

50/100

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

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A/T.A No. 220/2016

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SECTION OFFICER (Judl.)

Kahla  
26/10/17

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDERS SHEET

Original Application No. 220/06  
Misc Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicant(s) M. h. Gonsami

Respondant(s) U. O. I GOM

Advocate for the Applicant(s) M. Chanda, S. Nain  
G. N. Chakrabarty

Advocate for the Respondant(s) Mr. C. C. G. S. C.  
G. Baishya

Notes of the Registry	Date	Order of the Tribunal
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28.08.2006 Present: Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

This application is in form  
is filed in P. O. No. 101-  
dated 14.8.06

No. 266.325979

Date 14.8.06

Heard  
Dy. Registrar

22/8/06

Steps taken

21/8/06

Notice & order sent  
to D/Section for issuing  
to resp. nos. 1 to 6 by  
regd. A/D post.

11/9/06 D/No-958 to 963

Dated:- 12/9/06

Notice duly served  
on R-6.

11/11/06

This is the second round of  
litigation. The claim of the Applicant is for  
grant of second financial up-gradation  
under the Assured Career Progression  
Scheme. The Applicant stated that he has  
already promoted to the post of Junior  
Engineer (Civil) and completed 24 years of  
service and as such, he is entitled for  
second financial up-gradation under the  
Assured Career Progression Scheme.

Heard Mr M. Chanda, learned  
Counsel for the Applicant and Mr G.  
Baishya, learned Sr. C.C.G.S.C. for the  
Respondents.

Considering the issue involved, I am  
of the view that the case has to be  
admitted. Admit. Issue notice to the  
Respondents.

Post on 20.10.2006. The Applicant  
will take steps for process for the  
Respondent No. 6.

Vice-Chairman

~~Notice.~~

~~The counsel for the respondents wanted to file the rejoinder~~

14-11-06

① Notice duly served on R. No-6. 15.11.06.

② Service awaited from R. No-1 to 5.

my

lm

20.12.06.

The counsel for the Respondents wanted to file further four weeks time to file written statement. Let it be done. Post the matter on 20.12.06.

Vice-Chairman

No W/S has been filed.

my

18.12.06.

pg

Counsel for the respondents seek further four weeks time to file written statement. Post on 24.1.07 for order.

Vice-Chairman

No W/S has been filed.

my

23.1.07.

24.01.07

At the request of learned counsel for the respondents four weeks time is granted to file written statement.

Post the matter on 27.2.07.

Vice-Chairman

26.2.07

lm

27.2.07.

At the request of learned counsel for the respondents four weeks time is granted to file written statement. Post the matter on 29.3.07.

cl

Member

Vice-Chairman

lm

No W/S has been filed.

my

28.3.07.

29.3.07.

Counsel for the respondents wanted time to file written statement. Let it be done. Post the matter on 3.5.07.

Vice-Chairman

4-5-07

No W/S filed so far. lm

3-  
OA-220/2006

3.5.2007

Mr.G.Baishya, learned Sr.C.G.S.C. is granted further four weeks' time to file reply statement.

Post the case on 05.06.2007.

*[Signature]*

Vice-Chairman

/bb/

5.6.2007

Mr.G.Baishya, learned Sr.C.G.S.C. requested for further four weeks time to file reply statement. However, considering the urgency only three weeks' time is granted.

Post on 28.6.2007.

*[Signature]*

Vice-Chairman

/bb/

28.6.2007

Reply statement is filed. Four weeks time is granted to the Applicant to file rejoinder.

Post the case on 30.7.2007.

*[Signature]*

Vice-Chairman

/bb/

30.7.07.

Written statement has been filed by the respondents. Counsel for the applicant is absent. Post the matter on 22.8.07.

Vice-Chairman

lm

No Wks hmo been  
biked.

2  
1.6.07.

No Wks biked.

2  
27.6.07.

2.7.07

W/S Submitted.  
page- 1 to 12. 6pm  
served.

*[Signature]*

27.7.07.

No rejoinder filed.

*[Signature]*

15.9.08

Rejoinder  
Submitted.

*[Signature]*  
15/9/08

23.11.2007


This matter is adjourned to be taken on 15.01.2008.

Rejoinder not  
billed.

  
(Khushiram)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman


/bb/


  
11.1.08

15.01.2008


On the prayer of Mrs U. Dutta, learned counsel for the Applicant call this matter for hearing on 11.02.2008.

Rejoinder not  
billed.

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman


pg

  
8.2.08.


11.02.2008

On the request of Mrs. Uma Dutta, learned counsel appearing for the Applicant, this matter stands adjourned to be taken up on 11.03.2008.

Rejoinder not  
billed.

  
10.3.08.

  
(Khushiram)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman


/bb/


11.03.2008

Call this matter on 21<sup>st</sup>

April, 2008.

Rejoinder not  
billed.

  
17.4.08

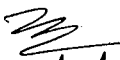
  
(M.R. Mohanty)  
Vice-Chairman

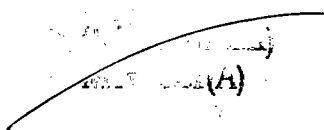
lm

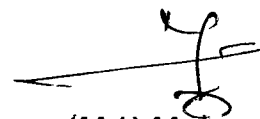
21.04.2008

Call this matter on 05.06.2008.

Rejoinder not  
billed.

  
4.6.08.

  
(A)

  
(M.R. Mohanty)  
Vice-Chairman

lm

30.7.07.

Counsel for the applicant has prayed for time to file rejoinder. Post the matter on 29.8.07.

Vice-Chairman

Rejoinder not filed.

28.8.07

lm

10.10.2007

Written Statement has been filed in this case.

29.8.07

Despite adjournments, no rejoinder has been filed by the Applicant. Counsel for the applicant wanted three weeks time is allowed. Call this matter on 22.11.2007 for hearing. Rejoinder, if any, be filed before 20<sup>th</sup> November, 2007.

Vice-Chairman

Rejoinder not filed.

29.9.07

Pg

(Khushiram

(M.R. Mohanty)

20.9.07

2 weeks time is granted to file rejoinder to the applicant.

Post on 10/10.07 for order. Interim order will continue.

Vice-Chairman

Pg

Dt 20.9.07.

Pl. Comply.

11

10.10.2007

Written Statement has been filed in this case.

Despite 4 adjournments granted to the Applicant, no rejoinder has been filed as yet.

Call this matter on 26.11.2007 for final disposal/hearing. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Central Government undertakes to file appearance memo in the course of the day. Rejoinder, if any, may be filed, before the next date.

Rejoinder not filed.

9.10.07

Rejoinder not filed.

22.11.07

(Khushiram  
Member(A)

(M.R. Mohanty)  
Vice-Chairman

lm

05.06.2008

On the request of Mr.M.Chanda, learned counsel appearing for the Applicant, call this matter on 21.07.2008 for hearing.

(Khushiram)  
Member (A)

(M.R.Mohanty)  
Vice-Chairman

/bb/

21.07.2008

On the request of Mrs.U.Dutta, learned counsel for the Applicant call this matter on 05.08.2008 for hearing.

(Khushiram)  
Member (A)

(M.R.Mohanty)  
Vice-Chairman

/bb/

05.08.2008

This matter (pertaining to ACP claims) be called before the Division Bench on 16.09.2008.

Learned Counsel for the Parties take notice of the next date of hearing.

(M.R. Mohanty)  
Vice-Chairman

nkm

16.09.2008

On the prayer of learned counsel appearing for both the parties, call this matter on 17.11.2008 for hearing.

(Khushiram)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

lm

Rejoinder not filed.

4.8.08.

Rejoinder not filed.

15.9.08.

15.9.08  
Additional Rejoinder  
filed by the  
Applicant. Copy  
received.

The case is  
ready for hearing.

14.11.08.

O.A.220/06

17.11.2008

Heard Mr M.Chanda, learned counsel appearing for the Applicant and Mr.G.Baishya, learned Sr.Standing Counsel appearing for the Respondents in part.

Call this part heard matter on 02.12/2008.

(S.N.Shukla)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

pg

The case is ready  
for hearing.

1.12.08

02.12.2008

On the prayer of counsel for the parties call this matter on 17.12.2008.

(S.N.Shukla)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

pg

The case is ready  
for hearing.

16.12.08

Contd

15.12.2008

Call this matter on 08.01.2009.

Send copies of this order to the Applicant and to all the Respondents in the address given in the O.A.

(S.N.Shukla)  
Member(A)

lm



0. A. 220106 - 8  
17.12.2008

Heard further in part. On the prayer of learned counsel for the Applicant the hearing of this part heard matter stands adjourned, to be taken up on 02<sup>nd</sup> February, 2009.

  
(S.N. Shukla)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman


lm

The case is ready for hearing.

2-2-09

Bench is not available.  
List on 18-3-09.


  
C.O.

  
21.2.09

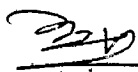
The case is ready for hearing.

18.03.2009

Call this matter on 28.04.2009.

  
(M.R. Mohanty)  
Vice-Chairman

lm


  
17.3.09.

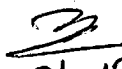
The case is ready for hearing.

28.04.2009

Call this matter on 11.06.2009

for hearing.

  
(M.R. Mohanty)  
Vice-Chairman

  
26.5.09.

lm

26.5.09.

This OA is prepared on request.

27.05.2009

On the prayer of Mrs. U.

