

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

MP 45/10 under page-1 of INDEX

17.03.10
petition copy sent
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O.A./T.A No. 71/2005

R.A./C.P No.

E.P./M.A No.

1. Orders Sheet..... Pg. 1 to 2
2. Judgment/Order dtd 29.04.2010..... Pg. to
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 71/2005..... Pg. 1 to 2
5. E.P./M.P..... Pg. to
6. R.A./C.P..... Pg. to
7. W.S. R. No. 3..... Pg. 1 to 2
W.S. R. No. 2..... Pg. 1 to 2
8. Rejoinder..... Pg. to
9. Reply..... Pg. to
10. Any other Papers..... Pg. to
11. Memo of Appearance.....
12. Additional Affidavit..... page-1 to 3
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Advocates of the Respondents. Advt Case for R. 123 - A.K. Choudhary for
Govt of Assam for R-224 Report No. 3.

Notes of the Registry	Dated	Order of the Tribunal
<p>No. 206/1165-43 Dated 9.3.05</p> <p>16 Dy. Registrar 16.3.05</p> <p>Steps taken on 30/3/05.</p> <p>Notice & order sent to D/section for issuing to resp. Nos. 1, 3 by regd. A/D post and other to 2 resp Nos. received by Hand.</p> <p>30.3/05.</p>	<p>23.03.2005</p>	<p>Present: The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman. The Hon'ble Mr. H.V. Prahladan, Member (A).</p> <p>Heard Mr. U.K. Nair, learned counsel for the applicant, Mrs. M. Das, learned Govt. Advocate, State of Assam appearing for the respondent nos. 2 & 4 and also Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondent nos. 1 & 3.</p> <p>Respondents will show cause as to why this application shall not be admitted. Post on 25.4.2005.</p> <p>Vice-Chairman</p> <p>Member</p> <p>At the request of learned counsel for the Respondents case is adjourned to 26.5.05.</p> <p>Vice-Chairman</p>

25.5.05

White duly served

on R. No. 2 & 4.
Served on 2 from
White 17.8.3 awarded
in reply filed
log.

26.5.2005

Ms.B.Devi, learned counsel for the applicant is present on behalf of Mr. U.K.Nair, learned counsel for the applicant. Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. appearing on behalf of respondent nos. 1 & 3 seek some more time to file written statement.

List on 27.6.2005.

for D. Das
Member

No written statement has been filed.

bb

27.6.2005

Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents submits that respondents No. 1 and 3 have filed their written statement. Counsel for the applicant is present.

Post on 27.7.2005. Reply of Respondent No. 2 and 4, if any, and for rejoinder of the applicant if any, in the meantime.

for D. Das
Vice-Chairman

28.6.05

Not submitted by the Respondent No. 3.

for D. Das

① WLS filed on behalf of R. No 3.

mb

27.7.2005

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

26.7.04

① WLS filed on behalf of R. No- 3.

② No. WLS filed by R. No. 1, 2 & 4.

29.8.05

Mr.U.K.Nair, learned counsel for the applicant is present. Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. submit that a written statement on behalf 3rd respondent has already been filed. Mrs.M.Das, learned Govt. Advocate, State of Assam appearing on behalf of 2nd & 4th respondents seeks further time to file written statement. Mr. Nair submits that a written statement from the 1st respondent is also required in this case. Post on 30.8.2005. Written statement, if any, in the meantime.

for D. Das
Member

for D. Das
Vice-Chairman

bb

30.8.05.

Post the matter before the next available Division Bench.

Vice-Chairman

23-4-07

05.05.2008

This matter stands adjourned to 19.05.2008 for hearing.

2.5.08

(Khushiram)
Member (A)

19.05.2008

6.5.08

W/c filed by the
Respondent Nos. 2 & 4.
Copy not served.

None appears for the Applicant nor the Applicant is present. Mr G. Baishya, learned Sr. Standing counsel makes a statement that this brief is to be handled for Union of India by Mr M.U.ahmed, learned Addl. Standing counsel. Mrs M.Das, learned counsel representing State of Assam is however, present.

Call this matter on 26.06.2008 for hearing along with O.A.168/06 and O.A.284/06. Rejoinder, if any may be filed before the next date of hearing.

Disciplinary Proceeding records should be produced on the date of hearing.

Send copy of this order to the Applicant and Respondents in the address given in the O.A and free copies of this order be handed over to the counsel for the parties.

(M.R.Mohanty)
Vice-Chairman

OA 71/05 - 4 -

19.05.2008

DI 195-08

Pl. send copies of this order to the Applicant and Respondents.

21.5.08

Received

(B. Sharma)

26.05.08

Order dt. 19/5/08 send to D/Section for issuing to applicant and respondents by regd. A post and free copies handed over to the counsel for the parties.

26.06.08

Case D/No- 2555 to 2561
27/5/08 Dt- 28/5/08.

Rejoinder not filed.

25.6.08

Rejoinder not filed.

30.6.08.

pg

None appears for the Applicant nor the Applicant is present. Mr G. Baishya, learned Sr. Standing counsel makes a statement that this brief is to be handled for Union of India by Mr M.U.Ahmed, learned Addl. Standing counsel. Mrs M.Das, learned counsel representing State of Assam is however, present.

Call this matter on 26.06.2008 for hearing along with O.A.168/06. Rejoinder, if any may be filed before the next date of hearing.

Send copy of this order to the Applicant and Respondents in the address given in the O.A and free copies of this order be handed over to the counsel for the parties.

(M.R.Mohanty)

Vice-Chairman

None appears for Applicant nor the Applicant is present. However, Mr M.U.Ahmed, learned Addl. Standing counsel representing Union of India is present. None appears for the State of Assam.

Call this matter on 01.07.2008 before Division Bench.

(M.R.Mohanty)

Vice-Chairman

O.A.71/2005

01.07.2008

Mr.B.Sarma, learned counsel appearing for the Applicant. Mr. learned Addl. Standing counsel for the Union of India is also present. However, Mrs.M.Das, learned Advocate representing the State of Assam is absent for the reason of her sickness.

Call this matter tomorrow, the 2nd July, 2008 along with O.A.168/2006.

(M.R.Mohanty)
Vice-Chairman

/bb/

02.07.2008

Call this matter on 08.08.2008 for hearing.

(R.C. Panda)
Member(A)

(M.R. Mohanty)
Vice-Chairman

nkm

08.08.2008

None appears for the Applicant. However, Mr. M. U. Ahmed, learned Addl. Standing Counsel appearing for the Respondents and Mrs. M. Das, learned counsel for the State of Assam are present.

Call this matter on 12.9.2008 before Division Bench for hearing.

(M.R.Mohanty)
Vice-Chairman

lm

Rejoinder not filed.

11.9.08

12.09.2008. Mr. B. Sarma, learned counsel appearing for the Applicant is present. Mr. M. U. Ahmed, learned Addl. Standing Counsel representing the Union of India is also present. Mrs. M. Das, learned counsel appearing for the State of Assam, is absent. She has sent a leave note.

Rejoinder not filed

Call this matter on 07.11.2008 for hearing.

3y
6.11.08

lm

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

07.11.2008 Mr.U.K.Nair, learned counsel for the Applicant is on accommodation.

Rejoinder not filed

Call this matter on 04.12.2008 for hearing.

3y
3.12.08

/bb/

(S.N.Shukla)
Member(A)

(M.R.Mohanty)
Vice-Chairman

04.12.08 Call this matter on 06.01.2009 for hearing.

Rejoinder not filed

3y
5.1.09

lm 06.01.2009

None appears for the Applicant nor the Applicant is present. Mrs M. Das, learned counsel representing the State Govt. of Assam is however, present. None appears for the State of Meghalaya.

Call this matter on 11.02.2009 for hearing.

Rejoinder not filed

3y
10.2.09

(M.R.Mohanty)
Vice-Chairman

OA. 71/05

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X

09.02.2009

Call this matter on

20.03.2009 before Division Bench.



(M.R. Mohanty)
Vice-Chairman

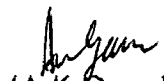
Reminder not
filed.

3
19.1.09.

pg

20.03.2009

None for the parties. Adjourned to be
taken up on 30.04.2009.



(A.K. Gaur)
Member (J)

Reminder not
filed.

3
29.4.09.

/bb/

30.04.2009

Call this matter on 16.06.2009.



(M.R. Mohanty)
Vice-Chairman

/bb/

16.06.2009

Call this matter on

14.08.2009 for hearing.



(M.R. Mohanty)
Vice-Chairman

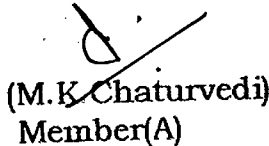
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filed.

3
13.8.09.

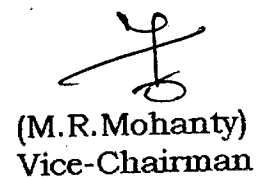
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14.08.2009

On the prayer of learned
counsel for the parties, call this
matter on 20.08.2009 for hearing



(M.K. Chaturvedi)
Member(A)



(M.R. Mohanty)
Vice-Chairman

lm

QA 71-05

20.08.2009

On the prayer of counsel appearing for both the parties, call this matter on 08.10.2009.

No rejoinder
filed.

7.10.09


(M.K. Chaturvedi)
Member(A)


(M.R. Mohanty)
Vice-Chairman


/bb/

08.10.2009

Call this matter on 20.11.2009 before the Division Bench for hearing.

No rejoinder filed.

3.12.09


(M.R. Mohanty)
Vice-Chairman

/bb/

20.11.2009

Call this matter on 04.12.2009 for hearing.


(Madan Kumar Chaturvedi)
Member (A)

/bb/

04.12.2009

Mr M.U.Ahmed, learned counsel states that Mr U.K.Nair is unable to attend the Tribunal due to some personal difficulty and prays for adjournment.

List on 6.1.2010.

No rejoinder
filed.

5.1.2010


(Madan Kr. Chaturvedi)
Member (A)


(Mukesh Kr. Gupta)
Member (J)

/pg/


-9-


A

O.A.71 of 05

6.1.2010 Learned proxy counsel states that Mr.U.K.Nair, learned counsel for the Applicant is out of station. Case is adjourned to 19.1.2010.

List the matter on 19.1.2010.


(Madan Kumar Chaturvedi)
Member (A)



(Mukesh Kumar Gupta)
Member (J)

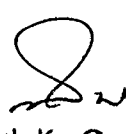
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19.01.2010

Learned proxy counsel for respondent No.2 prays for adjournment. It is seen that the matter pertains to 2005. This being the only matter prior to 2007,

List on 28.1.2010.


(Madan Kr. Chaturvedi)
Member (A)


(Mukesh Kr. Gupta)
Member (J)

/pg/

28.01.2010

Applicant had been inducted into IAS on 3.12.1996. Prior to said date in State service, he was in receipt of the pay scale of Rs.3825-5900/- and his pay was fixed at the stage of Rs.5375/-. On induction to IAS, he was granted the Central pay scale of Rs.4800-5700/- and his pay was fixed at the stage of Rs.5400/-. He was confirmed on 1.12.1997 in the IAS. In the meantime, Central Government has issued the CCS (Revised) Pay Rules and also IAS Pay Rules as amended based on 5th C.P.C. The pre-revised pay scale of applicant was refixed in the revised scale of 15100-18300/- with effect from 1.1.1996 and accordingly he was granted said scale and his pay was fixed at the stage of Rs.15500/- with effect from 30.12.2006 and accordingly on completion of one year service he was granted annual increment. Thereafter, there had been a revision of pay scale in State Govt. also with retrospective effect from 1.1.96 vide notification dated 4.7.1998. The pre-revised scale in the State

28.01.2010

Govt. Rs.3825-5900/- was revised to Rs.10,050-15575/- and consequently his pay was fixed at the stage of Rs.10,700/- as on 29.12.1996.

His grievance is that on revision of pay scale by the State Govt. his pay has been reduced after induction to IAS drastically and was granted the pay scale of Rs.10650-15850/- instead of Rs.15100-18300/- granted on earlier occasion. This has affected not only the pay scale but his total emoluments too.

We have heard both sides at certain length. In our considered view there needs some clarifications from the respondents, namely, what was the corresponding scale of Central Govt. on the said pay scale of Rs.3825-5900/- enjoyed by the applicant as on 29.12.1996, prior to the date when he was inducted to IAS. Similarly, another clarification which is required from the respondents is as to what is corresponding State pay scale of Rs.4800-5700/- revised to Rs.15100-19300/- granted on induction to IAS. Further, what are the basic scales applicable and enjoyed on induction to IAS? This in our opinion would be necessary to determine the basic issue raised in the present O.A.

Accordingly respondents are directed to file an affidavit within 10 days from today.

List on 10.02.2010.

Copy of this order be made available to both counsel for the respondents for necessary compliance.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

Copy of the order dtd.
28.1.2010 received by lpgl
hand both counsel for
the parties.

2.2.2010.

O.A.71 of 05

W/s filed.

M
18.2.2010

10.2.2010

List the matter on 19.2.2010.

M
(Madan Kumar Chaturvedi)
Member (A)

/lm

19.02.2010

Mr. G.Z. Ahmed, learned counsel for applicant states that applicant has expired during the pendency of present O.A.

Learned Addl. Standing Counsel for Respondents have not filed certain affidavit as expected vide order dated 28th January 2010.

Be that as it may, ^{Let Counsel for applicant} Respondents to take appropriate steps.

List the matter on 09.03.2010.

W/s filed.

M
8.3.2010

25.3.2010

An affidavit has been filed by the Respondent No.3 in compliance with the order dated 28.1.2010.

25/3/2010

M (Madan Kumar Chaturvedi) Member (A) M (Mukesh Kumar Gupta) Member (J)

/PB/

09.03.2010

Mr. G.Z. Ahmed, learned counsel for applicant states that application seeking substitution of ^{LR's} applicant will be filed during the course of day. List on 29.03.2010.

M (Mukesh Kumar Gupta) Member (J)

/bb/

W/s filed.

M
26.3.2010

O.A. No. 71/2005

29.03.2010 Mr M.U. Ahmed, learned Addl. C.G.S.C. for the respondents, has filed written request of his absence for two days namely, 29.03.2010 and 30.03.2010. In the circumstances, list on 01.04.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

01.04.2010

Pursuant to order passed on 28.1.2010 requiring certain clarifications from the respondents, an additional affidavit has been filed by respondent No.3 dated 9.3.2010. Heard Mr U.K.Nair, learned counsel for the applicant, Mrs M.Das, learned counsel for respondents No.2 & 4 and Mr M.U.Ahmed, learned Addl.C.G.S.C for respondent No.3. Reserved for orders.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

06.04.2010

For the reasons recorded separately, this O.A. stands disposed of.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/pb/

Received copy for
Mrs. M. Das, Sn. CGSC

Xloka

23.4.10

(Mukesh Kumar Gupta)

(L) 19/04/10

27/4/2010

Judgment/Final order dated 8/4/2010 prepared and sent to the D/Section for issuing to respondents by Post, and issued to Advocate for both sides.

Mem no. 1016 to 1019

dt 17-4-2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

O.A. No. 71 of 2005.

DATE OF DECISION: 08 -04-2010.

Smt Geetanjali Malakar

.....Applicant/s

Mr U. K. Nair

.....Advocates for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Mrs M. Das, G.A, Assam for respondents No.2 & 4 &

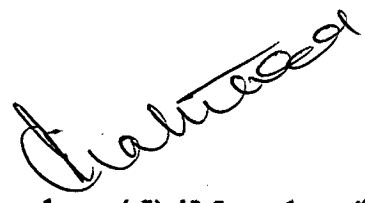
Mr M.U.Ahmed, Addl.C.G.S.C for respondents No.1 & 3.

.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR.MUKESH KUMAR GUPTA, MEMBER (J)
THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER(A)

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 their Lordships wish to see the fair copy of the judgment ? Yes/No ✓


Member (J)/Member(A)

15

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO. 71 OF 2005

DATE OF DECISION : THIS, THE 8th DAY OF APRIL, 2010

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)
HON'BLE MR. MADAN KUMAR CHATURVEDI, MEMBER (A)

Smt Geetanjali Malakar
Wife of late Ananta Kumar Malakar, IAS
Resident of Tarun Nagar,
Bye Lane No.5, House No. 46
Guwahati, Kamrup.

.....Applicant

By Advocate Mr U.K.Nair.

..-Versus-

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Personnel, Public Grievances and Pensions
(Deptt. of Personnel & Training), North Block,
New Delhi-1.
 2. The State of Assam,
represented by the Chief Secretary,
Government of Assam,
Dispur, Guwahati-6.
 3. The Accountant General (A&E),
Assam, Maidamgaon, Beltola,
Guwahati-29.
 4. The Secretary,
Government of Assam,
Department of Personnel (A), Dispur,
Guwahati-6.
-Respondents.

By Advocate Mrs M.Das, Govt. Advocate, Assam for Respondents No.2
& 4 and Mr M.U.Ahmed, Addl.C.G.S.C for respondents No.1 & 3.

/

ORDER

MR M.K.CHATURVEDI, MEMBER(A)

Sri Ananta Kumar Malakar, applicant died on 9.2.2010, i.e. during the pendency of the present proceedings. The name of his wife, Smt Geetanjali Malakar was substituted as his legal heirs.

2. By this O.A it is claimed that respondents have erred in reducing the applicant's pay scale after his induction to IAS on account of revision of pay scale by State Government.

