

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

MP 45/10 under page-1 ~~1/10~~ INDEX

17/03/10

particular copy and
found -

O.A/T.A No. 71/2005.....

R.A/C.P No.....

E.P/M.A No.....

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SECTION OFFICER (Judl.)

(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 71/05

71/05-

Misc. Petition NO. _____

Courtier petition No. _____

Applicants: A. K. Malakar

A. K. Malakar

Respondents. U.C.I. 90s.

U.C.I. 90s.

Address for the Applicant U.K. Neer, B.Simon, Arun

Mr. K. Nair, B. Sc., M. Sc., M. A.,
Cafe in R. 123 - A. K. Chudley for
Govt. of Assam for R. 224 Report No. 3.

25-5-05

Notice daily issued
on R. No. 2 & 4.
Service of from
Notice 17 & 3 awaited
in reply filed.

109

26.5.2005 Ms. B. Devi, learned counsel for
the respondent 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.

Govt. of Assam
Member

No written statement
has been filed.

24-6-05

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.

Govt. of Assam
Vice-Chairman

① Wts. filed on behalf

27.7.2005

of R. No. 3.

② No. wts. filed by

The R. No. 1, 2 & 4

MD
26.7.05

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 of
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.

Govt. of Assam
Vice-Chairman

① Wts. filed on behalf of

R. No. 3.

② No. wts. filed by R. No.
1, 2 & 4.

MD
29.8.05

Govt. of Assam
Member

30.8.05. Post the matter before the next available Division Bench.

23-4-08
Vice-Chairman

This matter stands adjourned to
19.05.2008 for hearing.

K
(Khushiram)
Member (A)

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

Div. 19.5.08

Pl. send copies
in order to the Applic-
ant and respondents

21.5.08

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.

Y
(M.R. Mohanty)
Vice-Chairman

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

26.06.08

Case
2715/08 D/No. 2555 to 2561
Dt. 28/5/08.

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.

Y
(M.R. Mohanty)
Vice-Chairman

Rejoinder not filed.

M.
30.6.08.

pg

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

Rejoinder not
billed.

/bb/

02.07.2008 Call this matter on 08.08.2008 for hearing.

(R.C. Panda)
Member(A)

nkm

(M.R. Mohanty)
Vice-Chairman

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. *4*

(M. R. Mohanty)
Vice-Chairman

im

Call this matter on 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.

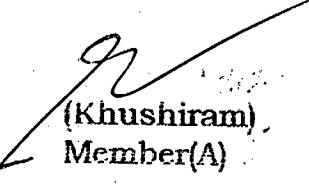
Rejoinder not filed.

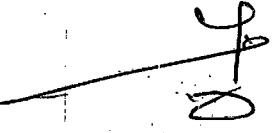
billed.

Call this matter on 07.11.2008 for hearing.

23
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.

23
3.12.08


(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.

23
5.1.09


(S.N. Shukla)
Member(A)

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.

23
10.2.09


(M.R. Mohanty)
Vice-Chairman

OA. 71/05

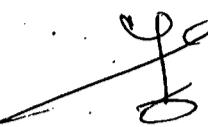
7

X

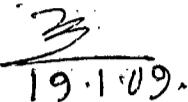
09.02.2009

Call this matter on

20.03.2009 before Division Bench.


(M.R. Mohanty)
Vice-Chairman

Rejoinder not
bileel.


pg
19.1.09.

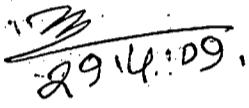
20.03.2009

None for the parties. Adjourned to be

taken up on 30.04.2009.


(A.K. Gaur)
Member (J)

Rejoinder not
bileel.


/bb/

30.04.2009

Call this matter on 16.06.2009.


(M.R. Mohanty)
Vice-Chairman

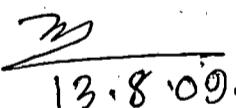
/bb/

16.06.2009 Call this matter on

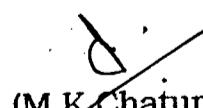
14.08.2009 for hearing.


(M.R. Mohanty)
Vice-Chairman

Rejoinder not
bileel.


lm

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)

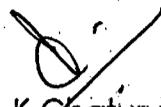

(M.R. Mohanty)
Vice-Chairman

lm

OA 71-05

20.08.2009

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


(M.K. Chaturvedi)
Member(A)

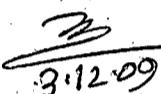

(M.R. Mohanty)
Vice-Chairman

/bb/

08.10.2009

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

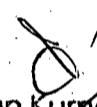
No rejoinder filed.


3.12.09

/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.


(Madan Kr. Chaturvedi)
Member (A)


(Mukesh Kr. Gupta)
Member (J)

/pg/

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.

W/S filed.


18.1.2010

List the matter on 19.1.2010.


(Mukesh Kumar Gupta)
Member (J)

/lm/

(Madan Kumar Chaturvedi)
Member (A)

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.

W/S filed.


27.1.2010


(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 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.

*Received
2/2/10*

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

Copy of the order dated
28.1.2010 received by 10gl.
hand both counsel for
the parties.

2/2/2010

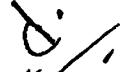
O.A.71 of 05

W/S filed.

22
18.2.2010

10.2.2010

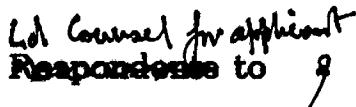
List the matter on 19.2.2010.


(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, ~~Respondents~~ to take appropriate steps.

List the matter on 09.03.2010.


(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) 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.


(Mukesh Kumar Gupta)
Member (J)

/bb/

W/S filed.

22
26.3.2010

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.

Learned Member (Member A) Adv. (Madan Kumar Chaturvedi)
and 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.

(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/

1st learned member (Member A) Adv.

and 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.

Printed copy for
O.A. No. 71/2005
Mrs. M. Das, Sn. C.G.S.C

Xleka

23.4.10

(Received copy for O.A. No. 71/2005)

(L) Madan M.

/pb/

01.04.2010

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

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

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.
Memos. 1016 to 1019

Or 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)

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
(Dept. 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.

ORDERMR 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.

Chaturvedi
 (MADAN KUMAR CHATURVEDI)
 ADMINISTRATIVE MEMBER

/pg/

M. K. Gupta
 (MUKESH KUMAR GUPTA)
 JUDICIAL MEMBER

Central Administrative Tribunal

1. 6 MAR 2001

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
Guwahati

Q.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.

--- 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) Rule 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

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.

***** ***** *****

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THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

D.A. No. of 2005

Sri Ananta Kumar Malakar

... Applicant

- Vs -

The Union Of India & Ors.

... Respondents

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(U.K. Nair)
Advocate.*

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THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

D.A. No. 71 of 2005

BETWEEN

Shri Ananta Kumar Malakar Smt. Geetanjali Malakar,
IAS Presently posted as Director of Land
Records, Survey etc., Assam, Rupnagar,
Guwahati. (Substituted with
order d. 17-3-10
passed in M.P.O 45/10)

..... Applicant.