Dutta, learned counsel appearing for the Applicant (made in presence of Mr. G. Baishya, learned Sr. Standing Counsel), call this matter on 22<sup>nd</sup> June, 2009.

  
(N.D. Dayal)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

lm

22.06.2009 Call this matter on

11.08.2009 for hearing.

(M.R.Mohanty)  
Vice-Chairman

lm

The case is ready  
for hearing.

11.08.2009

Call this matter on 08.10.2009 for hearing.

10.8.09.

(M.K.Chaturvedi)  
Member (A)

(M.R.Mohanty)  
Vice-Chairman

The case is ready  
for hearing.

/bb/

17.10.09.

08.10.2009

None appears for either of the  
parties.

Khairul

Send copies of this  
order to the Applicant  
and the Respondents

Call this matter on 18.11.2009 for

hearing before the Division Bench.

Send copies of this order to the  
Applicant and to the Respondents in the  
address given in the O.A.; so that the parties  
should come ready for hearing on the date  
fixed/18.11.2009..

(M.R.Mohanty)  
Vice-Chairman

21.10.2009

Copy of The order  
Dated - 8-10-2009 prepared  
and send to D. Section  
for issuing of the  
Same to the applicant  
and respondents,

/bb/

18.11.2009

Heard: Mr M. Chanda, learned  
counsel for applicant with Mrs U. Dutta and  
Mrs M. Das, learned Sr. C.G.S.C. for the  
respondents. Hearing concluded.

Orders reserved.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

Received on behalf of  
Mrs. M. Das, Sr. C.G.S.C.

nkm

Moka  
10.12.09

10-12-09

order dated 30/11/09  
sent to the D/Section for  
issuing the all the respondents vide No. def?

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI :**

Original Application No. 220 of 2006  
&  
Original Application No. 90 of 2007

DATE OF DECISION: THIS, THE 30<sup>TH</sup> OF NOVEMBER, 2009

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (JUDICIAL)  
HON'BLE MR. MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

Shri Mohan Lal Goswami  
MES No. 228556  
S/o - Late Binod Behari Goswami  
Junior Engineer (Civil)  
O/o - The Chief Engineering, Shillong Zone  
M.E.S, Spread Eagle Falls  
Shillong - 793011.

Applicant for O.A. No. 220 of 2006

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

Applicant for O.A. No. 90 of 2007

By Advocate : Mr. M. Chanda for both Applicants.

-Versus-

1. The Union of India  
Represented by the Secretary to the  
Government of India  
Ministry of Defence, South Block  
New Delhi - 110001.
  2. The E-in-C's Branch (EIC/EIR)  
Army Headquarter, DHQ  
New Delhi - 110011.
  3. The Chief Engineer  
HQ, Eastern Command  
Engineers Branch  
Fort William, Kolkata - 21.
  4. The Chief Engineer  
Shillong Zone, M.E.S.  
Spread Eagle Falls, Shillong - 793011.
- 2

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

Respondents for both O.A.s

By Advocate: Mrs. M. Das, Sr. CGSC

ORDER  
30.11.2009

MUKESH KUMAR GUPTA, MEMBER (J)

Issue raised in these two O.A.s namely 220 of 2006 and 90 of 2007 being identical in nature, the same were heard analogously and disposed of by present common order. The principal relief claimed in these two cases is for grant of ACP benefits under DOP & T OM dated 09<sup>th</sup> August, 1999. They also challenge validity of conditions prescribed vide Para 6 of Annexure - I Appended to DOP & T OM dated 09<sup>th</sup> August, 1999 as well as clarification No. 53 thereto vide DOP & T OM dated 18<sup>th</sup> July, 2007. Communication dated 28<sup>th</sup> September, 2005 (issued by the Respondent No.3) passed in compliance of direction issued by this Tribunal rejecting their representation for grant of aforesaid benefits, is also challenged. Both the applicants seek direction to respondents to grant them pay scale of Rs. 5500-9000/- with all consequential benefits. Admitted facts are that applicants earlier approached this Tribunal vide O.A. No. 241 of 2004 and 242 of 2004 respectively which were also disposed of vide order dated 21<sup>st</sup> July 2005 and 6<sup>th</sup> October 2005 respectively requiring the respondents to consider applicants request for grant of financial upgradation within the time limit prescribed therein by

passing reasoned and speaking order. Pursuant to said directions, respondents have passed orders dated 28<sup>th</sup> September, 2005 and 26<sup>th</sup> April 2006 respectively in these O.A.s on identical lines.

2. Admitted facts are that applicants were initially appointed as Sub-Overseer. They are matriculate. They were promoted to the post of Superintendent, Building/Roads Gr.II in 1994 & 1998 respectively. Said post of Superintendent, Building/Roads Gr.II was re-designated as Junior Engineer (Civil). DOP & T OM dated 9<sup>th</sup> August, 1999 provide "Safety Net" to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. As per said scheme, officials who have been stagnated in departmental service carrier, are provided two financial upgradation on completion of 12 years and 24 years of service respectively. Para 3.1 thereof provides that grant of financial upgradation under ACP scheme shall, however, be subject to the conditions mentioned in Annexure - I.

3. Para 6 of Annexure - 1 Appended to said OM prescribes that once should fulfill the normal promotion norms for becoming entitle to the benefits under ACP schemes, namely bench-mark, departmental examination, seniority-cum-fitness etc. Their grievance is that they have not been allowed the second financial upgradation under the aforesaid scheme in the pay scale of Rs. 5500-9000 on the ground that they have not clear the departmental promotion examination, which is a mandatory requirement for promotion for erstwhile Superintendent, Building/Roads Gr.II to Gr.I as per the recruitment Rules. It was further stated that holding degree/diploma in Civil Engineering and passing departmental examination is mandatory. Since they are only matriculate, they do not

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fulfill the prescribed criteria. In other words, they do not hold the basic/diploma in Civil Engineering and thus are ineligible under DOP & T OM dated 09.08.1999.

4. Mr. Manik Chanda, learned counsel for the applicants strongly contended that cadre of Superintendent, Building/Roads Gr.II was dying cadre and they belong to separate class who had no promotional avenue. They were appointed in the year 1968-1969 respectively and at this far end of their service career they cannot be expected to acquire higher educational qualification. Furthermore, the object of DOP & T OM dated 9<sup>th</sup> August, 1999 is to remove the problem of stagnation and hardship faced. It was further argued that this Tribunal has power to grant relaxation of the conditions prescribed in the peculiar facts of present cases. Since RRs to the post of Junior Engineer (Civil), 2001, have further been amended in 2008, do not provide any promotional avenue to applicants, neither they have any promotional prospectus nor allowed the benefits of financial upgradation, which is totally unjust and highhandedness on the part of authorities. Para 6 of Annexure - 1 Appended to DOP & T OM dated 09<sup>th</sup> August, 1999 insisting fulfillment of normal promotional norms is arbitrary, unjust and has no nexus with the objective sought to be achieved nor there is any intelligible differential. Strong reliance was placed on 2007 Vol - 6 SLR 434 S. Chittaranjan Das and Others -Versus- Secretary, A.P. Residential Educational Institutions Society, Hyderabad and others to contend that once a person has been promoted in relaxation of qualification, next promotional post can not be denied insisting fulfillment of prescribed educational qualification. Reliance was also placed on 1988 (Supp), 8 SCC 14 Raghunath Prasad

2

passing reasoned and speaking order. Pursuant to said directions, respondents have passed orders dated 28<sup>th</sup> September, 2005 and 26<sup>th</sup> April 2006 respectively in these O.A.s on identical lines.

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4. Mr. Manik Chanda, learned counsel for the applicants strongly contended that cadre of Superintendent, Building/Roads Gr.II was dying cadre and they belong to separate class who had no promotional avenue. They were appointed in the year 1968-1969 respectively and at this far end of their service career they cannot be expected to acquire higher educational qualification. Furthermore, the object of DOP & T OM dated 9<sup>th</sup> August, 1999 is to remove the problem of stagnation and hardship faced. It was further argued that this Tribunal has power to grant relaxation of the conditions prescribed in the peculiar facts of present cases. Since RRs to the post of Junior Engineer (Civil), 2001, have further been amended in 2008, do not provide any promotional avenue to applicants, neither they have any promotional prospectus nor allowed the benefits of financial upgradation, which is totally unjust and highhandedness on the part of authorities. Para 6 of Annexure - 1 Appended to DOP & T OM dated 09<sup>th</sup> August, 1999 insisting fulfillment of normal promotional norms is arbitrary, unjust and has no nexus with the objective sought to be achieved nor there is any intelligible differential. Strong reliance was placed on 2007 Vol - 6 SLR 434 S. Chittaranjan Das and Others -Versus- Secretary, A.P. Residential Educational Institutions Society, Hyderabad and others to contend that once a person has been promoted in relaxation of qualification, next promotional post can not be denied insisting fulfillment of prescribed educational qualification. Reliance was also placed on 1988 (Supp), 8 SCC 14 Raghunath Prasad



Singh -Versus- Secretary, Home (Police) Department, Government of Bihar and others, hold to contend that two promotional opportunities should be provided in every wing of public service. At least two promotional opportunities should have been provided to every officer. It was contended that said law has been violated by the Respondents. Reliance was also placed on 2004, Voll. 9 SCC 65, State of Tripura -versus- K.K. Roy which reiterated earlier law that promotional avenues have to be provided. Reliance was also placed on 1998; 8 SCC V.E. Chandran and others -versus- Union of India & others, as well as 2002(2) A.T.J. 47, to contend that relevant qualification amended cannot be made applicable retrospectively. Reliance was placed on this bench's judgment dated 10<sup>th</sup> September 2004 in O.A. 64 of 2004 Md. Afsar Ali and another Vs. Union of India and others wherein it was held that the prescribing the higher educational qualification for financial upgradation by the Director General EME, Army (H.Q.), Master General of Ordinance Branch, DHO, P.O. New Delhi - 110001 was held to be not justified and quashing the Respondent's action. O.A. was allowed directing the concerned authorities to grant the benefits of ACP scheme.

