGM HS 31/3/95 Pay fixed at Rs.1200/-
 II Lon W.e.f 31/3/95 with

Authy: Pay fixation approved by RAO(MES)
 Madras letter No.RAM/GEF/242/GC dt 2/1/96
 received under CE SC Pune letter No.
 1710101/152/516/E1R(P/E Gp-I) dt 3/2/96.

DNI/3/95 in the
 scale of Rs.1200-30-
 1440-EB-30-1800/-
 provided no non qual-
 ifying service inter-
 vened.

18. 135843 TP Loganathan

Painter 09/11/95 Com.leave 6 days on
 (SK) MC debit able to 12
 days HPL.
 15/11/95 Rejoined duty.

301 FPL 105 HPL:164
 28/10/93 Appeared Trade Test
 & for Painter (SK) to
 29/10/93 Painter HS II held
 at GE Madras on
 23/10/93 and 29/10/93.

RESULT DECLARED FILED.

AGEN'Tech
 for Garrison Engineer

PART IV(A)(ii)
 (EDS Not Centralised)

Elect 05/11/95 EOL 5 days on AC
 HS II 11/11/95 Rejoined duty (10th
 being Sunday.)
 19/11/95 EOL 5 days on MC
 26/12/95 Rejoined duty (24th
 being Sunday and
 25th being X'Mas
 Holiday.)

301 FPL HPL

*Attestd
 Smt.
 Advocate
 01-08-03*

19. 136000 D Bacheer

GE SHILLONG PTO NO. 19 DT 07 MAY 2001

PART-IV (CONT'D)

95.	MES-228961 Shri Chabi Lal Sharma	Mate OTF	Appeared Trade test for the post of M/ Mason and declared passed.
96.	MES-228137 Shri DB Thapa	- do -	- do -
97.	MES-229725 Shri S Roy Manik Kharkongor	- do -	- do - male (selected)
98.	MES-228715 Shri Raj Narayan Rai	FGM (SK)	Appeared Trade test for the post of FGM HS-II and declared passed.
99.	MES-229010 Shri Dobrik Dhangdoh	- do -	- do -
100.	MES-229110 Shri Rishi kesh Paul	- do -	- do -
101.	MES-223501 Shri Muktar Singh	- do -	- do -
102.	MES-229148 Shri C W Lama	- do -	Failed.
103.	MES-228527 Shri N C Paul	- do -	Appeared Trade test for the post of FGM HS-II and declared passed.
104.	MES-229167 Shri Saheb Md Ali	- do -	- do -
105.	MES-228609 Shri Jung Bdr Gurung	- do -	- do -
106.	MES-229119 Shri Jawahar lal Kohari	- do -	Failed.
107.	MES-229489 Shri Khem Nath Upadhyay	- do -	Appeared Trade test for the post of FGM HS-II and declared passed.
108.	MES-229487 Shri Dev Kr. Chettri	- do -	- do -
109.	MES-A No. 477971 Shri Jaleshwar Singh	- do -	- do -
110.	MES-228970 Shri Ram Chandra Singh	- do -	- do -

SSO
for Garrison

Contd . . .

Attested
Sana
Advocate
01/08/03

CWE SHILLONG PART II ORDER NO.19 DATED 13 MAY 02 Sheet No.8 of

1 2 3 4 5 6

PART IV (CONTD.)

PROMOTION

7. MES/2290195 Shri 15-2-02 Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.
8. MES/229150 Shri 15-2-02 Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.
49. MES/229000 Shri 15-2-02 Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.
50. MES/229110 Shri 15-2-02 Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.
51. MES/229010 Shri 15-2-02 Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.
52. MES/223507 Shri 15-2-02 Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.
- Auth : Sl.No.47 to 52 : CWE Shillong letter No.1455/DPC/2001/114/ EIA dated 15 Feb 2002.
53. MES/229143 Shri 15-2-02 Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.
54. MES/229527 Shri 15-2-02 Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.
- Auth : Sl.No.53 & 54 : CWE Shillong letter No.1455/DPC/2001/181/EIA dated 19 Apr 2002.

Contd. p/9

Attested
Smt. Advocate
01/08/03

REF ID : MES/228715
 RAJ NARAYAN RAI
 G.M. Shillong
 P.O. K/10 Suli dtv

Dear Department Works engineer
 Dafford Suli Falls
 Shillong

(through proper channel)

sub : Grant of ACP/Promotion

ANNEX

With due respect and humble submission I beg to lay
 the following few lines for your kind consideration and
 favourable action from your end;

That sir, I MES/228715, FGM - RAJ NARAYAN RAI of
 the Shillong under AGM E/H sub div, H/valley section would
 like to request your goodself regarding the ACP/Promotion
 and capacity of Industrial cause under your jurisdiction.

That sir, I had been appointed on 6th Nov, 1970 in
 the capacity of Mazdoor and was placed in CP upto date 1st
 June 1971 and thereby I have been regularise till date, and
 I was promoted to the post of MPA on 25th Aug 1977, and till
 I had same capacity and same grade as FGM. Since sir you are ~~alone~~
 that rate, two or present FGM are same and of same grade, except
 the change of their name. A copy of PTO regarding my promotion
 is also attached with this petition as annexure-I for your
 perusal.

That sir, after rendering 25 years of my long service
 in same capacity I achieved a chance to appear on test which
 was conducted some time in July 2001, and I have passed my test
 for P.O. I.L. A copy of PTO is attached as annexure-II for your
 perusal please.

In view to the above circumstances I hereby request
 your office kindly to grant me ACP or promotion which ever
 is possible and desirable for the cause, and for this act of kindness
 I will ever pray.