- AND -

1. The Union of India, represented by
the Secretary to the Government of
India, Ministry of Personnel, Public
Grievance and Pension (Dept. 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

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

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

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

Substantive Pay	Rs. 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 Appendix

= 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

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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.6E.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

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 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 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.

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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. : 206716543
- ii) Date : 9.3.2009
- iii) Payable at : Guwahati.

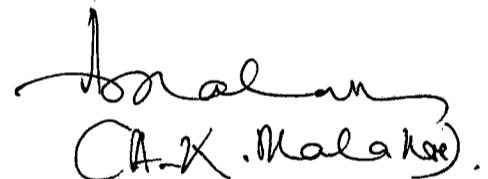
12. LIST OF ENCLOSURES:

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.


Signature 14/03/05

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

ORDERS BY THE GOVERNORNOTIFICATION

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/No.

1. Arunachal Kumar Malakar ✓
2. Kamal Krishna Bazarika
3. Jones Ingati Rather ✓
4. Ritendra Nath Sharma
5. Laxmi Nath Tamuly and ✓
6. Lall Chand Singh ✓

Sd/- R. VALDYANATHAN
 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, Muidomgaon, 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/
 C. S. officers to the Govt. of Assam.

Contd.....

Attested

u/s
 Advocate

Certified to be true Copy

Am

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 Handbook 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 Spcl. Officer to Chief Minister, Assam, Dispur.
19. All Principal Secretaries to 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, House of Complex, Dispur.
23. The Secretary-cum-Registrar, Office of the Lokayukta, Nabinagar, Guwahati.
24. The Supdt., Assam Govt. Press, Bramhimaidan, 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.

By order etc.,

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

Mr. A. K. Malakar, IAS
97 Secy, Elect. Deptt

Certified to be true Copy

Am
Lokayukta

ANNEXURE - 2

-2-

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

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

Pay/Leave Salary Slip

Office of the Accountant General, Assam, Meghalaya, State, Shillong. Ghy-28
No. SE-1/PS/185-6
Shillong, the 2-5-1977

Last P/S at 7/1
Pay in arrears of 1970-71
A.C.S. Date of 18/5/78
1-1-94 in arrears 1-1-93
19

Sri. Ananta Kr. Malabar, I.A.S. Joint Secretary to Govt of Assam Education Dept.

Dated: May-6 (Gazette page)

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 1-1-74	From 1-6-1974	From 1-7-74	From 29-11-74	From 1-1-75	From 1-6-75	From 1-7-75	From 1-1-76	From 1-6-76	From 1-7-76	From 1-1-77	From 1-6-77	From 1-7-77
Substantive pay													
Officiating pay	5050/-	5050/-	5050/-		5150/-	5250/-	5250/-						
Joining time pay													
Special pay	250/-	250/-	250/-		250/-	250/-	250/-						
Leave Salary					5300/-								
Non-practising allowance													
Dearness allowance	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-
House Rent allowance													
City compensatory allowance	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-
Kit maintenance allowance													
Winter allowance													
Medical allowance													
Hill allowance	1R				160/-	160/-	160/-	160/-	350/-	350/-	350/-	350/-	350/-
Total	7570/-	7670/-	7720/-	7920/-	8420/-	8170/-	8170/-	8170/-	8150/-	91845/-	NIC		

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, 2/15 dated 5th March 1985, 805 dated 10th September 1985, 664 dated 3rd March 1986.

Payment is subject to production of due and drawn statement.

Certified to be true Copy

Dr

Address

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

Office of the Accountant General, Assam, Meghalaya, etc., Shillong, City - 28.
No. GE-1/PS/165-⁶ Shillong, the 2-5-97.

Annexure - 3

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

is informed that under No. _____ dated _____ (Gazette page, Disp. - 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 1-1-94	To 1-6-94	From 29-6-94	From 1-1-95	To 1-6-95	From 1-7-95	From 14-9-95	From 11-10-95	From 20-12-95	From 1-1-96	From 1-6-96
Basic pay	5050/-	5050/-	5150/-	5250/-	5250/-	5375/-	5375/-	5375/-	5375/-	5375/-	5375/-
Time pay	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-
Salary	-	-	-	5300/-	-	-	-	-	-	-	-
Acting allowance	2250/-	2250/-	2300/-	2350/-	2350/-	2850/-	3150/-	3550/-	3850/-	4050/-	4250/-
SS allowance	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-
Rent allowance	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-
Compensatory allowance											
Intercaste allowance											
Allowance											
Leave allowance	10/-	10/-	10/-	10/-	10/-	350/-	350/-	350/-	350/-	350/-	350/-
Total	7570/-	7670/-	7920/-	7920/-	8420/-	8420/-	8470/-	9570/-	9845/-	10150/-	10450/-

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, 21/5 dated 5th March 1985, 805 dated 10th September 1985, 664 dated 3rd March 1986.

Payment is subject to deduction of claim drawn statement.

Advocate

Certified to be true Copy

10

H.R.A.

C.C.A.

S.D.A.

20.00.55.3219

587.00

Notes :-
A detailed statement showing the amount already drawn together with dispending B.V. Nos. and dates and the
should be appended to the Bill for arrest claims.
subject to production of usual non-practising certificate.
every year and in the

II-Drawal of non-practising allowance is subject to a increment accrues on _____ is reached.
This scale of pay is _____ increment accrues on _____ is reached.
instruction to the contrary this may be drawn till the stage* _____ is reached.
III-Drawal F. Rent is subjected to production of certificate in Annexure I or II or III whichever is applicable as per
in Firm. Apartment O.M. No. F.M. 63/74/5, dated 11th June 1974/No. F.M. 85/63/11, dated 2nd September 1983 along
the pay Bill for the month of January and July each year. _____
The slip may be attached to the first pay Bill drawn at these rate, and that No. 16/16

No. 55-11/PS/1
Copy forwarded to the Treasury Officer Dispun 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

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Adscitio

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/PA/228 GUWAHATI the 8. 8. 85 19

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 30.12.96	From 1.1.97	From 9.6.97	From 26.6.97	From 1.7.97	From 20.7.97	From 1.8.97	From 20.7.98	From 1.8.98	From 1.9.98	From 1.10.98	From 1.11.98
Substantive pay												
Officiating pay	15500	15500	X.S.	X.S.	X.S.	15500	15500	15500	15500	15500	15500	15500
Joining time pay	250	250	15500	15500	15500	250	250	250	250	250	250	250
Special pay												
Leave Salary												
Non-practising allowance	620	1240	1240	1240	2015	2015	2015	2015	2015	2015	2015	2015
Bearness allowance	20	20	20	20	20	20	20	20	20	20	20	20
House Rent allowance												
City compensatory allowance	20	20	20	20	20	20	20	20	20	20	20	20
Kit maintenance allowance												
Winter allowance	S.D.A.	675	675	675	—	—	675	675	675	675	675	675
Medical allowance												
Hill allowance												
Total	17065	17685	17685	17685	17685	17685	17685	17685	17685	17685	17685	17685

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.

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HB

Signature

Note :-

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

II-Drawal of non-practising allowance is subject to production of usual non-practising certificate. This scale of pay is subject to 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. It is particularly requested that the slip may be attached to the first pay Bill drawn at these rates and that No. 3 (XIV) may be entered at his audit number at the top of every pay bill.