3. Adverting to the facts we find that Sri Malakar was initially appointed in the Assam Civil Service in the year 1975. Thereafter vide notification dated 30.12.1996 issued by the Govt. of India and communicated by the Govt. of Assam vide notification dated 3.1.1997, he was promoted to Indian Administrative Service (IAS) with effect from 30.12.1996.

4. In the State service he was in the scale of Rs.3825-5900/-. His basic pay was Rs.5375/-. On promotion to IAS the pay is to be fixed in the next higher pay available in the IAS in comparison to the pay scale enjoyed just prior to his promotion in the State Service.

5. Sri Malakar was placed in the scale of Rs.4800-5700/- and he was allowed to draw a substantive basic pay of Rs.5400/-. The total gross pay amounted to Rs.13951/-. By Indian Administrative Service (Pay) Fifth Amendment Rules, 1997 his scale of pay of Rs.4500-5700/- stood revised to Rs.15100-18300/- with effect from 1.1.1996 and the he was sanctioned a substantive pay of Rs.15400/-. Gross amount of pay amounted to Rs.17065/-.

/

6. On completion of one year in the IAS he was granted one increment with effect from 1.12.2007 and the substantive pay increased to Rs.15900/- and the total emoluments drawn increased to Rs.18912/- He stood confirmed in IAS and lien he had in the State service, stood severed with effect from 1.12.1997.

7. Consequent upon the conferment in the IAS cadre, Assam Service (Revision of Pay) Rules 1998 came to be notified on 4.7.98 and made effective from 1.1.1996. Accordingly his pay in the State service stood revised. On promotion to IAS he ceased to be a member of the State service with effect from 29.12.1996. Vide pay slip dated 2.6.99, the substantive pay drawn by him on his promotion to IAS as on 30.12.1996 was reduced from Rs.15500/- to Rs.11300/- and from 15900/- to Rs.11625/- as on 1.12.1997. It was stated that at the time of notification of Assam Services (Revision of Pay) Rules 1998 on 4.7.1998, he had severed all links that he had with the State Service and also the lien with effect from 30.12.1997 on his confirmation in the IAS.

8. Being aggrieved he approached before this Tribunal by way of O.A.265/1999. The Tribunal directed him to make a representation before the respondents with further direction to the respondents to dispose of the same by speaking order. Accordingly he preferred an appeal before the authority. The matter was examined by the authority in January 2002. It was concluded that he is not entitled for revision of pay of the Central Government with effect from 1.1.1996 as because at that point of time he was a member of the State Service and he was not in Central Govt. service.

9. Respondents were asked to furnish the corresponding scale of the Central Government of the scale of pay enjoyed by him as on 29.12.1996 i.e. prior to the date when he was inducted into IAS and the corresponding State pay scale of Rs.4800-5700/- which was revised to Rs.15100-19300/- and granted on his induction to IAS and the basic scale applicable and enjoyed on induction to IAS.

10. Vide affidavit dated 9.3.2010 the respondents submitted that there was no corresponding pay scale in the Central Pay structure with State pay scale. However, the pay was fixed in the Senior Scale of IAS i.e. Rs.10650-15650/- which was revised from 1.1.1996 on induction to IAS.

11. In relation to corresponding State pay scale of Rs. 4800-5700/- it was stated that there was no direct corresponding State pay scale. This was revised on 1.1.1996 to Rs.15100-18300/-. On induction to IAS his pay was fixed (pre-revised Selection Grade scale of Rs.4800-5700/-) in terms of Govt. of India's order No.20011/1/95-AIS(II) dated 17.5.1996.

12. In relation to basic scale applicable on induction to IAS it was stated that basic scales are applicable to officers inducted to IAS of Sr. scale of IAS. Senior Scales had three components prior to 1.1.1996.

- i) Rs.3200-4700/-
- ii) Rs.3950-5000/- and
- iii) Rs.4800-5700/-

It was not stated that what are the corresponding new scales after 1.1.1996.



13. Admittedly, Sri Malakar did join after 1.1.1996. He cannot claim arrears or pay scale of Central Government till he was engaged in the service of State Government and took the benefit of the revised pay scale of the State Government. But after being inducted into IAS, he is entitled to get the benefit of Central pay scale. On promotion the pay cannot be reduced. As after 1.1.1996 old scale got substituted by new scale, the pay therefore cannot be fixed in terms of the old scale. We find that respondents committed an error while fixing the pay as per the old scale. We therefore, direct the respondents to correctly compute the pay i.e. the revised pay scale of Rs.4800-5700/- in conformity with the new pay scale and to make the payment accordingly within a period of three months from the date of receipt of this order.

O.A stands disposed of accordingly. No costs.

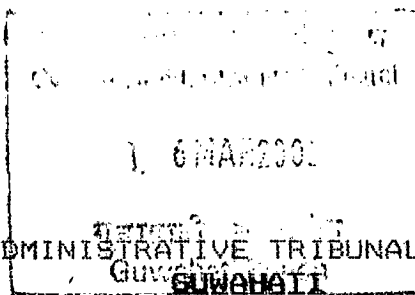


(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER



(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

21
THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH.



O.A. No. 71 of 2005

Sri Ananta Kumar Malakar

... Applicant

- Vs -

The Union Of India & Ors.

... Respondents

S Y N O P S I S

The applicant has by way of this application assailed a communication issued under no. GE-cell/IAS/CAT/2004-2005/75 dated 20.5.2004 by which the claim of the applicant for fixation of his pay in the IAS cadre at the stage of Rs. 5,400 (pre-revised) and at Rs. 15,500 (revised) with effect from 30.10.96 i.e. the date of his appointment to the IAS cadre.

1. 1975 --- Applicant appointed to the Assam Civil Service.
2. 30.12.96--- Applicant appointed by way of promotion to the Assam segment of the Assam-Meghalaya cadre of IAS.

--- On appointment to IAS pay and allowances of the applicant fixed in the scale of Rs.4,800-5,700. Basic pay drawn by the applicant was Rs.5,400.

3. 16.10.97--- Indian Administrative Service (Pay) Fifth amendment rules 1997 notified.

2
--- Scale of pay of Rs.4,800-5,700 stood revised to Rs.15,100-18,300 in terms of the Pay Revision and basic pay of the applicant stood enhanced to Rs.15,400.

4. 1.12.97 --- Applicant confirmed in the IAS and basic pay stood enhanced to RS.15,900.

5. 1998 --- After confirmation of the services of the applicant in the IAS and the lien the applicant had over the post held by him earlier in the state service having extinguished, the Assam services (Revision of Pay) Rules, 1998 came to be notified.

--- The authorities taking into consideration the revision as effected in the state civil service proceeded to down grade the scale of pay sanctioned to the applicant without following the principles of natural justice.

--- Such reduction as effected was in clear violation of the provisions of Clause - 4, section-1, schedule-II of the IAS (pay) Rules 1954.

--- Applicant preferred O.A. NO:- 265/1999 before this Hon'ble Tribunal assailing the reduction as effected in the scale of pay.

6. 25.6.2001--- This Hon'ble Tribunal disposed of said O.A. with direction to the authority to dispose of the appeal filed by

3
2

the applicant with a speaking order.

--- Applicant being aggrieved by the speaking order passed by the authorities in pursuance to the directives as passed by this Hon'ble Tribunal vide order dated 25.6.2000, again preferred O.A. No.313 of 2004.

7. 22.2.2004--- This Hon'ble Tribunal allows the O.A. 313/2004 by setting aside the communication impugned therein.

8. 20.5.2004--- Impugned communication issued by the Respondent No.3 rejecting his prayer for setting aside the reduction as effected in his scale of pay and the same has been issued in clear violation of the directives as passed by this Hon'ble Court and the provisions of the IAS(Pay) Rules, 1954.

24

THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH
GUWAHATI

Q.A. No. of 2005

Sri Ananta Kumar Malakar

... Applicant

- Vs -

The Union Of India & Ors.

... Respondents

INDEX

Sl. No.	:	Particulars of case	:	Page
1.		Original Application	-----	1-17
2.		Verification	-----	18
3.		Annexure- 1	-----	19-20
4.		Annexure- 2	-----	21
5.		Annexure- 3	-----	22-23
6.		Annexure- 4	-----	24-25
7.		Annexure- 5	-----	26-27
8.		Annexure- 6	-----	28-37
9.		Annexure- 7	-----	38-60
10.		Annexure- 8	-----	61-64
11.		Annexure- 9	-----	65-79
12.		Annexure- 10	-----	80-82
13.		Annexure- 11	-----	83-84
14.		Annexure- 12	-----	85-86
15.		Annexure- 13 series	-----	87-90

16. D/S R-3 — 91 — 114

17. D/S by R-2 — 115 — 126

18. MP NO. 452010 — 127 — 130

19. Affidavit by R No. 3 — 131 — 133

Filed by: *Anni Soan*
(U.K. Nair) Advocate.

25

Filed by:
Ananta Kumar Malakar, Applicant
Thrupb;
Unni Krishnan Nair,
Advocate

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

O.A. No. 71 of 2005

BETWEEN

Shri Ananta Kumar Malakar, Smt. Reetanjali Malakar,
IAS Presently posted as Director of Land
Records, Survey etc., Assam, Rupnagar,
Guwahati.

..... Applicant.

- AND -

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

..... Respondents

(Substituted vide
order dt. 17-3-10
passed in MPO 45/10)

DETAILS OF APPLICATION

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

This application is directed against a communication dated 20.5.2004 issued under No. GE Cell/ IAS/ CAT/ 2004-05/ 75 rejecting the prayer of the applicant for fixation of his pay in the IAS cadre at the stage of Rs. 5400/- (pre-revised) and at Rs. 15,500 (revised) w.e.f 30.12.96 i.e. with effect from the date of his appointment to IAS. The application is also directed against the arbitrary and illegal action on the part of the Respondent No. 3 in proceeding to down grade the pay of the applicant in the IAS, without any authority, in violation of the procedure prescribed for the same and in clear violation of the orders passed by this Hon'ble Tribunal.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION:

The applicant further declares that the application is made within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges guaranteed under the Constitution of India.

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

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

4.3 That just prior to his promotion to IAS, the applicant was drawing his pay and other allowances in the State service in the scale of pay of Rs. ~~3825-5900~~ and the basic pay of the applicant was Rs. 5375/-.

A copy of the pay slip issued by the AG, Assam under No. GE-1/ PS/ 165-66 is annexed hereto as Annexure - 2.

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

structure of the Applicant on his promotion to IAS was as under:

Substantive Pay	Rs. 5400/-
Special Pay	Rs. 250/-
Dearness Allowance	Rs. 6426/-
S.D.A.	Rs. 675/-
Interim Relief	Rs. 1180/-
Conveyance Allowance	Rs. 20/-
Total	Rs. 13,951/-

A copy of the pay slip dated 2.5.97 issued by the AG, Assam is Annexed herewith as Annexure

- 3.

4.5 That vide notification bearing No. 14021/ 2/ 97- AIS (2) -A dated 16.10.97, the Indian Administrative Service (Pay) Fifth Amendment Rules, 1997 were notified and the same was made effective from 1.1.96. Accordingly, the scale of pay of Rs. 4800 - 5700/- enjoyed by the applicant, stood revised to Rs. 15,100-18,300/- and the applicant was sanctioned a substantive pay of Rs. 15,400/-. The pay structure of the applicant pursuant to the said revision is as under:

Substantive Pay	Rs. 15500/-
Special Pay	Rs. 250/-
Dearness Allowance	Rs. 620/-
S.D.A.	Rs. 675/-
CCA	Rs. 20/-
Total	Rs. 17,065/-

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

4.6 That the applicant states that on completion of one year in the IAS, the applicant was granted one increment with effect from 1.12.97 and his substantive pay increased to Rs. 15,900/- and the total emoluments drawn by the Petitioner stood increased to Rs. 18,912/- The applicant stood confirmed in IAS and any lien he had over the post held by him in the state service stood severed, with effect from 1.12.97.

4.7 That your Petitioner states that after his confirmation in the IAS cadre, the Assam Services (Revision of pay) Rules, 1998 came to be notified on 4.7.98. The said revision was made effective, with effect from 1.1.96. Accordingly, the pay of the Applicant in the State Service stood revised and he was issued necessary pay slip to this effect by the Respondent No. 3 for the period 1.1.96 to 29.12.96. It may be stated here that with effect from 30.12.97 the applicant on his promotion to IAS ceased to be a member of the State Service.

4.8 That the applicant begs to state that he was shocked and surprised to receive a pay slip dated 2.6.99 issued by the Respondent No. 3, by which the substantive pay drawn by him on his promotion to IAS as on 30.12.96 was reduced from Rs. 15,500/- to Rs. 11,300/- and from Rs. 15,900/- to Rs. 11,625/- as on 1.12.97. The said reduction in the substantive pay of

the applicant resulted in drastic reduction of the total emoluments being drawn by him, from Rs. 17,065/- to Rs. 12,697/- as on 30.12.96 and from Rs. 18,912/- to Rs. 14852/- as on 1.12.97. It may be stated here that the said reduction of pay was effected without affording any opportunity to the applicant to show cause. Further, the said reduction was so effected by the Respondent No 3 without any jurisdiction and in colourable exercise of power vested in him.

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

4.9 That the applicant states that on enquiry it was revealed that the Annexure - 5, pay slip came to be issued, taking into consideration the revision of pay effected in the scale of pay drawn by the applicant in the State Service and the same was purportedly stated to have been done as per the provisions of Clause 4, Section I, Schedule II of the IAS (Pay) Rules, 1954. Bare perusal of the said provision, would clearly reveal that the same is not applicable in the case of the applicant inasmuch as at the time of notification of the Assam Services (Revision of Pay) Rules, 1998 on 4.7.98, the applicant had severed all links that he had with the State Service and the lien he had over the post in the State Service stood severed with effect from 30.12.97 on his confirmation in the IAS. As such, according to the provisions of the said Rules, the Pay of the applicant could not have been interfered with pursuant to his confirmation in the Indian Administrative Service.

4.10 That the applicant begs to state that being aggrieved by the reduction effected in his scale of pay and the consequent reduction in the emoluments being drawn by him, the applicant approached this Hon'ble Tribunal by way of an Original Application being OA No. 265 of 1999, interalia amongst others praying for setting aside the Annexure - 5 pay slip. This Hon'ble Tribunal vide order dated 25.6.2001 was pleased to dispose of the said original application with a direction to the applicant to prefer a representation before the concerned authority, who was also directed to dispose the same by way of a speaking order.

A copy of the said order dated 25.6.2001 is annexed as Annexure - 6.

4.11 That in pursuance to the directives passed by this Hon'ble Tribunal vide order dated 25.6.2001, the applicant preferred an appeal before the authorities praying for correction of the irregularities committed in fixation of his pay. The applicant interalia, highlighting the various provisions of law, showed the illegality committed in issuance of the Annexure - 5 pay slip by the Respondent No. 3. Instead of repeating the contentions raised in the said appeal, the averments made therein be treated as a part of this original application.

A copy of the said appeal is annexed hereto as Annexure - 7.

4.12 That the Under Secretary to the Government of India, Department of Personnel, vide letter dated January 2002 proceeded to dispose of the appeal preferred by the applicant, holding that the downward revision of pay effected by the Respondent No. 3 does not suffer from any vice or misinterpretation of the relevant policy. It may be mentioned here that, the said authority while proceeding to dispose of the appeal as preferred by the applicant failed to consider the relevant provisions of the IAS (Pay) Rules. Further, the contentious as raised by the applicant as regards the fact that his pay could not have been reduced in comparison to his state pay pursuant to his confirmation in IAS cadre, was ignored.

A copy of the said letter dated January 2002 is annexed as Annexure - 8.

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

A copy of the said amendment Rules, 1997 is annexed as Annexure - 9.

4.14 That poised thus the applicant being aggrieved by the issuance of the said communication dated January, 2002, assailed the same before this Hon'ble Tribunal by way of an original application being O.A. No.313 of 2002. The Respondent authorities on receipt of notices entered appearance in the said proceedings by filing of written statements. The Respondent No.3 had in his written statement, inter-alia, contested the case of the applicant on the ground that the provisions of Clause (4), Section I of the Schedule-II of the IAS (Pay) Rules, 1954 has got no application in the case on hand. It was also contended therein that the applicant is not entitled to the benefits as extended to Shri Bhudev Basumatary and others inasmuch as they were appointees of 1995 i.e. before the effective date of implementation of the Indian Administrative Service (Pay) Fifth Amendment, Rules, 1997. However, the averments made in the O.A to the effect that in view of the explanatory memorandum appended to the said Rules of 1997 his pay could not have been varied to his detriment, was however not controverted by the respondents.

4.15 That the said Original application being O.A. No. 313 of 2004 was taken up for disposal and this Hon'ble Tribunal upon hearing the parties to the proceedings, at length and also on perusal of the records of the case was pleased vide order dated 22.2.2004 to allow the said Original Application and the impugned communication dated January, 2002 and the

pay slips also were quashed. As such the contentions as raised by the respondents in the said proceeding came to be rejected by this Hon'ble Tribunal. This Tribunal after rejecting the contentions as raised by the Respondents before it proceeded to direct the Respondent authorities to re-consider the claims of the applicant in terms of the directives as contained in the said order dated 24.2.2004.

A copy of the order dated 24.2.2004 as passed by this Hon'ble Tribunal in O.A. No.313 of 2004 is annexed as Annexure-10.