Yours truly
 (1) Division engineer Shillong
 (2) G.M. Shillong
 (3) Dafford Committee
 (4) Shillong

Your faithfully,
 Raj
 (RAJ NARAYAN RAI)
 MES/228715
 For information
 and early action
 please. 21-3-2002

Attestd
 (Soh.
 Advocate
 02/06/03)

33
100/EM
Exhibit M (504)
Tele Mil : 6060

Garrison Engineer
Shillong Division
Shillong - 02

1013/17/ACP/ 08 /EIE

16 Apr 2002

AGE E/M Shillong

FORWARING OF PERSONNEL ACCPLICATIONS

1. Reference your letter No 100/502/Em dt 27 Mar 2002.
2. It is seen that MES/228715 Shri Raj Narayan Rai, FGM (SK) was appointed as Mazdoor (USK) on 01 Jun 19971, subsequently promoted to PHO on 25.8.1977 and designated as FGM(SK). It is quite clear that he has crossed semi skilled grade i.e two promotion from unskilled to semi-skilled and semi-skilled to skilled. Hence, he is not eligible for granting ACP financial upgradation. His application requesting for ACP is returned herewith.
3. As regards promotion he may ~~please~~ apply/represent separately. The individual may please be informed accordingly.

Encls : as above

V.M.U
(PP Singh)
Major
Garrison Engineer

AGE
GPI / II
EGC
DATE

Attacted
Advocate
01/08/03

8 JAN 2004

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

OA NO 177 OF 2003

Shri Raj Narayan Rai Applicant

-Vs-

Union of India and Others Respondents

- AND -

IN THE MATTER OF

Written Statement submitted by the respondents

The humble respondents beg to submit the Para-wise written statement as follows:-

1. That with regard to Para 1, 2, 3, 4.1, 4.2, 4.3 and 4.4, of the application the respondents beg to offer no comments.
2. That with regard to the statement made in Para 4.5 & 4.6, of the application the respondents beg to state that Para 5 of E-in-C's Branch, Army HQ letter No 91026/FGM/EIC(3) dated 21 Jul 94 clearly stipulates that with the re-designation as FGM (SK), the personnel would have been eligible for promotion to FGM HS-II subject to passing of Trade Test and having rendered a minimum 3 years service in the grade of re-designated FGM (SK). The personnel who would have been eligible for promotion to FGM HS-II as a result of introduction of policy for re-designation were from different diverse fields viz Pump House operator, Driver Mobile Plant Operator, Earth Moving Machinery, Operator Pneumatic, Boiler Attendant and Lift Mechanic (Existing incumbents only).

*Shri Raj Narayan Rai
- Respondent
through:-
Shri K. K. Choudhury*

Adm. C. Central Govt. Standing Counsel
C. A. T. 23/1/04
Guwahati

3. years of requisite service as envisaged in policy with regard to promotion to the next higher grade in the existing hierarchy, would have helped the personnel of re-designated FGM (SK) gain sufficient knowledge about the nature of duties assigned to FGM (SK) and acquire qualitative experience on grounds in discharging their responsibilities with greater application of mind and proficiency and this in turn would have helped them develop skill and hone their skills. 3 years practical service in the re-designated FGM (SK) would have helped the personnel to prepare them well before appearance/clearance of Trade Test for promotion to FGM HS-II.

Any trade test, if sought to be conducted, prior to the introduction policy/instructions for re-designation and before completion of 3 years requisite service in FGM (SK) would have proved detrimental to both the personnel as well the organisation they were associated with. Hence having rendered 3 years service in re-designated FGM (SK) were considered inescapable for the personnel to prepare them well before appearance/clearance Trade Test for promotion to next higher grade in the existing hierarchy as otherwise the same could have been against the principles of natural justice so far as affording opportunity to personnel is concerned. It is further submitted that seniority of industrial personnel is area based and fixed by respective CsWE under whose dispensation the personnel were working and no way connected/sought to be connected with similarly situated personnel of industrial categories of other CsWE elsewhere. Therefore contention of the petitioner that promotion of industrial personnel of GE (P) Madras has effected their seniority position, promotional aspects and consequent financial loss has no basis being made out of figment of imagination in contravention to provision of policy/instructions framed on the subject. Therefore the petition of the petitioner is liable to be set aside and dismissed.

3. That with regard to the statement made in Para 4.7, of the application the respondents beg to state that the promotions from FGM (SK) to FGM HS-II have been granted in accordance with existing rules. Number of available vacancies for FGM HS-II was 35 and the number of empanelled candidates were 35. The petitioner MES/228527 Shri Raj Narayan Rai stood 48 Nos in the seniority list. Therefore due to non-availability of vacancies the applicant could not be granted promotion. It is submitted that promotions have been given strictly based on the seniority list and the contention of the applicant that his juniors have been promoted is figment of imagination and false. The petition is therefore liable to be dismissed.
4. That with regard to the statement made in Para 4.8, of the application the respondents beg to state that the applicant was initially appointed in 1971 as Mazdoor in the scale of 196-3-220-EB-3-232. The applicant was promoted in 1977 as PHO, a semi skilled post in the pay scale of 210-4-226 - EB -4-250-EB-5-290. The post of PHO was upgraded to skilled category in 1981 and the applicant was granted financial up gradation in the pay scale of Rs. 260-6-290 - EB -6-326-8-366 - EB-8-390-10-400 from the existing pay scale of Rs. 210-4-226-EB-4-250-EB-5-290 wef 16 Oct 81. The up gradation of the post from semi skilled category to skilled category resulted in increased responsibilities on part of the applicant. Vide GOI, Min of Personnel, Public Grievances and Pensions (Dept of Personnel and Trg), Office Memorandum No 35034/1/97-Estt(D) (Vol.IV) state that "Where placement in a higher grade involves, assumption of higher responsibilities and duties, then such upgradation will be viewed as promotion/upgradation". Therefore it is evident that the petitioner has availed two promotions and therefore is not eligible for granting ACP financial up gradation. As such the applicants submission of huge financial loss is fictitious and imaginary. The petition is therefore liable to be dismissed.

