

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

4

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO. @  
(See Rule 42 )  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 283/05  
Misc. Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicant(s) Brij Nandan Sharma  
Respondent(S) U.O.I. Govt.

Advocate for the Applicants K.R. Chaudhary, R.S. Chaudhary  
ex. Rahul

Advocate for the Respondent(S) Mr. A.K. Chaudhary CGSC  
Adl. CGSC Rly St. Counsel

Notes of the Registry	Date	Order of the Tribunal
<p>Application is in order. is filed in the Registry. d. posted vide P.O. No. <u>266/3189/58</u> Dated <u>11.11.05</u></p> <p><u>Alms</u> Dy. Registrar</p> <p><u>PAI</u> <u>NS</u> <u>23.11.05</u></p> <p>Steps taken</p> <p><u>Pro.</u></p> <p>Pl. comply order dated <u>24.11.05</u> <u>NS</u> <u>24.11.05</u></p> <p>Notice &amp; order sent to D/section for issuing to resp. Nos. 1 to 4 by regd. A/D post.</p> <p><u>29/11/05</u> D/No=1649 to 1652 Dt= 30/11/05.</p>	<p><u>24.11.2005</u></p>	<p>Present : Hon'ble Mr. Justice G. Sivaraman, Vice-Chairman.</p> <p>Heard Mr. G. Rahul, learned counsel for the applicant and Mr. A.K. Chaudhuri, learned Addl. C.A.S.C. for the respond- ents.</p> <p>Admit. Issue notice to the respond- ents.</p> <p>Post on 11.01.2006. Written statement, if any, in the meantime.</p> <p><u>G. Sivaraman</u> Vice-Chairman</p> <p>The counsel for the Respondents has submitted that he would like to four weeks time to file written state- ment.</p> <p>Post the matter on 20.2.06.</p> <p><u>lm</u></p> <p>Vice-Chairman</p>

Notice duly  
served on  
resp. No. 1.

20.02.2006

Counsel for the applicant  
submits that he would like to have  
three weeks time to file rejoinder.  
Post on 15.3.2006.

Vice-Chairman

18-1-06

① Notice duly served  
on R. No. 1

mb

15.3.2006

Post on 27.3.2006.

Vice-Chairman

② No. w/s has been  
biled

mb

27.03.2006

Rejoinder has been filed by the  
applicant. Let the case be posted  
on 03.05.2006.

Vice-Chairman

17-2-06

No w/s has been  
biled

mb

3.5.2006

This case being a Division Bench  
matter is posted before the next  
Division Bench after three weeks.

Vice-Chairman

17.2.06

W/s submitted on  
behalf of Respdt. Nos. 1 to 4.

bb

02.08.2006

Post on 04.08.2006.

Vice-Chairman

24-3-06

No Rejoinder has  
been biled.

Member

mb

4.8.2006

Heard Mr. G. Rahul, learned couns-  
el for the applicant and Ms. U. Das,  
learned Addl. C.G.S.C. for the respon-  
dents. Hearing concludes. Order is  
reserved.

Member(A)

Vice-chairman

Rejoinder submitted  
by the Applicant.

The case is ready  
for hearing

bb

2.5.06

3

3

O.A. 283/2005

09.08.2006

Judgment pronounced in open

Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.

Received  
Alsha Dan  
Addl Chsc  
25/8/06



Member

Vice-Chairman

mb

25.8.06

Copy of the budget  
handed over to the  
L/Rev for the Region  
and a certified copy  
has been collected by  
the L/Rev. for Appoint  
on 16.8.06

gl

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

283 of 2005

O.A. No. ....

09.08.2006  
DATE OF DECISION .....

Sri Brij Nandan Sarma

Applicant/s

Sri K.N.Choudhury, Mrs R.S.Choudhury & G. Rahul

Advocate for the  
Applicant/s.

- Versus -

Union of India & Others

Respondent/s

Miss Usha Das, Addl.C.G.S.C

Advocate for the  
Respondents

CORAM

HON'BLE MR K.V. SACHIDANANDAN, VICE-CHAIRMAN

HON'BLE MR GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers  
may be allowed to see the Judgment ? Yes/No
2. Whether to be referred to the Reporter or not ? Yes/No
3. Whether to be forwarded for including in the Digest  
Being complied at Jodhpur Bench ? Yes/No
4. Whether their Lordships wish to see the fair copy  
of the Judgment ? Yes/No

Vice-Chairman/  
Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 283 of 2005.

Date of Order : This the 9<sup>th</sup> day of August 2006.

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.

The Hon'ble Sri Gautam Ray, Administrative Member.

Shri Brij Nandan Sarma  
Son of late M. Sarma,  
Resident of Narengi Pathar Quarry,  
(Near Anchalik College),  
P.O. Udayan Vihar, Guwahati-26.

...Applicant

By Advocate Sri K.N.Choudhury, Mrs. R.S. Choudhury  
& Gautam Rahul

- Versus -

1. Union of India,  
Represented by the Secretary to the India,  
Ministry of Defence, New Delhi-11.

2. The Director General of EME,  
Army Headquarter, New Delhi -11.

3. Estt. Officer,  
1 Advance Base Workshop EME,  
C/o 99 APO

4. The Commandant,  
1 Advance Base Workshop EME,  
C/o 99 APO.

.....Respondents

By Advocate Miss Usha Das, Addl.C.G.S.C.

ORDER

K.V.SACHIDANANDAN, ( V.C )

The applicant joined the service as Civilian/Pattern Maker in Carpentry Division No.1 in 1967, which was made permanent in 1979. The applicant's name was forwarded for being considered for the post of Master Craftsman but that cannot be given effect due to non-availability of vacancy. Concerned authorities were also directed to create a post of Master Craftsman for absorbing the applicant. On

20.5.2003 as per instruction of the Ministry of Defence restructured the industrial and non industrial cadre of the artisans staff and merged the grades of Highly Skilled-II and Highly Skilled-I into a single Highly Skilled category. ACP scheme was also introduced to counter the problem faced by the Government in failing to promote the person for want of a vacant post. The Government thereafter formulated the terms and conditions for consideration of an incumbent under the ACP scheme for promotion. The applicant finally retired from the post of Highly Skilled (Pattern Maker) in the pay scale of Rs.4000-6000/-He has made representation in 2004 ventilating his grievances against the refusal of the respondent authorities to promote him under the ACP Scheme. The respondents did not consider the case of the applicant. The applicant had filed O.A.105/2005 before this Tribunal. This Tribunal by its order dated 13.5.05 directed the applicant to submit a comprehensive representation before the concerned authorities and the authorities were also directed to consider the case of the applicant with a speaking order within a period of three months. The applicant accordingly submitted representation before the respondent No.4. There was no response from the respondents and the applicant again filed a reminder and then the respondent No.4 issued the impugned order dated 17.9.05 rejecting the claim of the applicant. Aggrieved by this action of the respondents the applicant filed this O.A. seeking the following reliefs.

- i) To set aside/quash the impugned order dated 17.9.05 passed by the respondent No.4.
- ii) Direct the respondent authorities to consider the case of the applicant for promotion to the post of Chageman with effect from the date of implementation of the ACP scheme on notional basis.
- iii) Direct the respondent authorities to make payment of all the pecuniary dues of the applicant including arrear salary

after promoting the applicant on notional basis from the date of implementation of the ACP Scheme.

- iv) Direct the Respondent authorities to revise and make payment of all the pensionary benefits of the petitioner in terms of the notional promotion.

2. The respondents had filed a detailed written statement contending that the applicant was enrolled in 1 Advance Base Workshop, EME on 31.01.1967 in lieu of Combatant and was absorbed as permanent Civilian Pattern Maker with effect from 1.1.79 (Annexure-1). The Government of India, Ministry of Defence vide order dated 20.5.2003 has restructured the cadre of Artisan Staff in Defence Establishment in modification of recommendations of 5<sup>th</sup> Central Pay Commission. The policy states that "selection from Highly Skilled grade to the grade of the Master Craftsman shall be 10% of Highly Skilled Cadre (i.e. 10% of 35% of the total) and placement in this grade shall be from 01.01.1996, but there is no provision which guarantees promotion to a person who does not fall in select panel and does not come up in merit. Further, there was no vacancy during 1999, 2000 and 2001<sup>o</sup> for Pattern Maker for Master Craftsman (Annexure-II). The recommendation for promotion to Master Craftsman were forwarded to higher authorities during 1999, 2000 and in 2001 but due to non-availability of vacancy for Pattern Maker for Master Craftsman, the name of the applicant was not considered. Further the vacancy cannot be created and as the same is fixed for each trade as per their strength. The selection from Highly Skilled grade to the grade of Master Craftsman shall be 10% of Highly Skilled Cadre (i.e. 10% to 35% to the total) as per the Ministry of Defence letter dated 20.5.2003. The ACP was implemented in 1999 and not in 2003 as stated by the applicant. The applicant was promoted from skilled to HS Grade-II on 1.1.1987 and from HS grade-II to HS grade-I



on 10.8.1996 i.e. before implementation of ACP Scheme, hence he is not eligible for benefits under ACP Scheme. The representation of the applicant was properly dealt with and replied accordingly. The applicant is not eligible for benefit under ACP Scheme as he was promoted twice from skilled to HS Grade-II and from HS grade-II to HS grade-I. Considering the issue speaking order was issued to the applicant. Therefore, the applicant has no case.

3. The applicant has filed a rejoinder contending that his name was recommended twice in 1999 and 2000 for promotion to the post of Master Craftsman, which was denied to him due to non-availability of vacancy. The very fact will reveal that he will be eligible for the post of Chargeman at the time of his retirement. Had there been reconsideration at that point of time the applicant would have been absorbed in the next hierarchy post according to clause 3(c) of the Policy i.e. the post of Chargeman. Therefore he should have been considered for promotion.

4. Heard Mr Gautam Rahul, learned counsel appearing for the applicant as well as Miss Usha Das, learned Addl.C.G.S.C for the respondents at some length. The learned counsel appearing for the parties has taken us to the various pleadings, evidence and materials placed on record. Learned counsel for the applicant submitted that admittedly in 1999 and 2000 the name of the applicant was recommended for promotion but for want of vacancy he could not be promoted. It cannot be said that he had availed promotion and therefore no reason to deny ACP and that benefit should be given to him as he is entitled for the same. Learned counsel for the respondents on the other hand argued that the applicant did not hold the post of Master Craftsman before retirement and therefore he

cannot be given that benefit. With regard to the ACP Scheme which came into effect from 1999 and the applicant got two promotions before it came into existence and therefore he is not entitled to get the benefit under the ACP Scheme.

5. We have given our due consideration to the arguments advanced by the learned counsel for the parties and materials placed on record. It is clear that the applicant is not seeking promotion to the post of Master Craftsman but his claim was based on the ACP Scheme. According to the applicant 10% of Highly Skilled trade had to be treated as Master Craftsman and if it is done, the applicant will come within that, particularly for the reason that the applicant's case was considered and recommended for promotion to the post of Master Craftsman but could not be done only in view of the fact that there was no vacancy. Considering the legal position that the offer for promotion will not confer any legal right to the applicant for entitlement of the promotion on a subsequent date which also applicable in this case. Therefore, the contention that admittedly he was considered in 1999 and 2000 to the post of Master Craftsman but could not be accommodated for want of vacancy cannot be overlooked. The contention of the applicant is that it is not the vacancy matter but 10% of the Highly Skilled workers should automatically be put on the upgraded category as Master Craftsman has not been accepted by the respondents. Therefore on that ground the applicant could not make out a case.

6. Our attention has been drawn to Annexure-IV Office Memorandum issued on 9.8.99 by the Government of India, Ministry of Personnel, Public Grievances and Pensions on the subject of ACP

Scheme for the Central Government civilian employees. The preamble of the scheme is quoted below :

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

The very intention of such scheme as evident from the reading of the preamble is that the Scheme has been introduced with a view as a safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. This is made on the strength of the recommendations of the 5<sup>th</sup> Central Pay Commission and also in accordance with the agreed settlement came to the Group 'C' and 'D' employees entered into with the Staff side of the JCM. The relevant 5.1 paragraph is reproduced below :

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

have already been received by an employee, no benefit under the ACP Scheme shall accrue to him."

It is evident that the ACP Scheme shall be available only if no regular promotion during the prescribed period of 12 and 24 years have been availed by an employee. It is however made clear that if an employee has already got one promotion he would be entitled for the 2<sup>nd</sup> upgradation only on completion of 24 years and in case two prior promotions for regular basis have already been received no benefit under the ACP shall accrue. Now we have to evaluate the entire gamut with reference to the above clause. Admittedly the applicant at the time of retirement has completed 24 years of service. According to the respondents he was promoted twice from Skilled to HS grade-II and from HS grade-II to HS grade-I before his retirement. He is not entitled for the ACP Scheme benefit. It is an admitted case that the applicant was first promoted in 1979 and then in the year 1999. The contention of the applicant is that with reference to Annexure-C letter dated 20.5.2003 issued by the Under Secretary to the Govt. of India to the Chief of the Army Staff the restructuring of cadre of Artisan Staff in Defence establishment has been made as per recommendations of the 5<sup>th</sup> Central Pay Commission. It is stated in the relevant paras as under :

"The matter regarding restructuring of Cadre of Artisan Staff in Defence Establishment has been under consideration of the Government for quite some time. Now in partial modification of the recommendations of the Vth CPC made in paras 54.16-18 and 54.29 of its report, I am directed to convey the sanction of the President as under :

2. The grade structure in the industrial as well as in the non-industrial trades, wherever already available and the pay scales of the Defence artisan staff shall stand modified w.e.f. 1.1.96 as under-

(i) Skilled

Rs.3050-4590

(ii) Highly Skilled (HS-I & HS-II) Rs.4000-6000

(iii) Master Craftsman Rs.4500-7000

3.(a) Wherever the grade structure in the Industrial as well as in the Non-Industrial trades is already existing in the ratio of 65:20:15, in the erstwhile Skilled : HS-II : HS-I, the merger of HS-II and HS-I shall be treated to have come into effect from 1.1.96 and the grade structure of Skilled and Highly Skilled categories shall be in the ratio of 65:35 (20+15).