5. In the above backdrop learned counsel strongly canvassed that since the applicants have not been allowed two promotion in their service, they are entitled to second financial upgradation.

6. Contesting the claim laid and filing reply, it was stated that the grant of financial upgradation under ACP scheme to Central Government Civilian Employees on completion of 12/24 year's of service is subject to fulfillment of normal promotional norms, bench-mark, departmental examination, seniority-cum-fitness etc., as prescribed for

18  
regular promotion under the recruitment/service Rules, for promotion to Higher Grade to which financial upgradation is to be granted. Vide clarification given against point No. 16 vide DOP & T OM No. 35034/1/97/Estt. (D) Vol. IV dated 10<sup>th</sup> February 2004, it was reiterated that all promotion norms have to be fulfilled for grant of financial upgradation under the ACP scheme and no upgradation shall be allowed if any employee fails to qualify the departmental test prescribed for the purpose of regular promotion. Since applicants had not passed the prescribed examination, they are not entitled for grant of second ACP. Moreover, they do not possess the prescribed educational qualification. In both the schemes namely ACP as well as the scheme which required grant of next higher grade on completion of 5/15 years of service as JE (Junior Engineer) makes it mandatory to have a diploma in Civil Engineering as well as to pass departmental examination, which conditions have not been fulfilled by them. The ACP scheme is a policy decision and can not be challenged by the applicants. No material has been placed on record or pointed out to record the findings that the Para 6 of Annexure - 1 appended to DOP & T OM dated 09.08.1999 is illegal & arbitrary, as projected.

7. Mrs. Manjula Das, learned Sr. CGSC for the respondents in the aforesaid background strongly contended that they are not entitled to any relief. It was further argued that the conditions laid down under the Rules for the post of Junior Engineer (Civil) have not been challenged by them and therefore the same cannot be indirectly questioned. Further it was emphasized that they cannot be allowed to approbate and reprobate. On the one hand they are seeking benefits under the ACP

scheme and on the other hand they are challenging the conditions prescribed therein. Thus the applicants are estopped to challenge the said scheme.

8. We have heard learned counsel for the parties at great length, perused the pleadings and other material placed on record.

9. Basic questions raised for consideration are two folds :

- (i) Whether applicants are eligible for second financial upgradation under DOP & T OM dated 09<sup>th</sup> August, 1999.
- (ii) Whether Para 6 Annexure - I appended to said aforesaid OM is illegal, arbitrary and unjustified.

10. Examining the second issue first, we may note that applicants in these OAs are basically seeking enforcement of financial benefits under DOP & T OM dated 09<sup>th</sup> August, 1999. Said financial benefits, as per said scheme, are available subject to fulfillment of conditions prescribed in Annexure - 1 appended to it. On the other hand they are challenging validity of Para - 6, which is one of the condition prescribed for grant of said benefits, under said ACP scheme. Thus we find justification in the contentions raised by the Respondents that Applicants are approbating and reprobating in the same breath. If the benefits of financial upgradation to ACP scheme is available, subject to fulfillment of conditions prescribed therein, one cannot either directly or indirectly challenge the conditions precedent for availing the benefit, as prescribed therein. As per Para- 6, financial benefits are available subject to fulfillment of normal promotion norms which includes bench mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc. In other words, conditions prescribed under Annexure - 1

to OM dated 09<sup>th</sup> August, 1999 are conditions precedent and have to be satisfied to avail the benefits prescribed for financial upgradation. Furthermore, the decision taken by Union Government providing financial benefits in shape of DOP & T OM dated 09<sup>th</sup> August 1999 is a "policy decision".

1.1. It is well settled law that policy decision is not open to judicial review unless such policy is arbitrary, illegal. No illegality has been established by them to question the conditions prescribed vide DOP & T OM dated 09<sup>th</sup> August, 1999. The reliance was placed on ATJ 2003(2) 532 CAT Hyderabad Bench, G. Madhava Rao (Supra) and others judgments in our considered view is totally misplaced as the said orders are normally distinguishable. We may note that in G. Madhava Rao (Supra), Director General, EME, Army Headquarter, New Delhi had issued letter No. 15251/ACP/GP-D/EME Civ-3 dated 22.08.2003 whereby it provided that Chowkidars (Non Matric), who do not possess the requisite qualification for direct recruitment to the post of Loading Heading (Non-Tech), are not eligible for grant of second financial upgradation, validity of which communication had been challenged in said proceedings. Such are not the facts in the case at hand. Moreover vide Para 8 of said order in G. Madanava Rao (Supra) it was clearly observed that : " the only condition which could be insisted upon in case of Group 'D' employees as per condition No.6, which is referred to above is seniority-cum fitness." In other words, a qualification or a condition which had not been prescribed under Para 6 of Annexure - 1, appended to OM dated 09 August, 1999, had been included by DG EME letter dated 22.08.2003, which was rightly held to be illegal and arbitrary. It is not the ratio of said order that the

conditions prescribed under Para - 6 of the Annexure - 1 are not justified and illegal.

12. In the above circumstances, said order and judgment is totally distinguishable. Similarly none of the judgments cited by the applicants dealt with this aspect of the matter. In this view of the matter, we hold that there is no illegality or arbitrariness for prescribing the eligibility conditions for grant of second financial upgradation. Thus, findings on said issue No.2 is recorded against the applicants.

13. As far as the first issue noticed herein above is concerned, we may note that as per the scheme formulated and notified by the Union of India on 09<sup>th</sup> August 1999, grant of financial benefits is dependent on: **"fulfillment of normal promotion norms"** (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.), which admittedly have not been satisfied by the applicants. We may also note that the post of Superintendent, Building/Roads, Gr.II has been re-designated as Junior Engineer (Civil). Recruitment Rules notified for the said post required fulfillment of educational qualification prescribed therein i.e. diploma in Civil Engineering. Admittedly they are only matriculate and do not possess diploma in Civil Engineering. Validity of the Recruitment Rules for the post of Junior Engineer has not been in question in present proceedings. It is not in dispute that the Recruitment Rules for the post of Junior Engineer (Civil) were formulated and notified in 2001, which were further amended in 2008 and it prescribed promotional avenue to the departmental employees. Perusal of the scheduled appended to the aforesaid rules, as amended on 2008, would reveal that it provides two modes of recruitment 80% by direct recruitment and 20%

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by promotion from amongst departmental employees failing which by direct recruitment. Thus it cannot be urged that RRs do not provide promotional avenues, as projected. Applicants admittedly do not satisfy prescribed mandatory conditions i.e. educational qualifications etc. They have yet not passed requisite written examination too. Prior to the re-designation of the post, Superintendent, Building/Roads Gr.II was mandatorily require to pass MES procedure examination for promotion to next higher post of Superintendent, Building/Roads Gr.I, which condition has also not been satisfied by them. On the face of it, it cannot be stated that the Recruitment Rules do not provide promotional avenues. The ratio of 1988 (Supp) SCC 519 RAGHUNATH PRASAD SING -VERSUS- SECRETARY, HOME (POLICE) DEPARTMENT, GOVERNMENT OF BIHAR AND OTHERS is that there should be at least two promotional opportunities available to an officer but it did not prescribe that one has to be promoted irrespective of attaining the prescribed qualification. Similarly in K.K. ROY (Supra) it was observed that at least two promotional avenue should be available. Para 6 of said judgment noted that :

**"It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom".**



In such circumstances, said judgment is rendered totally distinguishable. Further in CHANDRA PRAKASH MADHARAO DADWA AND OTHERS (SUPRA), the appellants were appointed in 1978 as Data Processing Assistants as direct recruits in Data Processing Division of National Sample Survey Organization (NSSO). The rules framed in 1977 provided for degree qualification for appointment as Data Processing Assistant. They had been confirmed with effect from 04.08.1989. Their promotion grade was Data Processing Supervisor, governed by the Recruitment Rules, 1978. Based on recommendation made by 4<sup>th</sup> Central Pay Commission, an expert committee known as Dr. Seshagiri committee was constituted in 1987 and had recommended that Key Punch Operators (KPOs) and Data Entry Operators (DEOs) may be combined and all of them may be known as DEOs. The said committee observed that: "This work will require intellectual skills in programming, computer etc. Such work will not be a routine type. Hence such personnel in the Government should be provided opportunities to give their best." Two scales were prescribed based on educational qualification. It was contended that: observations were made vide para - 52 that though impugned orders which had effect of re-designated them in lower scale was illegal and arbitrary. Such are neither facts or issues raised in the cases at hand. In CHITTARANJAN DAS AND OTHERS (Supra), applicants were initially appointed as Typist though they were not having required qualification but on account of non-availability of qualified candidates, they were promoted as UDC. When their term came for next promotion to the post of Superintendents, they were not allowed such promotion on the ground that they did not possess seniority as well as holding required educational qualification. Thus it was observed that once they have been

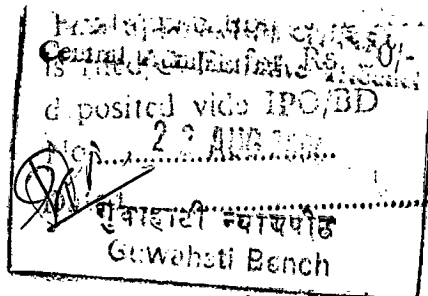
qualified in relaxation of qualification, the same can not be restricted to a particular stage. If we examine the case at hand, we would find that these are not the issues raised in present proceedings and therefore said ratio has no application in present cases.