5. That with regard to the statement made in Para 4.9, of the application the respondents beg to state that vide his representation dated 21 Mar 2002, addressed to CWE Shillong, the applicant had requested for grant of ACP or promotion which ever possible. It is submitted that based on the facts mentioned in the above paragraphs, the petitioner was found ineligible for grant of ACP. Further due to non availability of vacancies, the individual could not be promoted to FGM HS-II. The Garrison Engineer Shillong vide letter No 1013/17/ACP/889/EIE dated 06 Apr 2002 informed the petitioner about the ineligibility for grant of ACP, while leaving it upto the petitioner for seeking redressal for matters pertaining to promotion, separately. The contention of the petitioner that he is eligible for grant of ACP is false and incorrect. The GE has informed the individual that he was ineligible for ACP based on the existing rules position on the subject matter for which is fully competent and empowered. However if the petitioner was not satisfied with the contention of the Garrison Engineer, he was free to appeal/approach the Department for redressal of grievances.

6. That with regard to the statement made in para 4.10, of the application the respondents beg to state that promotions from FGM (SK) to FGM HS-II have been carried out strictly on the basis of seniority and the statement of the petitioner is false and the petition is liable to be dismissed.

7. That with regard to the statement made in Para 5, of the application the respondents beg to state that promotions from FGM (SK) to FGM HS-II have been carried out based on seniority. The number of available vacancies were 35 and number of eligible candidates 35. The applicant stood at number 48 Nos in the seniority list and hence could not be granted promotion. It is submitted that the petitioner was considered for promotion but could not be approved due to lack of vacancies. Therefore the statement of the petitioner that his juniors have been promoted, is false and incorrect. It is also submitted that the applicant is

ineligible for grant of ACP as per reasons in the preceding paragraphs and the GE has merely communicated the ineligibility to petitioner for which he is authorised and empowered.

8. That with regard to Para 6 and 7 of the application the respondents beg to state that only representation made by the petitioner was vide his letter number 21 mar 2002 requesting for grant of ACP or promotion which ever possible. Garrison Engineer Shillong vide letter No 1013/17/ACP/889/EIE dt 06 Apr 2002 communicated the ineligibility of the petitioner for grant of ACP. Thereafter the applicant has neither disputed the letter or appealed to the Department for grant of promotion. It is submitted that the applicant has approached the Hon'ble CAT without exhausting any of the available remedies by way of appeal/representation for grant of promotion to the Department. It is also submitted that entire application based on Garrison Engineer Shillong letter No 1013/17/ACP/889/EIE dated 06 Apr 2002 is time barred as the same has been filed after the expiry of one year from the date of GE Shillong letter No 1013/17/ACP/889/EIE dated 06 Apr 2002. Therefore the petition is liable to be set aside and dismissed.

9. That with regard to the statement made in Para 7, of the application the respondents beg to offer no comments.

10. That with regard to Para 9 to 12, of the application the respondents beg to state that the applicant was initially appointed in 1971 as Mazdoor in the scale of 196-3-220-EB-3-232. The applicant was promoted in 1977 as PHO, a semi skilled post in the pay scale of 210-4-226 – EB -4-250-EB-5-290. The post of PHO was upgraded to skilled category in 1981 and the applicant was granted financial up gradation in the pay scale of Rs. 260-6-290 – EB -6-326-8-366 - EB-8-390-10-400 from the existing pay scale of Rs. 210-4-226-EB-4-250-EB-5-290 wef 16 Oct 81. The up gradation of the post from semi skilled category to skilled category resulted in increased responsibilities on part of the applicant. Vide GOI, Min of Personnel, Public Grievances and Pensions (Dept of Personnel and Trg),

Office Memorandum No 35034/1/97-Estt(D) (Vol.IV) state that "Where placement in a higher grade involves, assumption of higher responsibilities and duties, then such upgradation will be viewed as promotion/upgradation". Therefore it is evident that the petitioner has availed two promotions and therefore is not eligible for granting ACP financial up gradation. As such the applicants submission of huge financial loss is fictitious and imaginary. The petition is therefore liable to be dismissed.

It is submitted that the promotions from FGM (SK) to FGM HS-II have been granted in accordance with existing rules. Number of available vacancies for FGM HS-II was 35 and the numbers of ~~empanelled candidates were~~ 35. The petitioner MES/228527 Shri Raj Narayan Rai stood 48 in the seniority list. Therefore due to non-availability of vacancies the applicant could not be granted promotion. It is submitted that promotions have been given strictly based on the seniority list and the contention of the applicant that his juniors have been promoted is figment of imagination and false. The petition is therefore liable to be dismissed.

16. Para 9 to 11. That with regard to the statement made in Para 9 to 11, of the application the respondents beg to offer no comments.

VERIFICATION

I, ASEEM KUMAR, AEE, AGCE(M) Office of the Garrison Engineer, Shillong being authorized do hereby solemnly affirm and declare that the statements made in Paragraphs 3, 4, 5 being matters of record are true to my information derived therefore and those made in the rest are humble submission before the Hon'ble Tribunal.

And I sign the verification on this 20 day of Jan 2004

Aseem Kumar

DEPONENT

annexure 'N'

Army Headquarters
The Inter-in-charge, Wanch
Rashmir House
D-1 P.O., New Delhi - 110 011

No.91026/FGW/310(3)

21 Jul 94

Chief Engineer
SC Pune -1
SC Calcutta
SC Chandigarh
SC Lucknow
SC S/o 56 APD
Comdt CMS Pune
MEG & Centre, Bangalore
MEG & Centre, Roorkee
MEG & Centre, Mirree

ITEMS OF INDUSTRIAL WORKERS IN MEG :
LEFT OUT CATEGORIES

1. A copy of Government of India Min of Defence letter No.5(1)/
94/5(II-II) dt 06 Jul 94 as amended lt 08 Jul 94 accordingly Govt
directive for certain left out categories in Fitment Policy, as a
result of a C.T case is forwarded herewith. Implementation orders
are amplified in the succeeding para's :-

2.1 Redesignation of Trades

Consequent to issue of above Govt letter, the following Trades
have been redesignated as Fitter General Mechanic.