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

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

Date.....

Signature.....
Assistant Accountant General
Accounts Officer

No. Q.C. Cell / D.A.S /

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

Date.....

Signature.....
Assistant Accountant General
Accounts Officer

No. Q.C. Cell / D.A.S /

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

Signature.....
Assistant Accountant General
Accounts Officer

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

AGP. 625/93 (AG) 70,000

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6.(1)(9.)

Pay/Leave Salary Slip
(A & E)

para 162 and 184 (7) M.S.O. (10)]

Office of the Accountant General, Assam, Guwahati-29

N S.G.A. / P.A.S / 221

Guwahati the 2.C.99

19

Shri: Amanta K. Malakai, I.A.S. *Sub Inspector, Assam*

is informed that under No. _____ dated _____ (Gazette page _____ 16) 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	Present	From												
Subsidized pay	11500	11300	1125	1125	11300	11300	11625	11625	1125	1125	1125	11625	11625	11950
Onward pay	250	250	11300	11300	11300	11300	11625	11625	11625	11625	11625	11625	11625	11625
Joining time pay	250	250	250	250	250	250	250	250	250	250	250	250	250	250
Special pay														
Leave Salary														
Non-pecuniary etc.														
Delhi allowance	452	904	904	904	1469	1469	1469	1469	1511	1360	2558	2558	2558	2629
City compensatory allowance	20	20	20	20	20	20	20	20	20	20	20	20	20	20
K.C. maintenance allowance														
Winter allowance: S. D. A.	£75	£75	£75	-	£75	£113	£113	£113	£1453	£1453	-	£1453	£1453	£1494
Compensatory allowance														
Medical allowance														
Hill allowance														
Total	12457	13167	13149	12474	1469	13714	14115	14115	15205	15205	15988	16452	15984	16517

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

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

N.B. Payment is subject to Production of the Drawn Statement.

Attested

Advocate:

Rs. 1,040.00

Rs. 20.00

Rs. 527.00

H.R.A
C.C.A.

S.D.A.

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

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

..... increment securities on every year and in the absence of increments, the same should be drawn till the stage * is reached.

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

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

..... a pause or efficiency bar operates.

Signature *Om Prakash*

Assistant Accountant General

Sr. Accounts Officers

Signature *Om Prakash*

Assistant Accountant General

Sr. Accounts Officers

Signature *Om Prakash*

Assistant Accountant General

Sr. Accounts Officers

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

Date

Copy forwarded to the Estate Officer for information.

Executive Engineer, P.W.D. Building Division.

Arrested

(1) If the allocation of funds or leave may be specified in column (1) to (11) overleaf.

(2) When the allocation of funds or leave is to be made among different Government the allocation should be clearly indicated.

AGM 43/53 (AG) 1/2-2000

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Om Prakash

Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL
GUARANTI BENCH

of Order: This the 26th day of June 2001.
 BLE MR.JUSTICE D.N.CHOUDHURY VICE-CHAIRMAN
 BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER
 Shri Layoni Nath Tamuli (O.A.No.266 of 99) Applicant
 -Vs-
 Union of India & Ors.
 2. Shri Ananta Kr.Malakar (O.A.No.267 of 99) Applicant
 -Vs-
 Union of India & Ors.
 3. Jones Ingti Kather (O.A.No.336 of 99) Applicant
 -Vs-
 Union of India & Ors.
 Mr.B.K.Sharma Advocate for the Petitioner(s)
 Mr.S.Sharma
 Mr.B.C.Pathak,
 Addl.C.G.S.C. Advocate for the Respondent(s)

U R D E RK.K.SHARMA, ADMINISTRATIVE MEMBER

All three applications are taken together as the issue raised is the same. All the three applicants were promoted to IAS from State Civil Service on 30.12.1996. The issue in all three applications relates to the fixation of pay by pay Slip dated 10.6.99. The facts in all the three O.A.s are similar. The facts are discussed below:-

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

Substantive Pay	Rs. 4,700.00
Special Pay	Rs. 250.00
Personal Pay	Rs. 350.00
Dearness Allowance	Rs. 5,593.00
H.R.A.	Rs. 1,040.00
C.C.A.	Rs. 20.00
S.D.A.	Rs. 537.00
<hr/>	
	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 ~~Nagaland~~ Civil Service was revised w.e.f. 1.1.96 to Rs. 10,375. By pay slip dated 10699, the pay of the applicant was revised to Rs. 10,975 on 30.12.96 and Rs. 11,300 as on 1.12.97.

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

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

Pre-revised	Revised
i) Rs. 3200 - 4700 (Time scale)	Rs. 10,650 - 15,050
ii) Rs. 3950 - 5000(JAG)	Rs. 12,750 - 16,500
iii) Rs. 4800 - 5700(SG)	Rs. 15,100 - 18,300

contd/-

1C (U.L.W.H.)

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Advocate

-3-

51

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. 15,100 to Rs. 10,975 on (30-12-96) and from Rs. 15,500/- to Rs. 11,300 on (1.12.97). The downward revision of the pay scale of the applicant is contrary to Clause 4 of Section 1 of Schedule II of the IAS (pay) Rules 1954. The learned counsel referring to the Notification dated 20.11.97 notifying the IAS (pay), Fifth Amendment Rules 1997, submitted that under column Explanatory Memorandum it is mentioned that no member of the IAS should be adversely affected by giving retrospective effect to those Rules. The undertaking dated 8.6.98 given by the applicant to refund any excess payment was a routine undertaking required to be given by all such promotee officers and the said undertaking did not envisage the kind of situation now created by the impugned pay slip. They relied upon the following reported cases :-

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

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

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

contd/-1.

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[Signature]

2000

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 became applicable. At the time of their promotion to the IAS, the applicants were drawing the pay in the pre-revised scale. Their pay was not required to be fixed as on 1.1.96, it was to be fixed with effect from the date of their promotion. He referred to the Department of Personnel Government of India letter No. 20015/1/92-AIS(II) dated 10.4.92 and argued that the applicant's pay was fixed initially in terms of this letter. The letter is reproduced below:—

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

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

contd/-5

CC (C.S. Verma)

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Advocate

58
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 stage 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. L.N. Tainuli (OA 266/99)

contd/-6

22/12/96
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Om P.

Secretary

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 10.6.98 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

		<u>Revised</u>
(1) 3200-4700 Time scale	(1)	10,650-325-15850
(2) 3950 5000 Junior Administrative Grade.	(2)	12,750-375 - 1650
(3) 4800-5700 (Selection grade)	(3)	15100-400-193

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

contd/-7

V. (16101)

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Dr

20/6/2013

that the IAS pay of such promoted officers is to be fixed at the stage next to the reckonable state pay. The applicant's pay was required to be fixed in the Sr. time scale, not in the selection grade, as the selection Grade is allowed on completion of 13 years of service. The applicant's year of allotment is 1990 and he would become eligible for selection grade only in the year of 2003. The fixation of the pay at Rs. 15,100 was only an interim measure and the pay slip issued to the applicant was a provisional one. The retrospective fixation of the pay of the applicant would not adversely affect the applicant ^{and it} 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 pay 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/-

11/11/98
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[Signature]
Advocate

Total emoluments of State Pay :

Revised State Pay

Revised Indian Administrative Service Pay.