14. We do not find any justification in the contentions raised by the Applicants that at this far end of their service career, they can not be insisted to achieve the prescribed educational qualification for granting second financial upgradation. We may note that said conditions have been prescribed for the entire categories and not for a group or limited number of person. Applicants in our considered view do not constitute a separate class, which can be allowed special treatment. This Tribunal has no power and jurisdiction to grant relaxation of the conditions prescribed for such benefits.

15. In view of discussion made herein above, we do not find any justification in the contentions raised. Findings no merits, O.A.s are dismissed. No costs.

Sd/- M.K. Gupta  
Member (J)  
Sd/-M.K. Chaturvedi  
Member (A)





IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

O.A. No. 220/2006

**Sri Mohan Lal Goswami.**

**-Vs.-**

**Union of India & Ors.**

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 1968- Applicant initially appointed as Sub-Overseer.
- 24.09.1994- Applicant promoted to the post of Superintendent, Building/Roads, Gr. II. He was however not spared by the Department for joining in the promoted post until 06.02.95.
- 06.02.1995- Applicant joined in the promoted post of Superintendent Gr. II, subsequently redesignated as Junior Engineer (Civil).
- 09.08.1999- Govt. of India introduced one welfare Scheme in the name of Assured Career Progression (ACP) Scheme. Under the said Scheme it was provided that the central Government civilian employees who do not get any regular promotion due to stagnation, will be granted two financial upgradations on completion of 12 years and 24 years of regular service during the entire tenure of their service.  
The applicant completed 24 years of service on 13.05.1992 and as such he is entitled for 2nd upgradation under the Scheme at least w.e.f. 09.08.99 i.e. the date on which the ACP Scheme came into being.
- 01.09.1999- Department of Defence Accounts vide its letter dated 01.09.99 issued clarification regarding fulfillment of normal promotion norms. (Annexure-X)
- 12.06.2002- The Respondents Department proposed to the Govt. for granting an one-time benefit under the ACP Scheme to those Junior Engineers (Civil) who were promoted from the lower post of Superintendent (B/R) Gr.II. (Annexure- IV)
- 12.07.2002- Chief Engineer, Shillong Zone forwarded the particulars of the applicant to Eastern Command HQ for grant of one time benefit under the ACP Scheme.

*M. L. Goswami*

13.02.2003- Chief Engineer, Eastern Command HQ in turn forwarded the particulars of the applicant to Army Headquarters, New Delhi.

28.02.2003 and 21.03.2003- Chief Engineer, Shillong Zone sent reminders for confirmation of the grant of benefit in respect of the applicant.

31.03.2003- Chief Engineer, Eastern Command informed that since the applicant had not completed 5 years or 15 years service before 09.08.99 as JE, his case has been taken up with E-in-C's Branch, Army HQ, New Delhi and the decision is awaited.

It is relevant to mention here that the requirement of 5 years or 15 years service for 1<sup>st</sup> and 2<sup>nd</sup> upgradation respectively refer to another departmental Scheme launched by the respondents department on 25.04.1996 which is different from ACP Scheme launched by the Govt. and as such is not relevant to the claim of the applicant.

31.03.2003- Chief Engineer, Eastern Command informed that since the applicant had not completed 5 years or 15 years service before 09.08.99 as J.E, his case has been taken up with E-in-C's Branch, Army HQ, New Delhi and the decision is awaited.

09.05.2003- Chief Engineer, Shillong Zone referred the case again to the Chief Engineer, Eastern Command HQ requesting for decision on the matter.

20.05.2003- Chief Engineer, Eastern Command HQ again informed the C.E, Shillong Zone that the matter was still pending for decision.

21.11.2003- Applicant submitted representation praying for grant of 2<sup>nd</sup> financial upgradation to him under the ACP Scheme but no response.  
(Annexure- VIII)

07.05.2004- Applicant submitted another representation which was forwarded by the C.E, Shillong Zone on 03.06.04.

10.06.2004- Respondent No. 5 vide his impugned letter dated 10.06.04 informed that since the applicant was promoted as J.E (Civil) in 1995 and since he had not completed 5 or 15 years service before 09.08.99, no benefit is admissible to him. Further, those who are not having Diploma in Civil Engineering and not passed the procedure Examination are not entitled for further upgradation.

(Annexure- IX)

*M. L. Gargwal*

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~~21.07.2005~~ Applicant approached this Hon'ble Tribunal by filing an O.A. No. 241/2004, praying for quashing of the letter dated 10.06.04, the said original application was disposed of on 21.07.05. (Annexure- X)

28.09.2005 Respondents issued impugned order dated 28.09.05, whereby the claims of the applicant for grant of second financial upgradation has been rejected basically on the plea that the applicant has not cleared the department procedure examination. (Annexure- XI)

Hence this application before the Hon'ble Tribunal.

### P R A Y E R S

#### Relief(s) sought for:

1. That the Hon'ble Tribunal be pleased to declare that the condition No. 6 of the ACP Scheme and clarification No. 53 thereto of the D.O.P. & T. O.M. No. 35034/1/97/Estt (D) Vol. IV dated 18.07.07 is void-ab-initio.
2. That the Hon'ble Tribunal be pleased to set aside and quash the impugned order No. 90237/9213/EIC (Legal-C) dated 28.9.2005.
3. That the Hon'ble Tribunal be pleased to direct the respondents to grant 2<sup>nd</sup> financial upgradation to the applicant w.e.f. 09.08.1999 in terms of ACP Scheme without insisting for passing of any departmental examination, with all consequential service benefits including arrear pay etc. by refixing the pay in the scale of Rs. 5500-9000/-.
4. Costs of the application.
5. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

#### Interim order prayed for.

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

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

M.L. Gorwa

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

Title of the case : O. A. No 220 /2006

Shri Mohan Lal Goswami : Applicant

-Versus -

Union of India & Others. : Respondents.

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Filed by

Date:

Advocate

M. L. Goswami

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 220 /2006

BETWEEN:

Shri Mohan Lal Goswami,  
MES No. 228556,  
S/o- Late Binod Behari Goswami.  
Junior Engineer (Civil)  
O/o- The Chief Engineer, Shillong Zone,  
M.E.S, Spread Eagle Falls,  
Shillong- 793011.

...Applicant.

-AND-

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

M.L. Goswami

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Filed by me Applicant  
Through: U. Sulta,  
Advocate on 21.08.2006

6. Department of Personal & Training,  
Govt. of India,  
Represented by it's Secretary,  
North Block,  
New Delhi- 110 001.

... Respondents.

#### DETAILS OF THE APPLICATION

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

This application is made against the impugned letter bearing No. 90237/9213/EIC/(Legal-C) dated 28.09.2005 issued by the Respondent No. 3 whereby representation of the applicant praying for grant of second financial upgradation under the ACP Scheme has been rejected by the respondents. The representation was submitted by the applicant in compliance with the directions passed by this Hon'ble Tribunal in it's Judgment and Order dated 21.7.2005 in O.A. No. 241/2004

2. Jurisdiction of the Tribunal.

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

3. Limitation.

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

4. Facts of the Case

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

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- 4.2 That your applicant was initially appointed as Sub-Overseer in the year 1968 at the office of the Garrison Engineer, Air Force, Shillong under the Military Engineering Service (for short MES) and was thereafter promoted to the grade of Superintendent, Building/Roads (Supdt. B/R) Gr-II vide order No. 131841/4/473/Engrs/EID dated 24.09.1994. However, the department could spare him only in 1995 and as such the applicant joined in his promotional post on 06.02.1995. The post of Superintendent B/R was subsequently re-designated as Junior Engineer (Civil) and as such the applicant is working as Junior Engineer (Civil) at present.

(Copy of the order dated 24.09.94 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-I).

- 4.3 That pursuant to the recommendation of the Fifth Central Pay Commission, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DOPT) vide its Office Memorandum No. 35034/1/97-Estt.(D) dated 09.08.1999 introduced one Assured Career Progression Scheme (for short ACP) Scheme making provisions for financial upgradation of the central Government civilian employees on completion of 12 years and 24 years of service as a 'Safety net' in order to provide relief against the hardships caused to such employees due to stagnation. As per the said Scheme, the Central Government Civilian employees who do not get any regular promotion due to stagnation or the categories of employees for whom there is no promotional avenues or because of the limited promotional scope, such employees will be granted two financial upgradations on completion of 12 years and 24 years of regular service during the entire tenure of their service.