(b) The post of Master Craftsman shall not be part of the hierarchy and the placement in this grade will not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme.

(d) The placement of the individuals in the post resulting from the restructuring and ratio revision, shall be made w.e.f. 1.1.96 in relaxation of the conditions, if any, i.e. trade test etc, as one time measure.

4(iii) Since the post of Master Craftsman is not part of the hierarchy, the placement in this grade shall not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP scheme.

(v) The benefit of the first and second ACP to the skilled workers will be as per the orders issued by the DOP&T under their O.M. dated 9.8.99 and subsequent clarifications issued on the subject.

This issues with the concurrence of the Ministry of Defence (Finance) vide their U.O. No.350/PB/03 dated 19.5.2003."

From the reading of the above letter and instructions thereof we find that the restructuring of cadre of Artisan Staff in Defence Establishment has been under consideration of the Government of India and some modifications had been made thereto. The basic modification as stated in clause 3 of the said letter will show that the Skilled HS-II, HS-I has been merged in one cadre as Highly Skilled categories in the pay scale of Rs.4000-6000/-. Clause 3 of the said letter specifically stated that this will come into effect from 1.1.1996 and the grade structure of Skilled and High Skilled categories shall be in the ratio of 65:35 (20+15). As per the ratio is concerned there is no

dispute but the dispute now centered round is the point that this restructuring has already came into effect from 1.1.96 though the instruction has been issued on 28.5.03. Therefore, the question to be looked into is whether the promotion in the Grade HS-II to the applicant subsequent to 1.1.96 but before his retirement in 1999 could be considered as a promotion at all. It is well settled position of law that though a rule or scheme will come into effect only when the date of his enactment and retrospective effect should be given in subsequent cases. On reading of Annexure-C we find that HS-I and HS-II has already been merged together into one cadre as Highly Skilled as on 1.1.96. There is no separate cadre as HS-I and HS-II from 1.1.96. Therefore, it cannot be said that any promotion made after 1.1.96 as HS-II could be construed as a promotion granted to the applicant. In the other words had this rule came into effect on 1.1.96 but granting the second promotion to the applicant as HS-II will not come into play after a circular about the retrospective effect of the benefit then also the applicant cannot claim that he was not given the second promotion as HS-II since Annexure-C is very clear that this measure will come into effect from 1.1.96.

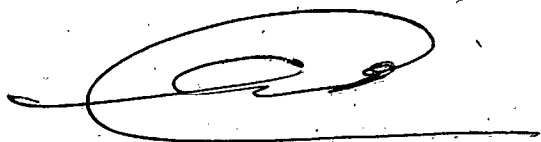
7. We are of the considered view that any promotion given to the applicant after 1.1.96 cannot be construed as promotion, in view of the merger of the cadre HS-I and HS-II with effect from 1.1.96. Therefore, he cannot be debarred for getting second promotion as HS-I by the respondents. Therefore, the applicant is entitled to have the second ACP benefit since his promotion become innocuous and ineffective. The respondent has not produced any further clarification regarding ACP, hence could not establish that the merger has not have retrospective effect as on 1.1.96.

7. In the conspectus facts and circumstances we are of the considered view that the applicant cannot be availed the second promotion and therefore the impugned order dated 17.9.05 has not been issued under in good spirit of law and to be set aside. The applicant is entitled to get the second ACP which is on the normal basis to the next up gradation from Rs.4000-6000/- to Rs.4500-7000/- as Master Craftsman from the date he is eligible for ACP. We make it clear that the applicant is only entitled to get notional benefit but that will have an effect on his pensionary benefits, since he has already retired. The relief shall be granted to the applicant forthwith in any case within 3 months from the date of receipt copy of this order.

O.A is allowed. In the circumstances no order as to costs.



( GAUTAM RAY )  
ADMINISTRATIVE MEMBER



( K.V.SACHIDANANDAN )  
VICE CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI.

ORIGINAL APPLICATION NO. 283 OF 2005

LIST OF DATES/SYNOPSIS

31.01.1967: The applicant joined in service as Civilian/Pattern Maker in Carpentry Division of No.1 Advanced Base Workshop, EME.

01.01.1979: The services of the applicant as Pattern Maker made permanent

(Annexure-A/Page No. 13 )

1999: The name of applicant was forwarded for being considered for the post of Master Craftsman. However, the same could not be given effect due to non-availability of a vacant post. Concerned authorities were also directed to create a post of Master Craftsman for absorbing the applicant.

20.05.2003: The Government of India in the Ministry of Defence restructured the Industrial and Non-industrial cadre of the artisans staff and merged the grades of Highly Skilled-II and Highly Skilled-I into a single Highly Skilled category. The Government also introduced the ACP Scheme basically to counter the problem faced by the Government in failing to promote the person for want of a vacant post.

(Annexure-C/Page No. 16 )

The Government thereafter formulated the terms and conditions for consideration of an incumbent under the ACP Scheme for promotion.

30.08.2003: The applicant finally retired from the post of Highly Skilled (Pattern Maker) in the pay scale of Rs.4000-6000/-.

14.05.2004: The applicant submitted representations before the respondent  
20.09.2004 authorities inter-alia ventilating his grievances against the refusal of the respondent authorities to promote him under the ACP Scheme, although he duly qualified for promotion way back in the year 1999. The applicant prayed before



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the respondents to give him notional promotion with all consequential benefits thereof under the ACP Scheme.

29.05.2004: The respondent authorities replied to the representations submitted by  
19.10.2004 the petitioner and did not consider his case.

10.05.2005 Being highly aggrieved and dissatisfied with the actions of the Respondents in refusing to consider the case of the applicant for promotion to the post of Chargeman notionally, the applicant approached this Hon'ble Tribunal by filing an Original Application being O.A. No.104 of 2005.

13.05.2005: This Hon'ble Tribunal disposed of the said O.A. No.104 of 2005 with a direction that the applicant will submit a representation before the concerned authorities and the authorities shall consider the case of the applicant in the light of Clause 3(c) of the ACP Scheme i.e. Order dated 20.05.2003 and thereby pass a speaking Order within a period of three months.

(Annexure-F/Page 23 )

30.05.2005: The applicant accordingly submitted a representation before the Respondent No.4

(Annexure-G/Page 27 )

03.09.2005: As the said representation failed to evoke any response from the Respondent No.4 within a period of three months, as directed by this Hon'ble Tribunal, the Respondent No.4 submitted a reminder.

17.09.2005: The Respondent No.4 issued the impugned Order after completely failing to understand the case of the applicant and refusing to consider the applicant's case for promotion to the post of Chargeman. In fact the Respondent No.4 wrongly considered the case of the applicant for the post of Master Craftsman, which was never a part of the hierarchy.

(Annexure-I/Page 30 )

Hence the present Original Application

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

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

ORIGINAL APPLICATION NO. 283 /2005

BETWEEN

Sri Brij Nandan Sarma  
Son of Late M. Sarma  
Resident of Narengi Pathar Quarry,  
(Near Anchalik College),  
P.O. – Udayn Vihar, Guwahati - 26

APPLICANT

-AND -

1. The Union of India,  
Represented by the Secretary to the Govt. of Assam  
Ministry of Defence, New Delhi – 11.
2. The Director General of EME  
Army Headquarter, New Delhi – 110 001.
3. Estt. Officer,  
1 Advance Base Workshop EME  
C/o 99 APO
4. The Commandant  
1, Advance Base Workshop EME  
C/o 99 APO

RESPONDENTS.

DETAILS OF THE APPLICATION

1. PARTICULARS OF ORDERS AGAINST WHICH THIS APPLICATION IS  
MADE:

The instant application has been preferred against the impugned Order dated 17.09.2005 issued by the Respondent No.4 while disposing of the representation dated 30.05.2005 submitted by the applicant pursuant to the directions issued by this Hon'ble Tribunal on 13.05.2005 in Original Application No. 104 of 2005 as well as actions of the Respondent authorities in refusing to consider the case of the applicant for promotion and thereby depriving the applicant of all the consequential benefits thereof.

*B.N. Sarma*

18  
Filed by  
The Applicant  
Through Rahul  
Jantam  
Advocate  
17-11-2005

2. **JURISDICTION OF THE TRIBUNAL:**

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

3. **LIMITATION:**

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

4. **FACTS OF THE CASE:**

4.1 That the applicant is a citizen of India and a resident of Narengi Pathar Quarry (Near Anchalik College), in the district of Kamrup, Assam and as such, he is entitled to all the rights, privileges and protections guaranteed to the citizens of India under the Constitution of India and the laws framed thereunder.

4.2 That the applicant joined the service under the Respondent authorities as Civilian/Pattern Maker in Carpentry Division of 1 Advance Base Workshop, EME, on 31<sup>st</sup> January 1967. Subsequently, the service of the applicant as 'pattern maker' was made permanent on 1st January 1979, with basic pay of Rs. 350/- (Three Hundred and Fifty Rupees Only). Thus the applicant is a civilian employee under the Respondent authorities.

A copy of the certificate dated 01.01.1979 converting the post of the applicant to a permanent one is annexed herewith and marked as **ANNEXURE – A.**

4.3 That the applicant humbly begs to state that the pay scale is determined with the grade structure available in the industrial as well as in the non-industrial trades of the Defence Artisan Staff. At the time of permanent absorption of the applicant in the post of pattern maker, the Defence Artisan Staff comprised of three Grade Structures viz., Skilled, Highly Skilled and Master Craftsmen with different scales of pay. However, the Grade of Highly Skilled was sub-divided into two grades i.e., H.S.- I and H.S. – II. But, subsequently, the Government of India, Ministry of Defence vide their letter No. 11(1)/2002/D(Civ)-1 dated 20.05.2003 restructured the grade in trades and pay scale of Defence Artisan staff by merging the H – I and H – II Grades into a single grade of Highly

B N Samra

Skilled. The pay scale of the Highly Skilled grade was fixed at Rs. 4000-6000/-. The applicant further states that after joining services as civilian/pattern maker, he continued to serve with sincerity and honesty and by the dint of his hard work, he was promoted to the grade of Highly Skilled Grade – I with effect from 1<sup>st</sup> August, 1997.

- 4.4 That the applicant begs to state that the applicant being Highly Skilled Grade – I pattern maker was twice i.e. in the year 1999 and in the year 2000, recommended for selection to the post of Master Craftsmen. However, the Respondent authorities most willfully and deliberately refused to consider the case of the applicant for promotion. It is pertinent to mention herein that some other persons who were similarly situated like that of the applicant herein were given promotions. The Respondent authorities have even allowed the applicant to be superseded by the persons who were much junior to him. But for reasons best known to the respondent authorities the applicant's case was never considered for promotion to the post of Master Craftsmen. Thereafter various representations were submitted by the applicant before the respondent authorities, but the Respondent authorities failed to consider the same. Such action on the part of the Respondent authorities was detrimental to the interest of the applicant inasmuch as the applicant suffered great injustice and prejudice. The respondent authorities ought to have considered the case of the applicant in a just and fair manner and given the applicant what he, as a matter of right, deserves i.e., right to be considered for promotion to the grade of Master Craftsmen. The applicant was recommended for promotion to the post of Master Craftsmen after complete assessment and was found by the concerned authorities to be fully eligible for the post of Master Craftsmen. However, such recommendations were turned down by the Respondent authorities due to non-availability of any vacant post of Master Craftsmen.

A copy of the said recommendation is annexed herewith and marked as ANNEXURE – B.

- 4.5 That it is pertinent to state herein that the Government of India, Ministry of Defence vide letter No. 11(1)/2002/D(Civ-I) dated 20.05.2003, restructured the industrial and non-industrial Cadre of the Artisan Staff in the Defence Establishments by modifications pursuant to recommendations of the 5<sup>th</sup> CPC whereby the grades of Highly Skilled – II and Highly Skilled – I were merged into Highly Skilled category with the ratio of 65:35(20+15). Further, the selection from Highly Skilled grade to the grade of Master Craftsmen was to be 10% of the Highly Skilled Cadre (i.e. 10% of 35% of the total) and such

BN Sarma

placement in the posts resulting from the aforesaid restructuring the ratio revision shall be made with effect from 01.01.1996 upto the date of issue of the said order. The said letter dated 20.05.2003 categorically stated that the post of the Master Craftsman shall not be part of the hierarchy and any placement made in this grade shall not be treated as promotion for highly skilled grade either under normal promotion rules or under the ACP. The said letter dated 20.05.2003 also provided that the posts of the Master Craftsman shall continue to be considered as highly skilled grade for the purpose of promotion to the grade of Chageman (in the pay scale of Rs. 5000-8000). The ACP Scheme was basically introduced by the Government of India in order to counter the problem faced by the Government in failing to promote a person for want of a vacant post. The Government as such under recommendation of the 5<sup>th</sup> CPC took a policy decision for upgradation of those persons working in different posts but who could not be promoted, inspite of fulfilling all the criteria for promotion, for non-availability of vacant posts. The basic idea behind adopting such a policy decision was to check the stagnation in services due to lack of adequate promotional avenues without creating new posts.

A copy of the said letter dated 20.05.2003 is annexed herewith and marked as ANNEXURE – C.

4.6 That pursuant to issuance of the aforesaid letter dated 20.05.2003 the Government formulated the terms and conditions for consideration of an incumbent for promotion under the Assured Career Progression Scheme for promotion. The following conditions were to be fulfilled by an incumbent to be considered for promotion under the ACP Scheme:

- (a) Fulfillment of normal promotion norms, i.e., bench mark as per ACR regarding (Average), seniority-cum-fitness for Gr. 'D' employees or Trade Test for Industrial employees is a must.
- (b) Employees who have completed eligibility service as on 09.08.1999 but retired prior to first meeting of Screening Committee will also be considered for grant of benefits under ACP Scheme if assessment is based on ACRs. However, the same will not be applicable in cases where passing of Grade test is mandatory for promotion as per the RRs as assessment based on such tests is not possible after date of superannuation.