- a) Pump House Operator
- b) Driver of The Static
- c) Mechanic Petrol & Diesel Engine
- d) Driver Mobile Plant
- e) Operator Earth Moving Machinery
- f) Operator Pneumatic Tools
- g) Boiler Attendant
- h) Lift Mechanic (existing incumbents only)

2.2 CGs Comms are advised to issue directions to lower formations
to notify the 'Redesignation' in the respective Unit Part II Orders
as a first step without any further delay. The Redesignation should
be 'Fitter General Mechanic (SG)' w.e.f. 6.7.94, without change in
pay structure.

3.1 Option to allow Upholsterer for induction in Carpenter's Trade

The existing Upholsterer may be allowed option for induction
in Carpenter's Trade subject to passing of Trade Test of Carpenter (SG)
so that the Upholsterer (SG) after induction to Carpenter (SG) will
continue to be considered for promotion upto Carpenter As I level
subject to passing of Trade Test at various level. The Upholsterer
(SG) when inducted to Carpenter (SG) will be considered as reclassifi-
cation only and not promotion, without change in pay structure.

contd...2/-

3.2. Caravan

Similarly the Caravan (S) Grade which is already a Grade Category for Upholsterer (SK) could be considered for promotion to Carpenter (SK) after promotion to Upholsterer (SK) and passing the Trade Test for Carpenter (SK).

4. No Fresh Recruitment in the trade of Lift Mechanic

The above Govt order now initiates that the existing Lift Mechanic may be redesignated as Fitter General Mechanic (SK). Recruitment of Lift Mechanic has been dispensed with from 05.7.94. CBs Command are advised to issue specific directive in this regard to all Units not to recruit/promote Lift Mechanic from 05.7.94.

5. High skills Grades for Fitter General Mechanic

With the redesignation of the above trades, the personnel would be eligible for promotion to Fitter Gen Mechanic in Lift subject to passing of Trade Test and having rendered a minimum of three years service. Similarly, the existing Naikoor, Chowkidar and S. Driver could be eligible for promotion to M/s Fitter Gen Mech (SK) subject to passing of trade test, and having rendered a minimum of three years service in the grade subject to availability of vacancies.

6. Trade Test

Till the revised IIs and revised syllabi for M/s Fitter Gen Mechanic (S), Fitter Gen Mech (SK), AS II and HS I are issued, CBs Command are advised to frame their own syllabi, keeping in view the job requirement. Simultaneously CBs Command are requested to forward Draft Syllabi for the above Trade Test to this HQ by 31 Aug 94.

7. Promotion to Fitter General Mechanic (SK), AS II and HS I

The existing ratio as per 'Fitment' Policy is 65% (SK): 20% (AS II): 15% (AS I). However, with the introduction of redesignated Trade i.e. Fitter General Mech (SK), a few personnel will initially become eligible for promotion to AS II after passing Trade Test. Skilled personnel thus promoted to AS II will eventually become eligible for promotion to HS I only after completion of requisite years of service as per recruitment rules subject to passing of Trade Test. As a welfare measure, it has been decided to allow :

i) 20% promotions to AS II : Level

ii) and further 15% promotion to AS II Level against 15% vacancies of AS I.

Thus a total of 35% (20+15) promotions would be made at AS II Level only. The promotion of 15% against the vacancy of AS I would be made as one time measure as a special case before 31 Mar 95. The POC for these 15% vacancies shall be conducted after a clear gap of one month of full utilization of 20% vacancies. After this period i.e. 31.3.95 no promotion at AS II Level against the vacancies of AS I would be made under any circumstances. Attention of CBs Command is hereby drawn to Rule 43 of PD according to which excess appointment in a lower rank/rate may be made against vacancies left unfilled in a higher rank/rate. For each vacancy in a higher rank/rate only one extra appointment in a lower rank/rate is admissible.

contd... 3/-

6. Inter-Se-Seniority

Consequent on reclassification of the above Trade, a doubt may arise as to how the Inter-Se-seniority is to be fixed between these trades. It is clarified that inter-se-seniority will reckon from the date of their placement in the scale of Rs.250-400 (pre-revised). In case the date happens to be similar for two or more individuals, seniority will count on the basis of length of service in the next below grades. If this also happens to be the same the date of birth will be the criteria. In case of a tie up between a direct recruit and a promotee, the promotee will be the senior. The basis of fixing inter-se-seniority as aforesaid will also apply to respective Mate (oS) Trades. A combined seniority as per their placement be maintained for the purpose of promotion.

9. New Recruits :

Future entry into Trade, made after exhausting the promotional and other avenues, will be as Fitter Gen Mech (SK) at semi-skilled level with Iff qualification in terms of GOI Min of Def letter No. 5810/DS (O'M)/Civ-I/84 dt 15.10.84. The newly inducted direct recruits if any will be recruited in the Semi-skilled Grade and on satisfactory completion of 2 years of Service in that Grade will be considered for promotion to the skilled Grade by DPC. Please refer para 3 of this HQ letter No.90270/89/E1C dt 11 Jan 85.

10. Posting as per CPD 75/72

Personnel posted from one CWB to another will have seniority from the date of TDS in new Unit (under different CWB) for the purpose of promotion only. Past service rendered in the former CWB area, will not repeat not, count for the purpose of promotion since Industrial Personnel are on the area based seniority.

11. Effective date of promotions:

The subject Govt orders are effective from 06 Jul 84. All the existing tradesmen referred to in para 2.1 above will be redesignated as Fitter Gen Mech (SK) from 06 Jul 84. However, effective date of their further promotions to HS II would be on the date of assuming new appointment. Under no circumstances the effective date would be given as 06 Jul 84 for the new assumption promotion.