State pay as on 30.12.96 (Senior Scales)

(revised)

Rs. 10050-325-11025-400- (1) Rs. 10650-325-15850/-
14625-475-15575/- (2) Rs. 12750-375-16500/-

(3) रु. 15,100 - 400 = 19,300/-

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

House Rent Allowance 600/- House Rent Rs. 1000/-
Allowance

Compensatory Allowance 20/- Compensatory Rs. 20/-
Allowance

Special Duty Rs. 587.50
Allowance

Rs. 11660/-

Rs. 13271.50/-

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

- the pay of State Civil Service/Non-State Civil Service officers inducted into the Indian Administrative Service may be fixed in the Senior Scale at a stage next above their State Pay. Senior Scale of Indian Administrative Service in the Pre-revised scale consists of (i) Time Scale Rs. 3200-4700 (ii) Union Administrative Grade Rs. 3950-5000; 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 incre-

Vol. 111 (1991)

contd/...

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John

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 11.8.97) on 4.7.98 on revision of State Service scales with effect from 1.1.96, the applicants pay in state service fixed at Rs. 10,375 in the scale of Rs. 10050-325-11025-400-14625-475-15575. The applicants pay in the revised IAS pay scale of Rs. 10,650-325-15650 was fixed at Rs. 10,975. The total emoluments in the revised scale in State Service worked out to Rs. 11,660 against Rs. 13271.50 in IAS. Thus there was no reduction of pay of the applicant. *Prima facie*, it cannot be said to be reduction of pay. Fixation of pay at Rs. 15,100/- was only protective measure. No infirmity as such is not discernible in the impugned action of the respondents in 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

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[Signature]
Advocate

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)

THE VILLAGE

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Advocacy

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)

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(2)

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

1. CIRCUMSTANCES OF THIS REPRESENTATION :

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

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

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

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

(Cont..3)

Answered

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Advocate

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

-4.

1.3. Under the Assam Services (Revision of Pay) Rules, 1998 was published on 4-7-98 the A.G. refixed the substantive pay of your humble Petitioner to Rs.11,300/- w.e.f. 30-12-96 and to Rs.11,300/- from 1-7-97 in the scale of pay of Rs.10,650 - 325 - 15,050 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 aggrieved by the arbitrary and suo moto refixation of the substantive pay by the A.G. your humble Petitioner who did not hold any lien to the Assam Service (Revision of Pay) Rules, 1998, filed an application before the Guwahati Branch of the Central Administrative Tribunal which was registered as O.A. No. 267 of 1999 and the Hon'ble Tribunal by its orders dt. 25-6-2001 has directed as under.

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

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J. J.

Advocate

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

Hence, 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/GIIY/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.

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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."

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[Signature]

Secretary

Clause 2 of Section-I 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-I 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

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Advocate

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-AIS(2)-A dated 16.10.1997. Meanwhile your humble Petitioner joined as Labour

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By

Amritpal Singh

(8)

Commissioner on 3.11.1997 and got the Pay Slip issued by the Accountant General vide No. GE-CELL/IAS/220 dated 8.6.1998 and the pay was fixed as on 30-12-1996 :-

Substantive pay	...	Rs. 15,500/-
Special pay	...	Rs. 250/-
Dearness Allowance	...	Rs. 620/-
S.D.A.	...	Rs. 657/-
C.C.A.	...	Rs. 20/-
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 8.6.1998 is enclosed hereto and marked as Annexure -4.

(Cont..9)

Substantive pay

Special pay

Dearness Allowance

(9)

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

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Abhishek

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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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Advocate

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Advocate

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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.

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

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

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

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

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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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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.

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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

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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

15-12-97
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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).

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Advocate

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(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 Report. (Cont..19)

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Advocate

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

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

A copy of Govt. Notification No. AAI-6/87/378 dt.

24-3-2000 enclosed as Annexure -8.

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

A.G.

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

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

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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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(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.

slv

(A.K. Malakar)

Labour Commissioner : Assam
Guwahati-16

Copy to :-

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


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


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A.K. Malakar

No. 20015/1/2001-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 refixed 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 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 to you that if the IAS 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 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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Advocate

24 JAN 2002

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

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

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

Yours faithfully,

(Y.P. Dhingra)

Under Secretary to the Government of India

Copy for information to :

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

(Y.P. Dhingra)

Under Secretary to the Government of India

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GOVERNMENT OF INDIA
DEPARTMENT OF PERSONNEL, PUPILS' SELECTED
COLLEGE, PUBLIC SERVICE COMMISSION
GANGA BHAWAN, NEW DELHI
110001

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ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 20th November, 1997.

U.O. NO. 19/97/46: The following notification issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, has to be given to the concerned Governmental Department.

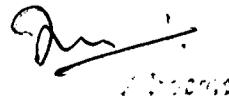
NOTIFICATION ISSUED PURSUANT TO THE PAY COMMISSION REPORT

In exercise of the powers conferred by sub-section (1) of Section 4 of the All India Services (Pay) Fifth Amendment Act, 1997 (61 of 1997), 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).
 - (i) Time Scale - Rs. 10650-325-15850 (with effect from the 1st day of January, 1996);

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(ii) Junior Administrative Grade-

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

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

Note - The four years and nine years of service in

Rules, 1987.

(iii) Selection Grade- Rs. 15100-400-11300 (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 - The option to retain the existing scale under the provision 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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(ii) 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, namely, by the following rule:—

Provided that, in the case of a member of the Service drawing pay from the minimum of the revised scale up to the maximum of the revised scale, the pay shall be fixed at the minimum of the revised scale;

(a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the maximum of that 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(s) 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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M.A.*

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A. J. S.
Advocate

Even if the open direction provided the merit pay for the scale unabsorbed, in the manner provided in clause (A) above, the pay of the latter shall also be stepped up to the extent by which it falls short of that of the former.

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

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

(a) the basic pay in the existing scale;

(b) dearness allowance appropriate to the basic pay admissible at index average 1510 (1960 = 100), and

(c) the amounts of first and second instalments of increments added to the basic pay in the existing scale;

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

Note - Under the tenement of a member of the Service, either in the scale or otherwise, to whom he may have an option to draw the increments in the existing scale or the revised scale.

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D. S. Iyer
Advocate

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Note 2- Where a member of the Service is on leave on the 1st day of January, 1996, he shall become entitled to pay in the revised scale of pay from the date of his return 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 such order of 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 increments in pay.

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

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

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Ans
Date 20/10/95

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

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

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

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

Note 8- In the case of a member of the Service who is in receipt of personal pay for passing Hindi Prayagraj 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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AMGSC

W.D.S.