B.N. Sarma

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It is pertinent to mention herein that Ministry of Defence letter dated 20.05.2003 (ANNEXURE-B) further categorically laid down in Clause 3(c) that the selection from Highly Skilled grade to the grade of the Master Craftsman shall be 10% of Highly Skilled cadre (i.e. 10% of the total of 35%) and the placement in this grade shall be 01.01.96 and upto the date of the issue of these Orders

The applicant respectfully begs to submit that the respondents ought to have fixed the retiral benefits of the applicant based on Clause 3(c) of the ACP Scheme i.e. by treating the applicant within 10% of highly skilled cadre, namely Master Craftsman. Undoubtedly, the applicant falls within 10% of Highly Skilled Cadre to be treated as Master Craftsman as provided under Clause 3(c) by virtue of the very fact that his name was twice recommended for the post of Master Craftsman in 1999 and 2000.

- 4.7 That the applicant begs to reiterate that in the year 1999 he was assessed by the Respondent authorities for being elevated to the post of Master Craftsman. The applicant came out successfully in all the assessments carried out by the authorities. The applicant's name thereafter was duly recommended for being elevated to the post of Master Craftsman. However, due to the non-availability of a post of Master Craftsman during that point of time the applicant could not be elevated. However, the Respondent authorities being highly satisfied with the services of the applicant had recommended for creation of an additional post of Master Craftsman for accommodating the applicant.

The applicant craves leave of this Hon'ble Tribunal to produce a copy of his assessment report at the time of hearing of the instant case.

- 4.8 That the applicant finally retired on 30.08.2003 from the post of Highly Skilled (Pattern Maker) in the pay scale of Rs. 4000-6000/-. It is pertinent to mention herein that although the ACP Scheme was brought into effect on 20.05.2003 yet the Respondent authorities most willfully and deliberately failed to consider the case of the applicant for promotion. Being highly aggrieved and dissatisfied by such non-consideration of the legitimate right of the applicant for promotion the applicant submitted several representations ventilating his grievances and praying before the Respondent authorities for consideration of the case of the applicant with retrospective effect by giving him notional promotion from the date of implementation of the ACP Scheme and thereby allowing him all the post retirement pecuniary benefits thereof.

B. N. Sarma

A copy of the one such representation submitted by the applicant 14.05.2004 and 24.09.2004 are annexed herewith and marked as ANNEXURE – D Colly.

- 4.9 That the aforesaid representations submitted by the applicant were dealt with by the Respondent authorities vide letters dated 29.05.2004 and 19.10.2004. The Respondent authorities had issued both these letters without any application mind and with an absolute mechanical approach. The Respondents authorities failed to consider the fact that the applicant was entitled for promotion way back in the year 1999. The Respondent authorities simply rejected the aforesaid representations submitted by the applicant only on the ground that the applicant had never worked as a Master Craftsman to be considered for the next grade of promotion i.e. the Post of Chargeman. The Respondent authorities failed to take note of the fact that the applicant was working in the grade of highly skilled in the pay scale of Rs. 4000-6000/- As such, he was very much in the feeder cadre for being promoted to the post of Chargeman. Needless to mention herein that several persons who were placed much below the applicant had been arbitrarily promoted by the Respondent authorities by superseding the applicant.

Copies of the aforesaid letters dated 29.05.2004 and 19.10.2004 are annexed herewith and marked as ANNEXURE – E colly.

- 4.10 That being highly aggrieved and dissatisfied with the repeated non-consideration of the case of the applicant for being promoted to the post of Chargeman on a notional basis by the respondents, the applicant was left with no other option but to approach this Hon'ble Tribunal by way of an Original Application being O.A. No. 104 of 2005. The said Original Application was disposed of by this Hon'ble Tribunal vide Order dated 13.05.2005 directing the applicant to submit a representation before the concerned authorities, within a period of one month of passing of the said Order and further directed the respondents to consider the same and to pass a speaking Order with reference to the communication dated 20.05.2003 and any other relevant Rules within three months thereafter. While disposing of the said Original Application this Hon'ble Tribunal had categorically held that the case of the applicant has not been considered for promotion on the sole ground that the applicant did not hold the post of Master Craftsman before retirement and the case of the applicant was not for promotion to the post of Master Craftsman but to the post of Chargeman by virtue of Clause 3 (c) of the ACP Scheme. The applicant being in the 10% of the Highly Skilled grade is to be treated as a Master Craftsman particularly for the reason that the

B. N. Sarma

applicant's case was considered and recommended for promotion to the post of Master Craftsman but the same could not be done in view of the fact that there was no vacancy at that point of time. As such, this Hon'ble Tribunal was pleased to dispose of the O.A. No.104 of 2005 with a direction that if the applicant makes a representation highlighting the aforesaid facts within a period of one month, the concerned respondents will consider the same and shall pass a speaking Order with reference to the communication dated 20.05.2003 (Annexure-C) and any other relevant Rules in that regard within three months.

Copy of the Order dated 13.05.2005 passed by this Hon'ble Tribunal in O.A. No. 104 of 2005 is annexed herewith and marked as ANNEXURE -F.

- 4.11. That accordingly the applicant submitted a representation before the Respondent No. 4 on 30.05.2005 inter-alia ventilating his grievances as aforesaid and praying for redressal of the same. Be it stated herein that a copy of the Order dated 13.05.2005 passed by this Hon'ble Tribunal in O.A No.104 of 2005 was also enclosed with the said representation. However as, the said representation failed to evoke any positive response within a period of three months as directed by this Hon'ble Tribunal, the applicant submitted a reminder on 03.09.2005.

Copy of the representation dated 30.05.2005 as well as the reminder dated 03.09.2005 are annexed herewith and marked as ANNEXURE G and H respectively.

- 4.12. That the Respondent No 4 finally disposed of the representation submitted by the applicant in a most mechanical manner vide impugned Order dated 17.09.2005. Be it stated herein that while issuing the said Order dated 17.09.2005 the Respondent No 4 did not even bother to understand the case of the applicant and simply considered the case of the applicant to the post Master Craftsman, which was never the case.

A copy of the impugned Order dated 17.09.2005 is annexed herewith and marked as ANNEXURE-I.

## 5. GROUND FOR RELIEF/S WITH LEGAL PROVISIONS:

- 5.1 For that the Respondent authorities have acted in a manner contrary to the policy decision of the Government of India inasmuch as Ministry of Defence letter No.

B. N. Sana



11(1)/2002/D(Civ-I) dated 20.05.2003 in refusing to promote the applicant by giving him notional promotion with retrospective effect and thereby giving all the consequential benefits thereof.

- 5.2 For that the Respondents authorities have failed to consider the fact that the name of the applicant was approved for the post of Master Craftsman way back in the year 1999 but could not be placed in the said post for want of vacancy and efforts were made to create a new post of Master Craftsman for accommodating the applicant. The post of Master Craftsman being kept in the same hierarchy as that of Highly Skilled, as such the petitioner in terms of the Assured Career Progression Scheme had already qualified before his retirement for being promoted to the post of Chargeman, which is the next grade in the hierarchy. As such, the applicant is entitled to be promoted in terms of the ACP Scheme even after his retirement on notional basis with all consequential benefits thereof.
- 5.3 For that the Respondent authorities have acted in a manner contrary to all the settled and established principles of service jurisprudence in refusing to promote the applicant and promoting other persons who were much junior to the applicant. Such action on the part of the respondent authorities is violative of Articles 14 and 16 of the Constitution of India. Although an employee cannot claim promotion as a matter of right, however, as has been held by the Hon'ble Supreme Court, the right to be considered for promotion is a fundamental right. In view of the facts and circumstances that have been narrated hereinabove, it was incumbent upon the respondents to consider the case of the Applicant in the light of the policy decision of the Govt. of India. Moreover, the fundamental right guaranteed to the Applicant under Article 16 of the Constitution of India was infringed the moment his immediate junior was promoted.
- 5.4 For that the actions of the respondent authorities in refusing to promote the applicant retrospectively, on notional basis with effect from the date of implementation of the ACP Scheme has highly prejudiced the rights and interest of the applicant. The Respondent authorities by acting in such a manner has deprived the applicant of his legitimate pecuniary benefits to which he is entitled from the date of implementation of the ACP Scheme by way of promotion on notional basis.
- 5.5 For that the Respondent No.4 miserably failed to understand the directions of this Hon'ble Tribunal issued vide Order dated 13.05.2005 in O.A. No. 104 of 2005, while issuing the impugned Order dated 17.09.2005. The Respondent

B.N. Sanna

No.4 did not make any endeavour to understand the real claim of the applicant and passed the impugned Order dated 17.09.2005 in a most mechanical manner without any application of mind to the relevant factors.

- 5.6 For that the claim of the applicant in O.A.No.104 of 2005 was that his candidature was already forwarded for the post of Master Craftsman way back in 1999, however the same did not materialize for the want of vacancy. However, after the ACP Scheme was implemented, the applicant is fit to be considered for promotion notionally to the post of Chargeman, which is the next higher post in the hierarchy.
- 5.7 For that while issuing the impugned Order dated 17.09.2005 the Respondent No.4 refused to consider the case of the applicant in terms of the directions of this Hon'ble Tribunal. The Respondent No.4 failed to understand the fact that this Hon'ble Tribunal in its Order dated 13.05.2005 had held that the applicant is entitle to get pensionary benefits fixed on the basis of the ACP Scheme dated 20.05.2003 under Clauses 3(a), 3(b) and 3(c), more particularly Clause 3(c). Hence it was held that the name of the applicant was fit to be considered promotion to the post of Chargeman in view of the fact that he was already within the zone of consideration, i.e. within 10% of Highly Skilled cadre which is the post of Master Craftsman. The Hon'ble Tribunal further held that the case of the applicant has not been considered for promotion to the post of Chargeman only because of the fact that the applicant did not retire as a Master Craftsman inspite of his name being recommended for the said post on numerous occasions. Hence the applicant may be treated to have retired as a Master Craftsman and is fit to be considered for promotion to the grade of Chargeman notionally.
- 5.8 For that the Respondent No.4 while issuing the impugned Order dated 17.09.2005 completely misinterpreted the Order dated 13.05.2005 passed by this Hon'ble Tribunal in O.A.No.104 of 2005. The Respondent No.4 under some miss conception of fact as well as of law rejected the case of the applicant and considered the case of the applicant for selection to the post of Master Craftsman only, which was never the case.
- 5.9 For that the impugned Order dated 17.09.2005 is grossly illegal, arbitrary and unreasonable apart from being dehors of the directions of this Hon'ble Tribunal issued vide Order dated 13.05.2005 in O.A. No.104 of 2005. The Respondent No.4 while issuing the said impugned Order have acted in a mechanical manner without any application of mind to the relevant and material factors. The action of the Respondent No.4 while issuing the impugned Order is fraught with

B.M. Sanma

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malafides. Upon a bear perusal of the impugned Order it transfers that there has been a deliberate effort on the part of the Respondent No.4 not to consider the case of the applicant for promotion notionally.

5.10 For that in any view of the matter the impugned Order dated 17.09.2005 is bad in the eye of law and as such is liable to set-aside and quashed by this Hon'ble Tribunal.

5.11 For that the actions of the Respondent authorities is violative of the fundamental as well as other legal rights of the applicant as has been laid down by the Hon'ble Apex Court in a catena Judgments that consideration for promotion is a fundamental right of a citizen.

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

6. **DETAILS OF REMEDIES EXHAUSTED:**

That the applicant declares that he has no other alternative and efficacious remedy available to him except by way of this instant application.

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

That the applicant declares that no such writ petition or suit has been filed regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. **RELIEFS SOUGHT FOR:**

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application and notice be issued to the respondents to show cause as to why the reliefs sought for by the applicant shall not be granted, call for the records of the case 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 reliefs:

8.1 Set-aside/quash the impugned Order dated 17.09.2005 passed by the Respondent No.4.

B.N. Samra

- 8.2 Direct the Respondent authorities to consider the case of the applicant for promotion to the post of Chargeman with effect from the date of implementation of the ACP Scheme on notional basis.
- 8.3 Direct the Respondent authorities to make payment of all the pecuniary dues of the applicant including arrear salary after promoting the applicant on notional basis from the date of implementation of the ACP Scheme.
- 8.4 Direct the Respondent authorities to revise and make payment all the pensionary benefits of the petitioner in terms of the notation promotion.
- 8.5 Costs of the application.
- 8.6 Any other relief or reliefs to which the applicant is entitled to, under the facts and circumstances of the case as may be deemed fit and proper by the Hon'ble Tribunal.

9. **PARTICULARS OF THE IPO.**

- |      |               |   |
|------|---------------|---|
| i.   | I.P.O. NO.    | : |
| ii.  | Date of Issue | : |
| iii. | Issued from   | : |
| iv.  | Payable at    | : |

10. **DETAILS OF ENCLOSURES:**

As stated in the Index.

B.N. Sarma

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

I, Shri B.N. Sharma, son of Shri Late M. Sarma, aged about 61 years, resident of Village – Narengi, Pathar Quarry (near Anchalik College) Guwahati - 26, in the district of Kamrup, Assam, do hereby solemnly affirm and verify that I am the Applicant No. 1 in the instant application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in Paragraphs 1 to 4.4, 4.7 (Partly), 4.8, 4.9, 4.10, 4.11 and 4.12 are true to my knowledge and those made in Paragraphs 4.5, 4.6 and 4.7 (Partly) being matters of record are true to my information derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 17<sup>th</sup> day of November, 2005 at Guwahati.