12. CAT Cases

In the past there have been many CAT cases due to wrong implementation of Three Grade structure. Further, in certain cases the new recruits were given directly the skilled Grade instead of inducting them at the semi-skilled Grade for 2 years. As such strict instructions be issued by CGs Command for the implementation of the above orders meticulously, without any deviation. Any lapse on the part of officials responsible will be viewed seriously and stern action taken against them. In case of any doubt, the unit may refer the cases to respective CGs Command/CZ Zone who in turn will refer such cases (if not resolved at their level) to this HQ for a decision.

contd.../-

13. Deployment of Personnel after redesignation

There will be no change in the existing deployment of above personnel, even after their redesignation as Fitter Gen Mech for the time being. However, in due course of time all Fitter Gen Mech are expected to perform any of the duties of the tradesman mentioned in para 2.1 above irrespective of their original/old trades. Initial difficulties during transition stage will have to be borne without sacrificing the functional efficiency. As such CEs Command are requested to impress upon their lower formations in deployment during the transformation stage as per the local and functional requirement.

14. Training

Now as per the redesignated post, the above tradesmen are expected to know the job in various trades referred to above for assignment of job as per functional requirement. In order to have adequate skill in the trades, CEs Command are requested to formulate necessary Training Programmes for considering suitability/eligibility for higher grades.

SJ/-xxxxxx

(M/s Buch)

Col

Dir SIC

for E-in-C

Copy to :-

CSCC - Alongwith a copy of Govt letter No. 5(1)/94/J(4-11) dt 06.7.94 and dt 08.7.94. CSCC section is requested to issue necessary amendment to Rds. Draft will may please be shown to SIC(3) before processing the case thru MUD.

E2 (ECC) - for comments if any
E4 (Utility)

Attested
P.M. Chauhan
Addl. C.G.S.C.

II Annexure B

F.NO-35034/1/97-Estt(B) (VOL. IV)

Government of India
Min of Personnel, Public Grievances
and Pensions (Dept of Personnel & Trg)

New Delhi-110001

July 18, 2001

OFFICE MEMORANDUM

Object: ASSURED CAREER PROGRESSION SCHEME FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES: CLARIFICATIONS REGARDING

The undersigned is directed to invite reference to the Deptt of Personnel and Training Office Memorandum of even number dt August 99 regarding the Assured Career Progression Scheme (ACPS) and subsequent office memorandum dt February 10, 2000 clarifying the various points of doubt received from various quarters.

Some more situations in which a doubt persists in various organisations in regard to applicability/implementation of ACPS scheme have been brought to the notice of this department. These have been duly examined and appropriate advice has been conveyed individual cases. However, as it is observed that similar being received from various other Ministries/Departments/authorities, it is considered appropriate to issue a second set of clarify orders containing point-wise clarification to the aforesaid points of doubt.

Cases where the ACPS scheme has already been implemented shall be reviewed/recalled, if the same are not found to be in accordance with the scheme/clarifications.

All Ministries/Departments may give wide circulation to these clarificatory instructions for general guidance and appropriate action in the matter.

Hindi version would follow.

SC/-x x x

(R K Goel)

Deputy Secretary to the Govt of India

All Ministries/Departments of the Govt of India

Commissioned Services and other concerned

Concerned: Secy's/Deptts heads of office and Inqrs

Attested
Seal. C. G. S. G.

Le Mil 6060

100/EM

Aggrevate-VII
SOK

6/45

Garrison Engineer
Shillong Division
Shillong - 79302

1013/17/ACP/ 89 /EIE

16 Apr 2002

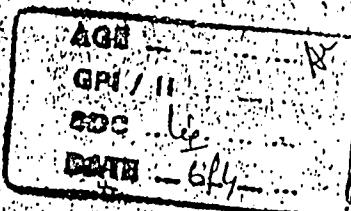
AGE E/M Shillong

FORWARING OF PERSONNEL ACCPLICATIONS

1. Reference your letter No 100/502/Em dt 27 Mar 2002.
2. It is seen that MES/228715 Shri Raj Narayan Rai, FGM (SK) was appointed as Mazdoor (USK) on 01 Jun 1997, subsequently promoted to PHO on 25.8.1977 and designated as FGM (SK). It is quite clear that he has crossed semi skilled grade i.e two promotion from unskilled to semi-skilled and semi-skilled to skilled. Hence, he is not eligible for granting ACP financial upgradation. His application requesting for ACP is returned herewith.
3. As regards promotion he may ~~please~~ apply/represent separately. The individual may please be informed accordingly.

PP Singh
Major
Garrison Engineer

Encls : As above



100/502/6/4/2002
G.S.C.

(28)

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Filed by the applicant
through: Subash Narayan Acharya
03.12.05.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No. 177/2003

Shri Raj Narayan Rai.

-Vs-

Union of India & Ors.

-AND-

In the matter of:

Rejoinder submitted by the applicant in reply to the written statement submitted by the respondents.

The humble applicant above named most humbly and respectfully state as under:

1. That your applicant categorically deny the statements made in paragraph 2 and 3 of the written statements as because the aforesaid contentions of the respondents are totally false and misleading and the same is contrary to para 6 of the Government order dated 21st July, 1994. The respondents in para 3 of the written statements specifically submitted that as per letter dated 21.07.1994 redesignated FGM (SK) would be eligible for promotion to FGM (H.S. II) after rendering 3 years of requisite service after being redesignated as FGM (SK) subject to passing of trade tests for FGM (H.S II), the aforesaid contention of the respondents is contrary to the para 6 of the Govt. letter dated 21.07.1994, which prescribed altogether 35% promotion to be effected within 31st March, 1995 as a

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special case. The relevant portion of para 6, 11 and 12 of the letter dated 21.07.1994 are quoted below for perusal of the Hon'ble Tribunal:

6. Trade Test

Till the revised RRs and revised Syllabi for Mate Fitter Gen Mechanic (SS), Fitter Gen Mech (SK), HS II and HS I are issued, CEs Command are advised to frame their own syllabi, Keeping in view the job requirement. Simultaneously CEs Command are requested to forward Draft Syllabi for the above Trade Test to this HQ by 31 Aug 94.