4.16 That the applicant states that in terms of the directives as passed by this Hon'ble Tribunal the respondents authorities were required to reconsider the claim of the applicant strictly in terms of the directives as contained in the said order. The Respondent No.3 on receipt of the copy of the said order dated 24.2.2004, vide communication under No. GE. CELL /IAS / CAT/2004-05/75 dated 20.5.2004 intimated to the applicant that the pay slip no.GE.CELL/IAS/221 dated 2.6.1999 stands and that no rules or norms came to be violated in the action of reducing the pay and allowances of the applicant. Mere perusal of the said communication dated 22.5.2004 would reveal that the claims of the applicant as directed to be reconsidered by this Hon'ble Court were not reconsidered and the same came to be rejected by reiterating the contentions as advanced in the written statement as filed in O.A.No.313 of 2004, which was already considered by this Hon'ble Court and rejected.

As such the said communication dated 22.5.2004 and the consideration of the applicants claims as have been stated therein to have been carried out was so done without any application of mind and in clear violation of the provisions governing the field and the directives as passed by this Hon'ble Tribunal.

A copy of the said communication dated 20.5.04 is annexed as Annexure - 11.

4.17 That the applicant states that the sole ground on which the claims as raised by the applicant came to be rejected was that the applicant who was inducted into the IAS on 30.12.96 i.e. after the effective date of implementation of the central pay revision i.e. 1.1.96, was not entitled to the benefits of the same and the benefits as claimed by the applicant were available only to persons inducted into the IAS prior to 1.1.96. Such a contention in addition to have been rejected by this Hon'ble Tribunal is in clear violation of the provisions of the IAS (Pay) Rules 1954. Further, the contention that the benefits as claimed by the applicant is only available to persons appointed prior to 1.1.96 is belied from the fact that persons inducted into IAS in the year 1996 i.e. after 1.1.96 are being extended the benefits as claimed by the applicant. In this connection the applicant begs to cite the example of Bhudev Basumatary, IAS who was inducted into the IAS vide Notification dated 5.2.96 and who has all along been allowed to draw the pay and allowances at the scale of pay as claimed by the applicant. No steps were

36
ever initiated for effecting any reduction in the scale of pay of the said officer but the applicant has been singled out for differential treatment. In this connection it may be pointed out that in the month of January- February, 2002 when the applicant was drawing Basic Pay of Rs.15,900/-, said Bhudev Basumatary was allowed to draw basic Pay of Rs.17,900/-, such great variation in the pay of similarly situated persons is not permissible and the same has come to happen only because of the arbitrary and illegal action on the part of the Respondents in arbitrarily fixing the pay of the applicant in clear violation of the provisions of the Rules holding the field.

A copy of the notification dated 05.02.96 is annexed as Annexure - 12.

Copies documents indicating the pay and other allowances of the applicant and said Bhudev Basumatary are annexed as Annexure-13 series.

4.18 That the applicant begs to state that the Respondent No. 3 and the other authorities have misconstrued the provisions of clause 4, Section 14, Schedule II of the IAS (Pay) Rules, 1954. The provisions of the said clause is applicable only in the case of an officer who is on probation and has a lien on the post held by him in the State Service. In the case on hand, the applicant stood confirmed in IAS with effect from 30.12.97 and as such no variation in the scale of pay drawn by him in the IAS could have been effected on the basis of the Revision of pay in

State Service in view of the variation in the scale of pay in the post held by him in the state service, which was notified after his confirmation in IAS. As such by applying the provisions of the said clause, the pay of the applicant could not have been reduced to his detriment.

4.19 That your applicant states that the factors as directed by this Hon'ble Court vide order dated 24.2.2004 to be taken note of while considering the case of the applicant, was however ignored by the Respondent No. 3 and accordingly the order dated 20.5.2004 having been issued in clear violation of the directives passed vide order dated 24.2.2004 the Respondent No. 3 is liable to proceeded against for contempt of this Hon'ble Tribunal.

4.20 That in view of the facts and circumstances stated above the impugned Annexure - 5 pay slip and the impugned communication dated 20.5.04 is liable to be set aside and quashed and the applicant is entitled to draw his pay and allowances as per the fixation made vide Annexure-4.

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

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that prima-facie the action on the part of the respondent No. 3 is proceeding to reduce the pay of the applicant is illegal and arbitrary and the same is violation of the provisions of the Rules holding the

field.

38

5.2 For that the reduction in pay effected in case of the applicant having visited him with civil consequences, the applicant was entitled to atleast a notice before the said reduction was effected. Further, the action on the part of the authorities in not complying with the principles of Natural Justice, has resulted in the impugned action being rendered illegal, arbitrary and ab-initio void.

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

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

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

5.6 For that the respondent No. 3 while proceeding to issue the impugned communication dated 20.5.2002 ignored the express directives passed by his Hon'ble Tribunal vide order dated 24.2.2002 and proceeded to dispose of the claim of the applicant basing on issues

which had already been settled by this Hon'ble Tribunal. As such the impugned communication having been so issued in clear violation of the provisions of the Rules holding the field, directives as passed by this Hon'ble Tribunal and without there being any application of mind, same is liable to be set aside and quashed.

5.7 For that persons similarly situated like the applicant, viz. Mr. Bhudev Basumatary, IAS a promotee to the IAS cadre after 1.1.96 having been allowed to draw his pay and allowances in the scale of pay as claimed by the applicant, there was no cogent cause or reason for reducing the pay of the applicant. Application of different yardsticks in cases of two similarly situated persons has rendered the action on the part of the respondent authorities in reducing the pay of the applicant null and void. The applicant is entitled to the benefits as are being extended to said Sri Bhudev Basumatary, IAS.

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

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

6. DETAILS OF REMEDIES EXHAUSTED:

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

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

The applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR:

Under the facts and circumstances stated above, the applicant pray that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs:

8.1 To set aside and quash the impugned Annexure-5 pay slip dated 2.6.95.

8.2 To set aside and quash the impugned communication dated 20.5.04 (Annexure - 11).

8.3 To direct the respondents to allow the applicant to draw his pay and allowances, as per the fixation made and available in Annexure-3 and 4, pay slips issued by

the respondent No.3.

8.4 Cost of the application.

8.5 Any other relief/ reliefs to which the applicant is entitled to under the facts and circumstances of the case and as may deem fit and proper by this Hon'ble Tribunal upon consideration of the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR:

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

10.

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

- i) I.P.O. No. : 206JJ6543
- ii) Date : 9.3.2009
- iii) Payable at : Guwahati.

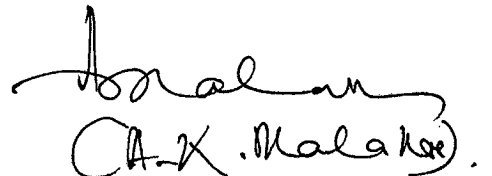
12. LIST OF ENCLOSURES:

As stated in the Index.

VERIFICATION

I, Shri Ananata Kumar Malakar, aged about 56 years, son of Late Holodhar Malakar, presently working as the Director of Land Records and Survey, etc., Assam. Resident of Guwahati, in the district of Kamrup, Assam, do here by solemnly affirm and verify that the statements as made in paragraphs 1, 2, 3, 4.1, 4.6 4.7, 4.9, 4.11, 4.12, 4.14, 4.17, 4.18, 4.21 and 5 to 12 of the accompanying application are true to the best of my knowledge; those made in paragraphs 4.2, 4.3, 4.4, 4.5, 4.8, 4.10, 4.13 4.15 and 4.16 being matters of record are true to my information which I verily believe to be true and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign this affidavit on this the 13th day of March 2005 at Guwahati.


A.K. Malakar
Signature 14/03/05

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

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 3rd January, 1997.

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

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

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

- | Sl.No. | S/Serial |
|--------|-------------------------|
| 1. | Aranta Kumar Talakar ✓ |
| 2. | Ramul Krishna Hazarika |
| 3. | Jones Ingli Rather ✓ |
| 4. | Ritendra Nath Sharma |
| 5. | Laxmi Nath Tamuly and ✓ |
| 6. | Lall Chand Singhi ✓ |

Sd/- R. VAIDYANATHAN
DESK OFFICER

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

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

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

Contd.....

Attested
u/s
Advocate.

Certified to be true Copy

[Signature]
Advocate

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

Sd/- A. K. Malakar, IAS
97 Secy, E&A Deptt

By order etc.,

[Signature]

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

Certified to be true Copy

[Signature]

Librarian

Abstract

Pay/Leave Salary Slip

-22-
A.S. is date of R. S. S. C. I -
1-1-94 with A. S. I. 1-1-95

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

Office of the Accountant General, Assam, Meghalaya, etc., Shillong. City-28.
No. GE-1/PS/185-6 Shillong, the 2-5-97.

Annexure-3

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

is informed that under No. _____ dated _____ (Gazette page _____) Dispno. July-6.

entitled to draw pay leave salary and allowance at the monthly rates shown below from the dates specified
the amount already drawn.

	From	From	From	From	From	From	From	From	From	From	From
	1-1-94	1-6-94	1-7-94	29-11-94	1-1-95	1-4-95	1-7-95	1-4-96	1-1-96	30-12-96	
Basic pay	5050/-	5050/-	5050/-		5250/-	5250/-	5250/-	5375/-	5375/-		N
Dearness pay	250/-	250/-	250/-		250/-	250/-	250/-	250/-	250/-		L
House rent allowance	-	-	-	5000/-	-	-	-	-	-		promoted
Gratuity allowance	2250/-	2250/-	2500/-	2500/-	2550/-	2850/-	3150/-	3550/-	3850/-		to
Rent allowance	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-		I.A.S.
Compensatory allowance											
Interim allowance											
Medical allowance											
Travel allowance											
Other allowance											
Total	7570/-	7670/-	7920/-	7920/-	8420/-	8670/-	8970/-	9170/-	9840/-		NIL

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

Payment is subject to production of due and claim statement.

Certified to be true Copy

H.R.A.

C.C.A.

S.D.A.

Rs. 20.00

Rs. 587.00

46

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

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

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

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

2. Deductions of fund subscriptions and recoveries of Government due as noted in the last pay certificates should be certified
unless otherwise stated.
*Here state the stage at which a pause or efficiency bar operates.
Date.....

No. SE-1/PS/

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

Date.....

No.....
Copy forwarded to the Estate Officer
Executive Engineer, P.W.D. Building Division. for

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

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

Certified to be true Copy

Advocate

Signature Ch...
Assistant Accountant General
Accounts Officer

Signature Ch...
Assistant Accountant General
Accounts Officer

Signature Ch...
Assistant Accountant General
Accounts Officer

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

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

Pay/Leave Salary Slip

OFFICE OF THE ACCOUNTANT GENERAL (A & E) ASSAM, ETC., GUWAHATI

No. GE Cell/DA/228

GUWAHATI the 8.8.98 19

Shri Arunima Kr. Mahanta, J.A.S., Kabani, Commissioned Assam, Guwahati.

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

	From	From	From	From	From	From	From	From	From	From	From
Substantive pay	30.12.96	1.1.97	9.6.97	24.6.97	1.7.97	20.7.97	1.12.97				
Officiating pay	15500	15500	X.S.	X.S.	X.S.	15500	15900				
Joining time pay	250	250	15500	15500	15500	250	250				
Special pay			250	250	250						
Leave Salary											
Non-practising allowance											
Dearness allowance	620	1240	1240	1240	2015	2015	2087				
House Rent allowance	20	20	20	20	20	20	20				
City compensatory allowance											
Kit maintenance allowance											
Winter allowance	875	875	875	-	-	875	875				
Medical allowance											
Hill allowance											
Total	17065	17685	17685	17010	17285	16460	15912				

N.B. Paymed in Subject to Production of the drawer's statement.

(2) Regarding correct necessary instruction may be obtained from Finance Deptt.

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

Certified to be true copy

[Signature]

HB

Note 1:-

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

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

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

Note 1:- 1. It is particularly requested that the slip may be attached to the first pay Bill drawn at these rate and that No. 3 (XIV) may be entered at his audit number at the top of every pay bill.

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

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

No. CC Cell / D As /

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

Signature J. Madhukar
Assistant Accountant General
Accounts Officer

No. CC Cell / D As /

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

Signature S. J.
Assistant Accountant General
Accounts Officer

Signature S. J.
Assistant Accountant General
Accounts Officer

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

AGP. 625/93 (AG) 70.000

Sanctioned to be 1st Copy

Pay/Leave Salary Slip
(A & E)

2a(19.)

parts 162 and 184 (I) M.S.O. (10)

Office of the Accountant General, Assam, Guwahati-29

N. G. A. 11/JAS/221

Guwahati the 2.6.99

19

Shri Amanta K. Mallick I.A.S. 2.6.99

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

Particulars	From 1996	From 1997	From 1998	From 1999	From 2000	From 2001	From 2002	From 2003	From 2004	From 2005	From 2006	From 2007	From 2008	From 2009	From 2010
Substantive pay	11500	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300	11300
Officiating pay															
Joining time pay	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250
Special pay															
Leave Salary															
Non-practising allow.															
Dearness allowance	452	904	904	904	1469	1469	1469	1511	1860	1860	2558	2558	2558	2558	2629
City compensatory allowance	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Kit maintenance allowance															
Winter allowance S. D. A.	875	875	875	-	-	875	1413	1453	1453	1453	1453	1453	1453	1453	1494
Compensatory allowance															
Medical allowance															
Hill allowance															
Total	12977	13147	13149	13149	14259	14259	14259	14539	16200	16200	18081	18081	18081	18081	18553

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

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

N.B. Payment is subject to production of the drawn statement.

Attested

Advocate

H.R.A.
C.C.A.
S.D.A.

Rs. 1,040.00
Rs. 20.00
Rs. 527.00

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

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

... increment accrues on every year and in the absence of increment is reached.

... that the slip may be attached to the first pay Bill drawn at these rates and that No. 1 (C) (XIV) may be entered at his end.

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

... a pause or efficiency bar operates.

No. GEAR/51/.....

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

No. GEAR/21/.....

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

Attested
MAD
[Signature]

Yes (1) If case of leave salary the nature of leave may be specified in column (1) to (11) overleaf.
(2) When leave salary during leave is payable among different Government the allocation should be clearly indicated.

AGP 43/93 (AG) 1-5-000

Certified to be true Copy
[Signature]
Advocate

Signature [Signature]
Assistant Accountant General
Sr. Accounts Officers

Signature [Signature]
Assistant Accountant General
Sr. Accounts Officers

Signature [Signature]
Assistant Accountant General
Sr. Accounts Officers

of Order: This the 25th Day of 3.00.2001.
BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN
BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER

Shri Laxmi Nath Tamuli (O.A.No.266 of 99) Applicant
-Vs-
Union of India & Ors. Applicant

2. Shri Ananta Kr. Malakar (O.A.No.267 of 99) Applicant
-Vs-
Union of India & Ors. Applicant

3. Jones Ingthi Kather (O.A.No.336 of 99) Applicant
-Vs-
Union of India & Ors. Respondents.

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

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

ORDER.

K.K. SHARMA, ADMINISTRATIVE MEMBER

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

The issue in all three applications relates to the fixation
of pay by pay slip dated 10.6.99. The facts in all the three

O.A.s are similar. The facts are discussed below.

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

Substantive pay	Rs. 4,700.00
Special Pay	Rs. 250.00
Personal Pay	Rs. 350.00
Dearness Allowance	Rs. 5,593.00
H.R.A.	Rs. 1,040.00
C.C.A.	Rs. 20.00
S.D.A.	Rs. 537.00

Rs. 12,540.50

contd/2.

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Advocate

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

The applicants have challenged the re-fixation of pay and prays that the impugned pay slip dated 10.6.99 should be corrected and they be allowed to draw salary as per the re-fixation made earlier by pay slip dated 15.6.98. The impugned pay slip is challenged on the ground that pay has been re-rixed without giving any opportunity and without application of mind and will place them in a disadvantageous position in terms of status and this is clearly contrary to the Constitutional provisions apart from causing a huge financial loss.

Mr. H. K. Sharma and Mr. A. K. Sharma learned counsel appearing on behalf of the applicants submitted that the pay of the applicant in O.A.No.266 of 99, at the time of his promotion was Rs.5050/-. On promotion to the IAS from 30.12.96, pay was fixed at 5050/- in the pay of scale Rs.4800-5700/- (Selection grade). On 17.10.97 the IAS(Pay) Fifth Amendment Rules, 1997 was published effecting revision of pay with effect from 1.1.96. The comparative pay scale in IAS is reproduced below:-

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

contd/-

16 (16) hah

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[Signature]

Advocate

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

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

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

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

contd/-4.

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[Signature]

statement filed by the respondents. It was submitted that the applicant was promoted to the IAS w.e.f. 30th December 1996 and not from 1.1.96, the date from which the recommendation of the 5th Pay Commission become applicable. At the time of their promotion to the IAS, the applicants were drawing the pay in the pre-revised scale. Their pay was not required to be fixed as on 1.1.96, it was to be fixed with effect from the date of their promotion. He referred to the Department of Personnel Government of India letter No.20015/1/92-AIS(II) dated 10.4.92 and argued that the applicant's pay was fixed initially in terms of this letter. The letter is reproduced below:-

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

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

contd/-5

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Advocate

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

"Indian Administrative Service was fixed as under:

State Pay:

Indian Administrative Service Pay.