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

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4.4 That the applicant having served for long 26 years as Sub-Overseer, was promoted to the post of Supdt. B/R (now redesignated as Junior Engineer (Civil)) in 1994 only and thereafter did not get any further promotion under the regular promotional avenue and as such is stagnated in the same post for the last 10 years. The applicant has completed 36 years of regular service and during this period he has got only one promotion as stated above. As per the ACP Scheme an employee is entitled to 1<sup>st</sup> financial upgradation on completion of 12 years of service and 2<sup>nd</sup> financial upgradation on completion of 24 years of service. Since the applicant got one promotion in 1994 he is entitled for the 2<sup>nd</sup> upgradation in terms of the ACP Scheme and he completed 24 years of regular service on 13.05.1992. The ACP Scheme being launched on 09.08.99, the applicant is entitled to the benefit of 2<sup>nd</sup> upgradation at least w.e.f. 09.08.99 although he had completed 24 years of service much earlier i.e. in 1992. Be it stated that the applicant at present working in pay scale of Rs. 5,000-8000/- but as per ACP Scheme the applicant is entitled for financial upgradation to the scale of pay of Rs. 5,500-9000/-.

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

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

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- 4.6 That since the applicant was promoted to the grade of Superintendent B/R Grade-II in the year 1994 (but joined on 06.02.1995 in the promotional post) i.e. prior to launching of the above stated scheme dated 25.04.96 and since thereafter the ACP Scheme of the Government of India was introduced w.e.f. 09.08.99 i.e. within 4 years of his promotion, so the fulfillment of the criteria of 5 years and 15 years of service for upgradation as envisaged under the above stated scheme dated 25.04.96 before 09.08.99 became an absurdity in case of the applicant and consequently he did not get any benefit under that Scheme dated 25.04.96.
- 4.7 That with the launching of ACP Scheme w.e.f. 09.08.99, the applicant became entitled to 2<sup>nd</sup> upgradation w.e.f. 09.08.99 in accordance with the scheme and as such he approached the Respondents praying for grant of 2<sup>nd</sup> financial upgradation to him in terms of ACP Scheme.
- 4.3 That it is stated that following the introduction of the ACP Scheme, the Respondents department vide it's Army HQ's letter No. B/75011/RR/JE (Civil)/CSCC dated 12.06.2002 proposed that the promotees from the lower post to the post of JE (Civil) are eligible for one time benefit under the ACP Scheme and accordingly the service particulars of the applicant were forwarded to HQ Eastern Command by the Chief Engineer, Shillong zone vide letter No. 77169/CAT/B'lore/55/E7B dated 12.07.2002 and the HQ Eastern Command in turn, forwarded the same to the Army Headquarters, New Delhi vide Chief Engineer E in C's Branch letter No. 13184/CAT Bang/181/Engrs./EID dated 13.02.2003 for grant of one time benefit under the ACP Scheme to the applicant.

(Copy of the CE, Shillong Zone's letter dated 12.07.2002 is annexed hereto for perusal of the Hon'ble Tribunal as Annexure-IV).

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- 4.9 That the Chief Engineer, Shillong Zone sent reminder vide letter No. 77169/CAT/B'lore/69/E 7B dated 28.02.2003 and again vide No. 77169/Cat Bang/71/E 7B dated 21.03.03 to the Chief Engineer, Eastern Command, Kolkata asking for confirmation regarding one time benefit under ACP Scheme to the Sub-Overseer promoted to JE (Civil). The Chief Engineer, Eastern Command, vide his letter No. 131841/CAT Bang/189/Engrs/ EID dated 31.03.2003 intimated the Chief Engineer, Shillong Zone that since the applicant has not completed 5/15 years service as J.E before 09.08.99, his case has been taken up with E-in-C's Branch, Army HQ, New Delhi and decision thereto is awaited.

(Copy of the letter dated 28.02.03 and the letter dated 31.03.2003 are annexed hereto for perusal of Hon'ble Tribunal as Annexure- V and VI respectively).

- 4.10 That the Chief Engineer, Shillong Zone thereafter sent another letter bearing No. 77169/Cat Bang/74/E 7B dated 09.05.2003 to the Chief Engineer, Eastern Command, Kolkata requesting for decision regarding the benefit of ACP Scheme in respect of the applicant. In response, the C.E, Eastern Command again informed vide his letter No. 131841/CAT BANG/202/Engrs./EID dated 20.05.03 that the decision on the matter is still awaited from Army HQ, New Delhi.

(Copy of letter dated 20.05.03 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-VII).

- 4.11 That the applicant in the meantime submitted representations on 12.07.2002, 27.11.2002, 28.02.2003, 09.05.2003 and 21.11.2003 praying for his 2<sup>nd</sup> upgradation in terms of ACP Scheme. Since his case was not considered, the applicant submitted another representation on 07.05.2004, forwarded by the C.E, Shillong Zone to C.E, Eastern Command vide No. 77169/CAT/92/E 7B dated 03.06.2004. In response, the Respondent No.5

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vide his impugned letter No. 131841/CAT Bang/214/Engrs./EID dated 10.06.2004 informed as under:-

- (i) The applicant was promoted as J.E (Civil) in 1995. Since he has not completed 5/15 years service before 09.08.99, no benefit under the Scheme is admissible to him.
- (ii) Those who are not having the Diploma in Civil Engineering and not passed the Procedure Examination are not entitled for further upgradation under the Scheme.

From the above stated contention it is clear that the Respondents have intermingled the two schemes i.e. the departmental scheme dated 25.04.96 (Annexure-III) and the ACP Scheme dated 09.08.99 (Annexure-II) of the Govt. of India and have confused the case of the applicant. None of the above stated contentions are relevant to the ACP Scheme which the applicant is entitled to. The above stated points relate to the other Scheme i.e. the Scheme dated 25.04.96 under which no benefit has been given to the applicant. Since the applicant has been promoted in 1994/1995 under no circumstances he can complete 5/15 years service before 09.08.99 as stated above which is an absurdity and as such this is not applicable in his case. Moreover, it is not the case of the respondents that the applicant is not entitled to any benefit under O.M dated 09.08.99, in view of the Scheme dated 25.04.96. The applicant is entitled to the benefit of 2<sup>nd</sup> upgradation in terms of the ACP Scheme dated 09.08.99 only wherein the only requirement is the completion of 24 years of regular service which the applicant fulfilled way back in 1992. As such the above stated contentions stated by the respondents in their impugned letter dated 10.06.004 are irrelevant in the instant case and contrary to the provisions of the ACP Scheme. By such of their acts the applicant was denied the

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benefit of upgradation under the departmental scheme dated 25.04.96 and again denied under the ACP Scheme.

(Copy of representation dated 21.11.2003 and impugned letter dated 10.06.2004 are annexed hereto as Annexure- VIII and IX respectively).

- 4.12 That being aggrieved, the applicant agitated the action of the respondents and approached this Tribunal by filing O.A. No. 241/2004, praying for quashing of the letter dated 10.6.2004 issued by the respondents and passing of a direction upon the respondents for grant of second financial upgradation under the ACP Scheme w.e.f. 9.8.1999 to the applicant. This Hon'ble Tribunal vide it's Judgment and Order dated 21.7.2005 in O.A. No. 241/2004, directed as follows:-

"..... the applicant is directed to make a detail representation setting out his claim for grant of second financial upgradation with effect from 9.8.99 based on the Scheme (Annexure-II) before the second respondent within a period of one month from today. If any such representation is made the respondents will consider the same with reference to the ACP Scheme of 9.8.99 and in the light of the decisions relied on by the applicant and referred to in this order and pass an appropriate order within four months from the date of receipt of the representation. We make it clear that we have not expressed any views on the merits of the claim made by the applicant."

(Copy of Judgment and Order dated 21.7.2005 is annexed hereto as Annexure-X).

- 4.13 That the applicant submitted his representation on 28.8.2005 to the respondents as directed by the Hon'ble Tribunal. But the respondents

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issued the impugned order under No. 90237/9213/EIC(Legal-C) dated 28.9.2005, whereby the claims of the applicant for grant of second financial upgradation has been rejected basically on the plea that the applicant has not cleared the Departmental Procedure Examination which is mandatory for promotion for erstwhile Superintendent B/R Grade-II to Grade-I the respondents have made this contention on the basis of clarification No. 53 of D.O.P.&T. O.M. No. 35034/1/97/Estt (D) Vol.IV dated 18.7.07 which says that only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACP Scheme.

(Copy of the impugned order dated 28.9.2005 is annexed hereto as Annexure-XI).

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

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

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

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

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

- 4.15 That the applicant most respectfully begs to state that the applicant has fulfilled all the requirements under ACP Scheme as stated in the preceding para hereinabove and as such he is entitled to get the 2<sup>nd</sup> upgradation w.e.f. 09.08.99 as provided under the Scheme.
- 4.16 That the applicant begs to submit that it has nowhere been provided by the D.O.P.&T. in the ACP Scheme that in order to get the benefit of upgradation under the Scheme, an employee will have to complete 5/15 years of service since his first promotion and before 09.08.99. Moreover, requirement of diploma in Civil Engineering and he will have to pass procedure examination etc. as contended by the Respondents in the their impugned letter dated 10.06.2004. The respondents cannot impose such riders which are not required under the ACP Scheme and this aspect has been dealt in thread bare in earlier cases successively and as such denial of 2<sup>nd</sup> upgradation to the applicant on grounds stated above are arbitrary, illegal, unfair, malafide and contrary to the provisions of the Scheme.
- 4.17 That the ACP Scheme is a welfare Scheme launched by the Govt. of India and the Respondents by their own stretch of imagination cannot impose such riders which are not warranted/mentioned in the Scheme and such of their acts are not only contrary to the provisions of the Scheme but frustrates the very spirit of the noble welfare scheme professed by the Government. The Hon'ble Supreme Court also in the case of State of Tripura and others Vs. K.K. Roy, reported in 2004 (9) SCC 65, wherein it

M. L. Goswami

was held by the Hon'ble Supreme Court that a Scheme like is necessary in a welfare state.