*Brynandan Sharma*

SIGNATURE OF THE APPLICANT

CERTIFICATE

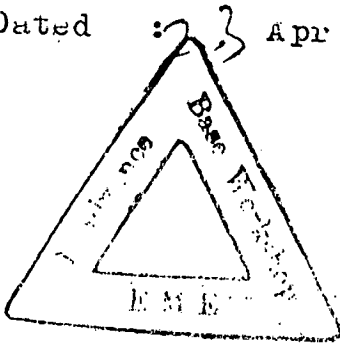
ANNEXURE

A

Certified that Civilian/Pattern Maker Shri M. Sharma is serving in this Workshop since 31 Jan 1967. His basic Pay is Rs 350/- and total monthly emoluments is Rs 684/- (Rupees six hundred eighty four only). He has been declared as permanent Defence employees w.e.f. 01 Jan 79.

Station : C/O 99 APO

Dated : 23 Apr 82



(BA Dandapani)

Major

Accounts Officer

for ofrg Commandant

Certified to be true copy

*[Signature]*  
Advocate

222 2551

(1) -14-

Headquarters  
Eastern Command (EME Branch)  
Fort William, Calcutta-21

ANNEXURE B

33/217/2/EME Civ

15 Dec 2000

HQ Base Wksp Group (EME)  
Meerut Cantt- 250 001

CREATION OF GRADE OF MASTER CRAFTSMEN IN THE  
DEFENCE ESTABLISHMENT

1. Refer to your letter No 20001/MCM/Est dt 06 Nov 99 and Sig Q 8196 dt 22 Nov 2000.

2. Assessment report duly completed in respect of Civ/PM Brij Nandan Sharma of 1 Adv Base Wksp EME is fwd herewith in duplicate for your necessary action please.

W. Baxi

(Rd Bakshi)  
Col  
Col EME  
for Offg MG EME

Encls : ( Eight )

Copy to :-

1 Adv Base Wksp EME - ✓ for info wrt their letter No 20701/Civ/IP dt 08 Dec 2000.

BR/CR  
30

Certified to be true copy.

Advocate

(39)  
- 15 -  
20  
32  
Date : 644221/5114

22001/MCM/Est

Headquarters  
Eastern Command (EME)  
Fort William, Calcutta 21

1 Adv Base Wksp EME  
C/O 97 APO

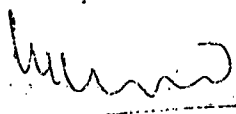
Headquarters  
Base Wksp Group EME  
Neerut Cantt-25001-5467

05 Jul 2000

CREATION OF GRADE OF MASTER CRAFTSMEN IN THE  
DEFENCE ESTABLISHMENT

1. Refer HQ Eastern Command (EME Dn) sig Q-8576 dated 01 Jul 2000.
2. Assessment report in respect of Pattern Maker Shri Brij Nandan Sharma of your Wksp was placed before Departmental Selection Committee held in Mar 2000. Due to non availability of vacancy in Pattern Maker no elevation to MCM was made in this trade.
3. Further, it may please be noted that the result of Departmental Selection Committee is intimated by the Dte Gen of EME (EME Civ) or by this HQ in the form a list of successful candidates. No communication is sent regarding others who are not elevated either due to non-availability of vacancy or not making up in merit.
4. HQ Eastern Command (EME Dn) only. In this connection please refer to this HQ letter No 20001/MCM/DPC/Est dated 18 Apr 2000.

B/F  
02  
15

  
(KL Sehgal)  
EME, Dte (Civ)  
Est Dte  
for Cdr

P-27 of 24501/Gen (File)



C.O.D-16-  
MAZDOR SANGH  
KANPUR (UP)

ANNEXURE C

No. 11(1)/2002/D(Civ. I)  
Government of India  
Ministry of Defence

New Delhi, the 20<sup>th</sup> May, 2003

To

The Chief of Army Staff  
The Chief of Air Staff  
The Chief of Naval Staff  
The DGOF  
& all the Heads of Inter Services Organisations

20/5/03

Subject: Restructuring of Cadre of Artisan Staff in Defence Establishments in modification of recommendations of 5<sup>th</sup> CPC.

Sir,

The matter regarding restructuring of Cadre of Artisan Staff in Defence Establishments has been under consideration of the Government for quite some time. Now in partial modification of the recommendations of the Vth CPC made in paras 54.16-18 and 54.29 of its report, I am directed to convey the sanction of the President as under:-

2. The grade structure in the industrial as well as in the non-industrial trades, wherever already available and the pay-scales of the Defence artisan staff shall stand modified w.e.f. 1.1.96 as under:-

(i)	Skilled	Rs. 3050-4590
(ii)	Highly Skilled (HS-I + HS-II)	Rs. 4000-6000
(iii)	Master Craftsman	Rs. 4500-7000

3. (a) Wherever the grade structure in the Industrial as well as in the Non-Industrial trades is already existing in the ratio of 65:20:15, in the erstwhile Skilled : HS-II : HS-I, the merger of HS-II and HS-I shall be treated to have come into effect from 1-1-96, and the grade structure of Skilled and Highly Skilled categories shall be in the ratio of 65:35(20+15)./

(b) The post of Master Craftsman shall not be part of the hierarchy and the placement in this grade will not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme.

1-1-96 : HS I HS II

2.../-

1-1-87  
1-8-96

10/8/1989  
8/10/96

Certified to be true copy

Advocate

(c) The selection from Highly Skilled grade to the grade of the Master Craftsman shall be 10% of Highly Skilled Cadre (i.e. 10% of 35% of the total) and the placement in this grade shall be w.e.f. 1-1-96 and upto the date of the issue of these orders.)

(d) The placement of the individuals in the posts resulting from the restructuring and ratio revision, shall be made w.e.f. 1.1.96, in relaxation of the conditions, if any, i.e. trade test etc., as one time measure.

(e) The above provisions may also be made applicable, as a special case, in relaxation of the existing rules/instructions to the employees who have either retired or died after 1.1.96.

4. (i) From the date of issue of these orders, all the trades classified as Skilled (including left out trades) in the Industrial as well as in the non-Industrial Estts. shall now be modified in the following inter-grade ratio :-

1. Skilled	(Rs. 3050-4590) : 45%
2. Highly Skilled	(Rs. 4000-6000) : 55%
3. Master Craftsman	(Rs. 4500-7000) : 25% of the Highly Skilled Grade posts will be placed in the grade of the Master Craftsman. They will, however, not be a part of the hierarchy.

(ii) The above-mentioned inter-grade ratio shall be worked out based on the sanctioned/authorized strength.

(iii) Since the post of Master Craftsman is not part of the hierarchy, the placement in this grade shall not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme.

(iv) The post of Master Craftsman shall continue to be considered as highly skilled grade for the purpose of promotion to the grade of Chargeman-I (Rs. 5000-8000).

(v) The benefit of the first and second ACP to the skilled workers will be as per the orders issued by the DOP&T under their O.M. dated 9.8.99 and subsequent clarifications issued on the subject.

(vi) Where there is direct recruitment at the level of HS-I, HS-II in Defence Estts., the number of Master Craftsmen (not exceeding 25% of Highly Skilled) may be decided considering the functional requirements by the concerned administrative Sections in the Ministry of Defence in consultation with their concerned Integrated Finance

18 - 35

(vii) The placement of the individuals in the posts resulting from the above restructuring and ratio revision shall be made from the date of issue of the orders, in relaxation of the conditions, if any, as one time measure.

(viii) The procedure for selection to the grade of Master Craftsman shall be as laid down in para-2 & 3 of Ministry of Defence letter No. 1(2)/80/D(Civ.I) dated 21<sup>st</sup> September, 1982, as amended with the exception that the number Master Craftsmen in each trade shall be upto 25% of the total number of sanctioned posts in the Highly Skilled grade in each Organisation instead of 10% as was provided for in para-2(i) of aforesaid Ministry of Defence letter.

(ix) The existing recruitment rules for the Tradesmen may be amended accordingly.

5. The expenditure involved will be debitable to the respective Heads of Defence Services Estimates.

6. This issues with the concurrence of the Ministry of Defence(Finance) vide their U.O. No. 350/PB/03, dated 19.5.2003.

Yours faithfully,

*Piara Ram*  
(Piara Ram)

Under Secretary to the Government of India

Copy to :

AG/MP-4(Civ)(d)  
Air HQ/s./PC-5  
NHQ/CP Dte.  
R&D/Orgn./DOP  
AG/MP-4(Civ)(d)

DGNCC/Pers(C)  
DGAFFMS/DG-2(B)  
OFB, Kolkata  
DPR  
R&D/DOP/MPD

DGDE/Admin  
DGAQA  
DGQA/Admin-7B  
CAO/Coord

Copy also to :

D(Appnt); D(Fy.II); D(R&D); D(GS.III); D(QS); D(Q&C); D(JCM); D(AG); D(N-II); D(Air.III); D(Works); D(O-II); D(Med); D(GS-VI).

The CGDA; All CDAs; All Sr. Dy. DADS; The DGADS; The Dy. DGADS The Asst. Audit Officers(Defence Services), Kirkee, Kanpur, Bangalore and Allahabad; The Director of Accounts (Postal) APS Section, Nagpur-440001.

DFA(AG/PB); DFA(Navy); DFA(AF)/Org; DFA(Works); DFA(Budget-II); AFA(DP-I); C.C.A.(Factory), Kolkata.

4./-

To

ANNEXURE - D *Cally*

The Commandant  
1 Adv Base Wksp EME  
C/O.99 APO

RESTRUCTURING OF CADRE OF ARTISAN STAFF IN  
DEFENCE ESTABLISHMENTS IN MODIFICATION OF  
RECOMMENDATION OF 5TH CPC

Sir,

I have the honour beg to inform you that the Govt of India, Min of Def vide their letter No. 11(I)/2002/D(CIV-I) dated 20 May 2003 has restructured the grade in the industrial and Non industrial trades, wherever already available and pay scales of the Defence artisan staff stand modified wef 01.01.1996 as under:-

- (a) Skilled Rs. 3050-4590.00
- (b) Highly Skilled Rs. 4000-6000.00  
(HS-I & HS-II)
- (c) Master Craftsman Rs. 4500-7000.00

As per the previous Existing grade structure ratio in the industrial and non industrial was 55:20:15, in the erstwhile skilled HS-II, HS-I, the merger of HS-II & HS-I shall have come into effect from 01.01.1996. Accordingly I was promoted to Highly skilled grade (i.e. Pattern Maker) in the scale of Pay Rs. 4000-6000 and subsequently retired from service in the above pay scale.

As per the instructions contained in the said letter I am entitled to the next higher grade of Master Craftsman in the scale of pay Rs. 4500-7000/- wef. 1.01.1996, because the selection from highly grade to the grade of the Master Craftsman shall be 10% of highly skilled cadre (i.e. 10% of 35% of the total) and the placement in this grade shall be wef 01.01.1996 upto the date of issue of these order.

The above provisions are also applicable, as a special case, in relaxation of the existing rules/instruction to the employees who have either retired or died after 01.01.96.

Under the provision laid down in the ibid letter, I therefore request your honour kindly to consider my case by restructuring the grade from pattern makers to Master Craftsman in the scale of pay Rs. 4500 -7000/- wef. 01.01.1996 and arrange to pay my arrear and revision of pension and gratuity etc.

Yours faithfully,

*(Signature)*  
( B.N. Sharma  
Ex- Pattern Makers  
1 Adv Base Wksp EME

Dated: 14 May 2004.

*Received  
18/5/04  
[Signature]*

Certified to be true copy

*(Signature)*  
Advocate

87

To

Directorate General of the  
Army HQ, New Delhi-110011.

Sub: REQUEST FOR PROMOTION TO THE GRADE OF MASTER CRAFTSMAN

Sir,

With due respect and humble submission, I beg to state the following for favour of your kind consideration and gracious action please:

That Sir, I was an employee of 1 Advance Base Workshop, c/o 191 APO and holding the post of Pattern Maker in the scale of pay Rs. 4000 - 6000/-. Subsequently I retired from service in the year 2003 without promotion.

That Sir, during my service period I requested my employer for getting my promotion to next higher grade of Master Craftman.

That, Govt of India, Min of Def vide their letter No.11(1), 2002/8(2iv-1) dated 20 May 2003 has restructured the grade in trades and pay scales of Defence Artisan Staff stand modified w.e.f 01-1-96 as under:

- (a) Skilled Grade ..... 3050 - 4500
- (b) Highly skilled grade - 4000 - 6000  
(merging with HS-I & HS-II)
- (c) Master Craftman ..... 4500 - 7000

That as per the instructions contained in the aforesaid letter, I am entitled to next higher grade of Master Craftman in the scale of Rs. 4500 - 7000/- w.e.f 01-1-96. The provisions also applicable to the retired or death cases also after 01-1-96.

In view of the above, your good office would be kind enough to consider my case and instruct the proper authority for implementation of the Govt policy so that I may get promotion of Master Craftman with the pay scale of 4500 - 7000/- w.e.f 01-1-96 and obliged.

With best regards

Yours faithfully,

Dated: Dec 2004.

(Signature)  
Enclosed you  
1 Adv Base Workshop  
c/o 191 APO

Copy fwd to:

191 APO, East Comd  
Fort William  
Kolkata-21.

191 APO, East Comd

CCO, Directorate Genl of the Army, 191 APO, New Delhi-110011.  
Jt. Secy, 191 APO, East Comd, Fort William, Kolkata-21.  
New Delhi-11.

General Secy,  
191 APO, East Comd  
Kolkata-21

for similar action  
please.

Tele : 6914

1 Adv Bn Wksp FIF  
C/O 99 740

23201/Civ/PC/BNS

29 May 2004

Ex-Civ Pattern Maker  
Shri Brij Nandan Sharma  
Vill.: Harangi (Near Harangi)  
Anchalik College  
PO: Udyan Vihar  
Distt : Kamrup, Guwahati (Assam)

RESTRUCTURING OF CADRE OF ARTISAN STAFF IN DEFENCE ESTABLISHMENTS  
IN MODIFICATION OF RECOMMENDATION OF 5TH CPC

1. Refer to your application dated 14 May 2004.

2. In this connection, it is intimated to you that you were employed in this wksp on 31 Jan 1967 in lieu of combatant. You were trade tested at unit level and on qualifying grade II & I of your respective trade, you have been granted 2 promotions and accordingly your pay was fixed to higher scale as admissible by the audit authorities. Your last basic pay at the time of your retirement was Rs. 6000/- in the scale 4000-6000. Your first PPO was issued by CDA (Pension Allahabad) on 20 Jun 2003 duly granted monthly pension @ Rs. 2860/- and further revised by CDA (Pension) Allahabad vide their PPO No C/Corr/AOC/0287/03 dt 16 Mar 2004 @ Rs. 3460/-pm. The same was fwd to the Manager SBI Main Branch and also handed over to you vide our letter No 23101/Civ/PC/BNS dated 02 Apr 2004.