Pay scale Rs. 3825-125-4450 (i) Rs. 3200-4700/- (Time scale)
150-5200-175-5900/-

(ii) Rs. 3950-5000/-

(Junior Administrative Grade)

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

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

Rs. 5050/-

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

Total emoluments of State Pay

Total emoluments of Administrative Service Pay (Central)

Rs. 10120/-

Rs. 12,540/- "

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

contd/-6

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[Signature]
Secretary

5

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

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

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

Pre-revised

Revised

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

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

contd/-7

10 (11) 1001

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AS/10013

- 34 -

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

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

contd/-

10/11/98

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[Signature]
Advocate

59

Total emoluments of State Pay :

Revised State Pay

Revised Indian Administrative Service Pay.

State pay as on 30.12.96
(revised)

(Senior Scales)

Rs. 10050-325-11025-400- (1) Rs. 10650-325-15850/-
14625-475-15575/-

(2) Rs. 12750-375-16500/-

(3) Rs. 15100-400-19300/-

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

Total emoluments of State pay.

Total emoluments in Indian Administrative Service pay scale.

Basis Pay - Rs. 10325/-

Basic pay - Rs. 10975/-

Special Pay Rs. 250/-

Special Pay- Rs. 250/-

Dearness allowance 450/-

Dearness allowance Rs. 439/-

House Rent Allowance 600/-

House Rent Allowance Rs. 1000/-

Compensatory Allowance 20/-

Compensatory Allowance Rs. 20/-

Special Duty Allowance Rs. 587.50

Rs. 11660/-

Rs. 13271.50/-

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

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

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[Signature]

- -36-


60

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

We have heard the parties at length. The undisputed fact is that the applicants were promoted to IAS on 30.12.96. The pay of the applicant in O.A. No. 266/99 as on 30.12.96 was Rs. 5050 in the pre-revised State Scale. The IAS pay scale as revised from 1.1.96 was not applicable to the applicant on 1.1.96 as on 1.1.96 he was not in IAS. As such fixation of his pay at Rs. 15100/- in the revised IAS scales in force from 1.1.96 on the basis of his basic pay of Rs. 5050 (pre-revised State pay) was not correct, as in terms of Ministry of Personnel, Public Grievances & Pensions circular No. 20015/1/92-IAS II, the pay of the applicants on promotion was to be fixed in the senior time scale, which was Rs. 3200-4700 (pre-revised). The fixation of pay at Rs. 4700 on 30.12.96 + Personal Pay of Rs. 350 would make total emoluments of the applicant Rs. 12,540/- as against Rs. 10,120 in State Service (by pay slip dated 11.2.97) on 4.7.98 on revision of State Service scales with effect from 1.1.96, the applicants pay in state service fixed at Rs. 10,375 in the scale of Rs. 10050-325-11025-400-14625-475-15575. The applicants pay in the revised IAS pay scale of Rs. 10,650-325-12650 was fixed at Rs. 10,975. The total emoluments in the revised scale in State Service worked out to Rs. 11,660 against Rs. 13271.50 in IAS. Thus there was no reduction of pay of the applicant. Prima facie, it cannot be said to be reduction ^{of} pay. Fixation of pay at Rs. 15,100/- was only proteam measure. No infirmity as such is not discernible in the impugned action of the respondents in re-fixing the pay by the impugned pay slip dated 10.6.99. This is, however, our tentative view. However, as the applicants have come directly, we are of the opinion that

Contd....10

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Attrocat

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

The applications are disposed of as above.

There shall be no order as to costs.

Sd/VICE CHAIRMAN
Sd/MEMBER (Adm)

TRUE COPY
Sd/

23/7/2022

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[Signature]
Adm

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

IN THE MATTER OF

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

IN THE MATTER OF

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

IN THE MATTER OF

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

- AND -

IN THE MATTER OF

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

- AND -

IN THE MATTER OF

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

PETITIONER

(Cont..2)

Certified to be true Copy



Advocate

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

1. CIRCUMSTANCES OF THIS REPRESENTATION :

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

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

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

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

(Cont..3)

Attested

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Advocate

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(3)

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

- 1.3. Under the Assam Services (Revision of Pay) Rules, 1998 was published on 4-7-98 the A.G. re-fixed the substantive pay of your humble Petitioner to Rs.11,300/- w.e.f. 30-12-96 and to Rs.11,300/- from 1-7-97 in the scale of pay of Rs.10,650 - 325 - 15,050 in the IAS reducing the substantive pay from Rs.15,500/- and Rs.15,900/- respectively vide Pay Slip No. GE Cell/IAS/221 dt. 2-6-99.

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

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

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

(Cont..4)

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Advocate

(4)

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

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


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

2. FACTS OF CASE :

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

(Cont..5)

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Advocate

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

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

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

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

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

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

(Cont..6)

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[Signature]

Secretary

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

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

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

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

(Cont..7)

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Adviser

-44-

68

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

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

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

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

2.7. Your humble Petitioner had been drawing his salary in accordance with the said Pay Slip till his pay was revised in accordance with the Indian Administrative Service (Pay) Fifth amendment Rules 1997 which was published vide Notification No. 14021/2/97-A15(2)-A dated 16.10.1997. Meanwhile your humble Petitioner joined as Labour

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Advocate

-45-

69

(8)

Commissioner on 3.11.1997 and got the Pay Slip issued by the Accountant General vide No. GE-CELL/1A5/220 dated 0.6.1998 and the pay was fixed as on 30-12-1996 :-

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

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

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

A copy of the said Pay Slip dated 0.6.1998 is enclosed hereto and marked as Annexure -4.

(Cont..9)

Copy to be sent



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

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

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

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

(Cont..10)

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[Signature]
Admission

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

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

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

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

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[Signature]

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

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

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

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

(Cont..12)

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[Signature]

[Signature]

[Signature]

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

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

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

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

(Cont..13)

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[Signature]

12/10/2013

- 49 - 50 -

284

(13)

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


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

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

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

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Attestate

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

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

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

(Cont..15)

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Advocate

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

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Advocate

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

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

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

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

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

(Cont..17)

Advocate
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Associate

78

- 54 -

(17)

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


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

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

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

(Cont..18)

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Advocate

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

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

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

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

(Cont..19)

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Associate

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

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

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

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

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

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Advocate

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

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

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

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

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(21)

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

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

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

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

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

3. RELIEF PRAYED FOR :

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

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[Signature]
22/06/02

(23)

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

Yours faithfully,

GHY

3rd Oct 2001.

el/-

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

Copy to :-

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

(A.K. Malakar) 02/10/2001
Labour Commissioner : Assam
Guwahati-16

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Adroent

— 61 —
ANNEXURE-8

No. 20075/1/2001-AIS(II)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training

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

To

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

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

Sir,

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

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

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Advocate

(i) As per the provisions contained in Schedule II of the IAS (Pay) Rules, 1954 by which Sh. Malakar is governed for the purpose of pay fixation on appointment in the IAS from the State Civil Service, the IAS Pay is to be fixed on the basis of the substantive State pay of the officer concerned. Such pay has to be further revised during the period of probation of the officer in the IAS if there is any increase in the substantive State pay during this period. Sh. Malakar was drawing the State pay in a substantive capacity at the stage of Rs.5200/- at the time of his promotion in the IAS on 30.12.96. He was accordingly eligible for pay fixation in the IAS at the stage of Rs.5250 - a stage which happened to fall in the pre-revised IAS Selection Grade of Rs.4800-150-5700. It is pertinent to note that under normal circumstances, he was not eligible for this grade at that time. This grade becomes admissible on completion of 13 years' service in the IAS, calculated from the Year of Allotment of a promoted officer. Sh. Malakar having been accorded 1990 as his Year of Allotment, would have become eligible for this grade only in the year 2003. The IAS pay scales were revised from 1.1.96 on the basis of the recommendations of the Fifth Pay Commission. As his pre-revised IAS pay fell in the Selection Grade, the revised IAS pay was also fixed in the same revised grade. On issuance of the revised pay scales, the provisional pay of Sh. Malakar, as fixed above, was re-fixed in the revised IAS pay scales at the stage of Rs.15500 in the Selection Grade from 30.12.96, with the next date of increment being 01.12.97 raising his pay to Rs.15900. These pay fixations were however provisional and therefore subject to adjustments, if necessary, on subsequent revision of the State pay scales. This was also made clear in his pay fixation order and it was also indicated that in case some overpayments had been made on his initial pay fixation, the same would be recovered.

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

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- (iii) The above action was well in accordance with the relevant rules and instructions. It has also been clarified in para 2.12 that the State pay scales had not been revised from 1.1.96 on the central pattern, the promoted officers would be allowed the equivalent stages of the replacement pay scales in the IAS. This was to be only provisional and upto the time the State pay scales were revised. The action taken by the A.G. in this case is thus in accordance with this position.
- (iv) If the IAS pay of a promoted officer is revised and the same happens to be at a lower level, as in the present case, the same cannot be construed as a punishment or a reduction in the substantive pay. The original and provisional pay fixation on induction into IAS was actually a case of higher pay which was not due but was allowed due to non revision of the State pay scales, when the IAS pay scales had already been revised. Later, when State pay scales were revised, the provisional pay fixed in IAS had to be revised (and corrected).
- (v) With reference to para 2.13 of the representation, it is stated that the certificate of retrospectivity that an order passed would not adversely affect any officer by its retrospective application, as given in the notification revising the IAS pay scales, is not relevant in the case of the petitioner. He was not in the IAS on 1.1.96 from when the IAS pay scales were retrospectively revised. At that time, he was only in the State Civil Service. Only if it is found that when the State pay scales were retrospectively revised from 1.1.96, his State pay was brought to a lower level or his total emoluments came down, the said certificate - if issued by the State Govt. at the time of the revision of their State pay scales - can be invoked against the State Government's pay fixation for the period when he was an SCS officer.
- (vi) As regards the contention made in para 2.19 of the representation, Clause 9, Section I, Schedule II of the IAS (Pay) Rules is also not relevant in this case. This clause talks of the IAS (Pay) 11th Amendment Rules, 1976, which is not attracted in this case as his IAS pay has not been fixed prior to the date of publication of the said amendment.
- (vii) The Central Govt. is not aware of, with reference to para 2.23 *ibid*, the higher IAS pay having been granted to some other promoted officers, as contended. It would be for the State Govt. of Assam to check up the position and to ensure that the said officers have not been allowed a pay which is not their due and is not in accordance with the relevant rules.

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Advocate

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

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

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

Yours faithfully,

(Y.P. Dhingra)

Under Secretary to the Government of India

Copy for information to :

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

(Y.P. Dhingra)

Under Secretary to the Government of India

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ANNEXURE - 9

GOVERNMENT OF ASSAM
 DEPARTMENT OF PUBLIC RELATIONS
 GURUVAHATI - 781006

03/02/97

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 20th November, 1997

HO.AAI.19/97/46: The following notification issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi, is hereby notified for general information.

NOTICE

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

1. (1) These rules may be called the Indian Administrative Service (Pay) Fifth Amendment Rules, 1997.
- (2) They shall be deemed to have come into force on the 1st day of January, 1996.
2. In the Indian Administrative Service (Pay) Rules, 1954 (hereinafter referred to as the said rules), in rule 3,-
 - (a) for sub-rule (1), the following shall be substituted, namely :-
 - "(1) Scales of Pay - The scales of pay admissible to a member of the Service and the dates with effect from which the said scales shall be deemed to have come into force, shall be as follows :-

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

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

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(11) Junior Administrative Grade-

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

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

Note - The four years and nine years of service in Rules, 1987.

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

from the 1st day of January, 1996).

- Above Supertime Scales -(i) Rs. 22400-525-24500
 - (ii) Rs. 26000 (Fixed)
 - (iii) Rs. 30000 (Fixed)
- (with effect from the 1st day of January, 1996).

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

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

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Explanation 2- The said option shall not be admissible to any person appointed to the Service on or after the 1st day of January, 1996 and he shall be allowed pay only in the revised scale.

Explanation 3- Where a member of the Service exercises an option under the proviso to this rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale, his substantive pay shall be the substantive pay which he would have drawn had he retained the existing scale in the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher."

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

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

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

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

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Advocate

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

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

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

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

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

(b) for a member of the Service drawing pay from the 9th upto the 12th stage in the existing scale, if there is bunching beyond the 8th stage - by two increments;

(c) for a member of the Service drawing pay from the 13th upto the 16th stage in the existing scale, if there is bunching beyond the 12th stage - by three increments;

If by stepping up of the pay as above, the pay of a member of the Service gets fixed at a stage in the revised scale which is higher than the stage in the revised scale at which the pay of a member of the

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Secretary

pay of the latter shall also be stepped up to the extent by which it falls short of that of the former.

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

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

- (a) the basic pay in the existing scale;
- (b) dearness allowance appropriate to the basic pay admissible at index average 1510 (1960 = 100), and
- (c) the amounts of first and second instalments of interest free advance on the basic pay in the existing scale.

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

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

When the treatment of a member of the Service falls in between the two scales, he shall have an option to draw the increment in the existing scale or the revised scale.

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Advocate

Note 2- Where a member of the Service is on leave on the 1st day of January, 1996, he shall become entitled to pay in the revised scale of pay from the date he commences duty. In case of a member of the Service under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings.

Note 3- Where the existing emoluments as calculated in accordance with clause (A) or clause (B), as the case may be, exceed the revised emoluments in the case of any member of the Service, the difference shall be allowed as personal pay to be absorbed in future increases in pay.

Note 4- Where in the fixation of pay under these rules, pay of a member of the Service who in the existing scale was drawing immediately before the 1st day of January, 1996, more pay than another member of the Service junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior.

Note 5- Where a member of the Service is in receipt of personal pay on the 1st day of January, 1996, which together with his existing emoluments as calculated in accordance with clause (A) or clause (B) as the case may be, exceeds the revised emoluments, then, the difference representing such excess shall be allowed to such member of the Service as personal pay to be absorbed in future increases in pay.

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Advocate

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

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

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

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Advocate

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

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

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

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

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

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

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

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

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

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

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4. In rule 9 of the said rules, in sub-rule (7), for the word and figures "Rs.8000", the word and figures "Rs.26000" shall be substituted.

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

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

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

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

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EXPLANATORY MEMORANDUM

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

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

Sd/-
(A.K.SARKAR)
Director { 6.10.97
(No. 14021/2/97-AIS(II)-A)

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Advocate

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

Sl.No.	G.S.R.No.	Date	Sl.No.	G.S.R.No.	Date
1-	22	12.1.1974		417(E)	22.6.1976
2.	51(E)	26.2.1974		426(E)	25.6.1976
3.	52(E)	28.2.1974		411	10.7.1976
4.	272	16.3.1974		435(E)	16.6.1976
5.	126(E)	25.4.1974		465(E)	23.7.1976
6.	664	29.6.1974		1137	7.8.1976
7.	725	13.7.1974		785(E)	31.8.1976
8.	773	27.7.1974		789(E)	27.9.1976
9.	374(E)	26.8.1974		1368	25.9.1976
10.	376(E)	26.8.1974		822(E)	31.8.1976
11.	378(E)	26.8.1974		849(E)	15.10.1976
12.	976	14.9.1974		859(E)	1.11.1976
13.	979	14.9.1974		947(E)	24.12.1976
14.	1013	21.9.1974		954(E)	27.12.1976
15.	1066	5.10.1974		125	29.1.1977
16.	427(E)	16.10.1974		45	28.1.1977
17.	430(E)	17.10.1974		52(E)	1.2.1977
18.	1202	16.11.1974		473	2.4.1977
19.	467(E)	15.11.1974		863	9.7.1977
20.	458(E)	15.11.1974		531(E)	19.7.1977
21.	469(E)	15.11.1974		545(E)	29.7.1977
22.	1260	30.11.1974		549(E)	3.8.1977
23.	1300	7.12.1974		655(E)	23.8.1977
24.	1348	21.12.1974		1286	1.10.1977
25.	92	25.1.1975		655(E)	25.8.1977
26.	176	8.2.1975		45	4.1.1978
27.	48	18.1.1975		5(E)	6.5.1978
28.	509	8.3.1975		215	11.2.1978
29.	185(E)	2.4.1975		952	29.7.1978
30.	281(E)	16.5.1975		586	27.5.1978
31.	278(E)	13.5.1975		666	27.5.1978
32.	293(E)	23.5.1975		923	22.7.1978
33.	296(E)	26.5.1975		1127	16.9.1978
34.	305(E)	28.5.1975		1236	14.10.1978
35.	752	21.6.1975		1281	29.10.1978
36.	345(E)	25.6.1975		1278	23.10.1978
37.	433(E)	31.7.1975		1526	11.11.1978
38.	438(E)	22.8.1975		575(E)	8.12.1978
39.	472(E)	29.8.1975		159	3.2.1979
40.	2661	15.11.1975		472	31.3.1979
41.	2557	25.10.1975		628	28.4.1979
42.	1	3.1.1976		291(E)	10.5.1979
43.	3(E)	1.1.1976		293(E)	10.5.1979
44.	74	17.1.1976		771	9.6.1979
45.	26(E)	17.1.1976		812	16.6.1979
46.	61(E)	31.1.1976		1038	11.8.1979
47.	197	14.2.1976		1016	4.8.1979
48.	73(E)	10.2.1976		591(E)	24.12.1979
49.	234(E)	17.3.1976		1372	17.11.1979
50.	236(E)	6.4.1976		103	27.11.1979
51.	207(E)	1.5.1976		657(E)	17.11.1979
52.	603	11.5.1976		629(E)	30.12.1979
53.	330(E)	26.6.1976		597(E)	26.1.1980
54.	900			77	30.1.1980
				24(E)	

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Advocate

Sl.No.	G.S.R. No.	Date	S.No.	G.S.R.No.	Date
226.	194	9.5.1992	251.	95(E)	12.2.1994
227.	199	9.5.1992	252.	343(E)	29.3.1994
228.	224	16.5.1992	253.	436(E)	9.5.1994
229.	226	16.5.1992	254.	310	2.7.1994
230.	239	23.5.1992	255.	334	23.7.1994
231.	405	12.9.1992	256.	302	30.7.1994
232.	407	12.9.1992	257.	443	3.9.1994
233.	413	19.9.1992	258.	357	29.7.1995
234.	449	10.10.1992	259.	434	30.7.1995
235.	480	31.10.1992	260.	478	10.11.1995
236.	588	26.12.1992	261.	569	30.12.1995
237.	527	29.11.1992	262.	69(E)	25.1.1996
238.	20	9.1.1993	263.	232	8.6.1996
239.	21	9.1.1993	264.	235	8.6.1996
240.	34	13.2.1993	265.	311	27.7.1996
241.	126	6.3.1993	266.	455(E)	27.9.1996
242.	238	15.5.1993	267.	555	14.12.1996
243.	259	29.5.1993	268.	277	5.7.1997
244.	535(E)	5.8.1993	269.	285	12.7.1997
245.	447	11.9.1993	270.	287	12.7.1997
246.	598(E)	8.9.1993			
247.	657(E)	15.10.1993			
248.	655(E)	15.10.1993			
249.	6	1.1.1994			
250.	29	15.1.1994			

Sd/-

16.10.97

Sd/- S.R.ISLAH
Deputy Secretary to the Govt. of Assam
Personnel (A) Department, Dispur

1. The Accountant General (A&E),/(Audit), Naghalaya, Shillong.
2. The Accountant General (A&E), Assam, Deldamraon, Beldanga, Guwahati.
3. The Chairman, Assam Sahitya Akademi, Dispur, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Principal Secretaries/ Commissioners & Secretaries/ Secretaries to the Govt. of Assam.
7. The Chief Electoral Officer, Assam, Dispur.
8. The Resident Commissioner, Govt. of Assam, Assam House, Dispur.
9. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.