- 4.18 That by framing the ACP Scheme, the Government has introduced a statutory provision of financial upgradation for the employees who are stagnated due to non availability of regular promotion and as such it has become a condition of service. But the respondents by their simple executive order have superseded the dictates of a statute, which is not permissible under law. The respondents vide their impugned letter dated 10.06.04 (Annexure-IX) have not only superseded the dictates of a statute but have even sealed to entertain further correspondence on this subject. As such it is arbitrary, unjust, unfair, malafide, illegal and contrary to law.
- 4.19 That all the departments including the office of the C & AG of India have been granting financial upgradations to their employees on completion of qualifying years of service in accordance with the ACP Scheme without any special rider whatsoever.
- 4.20 That while all other Central Govt. Departments have implemented the ACP Scheme in case of their employees without asking for any Departmental Examination/Skill Test, it is only in the respondent department that an additional requirement of diploma and test have been imposed in utter violation of the provisions of the scheme. It is relevant to mention here that in the Office of the Accountant General (A&E), Meghalaya 6 employees have been granted second financial upgradation under ACP Scheme w.e.f. the date of their completion of 24 years regular service without any Departmental Examination/Test vide order No. 297 dated 14.03.2001.

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

M. L. Goswami

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

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

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

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In the view of the above discussion the learned Tribunal held that there is no requirement of passing any departmental examination and the normal-promotion has been elaborately clarified in paragraph (vii) of C.G.D.S letter dated 01.09.1999, which is quoted below: -

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

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

- 4.23 That the applicant most respectfully begs to state that in a series of cases the Apex Court has elaborately dealt in the matter. In State of Tripura and Ors -Vs- K.K. Roy, reported in (2004) 9 SCC 65, the Hon'ble Supreme Court held that "Promotion is a condition of service" and directed the respondents therein to pay the applicant two promotions in the next

*M.L. Goswami*

✓✓<sup>14</sup>

higher scale on completion of 12 years and 24 years in service, in terms of ACP Scheme.

Similarly in Raghunath Prasad Singh -Vs- Secretary, Home (Police) Department, Govt. of Bihar and Others, reported in 1988 SCC Suppl. 519 the Hon'ble Supreme Court observed as follows:-

"4. .... Reasonable promotional opportunities should be available in every wing of Public Service. .... In absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the state of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organization within six months from today by appropriate amendments of rules....."

Again in Dr. Ms. O. Z. Hussain -Vs- Union of India, reported in 1990 Supp SCC 688, the Apex Court has held as under:-

"7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the Public Service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service....."

(Copy of the three judgments aforesaid are annexed hereto as Annexures-XIV, XV, XVI respectively).

4.24 That the applicant most respectfully begs to state that the respondents in para 5 of their impugned letter dated 28.9.2005 (Annexure-XI hereto) has referred to clarification No. 53 of D.O.P.&T. O.M. No. 35034/1/97/Estt(D) Vol.IV dated 18.7.07 which relates to condition No. 6 of the ACP Scheme. The contentions of the respondents are only rested upon the said

M.L.Goswami

clarification No. 53 in respect of condition No. 6 of the ACP Scheme which resulted into denial of the benefit of 2nd financial upgradation under the Scheme to the applicant.

It is relevant to mention here that both the D.O.P. & T. and the respondent department have misconstrued/misinterpreted the provisions of the ACP Scheme and the D.O.P. & T. clarification No. 53 is not in conformity with the objective and spirit of the ACP Scheme. The riders of "fulfilment of promotional norms vis-à-vis clearing the departmental procedure examination" etc. as pleaded by the respondents in the instant case are not sustainable in the eye of law in as much as that such norms are applicable in case of vacancy - based regular promotions only and not in case of promotion under the ACP Scheme. Promotion under the ACP Scheme is distinguished from the vacancy - based regular promotion in the sense that the promotion under the ACP Scheme is only a financial upgradation to the higher scale which does not grant any higher post to the concerned employee nor involves any change of duties and responsibilities as happens in vacancy - based regular promotions and as such the requirements of regular promotional norms or departmental examination is unwarranted and irrelevant, in case of ACP Scheme. The ACP Scheme has nowhere mentioned about any examination or extra qualification as a requirement for granting financial upgradation under the Scheme, but the Scheme has been launched as a welfare Scheme for granting financial upgradation to the stagnating employees only as an alternative to the vacancy - based regular promotions. But unfortunately the D.O.P. & T. and the respondent department have drawn an irrational equation between the two types of promotion aforesaid. It is further to be mentioned that the Hon'ble Supreme Court has repeatedly held in series of cases (some of which are referred to in the preceeding para hereinabove) that at least two promotional opportunities be provided to each employee and declared that promotion is a condition of service. It is in this spirit that the ACP Scheme has been launched by the Govt. of

M. L. Goswami

India. But the subsequent imposition of such riders as departmental examination and norms etc. as has been contended in the instant case by the respondents by the respondents, is an utter violation of the principles laid down by the Apex Court and totally frustrates the very spirit of the ACP Scheme and such illegal riders do not have any nexus to the objective of the ACP Scheme, according to which, the only requirements are completion of 12 years and 24 years service. As such the D.O.P.&T. O.M. dated 18.7.2002 containing clarification No. 53 and the impugned letter dated 28.9.2005 (Annexure-XI) clause no. 6 of the conditions of O.M dated 09.08.1994 are liable to be quashed and set aside.

4.25 That the applicant most humbly begs to submit that due to non-consideration for grant of second financial upgradation under the ACP Scheme, the applicant has been suffering heavy financial losses. Finding no other alternative, the applicant is approaching this Hon'ble Tribunal for protection of his rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with and protect the rights and interests of the applicant, directing the respondents to grant second financial upgradation to the applicant under the ACP Scheme w.e.f. 09.08.99.

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

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

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

5.2 For that, the applicant has completed his 24 years of regular service way back in 1992 and as such he is entitled to get the benefit of 2<sup>nd</sup> financial upgradation under the ACP Scheme at least w.e.f. 09.08.99 i.e. the date on which the ACP Scheme came into force.

M.L. Goswami

- 5.3 For that, all the departments including the office of the C & AG of India have been granting financial upgradation to their employees' w.e.f. the date of completions of 12 and 24 years of regular service in terms of ACP Scheme without any departmental examination or any such rider whatsoever.
- 5.4 For that, the respondents have imposed the requirement of 5/15 years of service by the applicant before 09.08.1999 after he was promoted in 1995 which is not required under or relevant to the ACP Scheme.
- 5.5 For that, requirement of Diploma in Civil Engineering and passing of procedure examination imposed by the Respondents department is contrary to the provisions and spirit of the ACP Scheme of DOPT and as such is superfluous, illegal, arbitrary, malafide, unjust, unfair, and contrary to the provisions of the Scheme.
- 5.6 For that, requirement of passing the Departmental procedure examination only in the case of Civilian Junior Engineers hits Article 14 of the Constitution.
- 5.7 For that, the respondents by imposing unwarranted riders stated above by stretch of their own imagination have superseded the dictates of a statute i.e. the ACP Scheme and thus have sought to frustrate the welfare scheme professed by the Government.
- 5.8 For that the respondents by their erroneous interpretations and constructions have denied the benefit of financial upgradation to the applicant provided under their departmental scheme dated 25.04.96 earlier and are now seeking again to deprive the applicant of the same benefit provided under the ACP Scheme dated 09.08.99, which is malafide, unfair and bad in law.

M.L.Goswal

- 5.9 For that the clause/condition 6 of the A.C.P scheme is contrary to the basic object of the A.C.P scheme as such the said condition and classification no. 53 being contains to the scheme are liable to be set aside and quashed.
- 5.10 For that the provisions made under the ACP Scheme are conditions of service framed by the rule making authority which cannot be altered or superseded by an executive order of any individual department.
- 5.11 For that the respondents, by way of imposing the riders of passing departmental examination have not only violated the rules laid down by the Apex Court and the directions of this Hon'ble Tribunal in this context, but have also treated the promotion under the ACP Scheme and the vacancy - based regular promotion alike which frustrates the very purpose of the ACP Scheme and as such is illegal, unfair and arbitrary.
- 5.12 For that the applicant submitted representations praying for grant of 2<sup>nd</sup> financial upgradation to him in terms of ACP Scheme but not considered.
- 5.13 For that the due to non-consideration of grant of 2<sup>nd</sup> financial upgradation, the applicant has been incurring heavy financial losses.

6. Details of remedies exhausted.

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

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

The applicant further declares that save and except the filing of O.A. No. 241/2004 before this Hon'ble Tribunal, he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this

M. L. Goswami

application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

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

- 8.1 That the Hon'ble Tribunal be pleased to declare that the condition No. 6 of the ACP Scheme and clarification No. 53 thereto of the D.O.P. & T. O.M. No. 35034/1/97/Estt (D) Vol. IV dated 18.07.07 is void-ab-initio.
- 8.2 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order No. 90237/9213/EIC (Legal-C) dated 28.9.2005.
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to grant 2<sup>nd</sup> financial upgradation to the applicant w.e.f. 09.08.1999 in terms of ACP Scheme without insisting for passing of any departmental examination, with all consequential service benefits including arrear pay etc. by refixing the pay in the scale of Rs. 5500-9000/-.
- 8.4 Costs of the application.
- 8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

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

- 9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for

*M.L. Goswami*

consideration of the case of the applicant for providing relief as prayed for.