Advocate

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Advocate

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

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

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

7. In the said rules, in Schedule III,
(a) in parts A and C, for the words and figures "Rs. 8000", "Rs. 7300-100-7600", "Rs. 4800-150-5700", "Rs. 5900-200-6700", "Rs. 3950-125-4700-150-5000", "Rs. 3200-100-3700-125-4700", wherever they occur, the words and figures "Rs. 26000", "Rs. 22400-525-24500", "Rs. 15100-400-18300", "Rs. 10650-325-15850" 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.

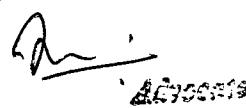
Sd/-
 (A.K.SARKAR) 6.10.97
 Director
 (No. 14021/2/97-AIS(II)-A)

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1.6.1997
 V. B.
 M.C.S.

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 Advocate

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

SI.No.	G.S.R.No.	Date	SI.No.	G.S.R.No.	Date
1.	22	12.1.1974	417(E)	22.6.1976	
2.	51(E)	26.2.1974	626(E)	25.6.1976	
3.	52(E)	20.2.1974	711	10.7.1976	
4.	272	16.3.1974	405(E)	16.6.1976	
5.	272	25.4.1974	716(E)	23.7.1976	
6.	196(E)	29.6.1974	717	7.8.1976	
7.	664	13.7.1974	785(E)	31.8.1976	
8.	725	27.7.1974	789(E)	7.9.1976	
9.	778	26.8.1974	1369	25.9.1976	
10.	374(E)	26.8.1974	822(E)	31.9.1976	
11.	376(E)	26.8.1974	849(E)	15.10.1976	
12.	379(E)	14.9.1974	850(E)	1.11.1976	
13.	976	14.9.1974	917(E)	21.12.1976	
14.	979	14.9.1974	954(E)	27.12.1976	
15.	1013	21.9.1974	125	29.1.1977	
16.	1066	5.10.1974	45	1.2.1977	
17.	427(E)	16.10.1974	52(E)	2.4.1977	
18.	430(E)	17.10.1974	475	9.7.1977	
19.	1202	16.11.1974	863	19.7.1977	
20.	467(E)	15.11.1974	531(E)	29.7.1977	
21.	453(E)	15.11.1974	545(E)	3.8.1977	
22.	469(E)	15.11.1974	549(E)	23.8.1977	
23.	1260	30.11.1974	655(E)	1.9.1977	
24.	1300	7.12.1974	1206	25.9.1977	
25.	1348	21.12.1974	655(E)	4.1.1978	
26.	92	25.1.1975	45	6.5.1978	
27.	176	8.2.1975	5(E)	11.2.1978	
28.	48	18.1.1975	215	29.7.1978	
29.	509	8.3.1975	952	27.5.1978	
30.	185(E)	2.4.1975	586	27.5.1978	
31.	281(E)	16.5.1975	666	22.7.1978	
32.	278(E)	13.5.1975	85	16.9.1978	
33.	279(E)	23.5.1975	923	16.10.1978	
34.	293(E)	26.5.1975	1127	28.10.1978	
35.	296(E)	28.5.1975	1236	28.10.1978	
36.	305(E)	21.6.1975	1281	28.10.1978	
37.	752	21.6.1975	1278	11.11.1978	
38.	345(E)	25.6.1975	1526	13.12.1978	
39.	433(E)	30.7.1975	975(E)	3.2.1979	
40.	450(E)	22.8.1975	159	31.3.1979	
41.	472(E)	29.8.1975	93	23.4.1979	
42.	2661	15.11.1975	472	10.5.1979	
43.	2557	25.12.1975	628	10.5.1979	
44.	1	3.1.1976	96	10.5.1979	
45.	3(E)	1.1.1976	97	9.6.1979	
46.	74	17.1.1976	20	9.6.1979	
47.	26(E)	17.1.1976	99	11.6.1979	
48.	61(E)	31.1.1976	100	11.6.1979	
49.	197	14.2.1976	101	11.6.1979	
50.	75(E)	10.2.1976	102	13.7.1979	
51.	234(E)	17.3.1976	103	17.7.1979	
52.	235(E)	17.3.1976	104	17.7.1979	
53.	207(E)	6.4.1976	105	620(E)	
54.	603	1.5.1976	106	597(E)	
	330(E)	11.5.1976	107	77	
	900	26.6.1976	108	26(E)	

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R
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G.S.R.No.	Date	S.No.	G.S.R.No.	Date
159	9.2.1980	167	708(E)	3.8.1985
220(E)	21.4.1980	168	792	24.8.1985
222(E)	21.4.1980	169	919	5.10.1985
230(E)	21.4.1980	170	1141	14.12.1985
290(E)	5.6.1980	171	884(E)	4.12.1985
447(E)	24.7.1980	172	38	18.1.1986
770	26.7.1980	173	98	8.2.1986
952	20.9.1980	174	218	22.3.1986
530(E)	8.9.1980	175	226	29.3.1986
523(E)	8.9.1980	176	378	31.5.1986
572(E)	7.10.1980	177	766	20.9.1986
120	17.12.1980	178	835	18.10.1986
701(E)	17.12.1980	179	1068	13.12.1986
703(E)	17.12.1980	180	22	10.1.1987
47(E)	5.2.1981	181	90	14.10.1987
230	20.2.1981	182	284(E)	13.1.1987
295	21.3.1981	183	471	20.6.1987
293(E)	15.4.1981	184	615	15.8.1987
295(E)	15.4.1981	185	796(E)	13.9.1987
520	6.6.1981	186	767	17.10.1987
489	23.6.1981	187	842	15.11.1987
615	4.2.1981	188	902	5.12.1987
640	11.7.1981	189	960	26.12.1987
800	5.9.1981	190	962	26.12.1987
926	19.10.1981	191	685(E)	26.12.1987
945	24.10.1981	192	52	14.12.1987
422	8.5.1982	193	295	23.1.1988
420	8.5.1982	194	297	16.4.1988
510	5.6.1982	195	654(E)	16.4.1988
610	17.7.1982	196	761(E)	26.5.1988
617	24.7.1982	197	659	30.6.1988
619	24.7.1982	198	831(E)	2.8.1988
777	18.9.1982	199	745	2.8.1988
610(E)	20.10.1982	200	1044(E)	24.9.1988
704(E)	16.12.1982	201	1045	1.1.1989
10(E)	10.1.1983	204	336(E)	1.3.1989
204	12.3.1983	205	341(E)	28.3.1989
333	5.4.1983	206	311	6.5.1989
447(E)	4.5.1983	207	418	17.6.1989
508	16.7.1983	208	420	17.6.1989
932	10.12.1983	209	492	22.7.1989
899(E)	20.12.1983	210	874	4.11.1989
901(E)	20.12.1983	211	869	25.11.1989
910(E)	24.12.1983	212	870	25.11.1989
35	21.1.1984	213	1044(E)	6.12.1989
400	21.4.1984	214	263	6.5.1990
400	1.5.1984	215	714	1.6.1990
107	19.1.1985	216	643	1.6.1990
250	2.2.1985	220	726	20.10.1990
630	9.3.1985	221	493	8.12.1990
637	5.7.1985	222	621	7.9.1991
550(E)	6.7.1985	223	68	26.10.1991
	15.7.1985	224	106	22.2.1992
		225	157	7.3.1992
				7.3.1992

Amara

Contd....