Contd...

M/slole
26/11

Certified to be true

[Signature]

79-

103

- 15 -

- All Commissioners of Divisions, Assam,
- The Agriculture Production Comm. Loner, Assam, Dispur.
- The Chief Secretary to the Govt. of Assam, Dispur.
- The Secretary to the Govt. of Assam, Dispur.
- The PPS to Chief Minister, Assam, Dispur.
- The PS to Chief Secretary, Assam, Dispur.
- The PS to Addl. Chief Secretaries Assam, Dispur.
- All PS to Ministers, Dispur.

By order etc.,

[Signature]

(S.R. ISLAM)
Deputy Secretary to the Govt. of Assam
Personnel (A) Department, Dispur
28/10/97

Certified to be true Copy

[Signature]

Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

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

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

THE HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER.

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

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

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

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Ministry of Personnel,
Public Grievance and Pension
(Deptt. of Personnel and Training)
North Block, New Delhi-1.
 2. The State of Assam
Represented by the Chief Secretary
Government of Assam
Dispur, Guwahati-6..
 3. The Accountant General(A&E), Assam
Maidamgaon, Beltola
Guwahati.
 4. The Secretary
Government of Assam
Department of Personnel (A)
Dispur, Guwahati. . . . Respondents in both the O.A.s.
- By Mr.AK.Chaudhuri, Addl.C.G.S.C. for the Respondent Nos. 1 and 3 and Mrs. M. Das, Govt. Advocate for the Respondent Nos. 2 and 4.

O R D E R (ORAL)SHANKER RAJU, MEMBER(J):

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

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

2. The applicants, who had been inducted into IAS

Contd./?

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Advocate

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

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

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

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

"EXPLANATORY MEMORANDUM

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

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

no adverse affect by giving retrospective effect to the

Contd./3

Certified to be true

[Signature]

Admission

revision would be undertaken.

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

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

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

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

Copy of this order be kept in each file.

Sd/MEMBER (J)

Sd/MEMBER(Adm)

Certified to be true copy

[Signature]

Advocate

REGD

07

N0.GE Cell/IAS/CAT/2004-05/75.

Date: 20-05-2004

To

Shri A.K.Malakar, IAS

Director of Land Records & Survey etc.,

Government of Assam..

Rajh Bhawan

Rupnagar, Guwahati

24 MAY 2004

Subject: O.A. N0's 313/2002 & 85/2003.

Sir,

I am to invite a reference to the Hon'ble C.A.T. order (Guwahati Bench) dtd. 24-02-2004 on the Original Application Nos.313 of 2002 & 85 of 2003 regarding re-consideration of the claims of the applicants in the light of the explanatory memorandum-the benefit's of (5th pay commission) central pay revision effective from 01-01-1996 to Shri A. K. Malakar, IAS and J. I. Kathar, IAS.

As directed by the Hon'ble CAT the Respondent No. 3 has thoroughly re-examined the case. It appeared that you have been inducted into Indian Administrative service on 30-12-1996 i.e. after the effective date of central pay revision on 01-01-1996 and this pay revision benefits is admissible only to those officers/officials who were in the All Indian Service prior to 01-01-1996.

Since you were in state service till 29-12-1996, you are not entitled to Central Government pay revision benefits effective from 01-01-1996.

The pay of the state service has been revised w.e.f. 01-01-1996 and you have been given the pay revision benefit of the state service along with the arrears Pay & Allowances till you were in state service i.e. upto 29-12-1996.

However, you have been allowed the pay fixation benefit from state service to Central service on 30-12-1996 as per Rules (the day you took over charge as IAS)

✓ You were not in any case being effected adversely since you were state officer till 29. 12. 1996 (A.C.S.) and you have been authorised the pay revision benefit which was implemented by the State Govt. w.e.f. 01-01-1996.

Contd.p/2

Certified to be true & correct.



Advocate

- 84 -


12345

108

P/2

Thus, the respondent NO.3 has carefully examined and re-considered all the above facts and the pay allowances as authorised earlier vide this office pay slip no. GE Cell /IAS /221 dt 2.6.1999 stands. While doing so, none of the rules and norms were violated. A copy of the payslip is enclosed herewith.

Yours faithfully,

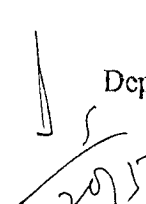

Deputy Accountant General(Admn.)

Memo no NO.GE Cell/IAS/CAT/2004-05/76-77.

Date: 22-05-2004

Copy for information to :-

1. The Commissioner & Secretary, Finance Deptt. Government of Assam,
Dispur, Guwahati.
2. The Commissioner & Secretary, Personnel(A), Government of
Assam, Dispur, Guwahati.


Deputy Accountant General(Admn.)

Certified to be



Advocate

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

@@@@@

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 5th February, 1996.

NO. AAI. 13/92/323 : The following notification issued by the Government of India, Ministry of Personnel, P.G. and Pensions, Department of Personnel and Training, New Delhi is republished for general information.

"Notification No. 14015/12/94-AIS, dated 5.2.1996.

NOTIFICATION

In exercise of the powers conferred by sub-rule(1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (1) of Regulation 9 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, the President is pleased to appoint Shri Bhudev Basumatari, a member of the State Civil Service of Assam to the Indian Administrative Service on Probation with immediate effect and to allocate him to the Joint Cadre of Assam-Meghalaya under sub-rule(1) of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954.

Sd/- R. VAIDYANATHAN
Desk Officer "

....

Sd/- D. SAIKIA,

Deena Joint Secretary to the Govt. of Assam

...

Memo No. AAI. 13/92/323 -A:: Dated Dispur, the 5th February, 1996.
Copy to :-

1. The Accountant General (A&E)/(Audit), Meghalaya, Shillong.
2. The Accountant General (A&E), Assam, Bhangagarh, Guwahati-5.
3. The Chairman, Assam Administrative Tribunal, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Principal Secretaries/ Commissioners & Secretaries/ Secretaries to the Government of Assam.
7. The Chief Electoral Officer, Assam, Dispur.
8. The Agricultural Production Commissioner, Dispur.
9. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
10. All Commissioners of Divisions, Assam.
11. The Commissioner & Secretary to the Governor of Assam, Dispur.
12. The Chief Secretary to the Govt. of Meghalaya, Shillong.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
14. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.

Contd.....

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[Signature]

Advocate

- 2 -

15. The Secretary to Chief Minister, Assam, Dispur.
16. The OSD to Chief Minister, Assam, Dispur.
17. The Principal Secretary, Bodoland Autonomous Council, Kokrajhar.
18. The Principal Secretary, N.C.Hills District Council, Haflong.
19. The Principal Secretary, Karbi Anglong Autonomous Council, Diphu.
20. The Principal Secretary, Mising Autonomous Council, Gogamukh, Dimaaji.
21. The Principal Secretary, Lalung Autonomous Council, Marigaon.
22. The Principal Secretary, Rabha Hasong Autonomous Council, Dudhnoi.
23. All Deputy Commissioners/Sub-Divisional Officers.
24. All Heads of Deptts/ All Deptts of Assam Secretariat.
25. The Spl. Officer to Chief Minister, Assam, Dispur.
26. The Secretary, Assam Legislative Assembly, Dispur, Guwahati-6.
27. The Secretary-cum-Registrar, Office of the Lokayukta, Nabin Nagar, Guwahati.
28. The Superintendent, Assam Govt. Press, Bamunimaidan, Guwahati-21 for publication of the above notification in the Assam Gazette.
29. The PS to Chief Secretary, Assam, Dispur.
30. All PS to Addl. Chief Secretaries, Assam, Dispur.
31. All PS to Ministers/ Ministers of State.
32. Officer concerned.
33. Personal file of the officer.

By order etc.,

(D. SAIKIA)

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

Rupena
5/2/96.

... ..

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[Signature]
Advocate

- 87 -

TO DISPUR → 225878

Assam Schedule III (Form 1), Form No. 67.

LAST PAY CERTIFICATE FOR NON-GAZETTED OFFICERS

Last Pay Certificate of Sri Ananta Kumar Malakar, DAS
Labour Commissioner, Assam, Guwahati-16proceeding to to join the appointment of
to officiate asHe has drawn pay as Basic Pay Rs. 15900.00 Spl. Pay Rs. 250.00 DA Rs. 675.00
allowance as DA Rs. 2067.00 CA Rs. 20.00 Per month
show below up to the 31st January, 2002.
at the rate of Rs. a month, less the deduction

He made over charge of his duties on the noon of the 199

No recoveries

The recoveries noted on the reverse
He is entitled to draw the following:

He is also entitled to joining time for days.

The details of the Income-tax Super-tax recovered from him up to the date from the beginning of
the current year are noted on the reverse

DATE AT

The 198

Deputy Labour Commissioner

Name and designation of Head of
Office in which pay was last
drawn.Deduction—On account of ① GPF a/c NO. AIS/657 @Rs. 1000.00 P.M.
② G.I.S. @Rs. 120.00 P.M. ③ Prof. Tax Rs. 185.00 P.M. ④ House rent Rs. 182.00 +
Electric charge Rs. 120.00 Per month of Cir. No. 10/2 Type IV Dispur*The words not required should be scored through with a Deputy Labour Commissioner
Assam, Guwahati-16

To be filed in, in office to which transferred.

assumed charge of his duties in my office on the
noon of the 193 and the pay of the appointment he fills in
my office is Rs.

DATED AT

The 19

Name and designation of Head of Office to which
transferred.Note 1.—A last pay certificate should, without fail, be attached to the first bill in which a transferred man's name
appears.2.—The Last-pay certificate of a non-Gazetted Officer should be granted by the Head of the Office he is
leaving and by the Treasury Officer, and such a last-pay certificate does not need the Countersignature of
A. G. when the Officer is transferred to another State.

3.—If the Officer is being transferred otherwise than for the public convenience, the fact should be stated.

G.I. R.M.:-A 1368/2①
I.T. paid Rs 22000/- on 13/3/02

Certified to be true Copy

Advocate

DETAILS OF RECOVERIES

Account to be recovered.....

Nature of recovery.....

(In one sum or
How to be recovered.....
in instalments)

Name of months	Pay	Gratuity, Pec, etc.	Funds and other deduction	Amount of income tax recovered	Remarks
April 19..					
May 19 ...					
June 19...					
July 19 ..					
August 19 ..					
September 19 ..					
October 19 ...					
November 19 ...					
December 19 ..					
January 19 ..					
February 19 ...					
March 19 ...					

*Statement enclosed
herein.*

[Signature]
Deputy Labour Commissioner
Assam, Guwahati-16

A.G.P. III (1) P. 67 No. 49/89-90-3,00,003

Certified to be true Copy

[Signature]
Advocate

-89-

ANNEXURE-13 (Series)

Audit No. 20(11)

Assam Schedule III (Sec.)

Form No. 67

LAST PAY CERTIFICATE FOR GAZETTED OFFICERS

Last pay certificate of Sri Bhudev Basumatary, IAS.

proceeding to to join the appointment of
to officiate as
to duty

(2) He has drawn pay as DLR etc. at the rate of Rs. 17,900.00
a month and acting pay Rs. 375.00
allowance as at the rate of Spl. Pay Rs. 8,055.00
shown below upto the D.A. Rs. 2,685.00
H.R. Rs. 2,238.00
Spl.D.A. Rs. 120.00
C.A. Rs. 31,373.00

His General Provident Fund Account No. is AIS(A) 0711 maintained by the Accountant General Assam.

(4) He made over charge of his duties on after noon of the 13-2-2002 due to transfer.

5. NO recovery

The recoveries noted on the reverse are to be made from the ca

6. He is entitled to draw the following pay Rs.

M.A. = Rs.
D.A. = Rs.
H.R. = Rs.
C.A. = Rs.

7. He is also entitled to joining time for days

8. He finances the insurance policies detailed below from the Provident Fund :-

Name of the Insurance Company	No. of policy	Amount of Premium	Due for the payment of premium
-------------------------------	---------------	-------------------	--------------------------------

9. The details of the income tax recovered from him upto the date from the beginning of the current year are noted on the reverse.

Dated

The

Name & Designation of the Head of office which pay was last drawn

Deduction - On a count of

Memo No. DLR(A) Pay/99-2000/68-A

Copy forwarded to Sri B. Basumatary, IAS. Ex DLR Assam for information.

Director of Lands Records etc.
Assam, Bongaigaon, Guwahati-32

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Advocate

-90-

Office of the _____ (Name of the _____) 19 _____ and the pay of the _____
 appointment he fills in my office is Rs. _____

Dated At _____

The _____
 199 _____

Name and Designation of _____ and of _____
 Office to which transferred _____

- Note 1. A last pay certificate should without fail, be attached to the first bill in which a transferred man's name appears.
2. The last pay certificate of a non Gazetted Officer should be granted by the Head of the Office he is leaving and by the Treasury Officer and a last pay certificate does not need the countersignature of the Assistant General when the Officer is transferred to another State.
3. If the Office is being transferred otherwise than for the public service the fact should be stated.
4. Against Serial No. 3 the information should be incorporated by the Head of the Office, in addition when a Government Servant is transferred from one audit circle to another the name of the Accounts Officer, who will maintain his General Provident Fund Account after transfer should be reported by the Head of the office, if possible

DETAILS OF RECOVERIES

Account to be recorded G.P.F. account No. A15(A)0711.

Nature of recovery G.P.F. - Contribution @ Rs. 1200.00

G.I.S. - Rs. 120.00

How to recovered (IA one sum of P.Tax - Rs. 185.00

1/tax - Rs. 1500.00

(in instalment) H.B. - Rs. 6410.00

(HUDCO)

R. 8095.00

Total No. of Instalment - 78.
 Already recovered 6 Nos.
 Instalment out of 78 Nos.
 Instalment of Rs. 6410.00
 Total instalment to be recovered
 @ Rs. 6430/-

Name of months	Pay	Gratuity fee etc.	Funds and other deduction	Amount of income tax recovered	Remarks
April/					
May /					
June/					
July/					
August/					
Sept./					
Oct./					
Nov./					
Dec./					
Jan./					
Feb./					
March/					

Certified to be true Copy

Advocate

91-
In the Central Administrative Tribunal

GUWAHATI BENCH
GUWAHATI

In the matter of OA No.71 of 2005

Ananta Kumar Malakar

-----Applicant

Vs

Union of India

----- Respondent.

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

I Shri/Smt. Tarini Mahan Roy Deputy Accountant General (Admn) in the office of the Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-29, do hereby solemnly affirm and say as follows :-

1. That I am the Deputy Accountant General (Admn) in the office of the Accountant General (A&E) Assam, Guwahati and as such fully acquainted with the facts and circumstances of the Case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in the written statement, the other contentions and statement may be deemed to have been denied and the applicant should be put to strict proof of whatever they claim to the contrary. I am authorised and competent to file this written statement on behalf of the Respondent No.3.
2. That the answering respondent has no comments to the statement made in the paragraphs 1,2,3, & 4.1 of the application.
3. That with regard to the statements made in Para 4.2 of the application, the answering respondent states that prior to the appointment to IAS, the applicant was in the Assam State Civil service. The applicant has been appointed to IAS on 30.12.1996 vide GOI notification No.14015/4/96-AIS(I) dated 30.12.96 and communicated by the Govt. of Assam Vide Notification No.AA/32/94/311 dated 3.1.97.