11. Effective date of promotions:

The subject Govt orders are effective from 06 Jul 94. All the existing tradesman referred to in Para 2.1 above will be redesignated as Fitter Gen Mech (SK) from 06 Jul 94. However, affective date of their further promotions to HS II would be on the date of assuming new appointment. Under no circumstances the effective date would be given as 06 Jul 94 for the new assumption promotion.

12. CAT Cases

In the past there have been many CAT cases due to wrong implementation of Three Grade Structure. Further, in certain cases the new recruits were given directly the skilled Grade instead of inducting them at the Semi-skilled Grade for 2 years. As such strict instructions be issued by CEs Command for the implementation of the above orders meticulously, without any deviation. Any lapse on the part of officials responsible will be viewed seriously and stern action taken against them. In case of any doubt, the unit may refer the cases to respective CEs

Command/CE Zone who in turn may refer such cases (if not resolved at their level) to this HQ for a decision."

It is quite clear from para 6 of the Govt. letter dated 21.07.1994, wherein altogether 35% (20+15) promotion would be made at H.S level only as one time measure as a special case before 31.03.1995. It is further suggested that initially 20% vacancy should be filled up to the cadre of HS II and thereafter 15% vacancy should be filled up after a clear gap of 1 month. There was a further instruction that after the deadline of 31.03.1995 no promotion would be effected to the cadre of HS II level against the vacancies of HS I under 15% quota. In para 11 it was further directed that in any circumstances the effective date of promotion should not be 6th July, 1994. It is further stated in para 12 of the Govt. letter 21.07.1994 that in the past there had been many CAT cases due to wrong implementation of the 3 grade structures hence it was further ordered that there should not be any deviation of the instruction contained in the Govt. letter dated 21.07.1994. Therefore by no stretch of imagination it can be said that there was any instruction to wait for 3 years after redesignation of the applicants as FGM (SK). It is further categorically submitted that the Govt. instruction laid down in letter dated 21.07.1994 never been implemented in this region. Redesignation, which was ordered, vide Govt. letter dated 6th July 1994 (Annexure-II of the O.A) and following that order the applicants were redesignated as FGM (SK). Be it stated that there was no change in the rank, status, duties, responsibilities and scale of pay after the applicant was redesignated as FGM, as such, question of requirement of 3 years service as redesignated FGM is an absurd proposition as alleged in para 2 of the written statement, even if the contention of the

respondents are accepted then also applicant is entitled for promotion to the cadre of HS II w.e.f. 31st July, 1997 in the cadre of HS II but the same is not agreed to.

It is further submitted that applicant was never invited in any trade test by the present respondents in N.E. region in terms of the instruction contained in Govt. letter dated 21.07.1994. Therefore it is necessary for perusal of the relevant records whereby 16 similarly situated employees working under G.E. Madras were promoted with effect from 31st March, 1995 following the Govt. order dated 21 July, 1994.

A duty caste upon the respondents Union of India to produce all relevant records relating to promotion of 16 similarly situated employees of G.E. Madras to the cadre of H.S II for the perusal of the Hon'ble Tribunal for proper adjudication of the cases of the applicant. A mere denial in the written statement without producing the relevant records/documents makes the conduct of the respondents more suspicious. Therefore the Hon'ble Tribunal be pleased to direct the respondents to produce all relevant records pertaining to promotion of 16 similarly situated employees of G.E. Madras as per Annexure-IV of the Original Application. It is further stated that the contention of the respondents made in para 2 of the written statement that the seniority of the applicants had been effected due to promotion of the 16 employees of the G.E. Madras to the cadre of H.S II is not the contention of the present applicant. The sole case of the present applicant is his seniority, promotional prospects as well as fixation benefit had been adversely effected in the cadre of H.S II due to non implementation of the Govt. order dated 21.07.1994 for effecting promotion of the applicants to the cadre of H.S II in the manner it was indicated. The trade test have been conducted in this region only in the month of May, 2001 for considering

promotion of the applicant to the cadre of H.S II and subsequently his juniors were promoted w.e.f.13.05.2002 denying the promotion of the applicant. As a result he is incurring huge financial loss so far his promotion, fixation of pay are concerned in the cadre of H.S II, where as other similarly situated employees of other regions were promoted way back in the month of March, 1995 and even his juniors were promoted in the higher scale and grade of H.S II, pre-revised Rs. 1200-1800/- (revised Rs. 4000-6000/-). There is no dispute that seniority of F.G.M (SK) and H.S II are being maintained in the C.W.E level but promotion policy of the Govt. of India are being implemented upon all those categories of employees on an uniform basis through out India by the Govt. of India.

It is categorically submitted that 3 years residuary period as contended in para 4 after redesignation of F.G.M is no where prescribed either in the letter dated 6th July, 1994 or 21 st July, 1994 as such that plea of the respondents is categorically denied. The applicants were very much well within the zone of consideration for promotion to the cadre of H.S II way back in the year 1994 itself. As such denial of promotion w.e.f. 31st March, 1995 as per policy of special case as indicated in letter dated 21.07.1994 is highly arbitrary, unfair and illegal.