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Sl.No.	G.S.R. No.	Date	S.No.	G.S.R.No.	Date
226.	194	9.5.1994	251.	395(E)	12.2.1994
227.	199	9.5.1994	252.	343(E)	29.3.1994
228.	224	16.5.1994	253.	3436(E)	19.5.1994
229.	226	16.5.1994	254.	310	2.7.1994
230.	239	23.5.1994	255.	334	23.7.1994
231.	405	12.9.1994	256.	302	3.10.1994
232.	407	12.9.1994	257.	413	3.10.1994
233.	415	19.9.1994	258.	357	12.11.1994
234.	449	10.10.1994	259.	434	30.11.1994
235.	480	31.10.1994	260.	473	10.11.1994
236.	503	26.12.1994	261.	569	30.12.1994
237.	527	28.11.1994	262.	68(E)	25.1.1995
238.	20	9.1.1995	263.	232	18.6.1996
239.	21	9.1.1995	264.	255	6.7.1996
240.	34	13.2.1995	265.	311	27.7.1996
241.	126	6.3.1995	266.	455(E)	27.9.1996
242.	238	15.5.1995	267.	555	14.12.1996
243.	259	29.5.1995	268.	277	15.7.1997
244.	535(E)	5.8.1995	269.	285	12.7.1997
245.	447	11.9.1995	270.	287	12.7.1997
246.	590(E)	8.9.1995			
247.	657(E)	15.10.1995			
248.	655(E)	15.10.1995			
249.	6	1.1.1996			
250.	29	15.1.1996			

Sd/-

16.11.97

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

1. The Accountant General (A&E),/(Audit), Meghalaya, Shillong.
2. The Accountant General (A&E), Assam Legislative Assembly, Dispur.
3. The Chairman, Assam Legislative Assembly, Dispur.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Principal Secretaries/ Commissioners & Secretaries to the Govt. of Assam.
7. The Chief Electoral Officer, Assam, Dispur.
8. The Resident Commissioner, Govt. of Assam, Arunachal Pradesh, Itanagar.
9. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.

(contd.)

M. Ismail
1/11/97

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Ans
Ans

- 19 -

All Commissioners of Divisions, Assam,
The Agriculture Production Comm. Lomer, Assam, Dispur.
The Other Head of the Govt. of Assam, Dispur.
1. The Collector, Dibrugarh, Assam.
2. The Collector, Jorhat, Assam.
3. The Deputy Commissioner, Dibrugarh.
4. The Secretary to the Governor, Assam, Dispur.
5. The PPS to Chief Minister, Assam, Dispur.
6. The PS to Chief Secretary, Assam, Dispur.
7. The PS to Addl. Chief Secretaries Assam, Dispur.
8. All PS to Ministers, Ministers of State.

By order, etc.,

(S.R. ISLAM)

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

.....

.....

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Am

Advocate

Am
1. 2. 3.
4. 5. 6.

GENTRAL 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
(Dept. of Personnel and Training)
North Block, New Delhi-1.

2. The State of Assam
Represented by the Chief Secretary
Government of Assam
Dispur, Guwahati-6.

3. The Accountant General(A&E), Assam
Maidamgaon, Beltola
Guwahati.

4. The Secretary
Government of Assam
Department of Personnel (A)
Dispur, Guwahati. . . . Respondents in both the O.A.s.

By Mr.A.K.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 identical 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./2

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(Signature)

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 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

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Address

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

R.

Advocate

REGD

07

No.GE Cell/LAS/CAT/2004-05/75.

Date: 20-05-2004

To

Shri A.K.Malakar,IAS

Director of Land Records & Survey etc.,

Government of Assam. Has carefully examined and re-considered all the

Rajb Bhawan

Rupnagar,Guwahati

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

24 MAY 2004

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

[Signature]
Advocate

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 26.6.1999 stands. While doing so, none of the rules and norms were violated. A copy of the pay slip is enclosed herewith.

Yours faithfully,

Shakti..
Deputy Accountant General(Admn.)

20/5

Memo no N0.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.

Shakti..
Deputy Accountant General(Admn.)

20/5

Certified to be

[Signature]

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. ^{for general information. It is issued in accordance with Rule 5 of the Indian Administrative Service (Recruitment) Rules, 1954.}

"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,

Dipena 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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Ranu

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, Dhemaji.
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.,

1852/6
(D. SAIKIA)

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

D. SAIKIA
5/2/96

... ...

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[Signature]

Assam Schedule: II (See. 1), Form No. 67.

LAST PAY CERTIFICATE FOR NON-GAZETTED OFFICERS

Last Pay Certificate of Sri Ananta Kumar Malakar, DAS
Labour Commissioner, Assam, Gauhati-16proceeding to | to join the appointment of
to officiate as
on dutyHe has drawn pay as Basic Pay Rs. 15900/- per month, Spl. Pay Rs. 250/- per month, SDA Rs. 675/-
allowance as D.A. Rs. 2067/- per month, C.A. Rs. 20/- per month, less the deduction
shown below up to the 31st January, 2002.

He made over charge of his duties on the

noon of the 198

No recoveries

to be made from the pay of this officer.

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 G.P.F. a/c NO. AIS/657 @ Rs. 1000/- P.M.
② G.I.S. @ Rs. 120/- P.M. ③ Prof. Tax Rs. 185/- P.M. ④ House rent Rs. 182/- +
Electric charge Rs. 120/- per month of Govt. No. 10/2 type IV Dispur*The words not required should be scored through with a Deputy Labour Commissioner

Again, Gauhati-16

To be filed in, in office to which transferred.

assumed charge of his duties in my office on the
noon of the 198 and the pay of the appointment he fills in

any 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
the 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.

I.T. paid Rs 2200/- on 13/3/02

Q1.R/T/8-A 1368/21

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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				Statement hereby enclosed
July 19				
August 19				
September 19				Deputy Labour Commissioner Assam, Guwahati-16
October 19				
November 19				
December 19				
January 19				
February 19				
March 19				

A.G.P. III (1) F. 67 No. 49/89-90-3,00,000

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[Signature]
Advocate

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 D.L.R. etc. at the rate of Rs. 17,900.00
a month and acting allowance as at the rate of Rs. 375.00
shown below upto the D.A. Rs. 8,055.00
H.R. Rs. 2,685.00
SPL.D.A. Rs. 2,238.00
C.A. Rs. 120.00
31,373.00

His General provident Fund Account
No. is A1S(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 recoveries
The recoveries noted on the reverse are to be made from the pa

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 18

The

Deduction - On a count of

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

Copy forwarded to Sri Basumatary, I.A.S. Govt. of Assam
for information.

Director of Lands Records etc.
Name & Designation of the Head
of office which pay was last drawn.

Director of Lands Records etc.
Assam, Rupnagar, Guwahati-22

Certified to be true Copy

Advocate

Office of the _____ Head of the _____ and the pay of the _____ appointment he fills in my office is Rs. _____.

Dated At _____

Name and Designation of _____ Office to which transferred _____

The _____
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Note 1. A last pay certificate should without fail, be attached to the final 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 the Accountant General when the Officer is transferred to another State.