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

Union of India & Or.
- Respondent
Through:-
Ananta Kumar Malakar
Addl. Central Govt. Standing Counsel
C. A. T.
Guwahati
25

4.

That with regard to the statements made in Para 4.3 of the application the respondent states that prior to the appointment to IAS, the basic pay of the applicant was Rs.5,375/- in the State Civil Service in Scale of Pay Rs. 3,825 – 5,900/- authorised vide pay slip No.GE-1/PS/165-166 dated 2.5.97.

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

5.

That with regard to the statements made in para 4.4 of the application the answering respondent states that the applicant was a State Civil Service Officer till 29.12.96 and on his appointment to IAS on 30.12.96 the Officiating pay (not Substantive pay) of the applicant was fixed provisionally at Rs.5400/- in the third component of the Senior Scale of IAS in the Scale of Pay Rs.4800/- – 5700/- in terms of GOI order issued vide letter No.20011/95/AIS (II) dated 17.5.96. The above pay was authorised vide pay slip No.GE-Cell/IAS/67 dated 02/06/97.

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

6.

That with regard to the statements made in para 4.5 of the application the answering respondent states that the applicant was appointed to Indian Administrative Service on promotion w.e.f. 30/12/96 and the pay of the applicant was fixed at Rs.5400/- in the pre-revised Scale of IAS pay in terms of GOI order No.20011/95/1 AIS (II) dated 17.05.96

A copy of the order annexed as Annexure-“D” The fixation was done as follows :-

Pre-revised ACS-I, Sr. Grade
Scale Rs.3825/- – 5900/-

Pre-revised IAS Senior Scale
(selection Grade)
Scale Rs.4800/- - 5700/-

Pay as on 30.12.96 Rs. 5375/-

Pay fixed at Rs. 5400/- (next higher stage)
With D.N.I. on 01.12.97.

After the Notification of the IAS (Pay) fifth Amendment Rules, 1997 which has been given effect from 1.1.96, the pay of the applicant was revised in the corresponding revised scale of pay of the third component of the Senior Scale of IAS provisionally, as an interim measure in terms of GOI clarification issued vide notification No. 20015/4/97-AIS (II) dtd. 14th January, 98 which states that “the pay of promoted officers would first be fixed on the basis of the rekonable

State pay in the pre-revised IAS pay scales unless this has been already done. The corresponding stages in the revised IAS scales would then be allowed in the component of the Senior Scale in which such officers happen to fall in the pre-revised IAS pay scales. This has to be done till the State pay scales are revised by the respective State Govt. at CPI 1510 which is the base for the revision of IAS scales from 1.1.96 (copy of the order is annexed as Annexure "E"). The fixation was done as follows :-

<u>Pre-revised Senior Scale of IAS</u>	<u>Corresponding Revised Senior Scale of IAS (third component)</u>
Rs. 4,800/- – 5700/-	Rs. 15,100/- – 18,300/-
Pre-revised pay as on 30/12/96 <u>Rs. 5400/-</u>	Revised pay fixed at <u>Rs. 15,500/-</u> on 30.12.96.

On receipt of the Govt. of Assam (Revision of Pay) Rules, 1998 which was given effect from 1.1.96, the State pay of the applicant has been revised as the applicant was in the State Civil Service on 1.1.96 and appointed to IAS on 30.12.96. The revision of State Pay fixation of the applicant was done as follows:-

Fixation No.1

Pre-revised State pay scale (p/257)
Rs. 3825/- - 5900/-

Revised State pay scale
Rs. 10,050 - 15,575/-

Pay as on 1.1.96 Rs. 5375/-
DA as on 1.1.96 Rs. 3550/-
IR as on 1.1.96 Rs. 0350/-
Total : Rs. 9275/-
Add 25% of pay Rs. 1344/-
Total : Rs. 10,619/-

Pay fixed at Rs. 10,700/-
With DNI on 1.1.97
(promoted to IAS on 30/12/96)

Fixation No.2 as IAS after State Pay revision

Revised State pay
Rs. 10,050/- - 15,575/-
Pay as on 30.12.96 Rs. 10,700/-

Revised IAS Pay (Senior Scale)
Rs. 10,650 - 15,850/-
Pay fixed at Rs. 11,300/-

7.

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

8.

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

9.

That with regard to the statements made para 4.8 of the application the answering respondent states that after the notification of the IAS (Pay) fifth Amendment Rules 1997, the applicant was allowed provisionally Rs.15,500/- , the corresponding stage of pre-revised IAS Senior Scale pay of Rs.5400/-, in the third component of revised Senior Scale. This has been done in terms of GOI's clarification issued vide letter No.20015/4/97 – AIS (II) dated 14th January 1998 to the Chief Secretaries of all State Governments and the Accountants General. It was thereby clarified that in case the pay scale of the State Civil Services have not been revised, the pay of the promoted officers would first be fixed on the basis of the rekonable State pay in the pre-revised IAS pay scale. The corresponding stages in the revised IAS scale would then be allowed in the component of the Senior scale in which such officers happen to fall in the pre-revised IAS pay scale. This was to be done till the State pay scales are revised by the respective State Government at CPI 1510 which is the base for the revision of the IAS

95-
189

pay scale from 1.1.96 . This was done as an interim measure and the pay of the applicant was provisionally fixed at the stage of Rs.15,500/- in the revised Scale pay of Rs.15,100 – 400-18,300/- of Indian Administrative Service and the pay slip dated 15.06.98 was issued obtaining undertaking from the applicant as under:-

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

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

- 10: That with regard to the statements made in para 4.9 of the application the answering respondent states that the applicant was on State Civil Service till 29.12.96 and as such the applicant was entitled to get the benefits of State pay revision of his Substantive pay in the State Civil Service which was given effect from 1.1.96. The applicant was on Probation for one year from the date of joining i.e. upto 30/12/97 and hence the applicant's membership in the State Service cannot be ceased during the period of probation. The arrears of pay for the period from 1.1.96 to 29.12.96 therefore, was authorised to the applicant vide

pay slip No.GE-1/PS/1266-67 dated 10.11.98. Clause (4) Section I of the Schedule II of the IAS (PAY) Rules 1954 which states that "In case of a promoted officer to the Indian Administrative Service on promotion, on any enhancement of his actual pay in the State Civil Service in which he holds a lien, as a result of an increment in the lower scale or the higher scale of that service, or in the event of confirmation in the higher scale of the State Civil Service, the officer shall, during the period of probation, be entitled to have his pay in the senior time scale of the Indian Administrative Service recalculated in accordance with the Principles laid down in this section on the basis of his enhanced pay in the State Civil Service, as if he was promoted to the Indian Administrative Service with effect from the date of such enhancement." Thus the above quoted Clause is not applicable in the instant case. The State pay of the applicant was revised in terms of the rules and regulation of the State ROP'98. Necessary arrears pay slip was also could not be denied to the Applicant as per the said rules. Thus, in no way the applicant's regular pay in the IAS service was interfered.

11. That with regard to the statements made in para 4.10, 4.11 & 4.12 of the application the answering respondent has no comments.
12. That with regard to statements made in para 4.13 of the application the answering respondent states that the Assam Service (Revision of pay) Rules, 1998 has come into effect retrospectively from 1.1.96. Since the applicant was in the State Service on 1.1.96 and upto 29.12.96, the revision of the Substantive pay of the applicant in the State Service on 1.1.96 could not be denied. The State pay of the applicant was revised as under :-

<u>Pre-revised State pay scale on 1.1.96</u>		<u>Revised State Pay Scale on 1.1.96</u>
Rs. 3825-125-4450-150-5200-175-5900/-		Rs.10,050-325-11025-400-14625-475-15575/-
Pay as on 1.1.96	Rs. 5375/-	Revised pay fixed at Rs.10,700/- on 1.1.96.
DA as on 1.1.96	Rs. 3550/-	
I.R. as on 1.1.96	Rs. 0350/-	
Total :	Rs. 9275/-	
Add 25% of basic pay :	Rs. 1344/-	
Total:	Rs. 10,619/-	

97'

121

Total emoluments in the pre-revised
Scale was Rs.9545/- on 1.1.96 (P/188)

As follows :-

Pay	Rs. 5375/- (Pre-revised state pay)
Spl. Pay	Rs. 0250/-
D.A.	Rs. 3550/-
IR	Rs. 0350/-
CA	Rs. 0020/-
Total :	Rs. 9545/-

Total emoluments in the revised
Scale was Rs.10,970/- on 1.1.96 (P/258)

Pay	Rs.10,700/- (revised State pay)
Spl. Pay	Rs.00,250/-
CA	Rs.00,020/-
Total	Rs.10,970/-

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

13. That with regard to the statements made in Para 4.14 of the application the answering respondent states that Shri Bhudev Basumatary and others are senior to the applicant and appointed to IAS on 24.3.95 and as such they were entitled to the benefit of IAS (Pay) 5th Amendment Rule 1997 effective from 1.1.96 .

But as the applicant was in State Civil Service up to 29.12.1996 he was entitled to get the benefit of the State Pay Scale Revision effective from 1.1.96 and not the benefit of Central pay Revision effective from 1.1.1996 on the recommendation of 5th - CPC based on 1510 CPI .

14. That with regards to the statements made in para 4.15 the answering respondent states that as per direction of the Hon'ble Tribunal on the ORDER dated 24.2.2004 , the Respondent has reviewed/reconsidered the case of the applicant in terms of the directives as contained in the said order and the position intimated the Hon'ble Court vide respondent letter No.GE Cell/IAS/CAT/2004-05/58 dtd. 7/5/2004 addressed to the Hon'ble Chairman. The applicant also been intimated the facts vide respondent letter No. GE Cell/IAS/CAT/2004-05/75 dtd. 20.5.2004.

Copy of the letter dated 7/5/2004 & 20/5/2004 are Annexed at Annexure-G - I & II.

15. That with regards to the statement made in para 4.16 of the application the respondent states that on receipt of the ORDER dated 24.2.2004 from the Hon'ble Tribunal, the claim of the applicant has been re-examined on the basis of the prevailing rules and orders and results intimated to the applicant and also to the Hon'ble Tribunal (Annexure- G - I & II).

16. That with regard to the statements made in para 4.17 of the application the answering respondent states that the pay of the applicant was fixed in terms of the Government of India, Ministry of Personnel , Public Grievance and Pension (Deptt. of Personnel and Training) letter No.20011/1/95-AIS-II dated 17.5.96 relevant portion of which is as follows :-

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

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

Pre-revised
State Pay Scale : Rs.3825 – 5900/-

Pre-revised Senior Scale of IAS

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

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

Pay fixed at Rs.5400/-

-99-

123

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

On receipt of the All India Service / Central Service Revised Pay Scale effective on 1.1.96 (on the recommendation of the 5th Central Pay Commission), this office was to authorise pay to the applicant. At that time the State pay of the applicant was under Revision and as the applicant was in State Service till 29.12.96 , he was not entitled the Central / IAS Pay revision benefits as the benefits of said revision is applicable only those officers, who were on Central / IAS Service on 1.1.96 . Thus, he has been authorised Rs.15,500/-, the corresponding stage of pre-revised IAS pay of Rs.5400/- as an interim measure in terms of Govt. of India's letter No.20015/4/97-AIS (II) dated 14th January , 1998 the relevant portion of which is as follows :-

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

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

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

100-

124

*(Benefit given on the recommendation of 5th Central Pay Commission). The revised pay fixed at Rs. 15,500/-. The above pay revision benefits was not applicable to the applicant since the applicant was not in the Indian Administrative Service on 1.1.96. This was authorised pending the final outcome of the State Pay Revision as per Govt. of India's letter dated 14.1.98 as a temporary measure. It is further stated that Shri Bhudev Basumatary was appointed into IAS w.e.f. 24/3/95 vide Govt. of India Notification No.F.14015/14/97-AIS.I dated 16th Jan,1998 and not on 5.2.96 as claimed by the applicant and accordingly the pay of Shri B. Basumatary was re-fixed on Revision of Central Pay as on 1.1.96 based on the fixation of his initial Pay in IAS Cadre as on 31.12.95 and as such no arbitration and illegality has been done with any officer at any stage.

A Copy of Govt. of India Notification no.F.14015/14/97-AIS.I dated 16th Jan,1998 is Annexed at Annexure-H.

17. That with regard to the statements made in Para 4.18 of the application the answering respondent states that Clause (4) of the Section-I of the Schedule II of IAS Pay Rule 1954 rules states that "in case of a promoted officer appointed to the IAS on promotion, on any enhancement of his actual pay in the State Civil Service in which he holds a lien, as a result of an increment in the lower scale or higher scale of that Service, or in the event of confirmation in the higher scale of the State Civil Service the officer shall, during the period of probation, be entitled to have his pay in the senior time scale of the IAS recalculated in accordance with the principles laid down in this section on the basis of his enhanced pay in the State Civil Service, as if he was promoted to the IAS w.e.f. the date of such enhancement".

101-

195-

The applicant was in the State Civil Service till 29.12.96 and the revision of Assam State pay was given effect from 1.1.96 that is within the period of his probation and accordingly, in terms of the above rules his State pay was revised as per the Assam Service (Revision of pay) Rule 1998 effective from 1.1.96 and all consequential benefits were authorised to him. The respondent therefore not debarred any benefit of the applicant while he was in the State civil Service.

18. That with regard to the statement made in para 4.19 & 4.20 & 4.21 of the application the answering respondent have no comments.
19. That with regard to the statements made in para 5.1 & para 5.2 of the application, the answering respondent states that after the IAS (pay) 5th Amendment Rules, 1997 which as been given effect from 1.1.96, the pay of the applicant was fixed in the IAS selection Grade scale in terms of GOI clarification issued vide No.20015/4/97-AIS (II) dated 14th January 1998 as an interim measure till the State Pay is revised and payslip was issued obtaining undertaking from the applicant to the effect that excess payment, if any, detected subsequently, will be refunded. Hence, the provisional arrangement will not confer any right on the applicant.
20. That with regard to the statements made in para 5.3 of the application the answering respondent states that after the notification of Assam Service (Revision of pay) Rules, 1998 on 4.7.98 which was given effect from 1.1.96 , the Substantive State pay of the applicant has been revised as the applicant was on State Civil Service on 1.1.96 till 29.12.96 (AN) . The applicant was on Probation for one year from the date of joining i.e. upto 30.12.97 and hence the applicant's membership in the State Service cannot be ceased during the period of probation. The arrears of pay for the period from 1.1.96 to 29.12.96 therefore, was authorised to the applicant vide pay slip No.GE-1/PS/1266-67 dated 10.11.98 . The action therefore, was taken as per existing Rules and orders and no violation of Rules was made.

21. That with regard to the statements made in para 5.4 of the application the respondent states that the officer who were allowed the corresponding stage of pay in the IAS revised pay as an interim measure in terms of the GOI order dated 14.1.98, the regularisation pay slip have been issued on the basis of State ROP,98.
22. That with regard to the statements made in para 5.5 of the application the answering respondent has no comments.
23. That with regard to the statements made in para 5.6 of the application the answering respondent states that on receipt of the ORDER dated 24.2.2004 from the Hon'ble Tribunal, the claim of the applicant has been thoroughly re-examined on the basis of the prevailing rules and orders and results intimated to the applicant and also to the Hon'ble Tribunal.
- (Annexure :G-I & II)**
24. That with regard to the statements made in para 5.7 of the application the answering respondent states that as Shri Bhudev Basumatary was appointed to IAS on 24.03.95 vide Govt. of India's notification no.F.14015/14/97 -AIS.I dated 16 January 1998 & his pay in the revised pay scale (effective from 1.1.96) was fixed on the pay drawn in the pre-revised scale of pay on 31.12.95. The applicant was appointed as IAS on 30.12.96 and as such his pay was re-fixed accordingly in terms of rules and orders in force.
- Annexure-Govt. of India's notification no.F.14015/14/97-AIS.I dated 16th January 1998 annexed at Annexure -H.
25. That with regards to statements made para 5.8 of the application the answering respondent has no comments.
26. That with regard to the statements made in paras 6 & 7 of the application answering the respondent has no comments.
27. That with regard to the statement made in paras 8, 8.1, 8.2, 8.3, 8.4, 8.5 and para 9 of the application the answering respondent has no comments.

-103-

197

VERIFICATION

I, Shri/~~Smt~~ Tarini Mohan Roy Deputy Accountant General ,
O/o the Accountant General (A&E) , Assam, Beltola, Guwahati-29 being authorised
and competent to sign this verification, do hereby solemnly affirm and state that the
statement made in paragraph ^{1, 2, 11, 18, 22, 25-27} of the written statement are true to my
knowledge, those made in ^{3-10, 12-17, 19-21, 23 + 24} paragraph being matters of record are true
to my information derived there from and those made in the rest are humble
submission before the Hon'ble Tribunal.

And I sign this verification on this ^{9th} June ~~day~~ of 2005 at Guwahati.

Tarini Mohan Roy
Deputy Accountant General (P.&F.)

ANNEXURE - A

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

@@@@@

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 3rd January, 1997.