3. You have been granted your all legitimated dues as admissible duly audited/verified your service book at all audit level.

4. It is not understood as to how you have asking for granting pension in Master Craftsman grade in the scale of Rs. 4500-7000. As per records available with your service book you were never promoted to the rank of Master Craftsman. However, it is seen from our records that your case was projected for HCD, but could not be considered due to non availability of vacancies in pattern maker trade. Hence question for granting pension/gratuity in HCD grade does not arise in this stage.

5. The above facts are intimated for your information.

(All Nandan)  
Major  
Est Officer  
C/O 99 740

wat/civ/pc/b

Certified to be true copy

Advocate

Tele : 6914

1 Adv Base Wksp EME  
C/O 99 APO

- 22 -

39

23201/Civ/PC/BNS

19 Oct 2004

Dte Gen of EME  
MGU s Branch  
Army Headquarters  
DHQ, PO, New Delhi-11

IN THE MATTER OF PROMOTION TO NEXT HIGHER GRADE OF  
MASTER CRAFT MAN

1. Pl Refer, indl's application dated 24th Sep 2004 submitted by Ex/PM BN Sharma addsd to Dte Gen of EME, AHQ with a copy to this unit.
2. In this connection, it is submitted that the above indl was employed in this wksp on 31 Jan 1967 in lieu of combatant. He was trade tested at unit level and on qualifying grade II & I of his respective trade, he has been granted 2 promotions and accordingly his pay was fixed to higher scale as admissible by the audit authorities. His last basic pay at the time of his retirement was Rs.6000/- in the scale 4000-6000. His first PPO was issued by CDA (Pension) Allahabad on 20 Jun 2003 duly granted monthly pension @ Rs.2960/- and further revised by CDA (Pension) Allahabad vide their PPO No C/Corr/AOC/8287/03 dt 16 Mar 2004 duly gtd monthly pension @ Rs 3960/- pm. The same was fwd to the Manager, SBI Main Branch and also handed over to him vide our letter No 23101/Civ/PC/BNS dated 02 Apr 2004.
3. He has been granted his all legitimate dues as admissible duly audited/verified his service book at all audit levels on his retirement on 30 Sep 2003.
4. It is not understood as to how he is asking for granting pension in Master Craftsman grade in the scale of Rs. 4500-7000. As per records available with his service book he was never promoted to the rank of Master Craftsman. However, it is seen from our records that his case was projected for MCM, but could not be considered due to non availability of vacancies in pattern maker trade. Hence, question for granting pension/gratuity in MCM grade does not arise at this stage.
5. The above facts are intimated for information please.

(Rajesh Kumar)

Lt Col

OIC Adm & OC Ops

for Commandant

Copy to :-

MGEME, HQ East Comd  
Fort William  
Kolkata -21

- for information please.

Secy, Department Council of  
JCM, 18, Lodhi Estate  
New Delhi - 11

-do-

General Secy,  
NERDWCC  
Guwahati-27

-do-

Ex-Civ Shri BN Sharma  
Vill : Narangi (Near Narangi)  
Anchalik College  
PO : Udyan Vihar  
Duztt : Kamrup, Guwahati (Assam)

In this connection, please  
ref this unit letter No  
23201/Civ/PC/BNS dt 29 May  
2004.

R 11-11-04

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 104/2005

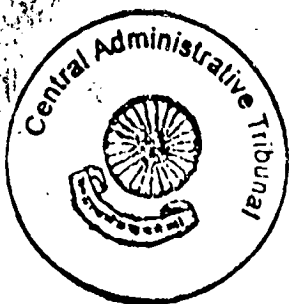
Date of Order : This the 13<sup>th</sup> day of May, 2005

The Hon'ble Sri Justice G. Sivarajan, Vice-Chairman.  
The Hon'ble Sri K.V. Prahladan, Administrative Member.

Sri Brij Nandan Sarma  
Son of Late M. Sarma  
Resident of Narengi Pathar Quarry  
(Near Anchalik College)  
P.O. - Udayn Bihar, Guwahati - 26.

... Applicant

By Mr. K.N. Choudhury, Sr. Advocate, Mr. L. Chowdhury,  
Mr. R. Duby, Mr. J. Patowary, Mr. G. Rahul, Advocates.



- Versus -

1. The Union of India,  
Represented by the Secretary to the Govt. of India  
Ministry of Defence, New Delhi - 11.
2. The Director General of EME  
Army Headquarter, New Delhi - 110 001.
3. Estt. Officer,  
1 Advance Base Workshop EME  
C/o 99 APO
4. The Commandant  
1, Advance Base Workshop EME  
C/o - 99 APO

... Respondents

By Ms. U. Das, Addl. C.G.S.C.

Certified to be true copy

*[Signature]*  
Advocate



ORDER (ORAL)

SIYARAJAN J. (V.C.)

After hearing Mr. L. Chowdhury, learned counsel for the applicant and also Ms. U. Das, learned Addl. C.G.S.C. for the respondents, we are of the view that the application can be disposed of at the admission stage itself.

2. The applicant was initially appointed as Pattern Maker in the year 1967 and his services made permanent in the said post on 01.01.1979, (Annexure - A). Later, his case was considered for selection to the post of Master Craftsman in the year 1999. Due to want of vacancy, he could not be appointed/promoted to the said post. The Government of India, Ministry of Finance re-structured the Industrial and Non-Industrial cadre of the artisans staff and merged the grades of Highly Skilled - II and Highly Skilled - I into a single Highly Skilled category. The Government also introduced the ACP Scheme as per order dated 20.05.2003 (Annexure - C). It is stated that the Government thereafter formulated the terms and conditions for consideration of an incumbent under the ACP Scheme for promotion. The applicant retired from service on 30.08.2003 as Highly Skilled (Pattern Maker) in the pay scale of Rs. 4000-6000/-. According to the applicant, he is entitled to get pensionary benefits fixed on the basis of the ACP Scheme dated 20.05.2003 under Clause 3(a), 3(b) and 3(c), particularly clause 3(c). His pensionary benefits had to be fixed treating him as Master Craftsman since, according to the applicant, he would fall within the cadre of Highly Skilled cadre (specified in Clause 3(c) of Para 3 of the



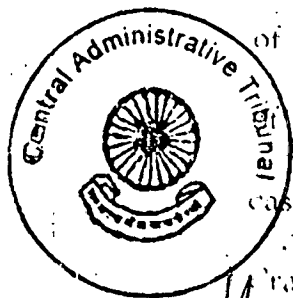
On /

ACP Scheme (Annexure - C). It is the further case of the applicant that though he had made representations dated 14.05.2004 and 20.09.2004 (Annexure - D) for the said relief, the respondents had rejected the same without properly understanding his case by communications dated 29.05.2004 and 19.10.2004 (Annexure - E).

3. Mr. T. Chowdary, learned counsel for the applicant submits that ~~the Respondents are required to fix~~ the retirement benefits of the applicant based on Clause 3(c) of the ACP Scheme, i.e. by treating the applicant within 10% of Highly Skilled cadre, namely Master Craftsman, which has not been done in the impugned order. Counsel further submits that the applicant's case falls within 10% of Highly Skilled Cadre to be treated as Master Craftsman as provided under Clause 3(c).

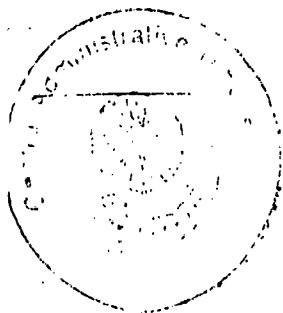
4. Ms. U. Das, learned Addl. C.G.S.C. for the respondents, on the other hand, submits that since the applicant has not been promoted as Master Craftsman, there is no question of fixing his pensionary benefits treating him as a Master Craftsman.

5. We have perused the representations and orders produced alongwith the application. We find that the respondents rejected the claim of the applicant on the sole ground that the applicant did not hold the post of Master Craftsman before his retirement. As we have already noted, the case of the applicant was not for promotion to the post of Master Craftsman; on the other hand his claim was based on Clause 3(c) of the ACP Scheme (Annexure - C). i.e., according to the applicant 10% of Highly



Skilled trade had to be treated as Master Craftsman and if it is done, the applicant will come within that, particularly for the reason that the applicant's case was considered and recommended for promotion to the post of Master Craftsman but could not be done only in view of the fact that there was no vacancy. In the circumstances, if the applicant makes a proper representation highlighting the aforesaid facts within a period of one month from today, the concerned respondents will consider the same and shall pass a speaking order with reference to the communication dated 20.05.2003 (Annexure - C) and any other relevant Rules in that regard within three months thereafter.

The application is disposed of as above at the admission stage itself. The applicant will produce a copy of this order alongwith his representation for compliance.



Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

*Never became Master Craftsman  
have a part of same*

Verified to be true copy  
of the original

24.5.05

Section Officer (I)  
C.A.T. GUWAHATI BRANCH  
Guwahati-781005

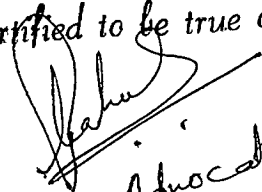
To,  
The Commandant  
1 Adv Base Workshop EME,  
c/o - 99 A.P.O.  
Dated:- 30/05/2005.

Sub:- Application for consideration of the case of the applicant, sri Brij Nandan Sharma, for treating him as Master Craftsman as per clause 3 (c) of the ACP scheme dated 20.05.2003, for retrieval benefits in pursuance of the order dated 13.05.2005 passed by the Hon'ble Central Administration Tribunal, Guwahati Branch in Original Application No. 104/2005

Sir,

With reference to the subject mentioned above, I would like to state the following few lines for your kind consideration and necessary action.

1. That I was appointed as a civilian pattern maker in Carpentry Division of No. 1 Advanced Base Workshop, EME on 31.01.1967 and my service was made permanent on 01.01.1979.
2. That in 1999, my name was forwarded for being considered for the post of master Craftsman but however, the same could not be given effect to due to non-availability of a vacant post. Be it stated herein that the concerned authorities were also directed to create a post of master Craftsman for absorbing me.
3. That in 2003, the government of India in Ministry of Defence restructured the industrial and Non- Industrial Cadre of the artisan staff and merged the grade of Highly skilled II and highly skilled I in a single highly skilled category. The government also introduced the ACP scheme as per order dated 20.05.2003 basically to counter the problem faced by the government in failing to promote the person for want of a vacant post.
4. That I retired from service on 30.09.2003 (Through inadvertently there occur a error in the order dated 13<sup>th</sup> May'2005 passed by the honorable CAT regarding date of retirement) and at that I was holding the post of highly skilled (pattern maker) in the pay scale of RS 4000-6000/.
5. That , though the ACP scheme was implemented before my retirement, yet I was not granted any benefit as per clause 3(a), (b), (c), (d) and (e) of the said ACP scheme.
6. That I also made representation dated 14.05.2004 and 20.09.2004 before the concerned authorities by my case was not considered in proper prospective.
7. That being arrived, I approach the Hon'ble Central Administrative Tribunal, Guwahati branch by way of original Application No. 104 of 2005, whereby on order dated 13.05.2005, the Hon'ble CAT was pleased to dispose of the application directing me to make a proper representation highlighting all the facts with in a period of one month from the date of order. It is also directed that the concerned respondents will consider the same and shall pass a speaking order with reference to the communication dated 20.05.2003 and any other relevant rules in that regard, within three months thereafter.
8. That this application is made pursuant to the order dated 13.05.2005. passed by the Hon'ble CAT in original application no. 104/2005.

Certified to be true copy  
  
Advocate

9. That as per clause 3© of the communication dated 20.05.2003 at the relevant time, I was within 10% of the highly skilled cadre and therefore my case should have been considered. Moreover, as per clause 3(d), the authorities had the power to consider relaxation of the conditions, but they did not do so. Again as per clause 3(e), the ACP scheme was made applicable, as a special case, to the employees who had either retired or died after 01.01.1996, yet, I was not considered.
10. That in view of the facts and circumstance of the case, it is a fit case for the authorities to consider my case for fixing my pensionary and other retiral benefits treating me as a master craftsman in the pay scale of Rs. 4500-7000 at the time of retirement. In the premises aforesaid, I pray your good office to consider my case in the light of clause 3 of the communication dated 20.05.2003 and fix my retiral and pensionary benefits treating me as a master craftsman.

I shall be highly obliged for your kind consideration

Thanking you,  
Yours faithfully



(Brij Nandan Sharma)  
EX civilian pattern maker  
Near Narangi college  
P.O. Udayan Vihar  
Dist- Kamrup (Assam)  
Pin No.- 781171.

Enclosure - Copy of the order dated 13.05.2005 passed by the Hon'ble CAT in O.A.No.104/2005.

N/S

30/11

To

The Commandant  
1 Advance Base Workshop EME  
C/O 99 APO

Sub : Application for consideration of the case of the applicant, Sri Brij Nandan Sharma, for treating him as Master Craftsman as per clause 3(c) of the ACP Scheme dated 20.05.2003, for retrieval benefits in pursuance of the order dated 13-05-2005 passed by the Hon'ble Central Administration Tribunal Branch in Original Application No:104/2005.

Respected Sir,

1. Please refer to my application fwd to you pursuant to the order dated 13-05-2005 passed by the Hon'ble CAT in original application No.104/2005, vide dated 30/5/05

2. Necessary action as requested vide my subject application is still awaited even though elapsing a period of 3 months.

3. It is again requested to please take up the case and intimate the result thereof earliest please.

Thanking you.