3. If the Office is being transferred otherwise than for the public convenience 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. A1s(A)0711

Nature of recovery G.P.F. - Contribution @ Rs. 120.00

G.I.S. - Rs. 120.00

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

I/tax - Rs. 150.00

Total No. of Instalment - 78.

(in instalment) H.B. - Rs. 6,110.00

Already recovered G.N.T.B. Instalment of Rs. 6,110.00

(HUDCO) Instalment of Rs. 6,110.00

Rs. 8,095.00 Last instalment to be recovered

@ Rs. 643/-

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

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In the Central Administrative Tribunal

केन्द्रीय नियन्त्रण न्यायालय के लिए
Central Administrative Tribunal

8 JUN 2005

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/Smti. Taruni Malakar 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 & Ors.
Union of India & Respondent
Ananta Kumar Malakar
Shonjoy
Ananta Kumar Malakar
Central Govt. Standing Comm/15/6/5
C. A. T.
Guwahati

Adel. Central Govt. Standing Comm/15/6/5
C. A. T.
Guwahati

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/-

Pay as on 30.12.96 Rs. 5375/-

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

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

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

<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 Rs.5400/-	Revised pay fixed at Rs.15,500/- on 30.12.96.
---	--

On receipt of the Govt. of Assam (Revision of Pay) Rules,1998 which was given effect from 1.1.96 , the State pay of the applicant has been revised as the applicant was in 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.	Rs1344/-
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

<u>Revised State pay</u> Rs.10,050/- - 15,575/- Pay as on 30.12.96	<u>Revised IAS Pay (Senior Scale)</u> 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

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 :-

Pre-revised State pay scale on 1.1.96

Rs. 3825-125-4450-150-5200-175-5900/-

Pay as on 1.1.96	Rs. 5375/-
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/-

Revised State Pay Scale on 1.1.96

Rs.10,050-325-11025-400-14625-475-15575/-

Revised pay fixed at Rs.10,700/- on 1.1.96.

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/-
<u>IR</u>	<u>Rs. 0350/-</u>
CA	Rs. 0020/-
<u>Total :</u>	<u>Rs. 9545/-</u>

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/-
<u>CA</u>	<u>Rs.00,020/-</u>
<u>Total</u>	<u>Rs.10,970/-</u>

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 (Dept. of Personnel and Training) letter No.20011/1/95-AIS-II dated 17.5.96 relevant portion of which is as follows :-

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

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 recknoable State pay in the pre-revised IAS pay scales unless this has been already done. The corresponding stages **in the revised IAS scales would then be allowed in the component of the Senior Scale** in which such officers happen to fall in the pre-revised IAS pay scales . This has to be done till the State pay scales are revised by the respective State Govt. at CPI 1510 which is the base for the revision of IAS scales from 1.1.96 .

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

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

V/S/

*(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".

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.

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VERIFICATION

I, Shri/Smti 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 paragraphs ~~1, 2, 11, 18, 22, 25-29~~ 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 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-AJS(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 Singh

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....

AN
Allied
S. Accounts Officer
S. Accounts Officer
Accountant General (A&E)
Guwahati

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ANNEXURE - B

Order 18 of 1955
By an order made on the 19th

1955, in the year 1955
in the year 1955

Office of the Accountant General, Assam, Meghalaya, etc., Shillong. G.O. 28.

Pay/Leave Salary Slip.

O. (1) 9.

para 161 and 184 (1) M.S.O. (2)

Office of the Accountant General, Assam, Meghalaya, etc., Shillong. G.O. 28.
No. GE-1/PS/165-6
Shillong, the 25-5-97. 19

Sri Ananta Kr. Mitalkar, I.A.S. Joint Secretary to the Govt of Assam Education Deptt

is informed that under No. 1 dated (Gazette page) 1955-6

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

	From	From									
	1-1-94	1-3-94	1-7-94	1-1-95	1-4-95	1-7-95	1-1-96	1-4-96	1-7-96	1-10-96	1-12-96
Basic pay	5050/-	5050/-	5050/-	5160/-	5200/-	5200/-	5200/-	5275/-	5350/-	5350/-	5350/-
Allowing pay	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-	250/-
Practising allowance	5350/-	5350/-	5350/-	5350/-	5350/-	5350/-	5350/-	5350/-	5350/-	5350/-	5350/-
Rent allowance	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-	2250/-
Compensatory allowance	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-	20/-
Maintenance allowance											
Allowance											
Allowance											
Total	7570/-	7670/-	7720/-	7920/-	8420/-	870/-	8770/-	9540/-	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, 2375 dated 10th March 1985, 805 dated 10th September 1985, 664 dated 3rd March 1986.

Pay/Leave Salary Slip
Addl. C.G.S.

Pl. to be the No.
a. Date of Form
b. D.A.S. Cadre
c. D.A.S. Cadre
d. Date of Form
e. D.A.S. Cadre
f. Date of Form
g. D.A.S. Cadre
h. Date of Form
i. D.A.S. Cadre
j. Date of Form
k. D.A.S. Cadre
l. Date of Form
m. D.A.S. Cadre
n. Date of Form
o. D.A.S. Cadre
p. Date of Form
q. D.A.S. Cadre
r. Date of Form
s. D.A.S. Cadre
t. Date of Form
u. D.A.S. Cadre
v. Date of Form
w. D.A.S. Cadre
x. Date of Form
y. D.A.S. Cadre
z. Date of Form

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ANNEXURE-C. 106-

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- 1) Promoted to D.A. on 30.12.91
- 2) Pay fixation at P.2.W.
- 3) The position as aading Post.
- 4) Holding same Post as P.2.W.

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

Personal

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

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PAY/LEAVE SALARY SLIP

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

No. 8/1/1985/67

The 2.5.1992

Sh. Agent for the State of Assam
is informed that under No. (Gazette No. 100 dated 1991), 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.

Mr. B. C. G. S. S.
Addl. C. G. S. S.

Particulars	From 30/12/91	From 2	From 3	From 4
Subsidized Pay				
Officiating Pay	Rs 400/-			
Special Pay	250/-			
Leave Salary	250/-			
Dearness Allowance	Rs 426/-			
House Rent Allowance				
City Compensatory Allowance	20/-			
	518/-	675/-	1350/-	1800/-
Total	1053/-			

N.B.-D.A., H.S.R. are admissible as per General Authorities.

Done at 17/6/92
(A.C. No. 100)

P.T.O.

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

New Delhi, dated the 17 May, 1995

B(P)

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.

I am directed to refer to the Ministry of Personnel, P.C. & Pension, Department of Personnel & Training, Notifications No. 2001/2/93-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 of service calculated from their Years of Allotment.

2. It has been brought to notice that the above manner 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 pay scale. 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, 1971

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vide Notifications dated 6.5.1994 and 17.7.1995, by which S.C.S./non-S.C.S. officers inducted into the I.A.S. would 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. Dhingra)
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

Ans
Y.P. Dhingra
CCS

(Y.P. Dhingra)
Desk Officer

To

New Delhi, dated 19 January, 1998.