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

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

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

Sl.No.	S/Shri
1.	Ananta Kumar Malakar
2.	Kamal Krishna Hazarika ✓
3.	Jones Ingti Kathar
4.	Ritendra Nath Sharma 1
5.	Laxmi Nath Tamuly and
6.	Lall Chand Singhi

Sd/- R. VAIDYANATHAN
DESK OFFICER "

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

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

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

Contd.....

ALL
Sr. Accounts Officer,
Ministry (A. & E.) of Revenue
& Accounts General (A&E)
Guwahati.

AM Chandra

105 - 15
ANNEXURE - 12

2. Last 3/8 of 1985
3) Pay on 1st Jan 86
4) 100% of basic pay
5) 100% of DA
6) 100% of HRA

O. (1) 9.3
paras 161 and 184 (1) M.S.O. (1) 7

Pay/Leave Salary Slip

Office of the Accountant General, Assam, Meghalaya, etc., Shillong. Ghy-28.
No. SE-1/PJ/185-68 Shillong, the 2-5-97. 19

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

is informed that under No. _____ dated _____ (Gazette page _____) Disp. July-6

he is entitled to draw pay leave salary and allowances at the monthly rates shown below from the dates specified less the amount already drawn

	From 1-1-74	From 1-6-74	From 1-7-74	From 29-11-74	From 1-1-75	From 1-4-75	From 1-7-75	From 1-1-76	From 1-12-76	From 30-12-76	From	From
Basic pay	5050/-	5050/-	5050/-	5050/-	5200/-	5200/-	5200/-	5375/-	5375/-	5375/-	IV	
Gratuity pay	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	L	
Salary				5300/-							Promoted	
Practising allowance												
House allowance	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	3150/-	3550/-	3550/-	3550/-	to	
Rent allowance	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	I.A.S.	
Compensating allowance												
Maintenance allowance												
Medical allowance												
Dearness allowance		100/-	100/-	100/-	100/-	350/-	350/-	350/-	350/-	350/-		
Total	7570/-	7670/-	7720/-	7720/-	8420/-	8670/-	8970/-	9520/-	9840/-	9840/-	NIL	

Please find
a. Date of Promotion
to I.A.S. cadre
in A.I.R.
CA 50

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

Attended
[Signature]
Addl. C. G. S. O.

- 1) Promote to J.A. on 30.12.96
- 2) Pay fixation at 2nd
- 3) The post is academic post.
- 4) Holding same post as

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

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

Porriwral

190

PAY/LEAVE SALARY SLIP

Office of the A.G. (A & E) Assam

No. GE/CUPAS/67

The 2.8.1997

Sh. Arup K. Bhattacharya, J.A. Secy to the govt of Assam, Education Deptt, Dispur. he is entitled to draw pay/leave salary and allowances at the monthly rates shown below from the dates specified less the amount already drawn.

Attended
Addl. C. G. S. O.

Particulars	From	From 2	From	From 4
Substantive Pay	30.12.96			
Officiating Pay	5400/-			
Special Pay	250/-			
Leave Salary				
Dearness Allowance	6426/-			
House Rent Allowance	20/-			
City Compensatory Allowance	675/-			
	180/-			
Total	13514/-			

Received
N.B.-D.A. & R. are admissible as per General Authorities.
17/6/97
(A.K. Mahanta)

P.T.O.

New Delhi, dated the 17 May, 1996

To
The Chief Secretaries of
all the State Govts. and
Union Territories.

Subject: Protection of pay of State Civil Service/
Non-State Civil Service officers appointed
to the IAS on promotion - regarding.

Sir,

I am directed to refer to the Ministry of Personnel, P.G. & Pension, Department of Personnel & Training, Notifications No. 20011/2/93-AIS(II)-A, issued on the above subject on 6th May 1994 and 14th July, 1995 under which the pay drawn by the S.C.S./non-S.C.S. officers in the State Governments is protectable to the extent of Rs. 5700/-, i.e. the maximum of the Selection Grade which is the third and the last component of the Senior Scale of I.A.S. This benefit is available on notional basis from 1.1.86, i.e. the date from which the revised pay scales for the I.A.S. came into being on recommendations of the Central Fourth Pay Commission, and on actual basis from 9.5.1994, i.e. the date of effect of the notification dated 6.5.1994. Accordingly, pay in such cases is fixed at the same stage of I.A.S. which is equal to their State Pay irrespective of whether the officers concerned are eligible for placement at such a level by virtue of their seniority or not, and no further increments are allowed till they become eligible for Selection Grade on completion of 13 years' service calculated from their Years of Allotment.

2. It has been brought to notice that the above mentioned of pay fixation- especially freezing of pay at the same stage in I.A.S. and not allowing any further increments till eligibility for Selection Grade is causing certain anomalies and financial hardship to the promoted officers. It has been found that under the new method of pay fixation, an officer promoted earlier in the I.A.S. whose pay is fixed and frozen at the same stage, begins to draw less pay than a junior officer who gets promoted in the I.A.S. subsequently, after earning one or more increments in the State payscale. In this way - as seniority has been delinked from pay in such cases, whereas pay of the senior is frozen at a particular stage, the junior gets his pay fixed at a comparatively higher stage in the I.A.S. which is equivalent to his State Pay including the increments earned by him while remaining in the State Service subsequent to promotion of the senior in I.A.S. This causes heartburning besides the financial hardship to the officers who are promoted in the IAS earlier.

3. The matter of removal of such anomalies has been engaging attention of the Government. After careful consideration, it has now been decided that keeping in view the amendments made in the I.A.S. (Pay) Rules, 1951.

17 ANNEXURE-D 107-51
(25) C
(18)

13(P)

Re

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QUTANT

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108- 218

vide Notifications dated 6.5.1994 and 17.7.1995, S.C.S./non-S.C.S. officers inducted into the I.A.S. be fixed in the Senior Scale at a stage next above the State pay. Senior Scale of the I.A.S. consists of (i) Time Scale: Rs.3200-4700; (ii) Junior Administrative Grade: Rs.3950-5000; and (iii) Selection Grade: Rs.4800-5700. While fixing pay in such a manner, if the pay stage happens to be common to any two grades of the Senior Scale, the officer has to be placed in the lower of these two grades. In addition, they may also be allowed annual increments till the attainment of the stage of Rs.5700/- in the normal course. No further increments or pay fixation in the next higher scale, viz. Supertime Scale (Rs.5900-6700) would be available to them till they are actually promoted in this grade. Stagnation increments would of course be admissible to them if they happen to stagnate at the stage of Rs.5700/- before being promoted in the Supertime Scale.

4. The benefits on the above counts would be actually available from 9.5.1994 which is the date of effect of the Notification dated 6.5.1994 mentioned above and no arrears for the past periods would be admissible. The promoted officers would of course get notional benefits of the same w.e.f.1.1.1966 in accordance with the Notification dated 14.7.1995.

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

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

Yours faithfully,

(Y.P. Chingra)
Desk Officer

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

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

Copy also to:-

Finance II, Ministry of Home Affairs.

Spare copies - 200

(Y.P. Chingra)
Desk Officer

Approved
Addl. C.G.S. & D.

New Delhi, dated 19 January, 1998.

To

1. The Chief Secretaries of
all State Governments &
Union Territories.
2. All Accountants General.

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

Sir,

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

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

Yours faithfully,

(Y.P. Dhingra)
Desk Officer

Copies also to:-

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

Spare copies - 200.

(Y.P. Dhingra)
Desk Officer

Attested
G.G.S.G.

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

Date : 6-6-98
Station: GHY

Signature: *A. K. Malakar*

Name: A. K. MALAKAR

Designation: LABOUR COMMR

ASSAM.

Gopinath Nagare

GHY-16

Attested

M. Chandra
Addl. C. G. S. O.

50/626
R. put up
25.5.98

M. Chandra

N0.GE Cell/IAS/CAT/2004-05/58.

Date: 07-05-2004

To

The Hon'ble Chairman
Central Administrative Tribunal
Guwahati Bench.

Subject: O.A. N0's 313/2002 & 85/2003.

Sir,

I am to invite
In inviting a reference to the Hon'ble C.A.T. order (Guwahati Bench) dtd. 24-02-2004 regarding re-consideration of the entitlement of the benefit's of (5th pay commission) central pay revision effective from 01-01-1996 to Shri A. K. Malakar, IAS and J. I. Kathar, IAS.

The matter has been thoroughly examined, It appears that Shri A. K. Malakar and Shri J. I. Kathar ^{were} inducted ^{into} Indian Administrative service on 30-12-1996 i.e. after the effective date of central pay revision on 01-01-1996 and this pay revision benefits ^{are} is admissible only to those officer's/officials who were in the All Indian Service prior to 01-01-1996.

Since both the officers were in state service till 29-12-1996, they were not entitled to Central Govt. pay revision benefits effective from 01-01-1996.

The pay of the state service has been revised w.e.f. 01-01-1996 and both officers got the pay revision benefit of the state service along with the arrears Pay & Allowances till they were in state service i.e. upto 29-12-1996.

However the officers were paid the pay fixation benefit from state service to Central service on 30-12-1996. (the day they were inducted & took over charge as IAS)

As mentioned regarding adversely affect for giving retrospective effect, The above officer's were not in any case being effected adversely, ^{since} they were state officer's (A.C.S.) and they got pay revision benefit which was implemented by the State Govt. w.e.f. 01-01-1996.

The respondent N0.3 has carefully examined and considered all the above facts and the pay of the applicants were regulated on the basic of the Govt. orders. While doing so, none of the rules and norms were violated.

Details of pay fixation is enclosed herewith for ready reference.

Yours faithfully

Shakya
Deputy Accountant General (Admn.)

Attested
12/5
Addl. G. O. S. O.

ANNEXURE- G- II

22

206

-112-

REGD

136

NO.GE Cell/IAS/CAT/2004-05/75.

Date: 20-05-2004

To

Shri A.K.Malakar, IAS
Director of Land Records & Survey etc.,
Government of Assam..
Rajh Bhawan
Rupnagar, Guwahati

24 MAY 2004

Subject: O.A. NO's 313/2002 & 85/2003.

Sir,

I am to invite a reference to the Hon'ble C.A.T. order (Guwahati Bench) dtd. 24-02-2004 on the Original Application Nos.313 of 2002 & 85 of 2003 regarding re-consideration of the claims of the applicants in the light of the explanatory memorandum-the benefit's of (5th pay commission) central pay revision effective from 01-01-1996 to Shri A. K. Malakar, IAS and J. I. Kathar, IAS.

As directed by the Hon'ble CAT the Respondent No. 3 has thoroughly re-examined the case. It appeared that you have been inducted into Indian Administrative service on 30-12-1996 i.e. after the effective date of central pay revision on 01-01-1996 and this pay revision benefits is admissible only to those officers/officials who were in the All Indian Service prior to 01-01-1996.

Since you were in state service till 29-12-1996, you are not entitled to Central Government pay revision benefits effective from 01-01-1996.

The pay of the state service has been revised w.e.f. 01-01-1996 and you have been given the pay revision benefit of the state service along with the arrears Pay & Allowances till you were in state service i.e. upto 29-12-1996.

However, you have been allowed the **pay fixation benefit** from state service to Central service on 30-12-1996 as per Rules (the day you took over charge as IAS)

You were not in any case being effected adversely since you were state officer till 29. 12. 1996 (A.C.S.) and you have been authorised the pay revision benefit which was implemented by the State Govt. w.e.f. 01-01-1996.

Contd.p/2

23

- 113 -

(205)

Regd.

37

P/2

Thus, the respondent NO.3 has carefully examined and re-considered all the above facts and the pay allowances as authorised earlier vide this office pay slip no. GE Cell /IAS /221 dt 2.6.1999 stands. While doing so, none of the rules and norms were violated. A copy of the payslip is enclosed herewith.

Yours faithfully,

[Signature]
Deputy Accountant General(Admn.)

Memo no NO.GE Cell/IAS/CAT/2004-05/76-77.

Date: 20-05-2004

Copy for information to :-

1. The Commissioner & Secretary, Finance Deptt. Government of Assam, Dispur, Guwahati.
2. The Commissioner & Secretary, Personnel(A), Government of Assam, Dispur, Guwahati.

Attested

[Signature]
Addl. G. O. S. O.

[Signature]
Deputy Accountant General(Admn.)

ANNEXURE-H

24 36/114

FROM: C. ASSAM NEW DELHI

TO: 910361561302

01-16-90 17:09

PAGE: 1

For Shri D.N. Saikia, Jt. Secretary to C.M.

(TO BE PUBLISHED IN THE GAZETTE OF INDIA, PART I SECTION 2)
F.14015/14/97-AIS.I

Government of India

Ministry of Personnel, P.G. & Pensions
(Department of Personnel & Training)

New Delhi, the 16th Jan., 98.

NOTIFICATION

Pursuant to the directions of the Guwahati High Court dated 23.9.1995 in Civil Rule No. 1072/93 and in exercise of the powers conferred by sub-rule (1) of Rule 3 of the I.A.S. (Recruitment) Rules, 1954, read with sub-regulation (1) of Regulations, 1955, the President is pleased to appoint following members of the Assam Civil Service to the Indian Administrative Service with effect from the dates indicated against each on probation until further orders and to allocate them to the Joint Cadre of Assam-Meghalaya under sub-rule (1) of Rule 3 of the Indian Administrative Service (Cadre) Rules, 1954.

S.No.	Name of the officer	Date of effect
	S/Shri	
1.	D.N. Saikia	09.03.1994
2.	Pranab Kumar Khopang	26.03.1994
3.	Aftabuddin Ahmed	24.03.1995
4.	B. Basumatary	24.03.1995
5.	A.Kr. Dasgupta	25.05.1995

R. Vaidyanathan

(R. VAIDYANATHAN)
DESK OFFICER.

Attested
Adm. Secy. S. G.

The Manager,
Govt. of India Press,
Faridabad (Haryana)

No. F. 4015/14/97-AIS.I

New Delhi, 16th Jan., 98.

1. The Chief Secretary, Govt. of Assam, Dispur, Guwahati, with 5 spare copies for onward transmission to the officers concerned etc.
2. The Accountant General, Assam, Guwahati.
3. The Chief Secretary, Govt. of Meghalaya, Shillong.
4. The Secretary, UPSC, Dhokpur House, N. Delhi (Sh.N. Namiasivayam, Under Secretary)
5. E.O. to the Government of India, New Delhi.

R. Vaidyanathan

(R. VAIDYANATHAN)
DESK OFFICER.

INTERNAL DISTRIBUTION:

US (S. III) / RO (CM) / EO (PR) / SO (AIS. III) /

Trg. Div.

US (S. III) / RO (CM) / EO (PR) / SO (AIS. III) / TRG. DIV.

File in Court on...24.1.08
Court Officer.

-115-139

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 71 of 2005

Shri A. K. Malakar

Applicant

-Vs-

Union of India & Others_

Respondents

INDEX

Sl. No.	Particulars	Annexure	Page No.
1.	Written statement		1-3
2.	Verification		4
3.	Pay fixation of Sh.A.K.Malakar, IAS issued by the Govt. of India, Ministry of Personnel & Public Grievances and Pension, dated 24.1.2002.	A	5-8
4.	Letter dated 27.4.04 issued by the Dy. Secretary, Govt. of Assam, Personnel A Deptt.	B	9
5.	Letter dated 20.5.04 issued by the Dy. Accountant General (Admn.) on the subject of O.a.313/2002 & 85/03.	C	10-11

Filed by

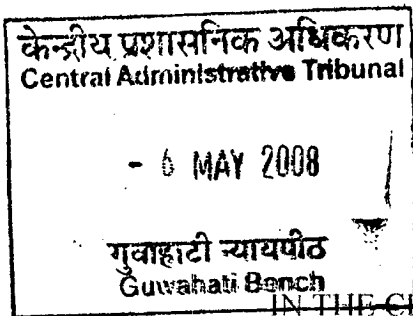
MS 21/7/08

Manjula Das

Govt. Advocate, Assam

Central Administrative Tribunal

Guwahati Bench.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.NO.71/2005

In the matter of:

Sri A.K. Malakar

....Applicant.

-Vs-

Union of India and others

.....Respondents.

-AND-

In the matter of

Written statement on behalf of the Respondent No. 2 (The Chief Secretary to the Government of Assam) and Respondent No.4 (The Secretary to the Government of Assam, Personnel (A) Department, Dispur, Guwahati-6) in the above case

[Written Statement on behalf of the Respondent No.2 and 4 to the application filed by the applicant.]

I, Shri N.C. Mishra, Deputy Secretary to the Govt. of Assam, Personnel (A) Department, Guwahati-6, do hereby solemnly affirm and declare as follows: -

1. That, I am the Deputy Secretary to the Govt. of Assam, Personnel (A) Department, Dispur, Guwahati-6. Copies of the aforesaid application have been served upon the respondent Nos.2 and 4. I have gone through the same and have understood the contents thereof, I have been authorized to file this written statement on behalf of Respondents Nos.2 and 4. I do not admit any of the averments which do not specifically admitted hereinafter and same are to be deemed as denied.

2. That the statements made in paragraph 4.1 of the application, the humble answering respondent has nothing to make comment on it. He, however does not admit any statements which are contrary to records

3. That with regard to the statements made in paragraph 4.2 of the application, the

File by -
The State of Assam Govt.
Respondent No 2 & 4
Through
Mr. N.C. Mishra
Govt. Assam
CA 7
5/5/08

Narenk Chandra Mishra

-2-

humble answering respondent has nothing to make comment on it as they are being matter of records of the case.