Yours faithfully.

Dated: 3 Sep 2005

*Brij* 3/9/05  
(Brij Nandan Sharma)  
Ex Civilian Pattern Maker  
Near Narangi College  
PO-Udayan Vihar  
Dist-Kamrup(Assam)  
Pin-781171

*ofc*

Certified to be true copy

*[Signature]*  
Advocate

**SPEAKING ORDER PASSED BY THE COMMANDANT LADY BASE WORKSHOP  
EME, TO DISPOSE OF THE APPLICATION DATED 30 MAY 2005 ON SHRI  
BRIJ NANDAN SHARMA FOR SELECTION TO THE POST OF MASTER  
CRAFTSMAN IN COMPLIANCE TO THE CAT, GUWAHATI  
JUDGMENT DATED 13 MAY 2005 IN OA 104/2005.**

1. WHEREAS, Shri Brij Nandan Sharma was appointed as Civilian Pattern Maker in 1 Advance Base Workshop on 31 Jan 1967 in lieu of Combatant and made permanent wef 01 Jan 1979.
2. AND WHEREAS, during 1999, 2000 and 2001 no vacancy for Pattern Maker for MCM was held. Hence, the DPC has not been held for this trade. The vacancy cannot be created as mentioned by the individual as the same is fixed for each trade as per their strength.
3. AND WHEREAS, in the year 2003 Govt restructured the cadre of Artisan Staff in Defence Establishment in modification of recommendation of 5<sup>th</sup> CPC. Govt never introduced the ACP scheme in order dated 20 May 2003. ACP scheme was already in vogue since 1999.
4. AND WHEREAS, the ACP was implemented in 1999 and not in 2003. (a) and (b) of Min of Def letter No 11 (1)/2002/D (Civ-I) dated 20 May 2003 but (c) and (e) of Min of Def letter No 11 (1)/2002/D (Civ-I) dated 20 May 2003 have been removed.
5. AND WHEREAS, the representations dated 14 May 2004 and 24 Sep 2004 of the individual were properly considered and replied vide letter No 23201/Civ/PC/BNS dated 29 May 2004 and letter No 23201/Civ/PC/BNS dated 19 Oct 2004 respectively.
6. AND WHEREAS, selection from Highly Skilled grade to the grade of Master Craftsman shall be 10% of Highly Skilled cadre (i.e, 10% of 35% of total) and placement in this grade shall be wef 01 Jan 1996. There is no provisions which guarantees elevation of MCM to a person who does not fall in select panel and does not come up in merit.

Station : C/O 99 APO

Dated : 17 Sep/2005

Ex Civilian Pattern Maker  
Shri Brij Nandan Sharma  
Near Narangi College  
P.O Udayan Vihar  
Distt : Kamrup (Assam)  
PIN-781171

Copy to :-

Directorate General of EME (EME Civ) - for information please.  
Master General of Ordnance Branch  
Army Headquarters  
DHQ PO, New Delhi-110011

Certified to be true copy

*[Signature]*  
Advocate

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केन्द्रीय न्यायाधीश  
Central Administrative Tribunal  
17 FEB  
गुवाहाटी न्यायाधीश  
Guwahati Bench  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 283 of 2005

IN THE MATTER OF :

Shri B.N. Sharma

... Applicant

- Versus -

Union of India & Ors.

... Respondents

- AND -

IN THE MATTER OF

Written statement on behalf of the  
Respondents No. 1 to 4.

I, Shri S.R. Nagula, Lt. Col. Establishment Officer, 1 Advance Base Workshop (EME), C/o - 99 APO, do hereby solemnly affirm and state as follows :

1. That I have been impleaded as Respondent No. 3 in the aforesaid Original Application and a copy of the same has been served upon me. I have gone through the same and understood the contents thereof. I am well acquainted and fully conversant with the facts and circumstances of the case and as such I am competent to file this affidavit.
2. The answering respondent begs to state that the applicant was enrolled in 1 Advance Base Workshop, EME on 31.01.1967 in lieu of Combatant and was absorbed as permanent Civilian Pattern Maker with effect from 01.01.1979. The applicant was promoted in his trade while serving with 1 Advance Base Workshop EME. The applicant retired from service with effect from 30.09.2003 (Afternoon) and granted all his legitimate dues.

Union of India & Ors.  
Through... - Respondents  
Mys. Kumar Chandra  
Hd. C. G. S. C.  
17/2/05



3. That with regard to the statements made in paragraph 4.1 of the Original Application ('the application' in short), the answering respondent has no comments to offer.
4. That with regard to the statements made in paragraph 4.2 of the application, the answering respondent begs to state that the applicant was enrolled on 31.01.1967 in lieu of combatant and absorbed as permanent Civilian Pattern Maker with effect from 01.01.1979.

DOPT U No 5/Civ/80

A copy of the certificate dated 01.01.1979  
dated 20 MAR 80  
is annexed herewith and marked as  
ANNEXURE - I.

5. That with regard to the statements made in paragraph 4.3 of the application, the deponent begs to state that the Government of India, Ministry of Defence vide letter No. 11(1)/2002/D(Civ.I) dated 20.05.2003 has restructured the cadre of Artisan Staff in Defence Establishment in modification of recommendations of 5th Central Pay Commission. The policy states that 'Selection from Highly Skilled grade to the grade of the Master Craftsman shall be 10% of Highly Skilled Cadre (i.e., 10% of 35% of the total) and placement in this grade shall be from 01.01.1996, but there is no provision which guarantees promotion to a person who does not fall in select panel and does not come up in merit. Further, there was no vacancy during 1999, 2000 and 2001 for Pattern Maker for Master Craftsman.

A copy of the Government of India, Ministry of Defence letter dated 20.05.2003 is annexed herewith and marked as ANNEXURE - II.

6. That with regard to the statements made in paragraph 4.4 of the application, the answering respondent begs to submit that the recommendations for promotion to Master Craftsman (Assessment reports) were forwarded to higher authorities

during 1999, 2000 and in 2001. Due to non-availability of vacancy for Pattern Maker for Master Craftsman, the name of the applicant was not considered. Further, the vacancy cannot be created as the same is fixed for each trade as per their strength. It is mentioned here that the applicant himself mentioned in his petition that recommendations for Master Craftsman were forwarded to the concerned authorities but due to non-availability of vacancy did not consider his name for Master Craftsman.

A copy of the Headquarters Base Workshop Group EME letter No. 22801/Est dated 05.07.2000 is annexed herewith and marked as ANNEXURE - III.

7. That with regard to the statements made in paragraph 4.5 of the application, the answering respondent begs to state that the selection from Highly Skilled grade to the grade of Master Craftsmen shall be 10% of Highly Skilled Cadre (i.e., 10% to 35% to the total) as per the Ministry of Defence letter No. 11(1)/2002/D(Civ-I) dated 20.05.2003 and not as stated by the applicant.
8. That with regard to the statements made in paragraphs 4.6(a) and (b) of the application, the answering respondent begs to state that the name of the applicant twice recommended for elevation as Master Craftsman and no considered due to non-availability of vacancies in Pattern Maker category. Therefore, the question of placement from highly skilled and to the grade of Master Craftsman under clause 3(c) of Ministry of Defence letter dated 20.05.2003 does not arise.
9. That with regard to the statements made in paragraph 4.7 of the application, the deponent begs to state that the vacancies can not be created as mentioned by the applicant as the same is fixed for each trade as per their strength.

10. That with regard to the statements made in paragraph 4.8 of the application, the deponent begs to state that the ACP was implemented in 1999 and not in 2003 as stated by the applicant. The applicant was promoted from skilled to HS Grade-II on 01.01.1987 and from HS grade-II to HS grade-I on 10.08.1996 i.e., before implementation of ACP Scheme, hence not eligible for benefits under ACP Scheme vide Government of India, Ministry of personnel, Public Grievances and Pension, Department of Personnel and Training letter No 35034/1/97-Estt.(D) dated 09.08.1999. The representation of the applicant dated 14.05.2004 and 24.09.2004 were properly dealt with and replied accordingly vide 1 Advance Base Workshop EME letter Nos. 23201/Civ/PC/BNS dated 29.05.2004 and 23201/Civ/PC/BNS dated 19.10.2004.

A copy of the letter dated 09.08.1999 is annexed herewith and marked as ANNEXURE-IV.

Copies of the letters dated 29.05.2004 and 19.10.2004 are annexed herewith and marked as ANNEXURES - V & VI respectively.

11. That with regard to the statements made in paragraph 4.9 of the application, the deponent begs to state that the applicant was not considered for Master Craftsman and retired on 30.09.2003 (Afternoon) in the pay scale of Rs. 4000-6000/- and granted all retirement benefits as applicable in the above pay scale duly verified by the audit authorities.

12. That with regard to the statements made in paragraph 4.10 of the application, the deponent begs to state that this Tribunal has directed on 13.05.2005 that the applicant to make proper representation within a period of one month and concerned respondents will consider the same and shall pass a speaking order with reference to the communication of Ministry of

Defence letter No.11(1)/2002/D (Civ-I) dated 20.05.2003 and any other relevant rules in this regard within three months thereafter. Accordingly, after receipt of the application from the applicant, speaking order dated 17.09.2005 has been issued.

Copies of the order dated 13.05.2005, speaking order dated 17.09.2005 and receipt dated 19.09.2005 obtained from the applicant are annexed herewith and marked as ANNEXURES - VII, VIII & IX respectively.

✓ 13. That with regard to the statements made in paragraphs 4.11 and 4.12 of the application, the deponent begs to state that the applicant was not elevated as Master Craftsman due to non-availability of vacancy. Further, the applicant is not eligible for benefits under ACP Scheme as he was promoted twice from skilled to HS grade - II and from H S grade- II to HS grade-I. Considering the aspects and rules thereon speaking order issued to the applicant is correct and in time frame of Hon' able Tribunal's order.

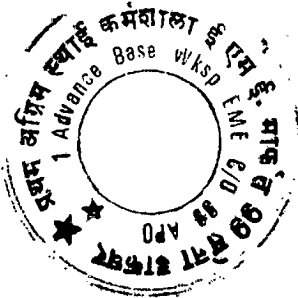
14. That the answering respondent respectfully begs to state that in view of the facts narrated hereinabove the applicant is not entitled to any relief and hence, the application is liable to be dismissed with costs.


## VERIFICATION

I, Shri S.R. Nagula, Lt. Col., aged about 56 years, son of Late Shri L.N. Nagula, presently serving as Establishment Officer, 1 Advance Base Workshop (EME), C/o - 99 APO do verify that the statements made in paragraphs 1 are true to my knowledge and those made in paragraphs 2 - 13 being matters of record are true to my information derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any facts.

I sign this verification on this Seventh day of February 2006

D E P O N E N T



  
 Lt Col/Major  
 स्थायी अधिकारी  
 EME Officer  
 प्रथम स्थाई कर्मचाला ई.एम.ई.  
 1 Adv Base Wksp EME

RESTRICTED

Unit : 1 Adv Base Wksp WME

DO-Pt No 5/Civ/80

Station : C/O 99 APO

Sheet No 1 and Last

Dated : 20 Mar 80

(LAST DO PART II No 4/Civ/80 DATED 28 FEB 80)

GROUP-IConversion into Permanent post

1. Civ Pattern Maker  
Smt B N Sharma

01 Jan 79 Declared as a Permanent w/f.

(Auth : Army Headquarters WME Directorate (WME Civ) Master General of  
Ordnance branch letter No 66237/2/WME/Civ-3 dated 14 Jan 80)

Typed by : Ssp Clk B R Kakati  
Checked by : NSub Clk B V Rao  
Distribution : Informal

(Jagjit Singh)  
Major  
GIC Administration

RESTRICTED

Attached  
to  
Addl Cg SC

No. 11(1)/2002/D(Civ.1)  
Government of India  
Ministry of Defence

New Delhi, the 20<sup>th</sup> May, 2003

To

The Chief of Army Staff  
The Chief of Air Staff  
The Chief of Naval Staff  
The DGOF  
& all the Heads of Inter Services Organisations

Subject: Restructuring of Cadre of Artisan Staff in Defence Establishments in modification of recommendations of 5<sup>th</sup> CPC.

Sir,

The matter regarding restructuring of Cadre of Artisan Staff in Defence Establishments has been under consideration of the Government for quite some time. Now in partial modification of the recommendations of the Vth CPC made in paras 54.16-18 and 54.29 of its report, I am directed to convey the sanction of the President as under:-

2. The grade structure in the industrial as well as in the non-industrial trades, wherever already available and the pay-scales of the Defence artisan staff shall stand modified w.e.f. 1.1.96 as under:-

(i) Skilled	Rs. 3050-4590
(ii) Highly Skilled (HS-I + HS-II)	Rs. 4000-6000
(iii) Master Craftsman	Rs. 4500-7000

3. (a) Wherever the grade structure in the Industrial as well as in the Non-Industrial trades is already existing in the ratio of 65:20:15, in the erstwhile Skilled : HS-II : HS-I, the merger of HS-II and HS-I shall be treated to have come into effect from 1-1-96 and the grade structure of Skilled and Highly Skilled categories shall be in the ratio of 65:35(20+15)./

(b) The post of Master Craftsman shall not be part of the hierarchy and the placement in this grade will not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme.

2.../-

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(c) The Selection from Highly Skilled grade to the grade of the Master Craftsman shall be 10% of Highly Skilled Cadre (i.e. 10% of 35% of the total) and the placement in this grade shall be w.e.f. 1.1.96 and upto the date of the issue of these orders.)

(d) The placement of the individuals in the posts resulting from the restructuring and ratio revision, shall be made w.e.f. 1.1.96, in relaxation of the conditions, if any, i.e. trade test etc., as one time measure.

(e) The above provisions may also be made applicable, as a special case, in relaxation of the existing rules/instructions to the employees who have either retired or died after 1.1.96.