10. ....  
This application is filed through Advocates.

11. Particulars of the I.P.O.

- |                   |                      |
|-------------------|----------------------|
| i) I. P. O. No.   | : 26 G 325979.       |
| ii) Date of Issue | : 14.8.06.           |
| iii) Issued from  | : G. P. O. Guwahati. |
| iv) Payable at    | : G. P. O. Guwahati. |

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

M. L. Goswami



VERIFICATION

I, Shri Mohan Lal Goswami, S/o Late Bimal Behari Goswami, aged about 59 years, working as Junior Engineer (Civil), MES No. 228556, in the office of the Chief Engineer, Shillong Zone, MES, Spread Eagles Falls, Shillong- 793001, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 20<sup>th</sup> day of August ~~June~~ 2006.

M. L. Goswami

ANNEXURE - I

File No. 1 PW 2014

Purav Kaman Mukhmalaya  
HQ Eastern Command  
Abhiyanta Shakha  
Engineers Branch  
Fort William  
Calcutta-21

131841/4/473 /Engra/BID

24 Sep 94

Chief Engineer

Shillong Zone

(A/F) Shillong

Siliguri Zone

Calcutta Zone

Comdt ESD Kanjinara

CE Civil Engg Cell (OFB) Cal

PROMOTION FROM SUB OVERSEER TO  
SUPDT B/R GDE II

1. Ref this HQ letter No 131841/4/450/Engra/BID dated 08 Aug 94.
2. The promotion of the undermentioned Sub Overseer to Supdt B/R Gde-II is hereby ordered as approved by CE. They have been posted to the Unit/Formation as indicated against their names in the interest of State subject to the following conditions given in succeeding paras:-

Sl No	MES No and Name	Transferred			Remarks
		From	To		
1	2	3	4	5	

S/Shri

1. MES/232907 D K Banerjee	GE (AF) Tezpur	GE Tezpur
2. MES/228244 Daswara Pant	GE Shillong	GE (AF) Shillong
3. MES/232621 Md Intejar Hussain	GE 859 EMS	In Situ
4. MES/201232 AK Choudh	GE Panagash	In Situ
5. MES/223389 AK Bora	GE (FM) Calcutta	GE (C) Calcutta
6. MES/220556 H L Goswami	GE (AF) Shillong	AGE (I) Zonal Lab Shillong

Attested  
Mulla  
Advocate

S/Shri

7. MES/223463  
Doster Roy (ST)

GE Shillong

GE (AF)  
Shillong

8. MES/228268  
AG Verghese

GE (C)  
Calcutta

GE (FW)  
Calcutta

9. MES/233324  
K K Hazarika (SC)

GE Tezpur

GE (AF)  
Tezpur

10. MES/233223  
Khagendra Borah (SC)

GE Tezpur

GE (AF)  
Tezpur

3. Before the above individuals are brought in position against the post of Supdt B/R Gde-II, please ensure that they are not involved in any disciplinary/SPB case and there is nothing else against the individuals to warrant with-holding of the above promotion.

4. The date from which the individuals are brought in position against the post of Supdt B/R Gde-II should be intimated to this HQ. Movement order should be issued without any delay for implementation of promotion immediately.

Copy to:-

E-in-C's Branch  
Army Headquarters  
DHQ PO New Delhi-11

CE	
GE (C)	
GE (AF)	
GE (FW)	
GE (E)	
AOS (E7)	

( M S Sidhu )  
Lt Colonel  
Offg Col (Pers)  
for Chief Engineer

All CWE/Affected Units/Formations

CDA Patna, CDA Gauhati, DCDA Shillong, AAO Shillong

AAO Calcutta

Internal

EIC(1) - for info w.r.t. their letter No 131322/2/3/410/Engrs/PT dated 14 Sep 94.

EIR, E7, EID (A), DPC Folder

Attested  
Advocate

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

Government of India

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

North Block, New Delhi 110001

August 9, 1999

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

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

2. GROUP 'A' CENTRAL SERVICES

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

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

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-1) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-1.

1640-1/87(E)-1  
12/8/99  
Attested  
Mulla  
Advocate

.....2/-

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

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

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

#### 6. SCREENING COMMITTEE

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

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

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

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

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7. Ministries/Departments are advised to explore the possibility of effecting savings so as to minimise the additional financial commitment that introduction of the ACP Scheme may entail.
8. The ACP Scheme shall become operational from the date of issue of this Office Memorandum.
9. In so far as persons serving in the Indian Audit and Accounts Departments are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.
10. The Fifth Central Pay Commission in paragraph 52.15 of its Report has also separately recommended a "Dynamic Assured Career Progression Mechanism" for different streams of doctors. It has been decided that the said recommendation may be considered separately by the administrative Ministry concerned in consultation with the Department of Personnel and Training and the Department of Expenditure.
11. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP Scheme shall be given by the Department of Personnel and Training (Establishment-D).
12. All Ministries/Departments may give wide circulation to these instructions for guidance of all concerned and also take immediate steps to implement the Scheme keeping in view the ground situation obtaining in services/cadres/ posts within their administrative jurisdiction;
13. Hindi version would follow.

*[Signature]*

(K.K. JHA)

Director(Establishment)

To

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

*Attested  
Mulla  
Advocate*

- 27 -  
CONDITIONS FOR GRANT OF BENEFITS  
UNDER THE ACP SCHEME

ANNEXURE-I

45

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

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

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

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

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

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

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

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

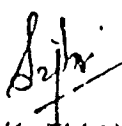
8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale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

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

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



11. In the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CGA) Rules, 1965 and instructions thereunder;
12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;
13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department -- not the employees -- shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;
14. In case of an employee declared surplus in his/her organisation and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the purpose of giving financial upgradation under the Scheme; and
15. Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the scheme) shall be given at the subsequent stage (second) of financial upgradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently, they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme.

  
(K.K. JHA)

Director (Establishment).

-34-30-

56

-7-

ANNEXURE-II

STANDARD/Common PAY-SCALES

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

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

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

Attested  
Mulla  
Advocate

## MAIN FEATURES OF THE ASSURED CAREER PROGRESSION SCHEME

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

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

*Attested  
Mulla  
Advocate*

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

ANNEXURE- III

(Extract)

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

New Delhi: dt: 25<sup>th</sup> April, 1996.

To  
The Chief of Army Staff

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

\*\*\*\*\*

Sir,

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

(a) There will be two scales of pay for Superintendent (BR/EM)/Surveyor Assistants Grade viz. Rs. 1400-2300 and Rs. 1640-2900. The entry grade will be Rs. 1400-2300. The Superintendents/Surveyor Assistants, on completion of 5 years service in the entry grade will be placed in the scale of Rs. 1640-2900, subject to the rejection of unfit. This higher grade will not be treated as a promotional one but will be non functional and the benefit of FR 22 (I) (a) (i) will not be admissible. While fixing the pay in the higher grade as there will be no change in duties and responsibilities.

(b) Superintendents (BR/EM)/Surveyor Assistants, who could not be promoted to the post of Assistant Engineers/Junior Surveyor of Works, in the scale of Rs. 2000-3500, due to non-availability of

*Attested  
Advocate*

vacancies in the grade of Assistant Engineers/Junior Surveyor of Works, will be allowed the scale of Assistant Engineers/Junior Surveyor of Works i.e. Rs. 2000-3500, on a personal basis, after completion of 15 years of total service as Superintendents (BR/EM)/Surveyor Assistants. This personal promotion will be on fitness basis. As and when regular vacancies in their grade of Assistant Engineer/Junior Surveyor of Works arise such officers who enjoy personal promotion will be adjusted against those vacancies, subject to observance of normal procedure.

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

Yours faithfully,

Sd/- Illegible

(M.V. VIJAYAN)

DESK OFFICER.

Copy to: -

1. CGDA, New Delhi.

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

Attested  
Mulla  
Advocate

File 5006

Headquarters  
Chief Engineer  
Shillong Zone  
SE Falls  
Shillong-11

12 Jul'2002

77169/Cat/B'lere/ 55/ETH

Headquarters  
Eastern Command  
Engineer Branch  
Fort William  
Kolkata-21

GRANT OF HIGHER PAY SCALE TO JE's ON  
COMPLETION OF 5 & 15 YEARS SERVICE IN  
COMPLIANCE OF CATE BANGLORE JUDGEMENT

1. Reference Engineer-in-Chief's Branch letter No B/75011/RR/JE/CIVIL/CSCC dated 12 Jun'2002.
2. Report on the above subject in respect of this HQ is forwarded herewith as per Annexure-I for your necessary action please.

Encls : 2 Sheets

NOO

EIC(3) Section :

For information with reference to  
letter No 70414/ACP/1363/EIC(3) dated  
04 Jul'2002.

*Mohan*  
(Mohan Prakash)  
Major  
SO II(Adm)  
for Chief Engineer

Attested  
*[Signature]*  
Advocate



65

1. Ref this HQ letter No 77163/CaUB.Ire/67/E7B dt 27 Nov 2002

2. May the present position of the case regarding one time benefit under ACP scheme to the promotes from lower grade please be intimated.