2. That the contention of the respondents made in para 3, 6 and 7 are categorically denied and the same are contradictory to their own records. Contention of the respondents that the promotion from FGM (SK) to FGM HS II has been granted in accordance with existing Rules is totally false and misleading. In this connection it is submitted that many of the juniors of the applicant in the cadre of MPA/PIIO (redesignated as FGM (SK)) were promoted to the cadre of FGM IIS-II vide order dated 13.05.02 (Annexure-VI) but denied the promotion to the

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present applicant. It is evident from the record that one Shri P. Diengdoh, who is junior to the applicant was also promoted to the cadre of PHO on 29th August'1983, whereas the applicant was promoted to the cadre of PHO (now FGM) in the year 1977. The applicant does not posses relevant records/documents regarding other juniors who were promoted to the cadre of FGM HS-II on 13.05.02 therefore the applicant urge to produce all relevant documents relating to service book to the seniority of the applicant as well as the name of the juniors, indicated in the application to ascertain the factual position. Hence contention of the respondents that the promotion from FGM (SK) to the cadre FGM HS-II has been made strictly on the basis of the seniority list in the fact situation is not correct. It is evident from one written statement filed by the respondents in connection to the O.A. NO. 313/1998 before this Hon'ble Tribunal that Shri Diengdoh one of the junior of the applicant who got promotion as MPA/PHO only during the year 1983 whereas the present applicant got promotion as MPA/PHO in the year 1977 therefore Shri Diengdoh is junior to the present applicant. However due to transfer and posting of the applicant from Silchar Division to Shillong Division the applicant although placed at Sl. No. 48 subsequently then the erstwhile juniors even then he is entitled to be considered for promotion considering his eligibility and length of service alongwith the other juniors.

It is further submitted that question of placement of the applicant at Sl. No. 48 in the cadre of PHO/MPA due to his transfer and posting from Shillong to Silchar and again from Silchar Division to Shillong Division when the seniority is fixed below his juniors, such placement of the applicant in the gradation list i.e. at Sl. No. 48 does not take away right for consideration of his promotion at

per with his erstwhile juniors to the cadre of FGM, HS-II. It is settled position of law that if a civilian central Govt. employee is transferred and posted to one division to another division on his own request and as a result of such posting if the employee concerned is fitted in the bottom of the seniority list of the cadre in the new division even then he is entitled to be considered for his promotion with his juniors if he fulfills other conditions of promotion, this position of law has already been settled by series of decision of the Hon'ble Tribunal as well as by the Supreme Court. Therefore placement of the applicant at Sl. No. 48 cannot stand on his way for consideration of promotion at par with his juniors to the post of FGM HS-II with all consequential service benefit including monetary benefit. Herein the applicant relied on the Hon'ble Supreme Court decision reported in 2004 SLJ (2) SC 62 Union of India -Vs- V.N. Bhatt.

A copy of representation of Shri P. Dicngdoh dated 14.03.02 written statement in O.A. No. 313/98 is enclosed hereto as Annexure-A and B.

3. That your applicant categorically denies the statements made in paragraphs 4, 5, 8 and 10 of the written statement, and further begs to submit that the present applicant was initially appointed as Mazdoor and thereafter he was only once promoted during his service career in the year 1977 to the post of Pump House Operator (redesignated as FGM (SK)) and could not avail any promotion in his 26 years service career. The contention of the respondents is quite contrary to the service records of the applicant and the allegation of the respondents that the applicant has availed two promotions is quite wrong. Upgradation of the applicant from semi skilled category to the skilled category in the cadre of PHO is not a promotion but mere placement in the higher rate of wages, designation of

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the applicant has not been changed due to upgradation from semi skilled to the skilled category.

It is further submitted that upgradation from unskilled to semi-skilled and semi-skilled to skilled cannot be termed as promotion as because said upgradation has not involve any higher responsibilities on duties and the wages also not being fixed after such upgradation under FR 22 (C). Hence contention of the respondents that the applicant had already availed 2 promotions is categorically denied. Be it stated that under O.M dated 09.08.99 issued by the Govt. of India whereby financial upgradation has been granted in the absence of promotion, therefore said promotion said to have been avail only when fixation in a higher pay scale is made under FR 22 (C) and such element is absent in the event of upgradation from unskilled to semi-skilled and semi-skilled to skilled in the instant case of the applicant.

4. That it is further relevant to mention here that the Army Headquarter, New Delhi (Engr. Branch) constituted a anomalies committee to remove anomalies in the matter of promotion of different categories of employees of MES which were resulted due to non-adoption or wrong implementation of various Govt. order relating to promotion/upgradation of the different categories of M.E.S employees. In this connection it may be stated that the applicant in spite of his best effort could not obtained a complete copy of the order dated 09.04.2002, however he has obtained a copy of the order dated 09.04.2002 where some paragraphs are missing, which the applicant urges to produce at the time hearing. Therefore the Hon'ble Court be pleased to direct the respondents to produce a complete copy order dated 09.04.2002 for proper adjudication of the case of the applicants.
5. In the facts and circumstances stated above the application deserves to be allowed with cost granting adequate relief to the applicant with all consequential service benefit including promotion, seniority and related monetary benefit.

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VERIFICATION

I, Shri Raj Narayan Rai, Son of Late R.G. Rai, aged about 51 years, working as FGM (SK) in the office of the Garrison Engineer, MES, Shillong, applicant in the instant application, accordingly I declare that the statements made in paragraphs 1 to 4 are true to my knowledge and belief and rests are my humble prayers. I have not suppressed any material fact.

And I sign this verification on this the _____ day of December, 2004.

Raj Narayan Rai

TO

HQ CWE SHILLONG
SE FALLS SHILLONG - 11
(Through Proper Channel)

DISCREPANCIES ON PROMOTION

Respected Sir,

With due respect I beg to state the following few lines for your consideration sympathetic action please.

(a) That Sir I was appointed as Headman w.e.f 14.1.75 and subsequently promoted to MPA (New FGM) w.e.f 29 Aug - 83. Since then I am working in the same post with No further Promotion. My Particulars are furnished as below.