ANNEXURE

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)
Deputy 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)
Deputy Officer

Attested
Raj. G. C. S. E.

ANNEXURE "F" 2A ⁽¹²⁾ ~~2A~~ ¹¹⁰⁻
ANNEXURE-RB ¹¹¹

UNDERTAKING

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 : 6-6-58
Station: GHY

Signature *A. K. Malakar*

Name: A. K. MALAKAR

Designation: LABOUR COMMR

ASSAM

Gopinath Naingar

GHY-16

Attested
J. K. Chaudhury
Addl. C. C. S. O.

6/9/58
R. Butta
25.5.98

25.5.98

ANNEXURE - Gc-I 2L III-

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Date: 07-05-2004

NO.GE Cell/IAS/CAT/2004-05/58.

To

**The Hon'ble Chairman
Central Administrative Tribunal
Guwahati Bench.**

Subject: O.A. NO'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 to 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} 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, 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 NO.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

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

Yours faithfully

Deputy Accountant General(Admn.)

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..
 Rajb Bhawan
 Rupnagar,Guwahati

12.5.2004
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.p2

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Regd.

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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,

Abhay
Deputy Accountant General(Admn.)

2075

Memo no N0. 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.

*Attested
by
Abhay
Addl. C. C. S. S.*

Abhay
Deputy Accountant General(Admn)

2075

ANNEXURE-H *26/114*

FROM: C. ASSAM NEW DELHI

TO: 910361561302

01-16-98 17:09

PAGE: 1

For Sri D N Saikia, Lt Secretary to C.M.

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

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 13.9.1995 in Civil Rule No.1079/93 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.

<u>S.No.</u>	<u>Name of the officer</u>	<u>Date of effect</u>
1.	S/Shri	
1.	D.N. Saikia	09.03.1994
2.	Pranab Kumar Khypung	28.03.1994
3.	Aftabuddin Ahmed	24.03.1995
4.	B. Basumatary	24.03.1995
5.	A.K. Daolagupu	25.05.1995.

R. Venkateswaran
(R. VIDYANATHAN)
DESK OFFICER.

Attested
Audi. Co.C.S.
The Manager,
Govt. of India Press,
Faridabad(Haryana)

NOTE: 4015/14/97-RIS.R

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, Dhopur House, N-Delhi (Sh.N. Namashivayam, Under Secretary)
5. E.O. to the Government of India, New Delhi.

R. Venkateswaran
(R. VIDYANATHAN)
DESK OFFICER.

INTERNAL DISTRIBUTION:

US (S. III) / RO (CM) / EO (PR) / S. (RIS. III) /
Trg. Div. / *** / **** / **** / ****

US (S. III) / RO (CM) / EO (PR) / S. (RIS. III) / Trg. Div.

File in Court on....20.10.08
Court Officer.

115-B9

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 71 of 2005

Shri A. K. Malakar

Applicant

-Vs-

Union of India & Others

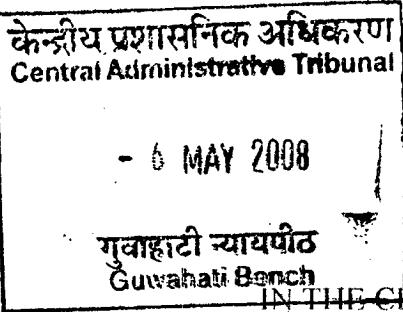
Respondents

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

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 No. -
The State of Assam Ban
- Respondent No 224
- Mr. Hemanta
Mishra, Asst. Advocate
Court, Assam
CA T. S. S. 5/5/08

Naren Chandra Mishra

- 1 MAY 2008

गुजराती न्यायालय
Gujarat Bench

-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.

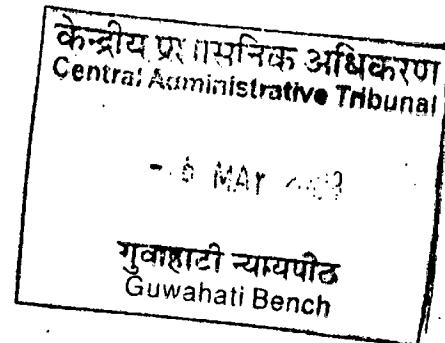
6. That with regard to the statements made in paragraph 4.7 to 4.9 of the application, the answering respondent respectively states that the fixation of pay made by Respondent No.3 in accordance with the Rules and procedure as prescribed under the law.

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 dtg. 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.



-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.

- ६ मई २००६

गुवाहाटी न्यायपीठ
Guwahati Bench

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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.

Naren Chandra Mishra

Signature,

Deputy Secretary to the Govt. of Assam,

Personnel Department.

-000-

RB/-

No. 20015/1/2001-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.

24 JAN 2002

Commr. Secy. (Personnel)

PM 20/1/2002

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 :-

PMD
29/11/02
368
29/11/02

(95)

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(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 refixed 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 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 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.

(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

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

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.

Enclo : As stated.

yours faithfully,

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

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

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.,
Rajah Bhawan
Rupnagar,Guwahati

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 C.A.T 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

*Min. G.A. Assam
5/5/08*

Very truly yours

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VS Ver(1)

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27/5/04

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,

Sdf

Deputy Accountant General(Admn.)

Memo no N0. GE Cell/IAS/CAT/2004-05/76-77 27/5/2004

Date: 26-05-2004

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. P. T. S. 27/5/04

blat

Deputy Accountant General(Admn)

Office of the Commissioner & Secretary

to the Government of Assam

Personnel Department, Assam

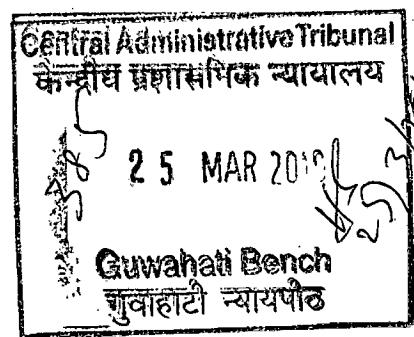
Dispur, Guwahati 781006

Dy. Ho. 16316

Date 27/5/04 (Dh)

B. D. S.
27/5/04

2561
27/5/04



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 Joy Lankayason.....S/o Rati Akki.....Lankayason
aged about 39.....years working as Deputy Accountant General.....resident
of Belti/9, Guwahati..... do hereby solemnly affirm and declare as
follows:

R. Lopyan
17/03/10
for me. U.K. Vais
G.I. Annex.

A.B. PURKAYASTHA, I.A & AS
Dy. Accountant General (AO & FC)
Off. The A.O. (A&E), Assam
Belti, Guwahati

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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 : <ol style="list-style-type: none"> 4. Rs.3200-4700/-, 5. Rs.3950-5000/-and 6. Rs.4800-5700/-

[Signature]

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

Anand Joy Dasmayachar

25 MAR 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

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

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

Identified by :



Advocate

Ananta Joy Purkayastha

DEPONENT

A.B. PURKAYASTHA, I.A & AS
Dy. Accountant General (A&E), Assam
O/o The A.G. (A&E), Assam
Beltola, Guwahati-29