(i) From the date of issue of these orders, all the trades classified as Skilled (including left out trades) in the Industrial as well as in the non-Industrial Estts. shall now be modified in the following inter-grade ratio :-

1. Skilled	(Rs. 3050-4590) : 45%
2. Highly Skilled	(Rs. 4000-6000) : 55%
3. Master Craftsman	(Rs. 4500-7000) : 25% of the Highly Skilled Grade

posts will be placed in the grade of the Master Craftsman. They will, however, not be a part of the hierarchy.

(ii) The above-mentioned inter-grade ratio shall be worked out based on the sanctioned/authorized strength

(iii) Since the post of Master Craftsman is not part of the hierarchy, the placement in this grade shall not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme.

(iv) The post of Master Craftsman shall continue to be considered as highly skilled grade for the purpose of promotion to the grade of Chageman-II (Rs. 5000-8000).

(v) The benefit of the first and second ACP to the skilled workers will be as per the orders issued by the DOP&T under their O.M. dated 9.8.99 and subsequent clarifications issued on the subject.

(vi) Where there is direct recruitment at the level of HS-I, HS-II in Defence Estts., the number of Master Craftsmen (not exceeding 25% of Highly Skilled) may be decided considering the functional requirements by the concerned administrative Sections in the Ministry of Defence in consultation with their concerned Integrated Finance.



10  
(vii) The placement of the individuals in the posts resulting from the above restructuring and ratio revision shall be made from the date of issue of the orders, in relaxation of the conditions, if any, as one time measure.

(viii) The procedure for selection to the grade of Master Craftsman shall be as laid down in para-2 & 3 of Ministry of Defence letter No. 1(2)/80/D(Civ.1) dated 21<sup>st</sup> September, 1982, as amended with the exception that the number Master Craftsmen in each trade shall be upto 25% of the total number of sanctioned posts in the Highly Skilled grade in each Organisation instead of 10% as was provided for in para-2(i) of aforesaid Ministry of Defence letter.

(ix) The existing recruitment rules for the Tradesmen may be amended accordingly.

5. The expenditure involved will be debitable to the respective Heads of Defence Services Estimates.

6. This issues with the concurrence of the Ministry of Defence(Finance) vide their U.O. No. 350/PB/03, dated 19.5.2003.

Yours faithfully,

*Piara Ram*

(Piara Ram)

Under Secretary to the Government of India

Copy to :

AG/MP-1(Civ)(d)  
Air HQrs./PC-5  
NIQ/CP Dte.  
R&D/Orgn/DOP  
AG/MP-1(Civ)(d)

DGNCC/Pers(C)  
DGAEMS/DG-2(B)  
C&B, Kolkata  
DPR  
R&D/DOP/MPD

DGDE/Admn  
DGAQA  
DGQA/Admn-7B  
CAO/Coord

Copy also to :

D(Appnt), D(Fy.II), D(R&D), D(GS.III), D(QS), D(Q&C), D(JCM), D(AG), D(N-II), D(A-III), D(Works), D(O-II), D(Med), D(GS-VI).

The CGDA, All CDAs, All Sr. Dy. DADS, The DGADS, The Dy. DGADS, The Asst. Audit Officers(Defence Services), Kirkee, Kanpur, Bangalore and Allahabad, The Director of Accounts (Postal) APS Section, Nagpur-440001.

DFA(AG/PB); DFA(Navy); DFA(AF)/Org; DFA(Works); DFA(Budget-II); DFA(DP-I); C.C.A.(Factory), Kolkata.

4./-

*Plotted by  
P. Chandra  
19.5.2003  
CJSC*

(39)

11

A

Annexure-III

21

Tele : 644221/5114

22801/MCM/Est

Headquarters  
Eastern Command (EME)  
Fort William, Calcutta-21

1 Adv Base Wksp EME  
C/O 99 APO

Headquarters

Base Wksp Group EME

Memorandum No 258001

205 Jul 2000

CREATION OF GRADE OF MASTER CRAFTSMEN IN THE  
DEFENCE ESTABLISHMENT

1. Refer HQ Eastern Command (EME Br) sig Q-8576 dated 31 Jul 2000.
2. Assessment report in respect of Patern Maker Shri Brij Nandan Sharma of your Wksp was placed before Departmental Selection Committee held in Mar 2000. Due to non-availability of vacancy in Patern Maker no elevation to MCM was made in this trade.
3. Further, it may please be noted that the result of Departmental Selection Committee is intimated by the Dte Genl of EME (EME Civ) or by this HQ in the form a list of successful candidates. No communication is sent regarding others who are not elevated either due to non-availability of vacancy or not making up in merit.
4. HQ Eastern Command (EME Br) only. In this connection please refer to this HQ letter No 20801/MCM/DPC/Est dated 10 Apr 2000.

B F  
02  
15

*[Signature]*

(K. Sehgal)  
EME Offr (Civ)  
Est Offr  
for Cdr

*[Handwritten signature]*  
Attested  
Addl Cdr

MOST IMMEDIATE

58

No.35034/1/97-Est(D)

Government of India

Ministry of Personnel, Public Grievances and Pensions  
(Department of Personnel and Training)

North Block, New Delhi 110001

August 9, 1999

OFFICE MEMORANDUMSubject: THE ASSURED CAREER PROGRESSION SCHEME FOR  
THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.

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

2. GROUP 'A' CENTRAL SERVICES

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

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

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

.....2/-

9/8/1999

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

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

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

#### 6. SCREENING COMMITTEE

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

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

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

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

and the "Duke" as  
the "son of a bitch."  
The Duke's life was  
long and the payment

Any interpretation/analysis of the data is given.

17. The defendant's Deposition  
of 11/1/78 and also take  
into account the following:

DATE: 11/11/2011

1. Director of Economic  
 Development, International  
 Support Center, Japan  
 International Center for  
 Economic and Technical  
 Cooperation, United Nations  
 Economic and Social  
 Commission for Asia and  
 the Pacific, National Co-  
 operation, National Co-  
 operation, Staff, India, 1  
 2. Staff of the Ministry  
 of Education (1) Sec

1. *Chlorophyll*  
 2. *Chlorophyll*  
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 8. *Chlorophyll*  
 9. *Chlorophyll*  
 10. *Chlorophyll*

Prime Minister's Office/  
Department of Cabinet Affairs (1947)  
Ottawa, Ontario, New York  
Canada, Public

1.5/30nd 1964 Tribes  
C. Patterson - Head, New Britain  
710

Attended  
AM Church  
Addl C of SC

CONDITIONS FOR GRANT OF BENEFITS  
UNDER THE ACP SCHEME

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

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

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

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

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

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

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

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

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

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

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

of discipline, disciplinary proceedings, grant of benefits under the ACP and to rules governing normal promotion. Such cases shall, therefore, be governed by the provisions of relevant CCS(ECA) Rules, 1965 and instructions thereunder;

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

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

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

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

*S. J. K.*

(K.K. JHA)

Director (Establishment)

....7/-

Attested  
M. C. Choudhary  
Addl. Secy SC



18  
Tel: 6914

1: Adv Base Wksp. EMB  
C/O 99 APO

23201/Civ/PC/BNS

29 May 2004

Ex-Civ Pattern Maker  
Shri Brij Nandan Sharma  
Vill: Narangi (Noar Narangi)  
Anchalik College  
PO: Udyan Vihar  
Distt: Kamrup, Guwahati (Assam)

RESTRUCTURING OF CADRE OF ARTISAN STAFF IN DEFENCE ESTABLISHMENTS  
IN MODIFICATION OF RECOMMENDATION OF 5TH CPC

1. Refer to your application dated 14 May 2004.
2. In this connection, it is intimated to you that you were employed in this wksp on 31 Jan 1967 in lieu of combatant. You were trade tested at unit level and on qualifying grade level of your respective trade, you have been granted 2 promotions and accordingly your pay was fixed to higher scale as admissible by the audit authorities. Your last Basic pay at the time of your retirement was Rs. 6000/- in the scale 4000-6000. Your first PPO was issued by CDA (Pension) Allahabad on 20 Jun 2003 duly granted monthly pension @ Rs. 2960/- and further revised by CDA (Pension) Allahabad vide the PPO No C/Corr/AOC/8287/03 dt 16 Mar 2004 @ Rs. 3960/- pm. The same was fwd to the Manager SBI Main Branch and also handed over to you vide our letter No 23101/Civ/PC/BNS dated 02 Apr 2004.
3. You have been granted your all legitimated dues as admissible duly audited/verified your service book at all audit level.
4. It is not understood as to how you have asking for granting pension in Master Craftsman grade in the scale of Rs. 4500-7000. As per records available with your service book you were never promoted to the rank of Master Craftsman. However, it is seen from our records that your case was projected for MCM, but could not be considered due to non-availability of vacancies in pattern maker trade. Hence question for granting pension/gratuity in MCM grade does not arise in this stage.
5. The above facts are intimated for your information.

WS4/civ1/p-5

(AM Mahas)

Major  
Est Officer  
for Offg Comdt

Attested  
AM Chandra  
Raddi Ely SC

19 Oct 2004

23201/Civ/PC/BNS

Dte Gen of EME  
MGO s Branch  
Army Headquarters  
DHQ, PO, New Delhi-11

IN THE MATTER OF PROMOTION TO NEXT HIGHER GRADE OF  
MASTER CRAFT MAN

1. Pl Refer indl's application dated 24th Sep 2004 submitted by Ex/PM BN Sharma addsd to Dte Gen of EME, AHQ with a copy to this unit.

2. In this connection, it is submitted that the above indl was employed in this wksp on 31 Jan 1967 in lieu of combatant. He was trade tested at unit level and on qualifying grade II & I of his respective trade, he has been granted 2 promotions and accordingly his pay was fixed to higher scale as admissible by the audit authorities. His last basic pay at the time of his retirement was Rs.6000/- in the scale 4000-6000. His first PPO was issued by CDA (Pension) Allahabad on 20 Jun 2003 duly granted monthly pension @ Rs.2960/- and further revised by CDA (Pension) Allahabad vide their PPO No C/Corr/AOC/8287/03 dt 16 Mar 2004 duly qtd monthly pension @ Rs 3960/- pm. The same was fwd to the Manager, SBI Main Branch and also handed over to him vide our letter No 23101/Civ/PC/BNS dated 02 Apr 2004.

3. He has been granted his all legitimate dues as admissible duly audited/verified his service book at all audit levels on his retirement on 30 Sep 2003.

4. It is not understood as to how he is asking for granting pension in Master Craftsman grade in the scale of Rs. 4500-7000. As per records available with his service book he was never promoted to the rank of Master Craftsman. However, it is seen from our records that his case was projected for MCM, but could not be considered due to non availability of vacancies in pattern maker trade. Hence, question for granting pension/gratuity in MCM grade does not arise at this stage.

5. The above facts are intimated for information please.

BK  
p-40  
41  
42

(Rajesh Kumar)  
Lt Col  
OIC Adm & OC Tps  
for Commandant

Copy to :-

MGEME, HQ East Comd  
Fort William  
Kolkata -21

Secy, Department Council of  
JCM, 18, Lodhi Estate  
New Delhi -11

General Secy,  
NERDWCC  
Guwahati -27

Ex-Civ Shri BN Sharma  
Vill : Narangi (Near Narangi)  
Anchalik College  
PO : Udyan Vihar  
Distt : Kamrup, Guwahati (Assam)

- for information please.

-do-

-do-

In this connection, please  
ref this unit letter No  
23201/Civ/PC/BNS dt 29 May  
2004.

Attended  
M. Choudhary  
Addl CgSC

11-11-04

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

64

Original Application No. 104/2005

Date of Order : This the 13<sup>th</sup> day of May, 2005

The Hon'ble Sri Justice G. Sivarajan, Vice-Chairman.  
The Hon'ble Sri K.V. Prahladan, Administrative Member.

Sri Brij Nandan Sarma  
Son of Late M. Sarma  
Resident of Narengi Pathar Quarry  
(Near Anchalik College)  
P.O. - Udayn Bihar, Guwahati - 26.

... Applicant

By Mr. K.N. Choudhury, Sr. Advocate, Mr. I. Chowdhury,  
Mr. R. Duby, Mr. I. Patowary, Mr. G. Rahul, Advocates.

Versus -

1. The Union of India,  
Represented by the Secretary to the Govt. of India  
Ministry of Defence, New Delhi - 11.

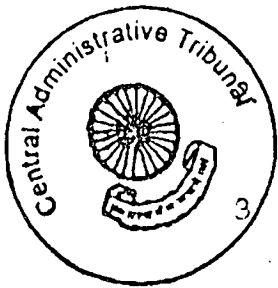
The Director General of EME  
Army Headquarter, New Delhi - 110 001.

Estt. Officer,  
1 Advance Base Workshop EME  
C/o 99 APO

4. The Commandant  
1, Advance Base Workshop EME  
C/o - 99 APO

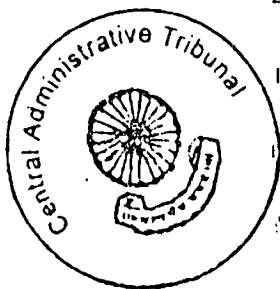
... Respondents

By Ms. U. Das, Addl. C.G.S.C.



ORDER (ORAL)SHIVARAJAN J. (V.C.)

After hearing Mr. I. Chowdhury, learned counsel for the applicant and also Mrs. U. Das, learned Addl. C.G.S.C. for the respondents, we are of the view that the application can be disposed of at the admission stage itself.