MES/ 229010

Shri Phobok Diengdoh

Date of Birth 18-3-50

Date of Appointment 14 Jan 1971

Date of Promotion 29 Aug - 83

Trade Test Pass 7-6-01 F.G.M. HS-II

(b) It is further intimated that the following individuals who were promoted to HS-II w.e.f 06.05.97 without Passing the T/T which is the criteria for promotion for industrial personnel as the T/T was not conducted by the Department since 1982

MES/ 228578

Shri Ram Briksh Baruha

Date of Birth 02-1-44

Date of Appointment 01-08-68

Date of Promotion 6-5-97

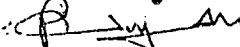
T/T Pass 6-5-97

Unit. G.E. (AF) Shillong

2. In view of the above, you are requested to look into the matter and also the needful at the earliest please.

Thanking you,

Yours faithfully



MES/ 229010

Name Phobok Diengdoh

Designation F.G.M. (SK)

Unit. GE Shillong

Shillong
Df - 14-3-02

Received
14/3
14/3

M. Chanda

S/C 1

Order of the day

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI.

Case No. 313 of 1998.

Shri Iherbok Diengolish & Others.

.... Appellants.

-Versus-

Union of India and others.

.... Respondents.

And -

In the matter of :-

Written Statement submitted by
Respondents Nos. 1, 2, 3, 4 and 5.

Written Statement.

The humble Respondents beg to submit their written statements as follows :-

1. That with regard to the statement made in paragraph 1 to 5 of the application the respondents have no comments. ~~para 4-1.~~
2. That with regard to the statements made in paragraphs 4-1, 4-2, 4-3, 4-4 of the application the respondent beg to state that at the time of promotion of the applicant to the semi skilled grade, the notified recruitment rules for the post of Motor Pump Attendant (now Fitter General Mechanic (skilled) only provided for semi skilled grade. Therefore they are entitled for the semi skilled grade, at the time of their promotion. In this connection it is stated that based on the recommendation

-2-

of Sri Central Pay Commission, an expert classification was set up in 1974 for proper classification of all industrial employees in Defence Establishment including Military Engineering Services. Based on the reports of Expert Classification Committee, Min. of Defence issued a fitment order vide No.1(2)/80/D(ECC/IC) dated 11 May 83, and the effective date of fitment was given w.e.f. 16 Oct 81. and the classification of industrial employees in MES has been classified as under :-

Category	Scale of Pay
Unskilled	196-30-220-13-232
Semi-skilled	210-4-226-13-4-250-13-5-290
Skilled	260-6-296-13-6-326-8-366-13-6-390-10-400

As a result of fitment at the scale of Motor Lamp Attendant which carried semi-skilled before fitment has now been upgraded to skilled pay scale of Rs. 210-400/- and as such feeder grade in the semi-skilled grade of Rs. 210-230 required to be identified which has been done as Mate (Motor Lamp Attendant) vide E-in-C's Branch, Army Headquarters, New Delhi, clarification No. 80270/89/RIC dated 29 Dec 83. As per recruitment rules and further recommendation of Expert Classification Committee and as per their next line of promotion can be only semi skilled category and not directly to skilled grade as claimed by the applicant.

3. That with regard to statement made in para 4 of the application it is submitted that in accordance

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ANSWER

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Govt. of India, Min. of Defence letter No.1(2)/80/D(ECG)/1
dated 11.5.83, the post of MPA has been assigned the scale
of pay of Rs. 260-400 in the category of skilled worker.
It followed that the feeder category to the post of Category
of MPA is to be semi skilled in the scale of pay of Rs. 210-
290. However, the case was further taken up with E-in-C's
Br. and it was clarified by E-in-C's Br that the promotion
of Mandoor/Chowkidar and safaiwala to the post of MPA in
the scale of pay of Rs. 260-400 after the issue of Govt.
letter dated 11 May 83 is highly irregular and they should
be brought down to the scale of MPA (MPA) in the pay scale
of Rs. 210-290. In this case individual was promoted to the
post of MPA with effect from 5.9.83.

4.5. That with regard to para 4.6, 4.7 and 4.8 of the application it is submitted that the applicants were promoted from Chowkidar/Mazdoor in terms of B-in-C's Br policy letter No. 90270/89/EIC dated 20 Dec 1983 and subsequently reverted as per B-in-C's Br letter No. 90270/89/EIC dated 22 Oct 86.

In the instant case although the judgement was pronounced in favour of certain individuals who were applicant of the case only and for which Govt. sanction was accorded to give the benefits to the applicants only and not to all. Thus the present cannot be given the benefit as claimed. The recovery was made in accordance with instruction issued by CE HS EC Calcutta vide their No. 131930/95/237/Engrs/EIR(C) dated 10 Nov 86.

5. That with regard to para 4.9, 4.10, 4.11 of the application it is submitted that judgement of C.A. No. 70 of 97 was sent to Min. of Defence for asking whether the judgement can be implemented or not. Min of Defence vide their letter dated 26 Dec 87 had directed to implement the judgement. But it the instant case the present applicant was not an applicant of C.A. No. 70/97 hence cannot claim any benefit. ~~is true to up to date of 05/01/98~~
6. That with regard to para 4.12 of the application the respondents beg to offer no comment. ~~is true to up to date of 05/01/98~~
7. That with regard to the para 5.1 to 5.14 the respondents beg to state that in view of the statements made in apply to para 1 to 4.12 of the application the applicant's grounds are baseless and thus the application is liable to be dismissed. ~~the written statement~~
8. That with regard to para 6 and 7 of the application the respondents beg to offer no comment.
9. That with regard to the contents made in para 8 of the application, the respondents maintain that in view of the facts stated in this written statement the applicants have no merit and deserve no relief and as such the application is liable to be dismissed.
10. That with regard to the contents made in para 9 of the application, the respondents beg to state that in view of the facts stated in this written statement, the applicants have no merit to get interim order.

Verification....5

-5-

VERIFICATION

I, Shri Ruk. Bout, ADR, AGS (EIM) Shillong, do
hereby solemnly declare that the statements made in
para are true to my knowledge,
those made in para are true to my information
and facts are my humble submission before this Hon'ble
Court.

and I sign this verification today day of
1939.

Declarant.