4. That the statements made in paragraph made in paragraphs 4.3 to 4.5 of the application, the answering respondent has nothing to make comment on it as they are the matters related with the Accountant General concerned.

5. That with regard to the statements made in paragraph 4.6 of the application, the answering respondent begs to state that the applicant was not confirmed in IAS but was confirmed in ACS vide notification No.AAA.30/75/72 dated 14.08.85. So far the pay and increments are concerned that will be replied by the Respondent No.3.

6. That with regard to the statements made in paragraph 4.7 to 4.9 of the application, the answering respondent respectively states that the fixation of pay made by Respondent No.3 in accordance with the Rules and procedure as prescribed under the law.

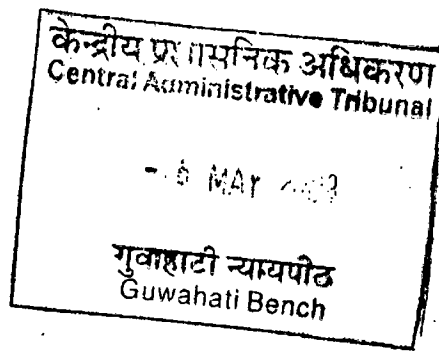
7. That with regard to the statements made in paragraph 4.10 of the application, the answering respondent has nothing to make comment on it as they are being the matters of records of the case.

8. That with regard to the statements made in paragraph 4.11 and 4.12 of the application it is stated that as per direction of the Hon'ble Tribunal vide order dated 25.06.2001 in O.A.No.267/99 the applicant made a representation dated 03.10.2001 to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi with a copy to the State Govt. (Respondent No.4). The Respondent No.1 thereafter, examined the matter in detail and submitted its views to the State Govt. vide Ministry's letter No.20015/1/2001-AIS (2) Dated 24.01.02 as annexed as Annexure-8 to the application filed by the applicant. Accordingly the Respondent No.4 conveyed the Government of India's views to the applicant vide letter No. AAI.42/96/98 dated 04.03.02

A copy of said letter dt. 24.1.02 is annexed herewith and marked as Annexure - A

9. That with regard to the statement made in paragraph 4.13 of the application, the answering respondent has nothing to make comment on it. He, however does not admit any statements which are contrary to records.

Narendra Chandra Mishra



118-

142

-3-

10. That with regard to the statements made in paragraph 4.14 to 4.16 of the application the humble answering respondent begs to state that as per direction of the Hon'ble Tribunal the State Govt. requested the Respondent No.3 vide letter dated 27.04.04 to take necessary action of the order of Hon'ble Tribunal within the stipulated period and to intimate to the department.

Thereafter the respondent No.3, issued a letter dated 20.05.04 to the applicant with a copy to the answering respondent informing that he is not entitled to Central Govt. pay revision benefits effective from 01.01.96 as he was in service till 29.12.96.

The copies of the letter dated 27.04.04 and 20.05.04 are annexed herewith and marked as Annexure 'B' and 'C' respectively.

11. That with regard to the statements made in paragraph 4.17 of the application the answering respondent begs to state that the Respondent No.3 is the authority to fix the pay and allowances of the IAS Officer.

12. That with regard to the statements made in paragraphs 4.18 and 4.19 the answering respondent has nothing to make comment on it.

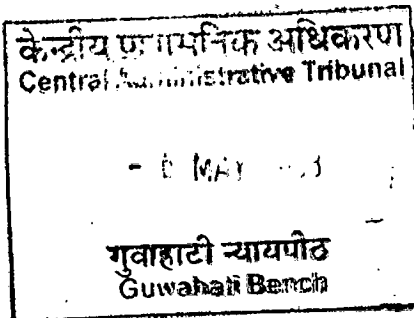
13. That with regard to the statements made in paragraph 4.20 of the application the answering respondent begs to state that so far the fixation of pay in respect of IAS Officer is concerned the same is made by the Respondent No.3.

14. That the answering respondent begs to submit that the grounds set forth in the application are not good grounds.

15. That it is submitted that the instant application has no merit at all and is liable to be dismissed.

Narsh Chandra Mishra

-5-



VERIFICATION

I, Shri N.C. Mishra, son of late Basu Dev Mishra, presently working as Deputy Secretary to the Govt. of Assam, Personnel Department, Dispur, Guwahati-6, do hereby verify that the statements made in paragraphs 1,2,3,4,5,6,7, 9,11,12,13 are true to my knowledge; those made in paragraphs 8 and 10 are being matters of records of the case derived there from which I believe to be true and the rests are my humble submissions before this Hon'ble Tribunal.

I have not suppressed any material facts.

And I sign this verification on this the 23 November, 2006 at Guwahati.

Narek Chandra Mishra
Signature,

Deputy Secretary to the Govt. of Assam,
Personnel Department.

-000-

RB/-

5 -

ANNEXURE - A

(94)

No. 20015/1/2001-AIS(II)

Government of India

Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training

To

New Delhi, Dated : January, 2002.

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

24 JAN 2002

Commr. & Secy (Personnel)

28/1/2002

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

Sir,

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

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

- (95)
145
- 6
- 121-
- (i) As per the provisions contained in Schedule II of the IAS (Pay) Rules, 1954 by which Sh. Malakar is governed for the purpose of pay fixation on appointment in the IAS from the State Civil Service, the IAS Pay is to be fixed on the basis of the substantive State pay of the officer concerned. Such pay has to be further revised during the period of probation of the officer in the IAS if there is any increase in the substantive State pay during this period. Sh. Malakar was drawing the State pay in a substantive capacity at the stage of Rs.5200/- at the time of his promotion in the IAS on 30.12.96. He was accordingly eligible for pay fixation in the IAS at the stage of Rs.5250 - a stage which happened to fall in the pre-revised IAS Selection Grade of Rs.4800-150-5700. It is pertinent to note that under normal circumstances, he was not eligible for this grade at that time. This grade becomes admissible on completion of 13 years' service in the IAS, calculated from the Year of Allotment of a promoted officer. Sh. Malakar having been accorded 1990 as his Year of Allotment, would have become eligible for this grade only in the year 2003. The IAS pay scales were revised from 1.1.96 on the basis of the recommendations of the Fifth Pay Commission. As his pre-revised IAS pay fell in the Selection Grade, the revised IAS pay was also fixed in the same revised grade. On issuance of the revised pay scales, the provisional pay of Sh. Malakar, as fixed above, was re-fixed in the revised IAS pay scales at the stage of Rs.15500 in the Selection Grade from 30.12.96, with the next date of increment being 01.12.97 raising his pay to Rs.15900. These pay fixations were however provisional and therefore subject to adjustments, if necessary, on subsequent revision of the State pay scales. This was also made clear in his pay fixation order and it was also indicated that in case some overpayments had been made on his initial pay fixation, the same would be recovered.
- (ii) The State pay scales were later on revised in 1998 and were given a retrospective effect from 1.1.96. As Sh. Malakar was in the State Service on 1.1.96 and till 29.12.96, his State pay had to be revised. This was done and on the basis of his revised State pay as on 29.12.96, his IAS pay was re-fixed from 30.12.96. This time, however, the stage of the IAS pay happened to fall within the revised Sr. Time Scale of the IAS and he was accordingly placed in this grade. On the basis of his revised State pay of Rs.10700 on that date, he was eligible for pay fixation in the IAS at the stage of Rs.10975 in the Sr. Time Scale of Rs.10650-325-15850, with the benefit of refixation at the stage of Rs.11300 from 1.7.97 under Clause 4, Section I, Schedule II of the IAS (Pay) Rules, 1954.

- 7 -
- 122 -
- (96)
- 46
- (iii) The above action was well in accordance with the relevant rules and instructions. It has also been clarified in our letter dated 14.1.98 (copy enclosed) that in case the pay scales of the State Services had not been revised from 1.1.96 on the central pattern, the promoted officers would be allowed the equivalent stages of the replacement pay scales in the IAS. This was to be only provisional and upto the time the State pay scales were revised. The action taken by the A.G. in this case is thus in accordance with this position.
 - (iv) If the IAS pay of a promoted officer is revised and the same happens to be at a lower level, as in the present case, the same cannot be construed as a punishment or a reduction in the substantive pay. The original and provisional pay fixation on induction into IAS was actually a case of higher pay - which was not due but was allowed due to non revision of the State pay scales, when the IAS pay scales had already been revised. Later, when State pay scales were revised, the provisional pay fixed in IAS had to be revised (and corrected).
 - (v) With reference to para 2.13 of the representation, it is stated that the certificate of retrospectivity that an order passed would not adversely affect any officer by its retrospective application, as given in the notification revising the IAS pay scales, is not relevant in the case of the petitioner. He was not in the IAS on 1.1.96 from when the IAS pay scales were retrospectively revised. At that time, he was only in the State Civil Service. Only if it is found that when the State pay scales were retrospectively revised from 1.1.96, his State pay was brought to a lower level or his total emoluments came down, the said certificate - if issued by the State Govt. at the time of the revision of their State pay scales - can be invoked against the State Government's pay fixation for the period when he was an SCS officer.
 - (vi) As regards the contention made in para 2.19 of the representation, Clause 9, Section 1, Schedule II of the IAS (Pay) Rules is also not relevant in this case. This clause talks of the IAS (Pay) 11th Amendment Rules, 1976, which is not attracted in this case as his IAS pay has not been fixed prior to the date of publication of the said amendment.
 - (vii) The Central Govt. is not aware of, with reference to para 2.23 *ibid*, the higher IAS pay having been granted to some other promoted officers, as contended. It would be for the State Govt. of Assam to check up the position and to ensure that the said officers have not been allowed a pay which is not their due and is not in accordance with the relevant rules.

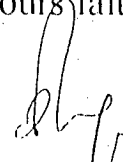
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123-
97
47

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

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

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

Yours faithfully,


(Y.P. Dhingra)

Under Secretary to the Government of India

Certified to be true
MS
G.A. Assam
5/5/08

- 9 -

124- ANNEXURE-13

COURT CASE
MOST URGENT.

NO.AAP.151/2002/88.
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI : 781006.

Dated Dispur, the 27th April, 2004.

TO : The Accountant General (AGE), Assam,
Maidamgaon, Beltola, Guwahati-29.

SUB : ORDER OF THE HON'BLE CENTRAL ADMINISTRATIVE
TRIBUNAL, GUWAHATI BENCH IN ORIGINAL APPLICATION
NOS. 313 OF 2002 & 85 OF 2003.

Sir,

I am directed to forward herewith a copy of
order dated 24-2-2004, passed by the Hon'ble Central
Administrative Tribunal, Guwahati Bench in connection with
the applications cited above & to request you kindly to
take necessary action on the order of the Hon'ble Tribunal
within the stipulated time as deem fit & proper with intimation
to this Department.

Encls : As stated.

Yours faithfully,

(N.C. MISRA)
Deputy Secretary to the Govt. of Assam,
Personnel (A) Department.

Certified to be true
M. G.A. Assam
5/5/08

10-125-ANNEXURE-G
149

N0.GE Cell/IAS/CAT/2004-05/75.

Date: 20-05-2004

To
Shri A.K.Malakar, IAS
Director of Land Records & Survey etc.,
Government of Assam.,
Rajh Bhawan
Rupnagar, Guwahati

Subject: O.A. N0's 313/2002 & 85/2003.

Sir,

I am to invite a reference to the Hon'ble C.A.T. order (Guwahati Bench) dtd. 24-02-2004 on the Original Application Nos. 313 of 2002 & 85 of 2003 regarding re-consideration of the claims of the applicants in the light of the explanatory memorandum-the benefit's of (5th pay commission) central pay revision effective from 01-01-1996 to Shri A. K. Malakar, IAS and J. I. Kathar, IAS.

As directed by the Hon'ble CAT the Respondent No. 3 has thoroughly re-examined the case. It appeared that you have been inducted into Indian Administrative service on 30-12-1996 i.e. after the effective date of central pay revision on 01-01-1996 and this pay revision benefits is admissible only to those officers/officials who were in the All Indian Service prior to 01-01-1996.

Since you were in state service till 29-12-1996, you are not entitled to Central Government pay revision benefits effective from 01-01-1996.

The pay of the state service has been revised w.e.f. 01-01-1996 and you have been given the pay revision benefit of the state service along with the arrears Pay & Allowances till you were in state service i.e. upto 29-12-1996.

However, you have been allowed the **pay fixation benefit** from state service to Central service on 30-12-1996 as per Rules (the day you took over charge as IAS).

You were not in any case being affected adversely since you were state officer till 29. 12. 1996 (A.C.S.) and you have been authorised the pay revision benefit which was implemented by the State Govt. w.e.f. 01-01-1996.

Contd.p/2

Certified to be true
M. G. A. Assam
5/5/08

Long

Yours faithfully,

Sdf

Memo no N0.GE Cell/IAS/CAT/2004-05/76-77 12 4 11 2004

Date: 28-05-2004

Copy for information to :-

1. The Commissioner & Secretary, Finance Deptt. Government of Assam,
Dispur, Guwahati.
2. The Commissioner & Secretary, Personnel (A), Government of
Assam, Dispur, Guwahati.

~~DA~~
P. put up 27/07/2014

Black

Deputy Accountant General (Admin)

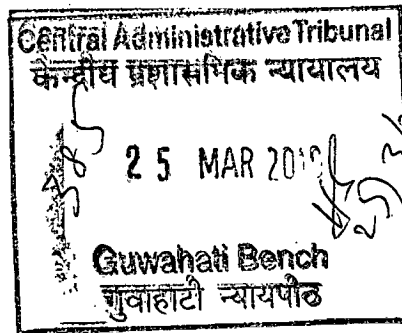
Office of the Controller & Secretary
to the Government of Assam
Public Department, Assam
Dispur, Guwahati 6, Assam

By file .. 1131

Date

B. Das
27/5/04

~~2561~~
~~28/5/04~~



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH AT GUWAHATI

In the matter of OA No.71 of 2005

Shri A.K. Malakar

Applicant

Vs.

Govt. of India and others

Respondent

IN THE MATTER OF

Submission of Affidavit on behalf of the Respondent
No.3 in compliance with the order dated 28.01.2010
passed by this Hon'ble Tribunal in the above noted
original application.

AFFIDAVIT ON BEHALF OF THE RESPONDENTS

I, Shri Ananta Bijoy Punyastha S/o Ratan Akli Ch. Punyastha
aged about 59 years working as Deputy Accountant General resident
of Belgaon, Guwahati do hereby solemnly affirm and declare as
follows:

R. W. pyan
17/03/10
for Mr. V.K. Nair
G.Z. Sharma

132
25 MAR 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

1. That I am the Deputy Accountant General (Admn) in the office of the Accountant General (A&E) Assam, Guwahati-29 and as such I am fully conversant with the facts and circumstances of the case and hence I am competent to swear this affidavit on behalf of the respondents.
2. That in compliance with the order dated 28.01.2010 of this Hon'ble Tribunal the respondent beg to state as follows:

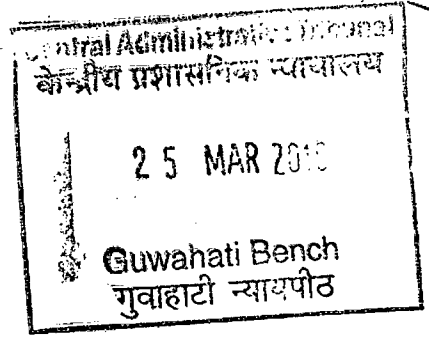
Sl. No.	Point of Query	Clarification
1.	What was the Corresponding Scale of Central Govt. on the Pay Scale of Rs.3825-5900 (State Scale) on 29-12-96 (prior to State Pay Revision). The corresponding State Revised Scale w.e.f. 01-01-2006 was Rs.10,050-15,575/-	There was no corresponding Pay Scale in the Central Pay Structure with State Pay Scale. However, the Pay of the applicant was fixed in the Sr. Scale of IAS i.e. Rs. 10650-15650/- (Revised from 01-01-1996) on induction to IAS.
2.	What is corresponding <u>State Pay</u> Scale of Rs.4800-5700/-	This is Pre-revised Central Pay Scale and there was no direct corresponding State Pay Scale. This is however revised on 01-01-96 to Rs.15100-18300/- on induction to IAS applicant's pay was fixed in (the pre-revised Selection Grade Pay Scale of Rs.4800-5700 in terms of Govt. of India's order No.20011/1/95-AIS(II) dated 17-05-96
3.	What are the basic scales applicable and enjoyed on induction to IAS.	Basic scales are applicable to the officers inducted to IAS is Sr. Scale of IAS. Sr. Scales as three components prior to Central Pay Revision w.e.f.01-01-96. There are : 4. Rs.3200-4700/-, 5. Rs.3950-5000/-and 6. Rs.4800-5700/-

has placed in...

Ananta B. Joy Purnayastha


A.B. PURKAYASTHA, IA & AS
Dy. Accountant General (A/c & VLC)
Q/o The A.G. (A&E), Assam
Belga, Guwahati-29

133 -



3. That the statements made in the paragraphs and in para 1 and 2 are true to the best of my believe and knowledge.

And I sign this affidavit on this 9th day of March, 2010 at Guwahati.

Identified by :

Advocate

Ananta Bijo, Punayama
DEPONENT
A.B. PURKAYASTHA, IA & AS
Dy. Accountant General (Acs & VLC)
O/o The A.G. (A&E), Assam
Bellola, Guwahati-29