2. The applicant was initially appointed as Pattern Maker in the year 1967 and his services made permanent in the said post on 01.01.1979 (Annexure - A). Later, his case was considered for selection to the post of Master Craftsman in the year 1999. Due to want of vacancy, he could not be appointed/promoted to the said post. The Government of India, Ministry of Finance re-structured the Industrial and Non-Industrial cadre of the artisans staff and merged the grades of Highly Skilled - II and Highly Skilled - I into a single Highly Skilled category. The Government also introduced the ACP Scheme as per order dated 20.05.2003 (Annexure - C). It is stated that the Government thereafter formulated the terms and conditions for consideration of an incumbent under the ACP Scheme for promotion. The applicant retired from service on 30.08.2003 as Highly Skilled (Pattern Maker) in the pay scale of Rs. 4000-6000/-. According to the applicant, he is entitled to get pensionary benefits fixed on the basis of the ACP Scheme dated 20.05.2003 under Clauses 3(a), 3(b) and 3(c), particularly clause 3(c). His pensionary benefits had to be fixed treating him as 'Master Craftsman' since, according to the applicant, he would fall within 10% of Highly Skilled cadre (specified in Clause 3(c) of Para 3 of the

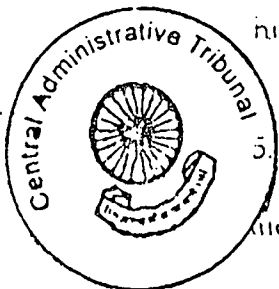
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✓ ACF Scheme, Annexure - C). It is the further case of the applicant that though he had made representations dated 14.05.2004 and 20.09.2004 (Annexure - D) for the said relief, the respondents had rejected the same without properly understanding his case by communications dated 29.05.2004 and 19.10.2004 (Annexure - E).

3. Mr. I. Chowdhury, learned counsel for the applicant submits that the Respondents are bound to fix the retiral benefits of the applicant based on Clause 3(c) of the ACF Scheme, i.e. by treating the applicant within 10% of Highly Skilled cadre, namely Master Craftsman, which has not been done in the impugned order. Counsel further submits that the applicant's case falls within 10% of Highly Skilled Cadre to be treated as Master Craftsman as provided under Clause 3(c).

4. Mr. P. Das, learned Advt. C.G.S.C. for the respondents, on the other hand, submits that since the applicant has not been promoted as Master Craftsman, there is no question of fixing his pensionary benefits treating him as a Master Craftsman.

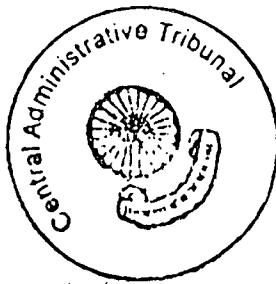
5. We have perused the representations and orders produced alongwith the application. We find that the respondents rejected the claim of the applicant on the sole ground that the applicant did not hold the post of Master Craftsman before his retirement. As we have already noted, the case of the applicant was not for promotion to the post of Master Craftsman; on the other hand his claim was based on Clause 3(c) of the ACF Scheme (Annexure - C) i.e. according to the applicant 10% of Highly



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Skilled trade had to be treated as Master Craftsman and if it is done, the applicant will come within that, particularly for the reason that the applicant's case was considered and recommended for promotion to the post of Master Craftsman but could not be done only in view of the fact that there was no vacancy. In the circumstances, if the applicant makes a proper representation highlighting the aforesaid facts within a period of one month from today, the concerned respondents will consider the same and shall pass a speaking order with reference to the communication dated 20.05.2003 (Annexure - C) and any other relevant Rules in that regard within three months thereafter.



The application is disposed of as above at the admission stage itself. The applicant will produce a copy of this order alongwith his representation for compliance.

Sd/ VICE CHAIRMAN

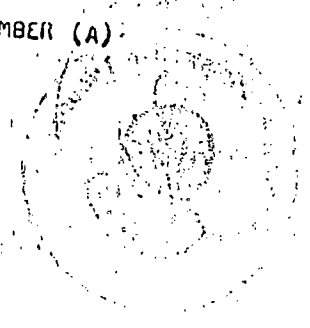
Sd/ MEMBER (A)

TRUE COPY

प्रतिप्रति

Section Officer (J)  
C.A.T. GUWAHATI BRANCH  
Guwahati-781003

25.5.05



**SPEAKING ORDER PASSED BY THE COMMANDANT 1 ADV BASE WORKSHOP  
EME, TO DISPOSE OF THE APPLICATION DATED 30 MAY 2005 OF SHRI  
BRIJ NANDAN SHARMA FOR SELECTION TO THE POST OF MASTER  
CRAFTSMAN IN COMPLIANCE TO THE CAT, GUWAHATI  
JUDGMENT DATED 13 MAY 2005 IN OA 104/2005**

1. WHEREAS, Shri Brij Nandan Sharma was appointed as Civilian Pattern Maker in 1 Advance Base Workshop on 31 Jan 1967 in lieu of Combatant and made permanent wef 01 Jan 1979.
2. AND WHEREAS, during 1999, 2000 and 2001 no vacancy for Pattern Maker for MCM was held. Hence, the DPC has not been held for this trade. The vacancy cannot be created as mentioned by the individual as the same is fixed for each trade as per their strength.
3. AND WHEREAS, in the year 2003 Govt restructured the cadre of Artisan Staff in Defence Establishment in modification of recommendation of 5<sup>th</sup> CPC. Govt never introduced the ACP scheme in order dated 20 May 2003. ACP scheme was already in vogue since 1999.
4. AND WHEREAS, the ACP was implemented in 1999 and not in 2003. The clause 3 (a) (b) (c) (d) and (e) of Min of Def letter No 11 (1)/2002/D (Civ-I) dated 20 May 2003 have no relevance with ACP.
5. AND WHEREAS, the representations dated 14 May 2004 and 24 Sep 2004 of the individual were properly considered and replied vide letter No 23201/Civ/PC/BNS dated 29 May 2004 and letter No 23201/Civ/PC/BNS dated 19 Oct 2004 respectively.
6. AND WHEREAS, selection from Highly Skilled grade to the grade of Master Craftsman shall be 10% of Highly Skilled cadre (i.e, 10% of 35% of total) and placement in this grade shall be wef 01 Jan 1996. There is no provisions which guarantees elevation of MCM to a person who does not fall in select panel and does not come up in merit.

Station : C/O 99 APO.

Dated : 17 Sep 2005

Ex Civilian Pattern Maker  
Shri Brij Nandan Sharma  
Near Narangi College  
P.O Udayan Vihar  
Distt : Kamrup (Assam)  
PIN-781171

Copy to :-

Directorate General of EME (EME Civ) - for information please.  
Master General of Ordnance Branch  
Army Headquarters  
DHQ PO, New Delhi-110011

(V P Munjal)  
Brig  
Commandant

1 Adv Base Workshop EME

2 11/9. 17/9

*Attested*  
*AK Choudhary*  
*Addl Gf SC*

## R E C E I P T

Received Speaking Order dated 17 Sep 2005 passed by Commandant I Adv Base Workshop EME, to dispose of the application dated 30 Mar 2005 of Shri Brij Nandan Sharma for selection to the post of Master Craftsman in compliance to the CAT, Guwahati judgment dated 13 May 2005 in OA 104/2005.

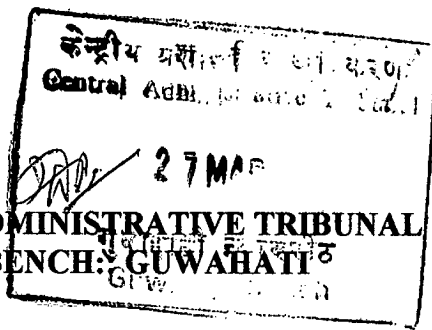
Brij 19/9/05

Signature of the individual  
Ex Pattern Maker  
Shri Brij Nandan Sharma  
Near Naranqi College  
P.O Udayan Vihar  
Distt : Kamrup (Assam)  
PIN- 781171

Attested  
AK Chandra  
Addl Cg SC



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI



Filed by  
The Applicant  
Through  
Jyotam Raha  
Advocate  
27.3.2006

**IN THE MATTER OF :**

ORIGINAL APPLICATION NO. 283/2005

Shri Brij Nandan Sharma

... **APPLICANT**

-Vs-

Union of India & Ors.

... **RESPONDENTS**

-AND -

**IN THE MATTER OF :**

A Rejoinder submitted by the Applicant in reply  
to the Written Statement submitted by the  
Respondent Nos.1 to 4

**(R E J O I N D E R)**

I, Shri B.N Sharma, aged about 61 years, son of Late Shri M. Sharma,  
resident of Village – Narengi. Pathar Quarry ( near Anchalik College) Guwahati –  
26, in the district of Kamrup, Assam, do hereby solemnly affirm and state as  
follows :

1. That, I am the Applicant in the present case and as such I am well acquainted  
and fully conversant with its facts and circumstances. A copy of the written

statement filed on behalf of the Respondent Nos. 1 to 4 in the present case has been served upon the Counsel for the Applicant. I have gone through the copy of the written statement and have understood the contents thereof and as such, I am competent to file the instant rejoinder.

2. That, save and except those statements and averments made in the written statement, which have been specifically admitted herein below, the rest shall be deemed to have been denied by the deponent. The deponent, however, denies anything, which is contrary to the records of the instant case.
3. That the applicant has no comments to made in regard to paragraphs 1,2,3 and 4 of the written statement.
4. That, the Applicant categorically denies the statements made in paragraphs 5, 6 and 7 of the Written statement and begs to state that the Respondents having been satisfied by dint of performance and hard work of the applicant recommended his name for selection to the post of Master Craftsman twice in the year 1999 and 2000 respectively. However, the recommendation was not considered due to non-availability of vacancy. It is pertinent to mention herein that the concerned authorities after complete assessment finding the Applicant duly eligible made the recommendation and with regard to the contentions raised in paragraph 5 of the written statement to the effect that there is no provision which guarantees promotion to a person who does not

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fall in the select panel and those not come up in merit, the applicant begs to state that such contentions do not have any bearing upon the facts of the instant case due to the fact that the name of the applicant was forwarded by the authorities itself for being absorbed in the cadre of Master Craftsman way back in 1999. As such, the applicant was very much eligible for promotion to the post of Chargeman at the time of his retirement. The factum of Applicant's eligibility to the post of Chargeman by virtue of Rule 3 (c) of the A.C.P. scheme has already been decided by this Hon'ble Tribunal in its order dated 13.05.2005 passed in O.A. No. 104/2005. Needless to mention herein that the said decision of this Hon'ble Tribunal has never been put to challenge or questioned by the Respondent authorities before any other forum and as such, the same has attained finality as on this date.

5. That, in reply to the statements made in paragraph 8 of the written statement, the applicant begs to state that the post of Pattern Maker or the post of Master Craftsman category was never a part of the hierarchy as promotion for Highly Skilled grade either under normal promotion rules or under A.C.P. Scheme as per Clause 3(b) of the Ministry of Defence letter dated 20.05.2003. The applicant based on clause 3(c) of the policy undoubtedly falls within 10% of the Highly Skilled cadre, namely Master Craftsman and hence, by virtue of the very fact that his name was twice recommended for the post of Master

A.C.P.

Craftsman in the year 1999 and 2000, the applicant was eligible to be promoted to the post of Chargeman at the time of his retirement.

6. That, the applicant denies the statements made in paragraphs 9 and 10 of the written statements and begs to state that the Respondent Authorities being highly satisfied with the service of the applicant had recommended for creation of an additional post of Master Craftsman vide letters dated 05.07.2000 and 15.12.2000 (Annexure-B of the Original Application). It is pertinent to state herein that the category of Highly Skilled-I and Highly Skilled-II was merged into a single post and thus the promotion to the post of Highly Skilled on 10.08.96 becomes immaterial and irrelevant. Moreover, the Respondent Authorities after proper assessment recommended the applicant's name to the post of Master Craftsman in the year 1999 and 2000, but was denied absorption due to non availability of vacancy. Subsequently, the applicant retired on 30.08.03 from the cadre of Highly Skilled.
7. That, in reply to statements made in paragraphs 11 and 12 of the written statement, the applicant begs to state that the applicant was most willfully and deliberately denied promotion and thus was deprived of his pecuniary benefits that he was entitled to. It is pertinent to mention herein that had there been vacancy at that point of time, the applicant would have been absorbed in the next hierarchy post that according to Clause 3 (c) of the Policy is the post of Chargeman. It is clearly stated in Clause 4 (iii) of the said Policy that the post

of Master Craftsman is not part of the hierarchy and that the placement in this grade shall not be treated as promotion for Highly Skilled grade under normal promotion rules or under A.C.P. scheme. Thus, it is unjust/unfair on the part of the Respondent Authorities to have rejected the representation submitted by the applicant on the ground that the applicant had never worked as Master Craftsman to be considered for the next grade of promotion, i.e. the post of Chargeman.

8. That, the applicant emphatically denies the statements made in paragraph 13 of the written statement and respectfully begs to state that the Respondent Authorities failed to understand the case of the applicant and disposed of the representation submitted by him in a most mechanical manner vide impugned order dated 17.09.2005 completely misinterpreting the order dated 13.05.2005 passed by this Hon'ble Tribunal in Original Application No. 104/2005, wherein it was held that the name of the applicant was fit to be considered for promotion to the post of Chargeman in view of the fact that he was already within the zone of consideration, i.e. within 10% of Highly Skilled cadre which is the post of Master Craftsman. As such grave prejudice and unjust has been caused to the applicant and the same has resulted in violations of Article 14 and 16 of the Constitution of India.

9. That, the applicant categorically denies the statements made in paragraph 14 of the written statement and respectfully begs to state that all the grounds averred to in this application are valid and legally tenable grounds and the application ought to be allowed with costs.

10. That, in the facts and circumstances, the applicant humbly submits that he is entitled to the relief prayed for and the applicant deserves to be promoted to the post of Chargeman on a notional basis with all the consequential benefits.

11. That the statements made in this paragraph and in paragraphs 1, 2, 3, 4 (partly), 5 (partly), 6 (partly), 7 (partly) and 8 to 10. .... are true to my knowledge and those made in paragraphs 4 (partly), 5 (partly), 6 (partly) and 7 (partly). .... being matters of record are true to my information derived therefrom, which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this 27<sup>th</sup> day of March, 2006 at Guwahati.

Identified by:

*Brijendra Sarma*

DEPONENT