3. Ref this HQ letter No 77163/CaUB.Ire/67/E7B dt 27 Nov 2002

HQ Chief Engineer  
Eastern Command  
Fort William  
Kolkata - 21

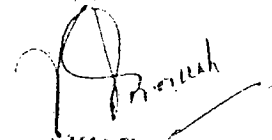
HQ Chief Engineer  
Eastern Command  
Fort William  
Kolkata - 21

7.6 1.11.2002

NON FIXING OF ACP IN RESPECT OF SUB-OVERSEER PROMOTED TO JE(QV)

1. Ref this HQ letter No 77163/CaUB.Ire/67/E7B dt 27 Nov 2002
2. May the present position of the case regarding one time benefit under ACP scheme to the promotes from lower grade please be intimated.

Attested  
Mulla  
Advocate

  
(KP Baruah)  
SO-III  
For Chief Engineer

R K Kalia -38-  
New Delhi

ANNEXURE-VI

Tele : 2222-1577

131841/CAT Bang/181/Engrs/EID  
21 Mar 2003

HQ Eastern Command  
Engineers Branch  
Fort William,  
Kolkata-21

21 Mar 2003

131841/CAT Bang/181/Engrs/EID

Chief Engineer ✓  
Shillong Zone  
Shillong-793011

NON FIXING OF ACP IN R/O SUB-OVERSEER  
PROMOTED TO JE(CIV)

1. Reference your letter Nos 77169/Cat Bang/69/E7B dt 25 Feb 03 and 77169/Cat Bang/71/E7B dated 21 Mar 03.
2. It is seen from the documents that MES-228554 Shri H L Coswami, JE(Civ) has not completed 5/15 years service as JEs before 09.8.99.
3. However the case has been taken up with E-in-C's Branch vide this HQ letter No 131841/Cat Bang/181/Engrs/EID dated 13.02.03. Further communication will follow on receipt of decision from them.

S. K. Das

( KLS Das )  
SAO  
SO-2 (Pers)  
for Chief Engineer

B/69/71

Ra

169/Cat B/69/71

Attended  
Mulla  
Advocate

FAT-25253856

-39-

20 May 2003

CE Shillong zone

NON MIXING OF ACP IN RESPECT OF  
SUB-~~OVERSEER~~ PROMOTED TO JE (CIV)

1. Reference your letter No 77169/Cat Bang/74/E7E dated 09 May 2003.
2. Decision as sought forx vide this HQ letter No 131841/Cat Bang/181/Engr./EID dated 13-2-2003 is still awaited from E-in-C's Branch.

( KLS Das )

SAO

SO-2 (Pers)

For Chief Engineer

Attested  
Public Advocate

From : ML Goswami, JE (Civ)  
MES/228556  
C/O HQ Chief Engineer Shillong Zone

- 40 -

ANNEXURE - VIII

68

TO : E-in-C's Branch (EIC/EIR)  
Army Headquarters  
DHQ, PO- New Delhi

(Through proper Channel )

NON FIXATION OF ACP

Respected Sir,

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

That Sir, I was enrolled in the department as sub-oversees in the year 1968 and promoted to Supdt B/R, Gde-II, now re-designated as JE (Civ), in the year 1994, after completion of 26 years of regular service.

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

Sir, as per ACP policy I am entitled for 2<sup>nd</sup> up gradation. And as per E-in-C's Branch, Army HQs letter No B/75011/RR/JE (Civ)/CSCC dt 12 Jun 2002, the promotes from lower post are eligible for one time benefit and special sanction from Govt is required. My service particulars have been already fwd to HQ Eastern Command vide CESZ letter No 77169/CAT/B'lore/55/E7B dt 12 Jul 2002 and the same has been fwd to your HQ vide CEEC letter No 131841/CAT Bang/181/Engrs/EID dt 13 Feb 2003.

It is to inform you that benefit of Cat Bangalore has also not been awarded, and I am deprived from my benefit.

I therefore, request your good self to look into the matter for my legitimate benefit.

I shall be remain grateful to you, thanking you sir.

Station : Shillong

M.L. Goswami  
JE (Civ)

( Signature of the applicant )

Dated : 21 Nov 2003

*Attested*  
*Advocate*

ANNEXURE- IX

(Extract)

Tele No : 2222-2527

131841/CAT BANG/214 /Engrs/EID

10 Jun 2004

HQ Chief Engineer  
Shillong Zone  
SE Falls, Shillong-11.

NON FIXATION OF ACP IN RESPECT OF MES-  
228556 SHRI ML GOSWAMI, JE (CIV)

1. Ref your HQ letter No. 77169/CAT/92/E7B dt 03 Jun 2004.
2. It may be seen from E-in-C's branch letter No. 75011/RR/JE (Civil)/CSCC dt 12 June 2002 that E-in-C's Branch desired to taken up a case with Govt for grant of one time special sanction in respect of JEs recruited at lower posts i.e. Sub overseer, Ch/Mech/Ch. Elect and subsequently promoted to JEs who have completed 5 years regular service as on 01.01.86 or after but before 09.08.99 and completed 15 years service as on 01.01.91 or after but before 09.08.99.
3. Accordingly a list of such JEs has been forwarded to E-in-C's branch vide this HQ letter No. 131841/Cat BANG/181/Engrs/EID dt 13 Feb 2003 for their further action.
4. MES/228556 Shri ML Goswami was promoted from Sub Overseer to B/R-II (Now JE (Civ)) of 1995. The indl has not completed 5/15 years service as JE before 09.08.99, no benefit under the Scheme is admissible to him.
5. However it is intimated that the indl. who are not having the Diploma in Civ Eng. and not passed the MES procedure examination are not entitled for further upgradation under ACP Scheme. No further correspondence on this subject without verifying the documents will be entertained in future.

*Attested  
Mulla  
Advocate*

6. Application dt 07 May 2004 received vide your above quoted letter is returned herewith unactioned.

Encls: As above.

Sd/- Illegible  
(D C Saha)  
SAO  
Dy. Dir (Adm)  
for CF.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application Nos. 241 of 2004.

Date of Order: This, the 21st day of July, 2005.

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.  
THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Shri Mohan Lal Goswami,  
MES No. 228556,  
S/o Late Binod Behari Goswami,  
Junior Engineer (Civil)  
O/o the Chief Engineer, Shillong Zone,  
M.E.S. Spread Eagle Falls,  
Shillong - 793011.

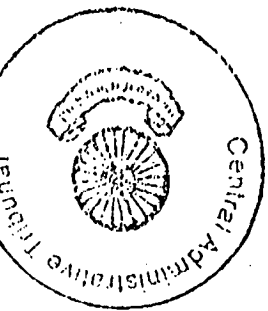
.... Applicant

By Advocate Shri M.Chanda

- Versus -

1. Union of India,  
represented by the Secretary to the  
Government of India,  
Ministry of Defence,  
New delhi-110001.
2. The E-in-C's Branch (EIC/EIR)  
Army Headquarter, DHQ,  
New Delhi.
3. The Chief Engineer,  
HQ, Eastern Command,  
Engineers Branch,  
Fort William,  
Kolkata-21.
4. The Chief Engineer,  
Shillong zone, M.E.S.,  
Spread Eagle Falls,  
Shillong - 793011.
5. The Dy. Director (Admn.)  
O/o the Chief Engineer,  
HQ, Eastern Command,  
Fort William,  
Kolkata-21.
6. Department of Personnel & Training,  
Govt. of India,  
Represented by it's Secretary,  
North Block,  
New Delhi-110 001.

.... Respondents

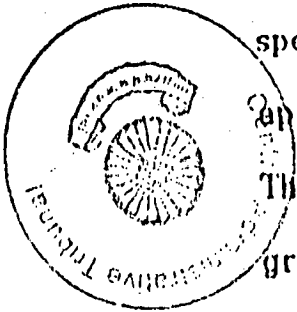


*Attested*  
*Advocate*

By Mr M.U.Ahmed, Addl.C.G.S.C.

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

The applicant was originally appointed as Sub-Overseer in the year 1968 under the respondents. He was promoted to the post of Superintendent Grade-II on 6.2.95. The said post was later re-designated as Junior Engineer. The grievance of the applicant is that though he had completed 24 years of service in the MES on 13.05.1992 he was not given the benefit of ACP Scheme. The applicant made representation before the 2<sup>nd</sup> respondent for grant of second financial upgradation under the scheme. The said representation was rejected by the respondents stating that the applicant was not entitled to the financial up gradation under the Scheme which was in vogue during the relevant period and under the special grant mentioned in the communication dated 10.6.2004. The applicant has impugned the said communication in this proceeding. The applicant has also sought for a direction to the respondents to grant second financial upgradation to the applicant with effect from 9.8.99 in terms of ACP Scheme without insisting for passing of any departmental examination with all consequential service benefits including arrear pay etc. by refixing the pay in the scale of Rs. 5500-9000/-. The applicant in support of his case has relied on the Memorandum dated 9.8.99 (Annexure-II) issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training)- the ACP Scheme for the Central Government employees and the decision of the Hon'ble Supreme Court in State of Tripura and ors. vs. K.K.Roy, 2004(9) SCC 65, the decision of this Tribunal in the order dated 10.9.2004 in



*[Signature]*



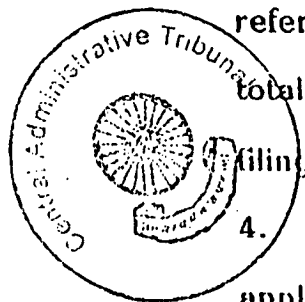
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O.A.64/2004 and the decision of the Ernakulam Bench of CAT in V.E.Chandran and ors. vs. Union of India & Ors., 2002(2) A.T.J 47.

2. The respondents have filed their written statement, wherein it is stated that passing the MES departmental Procedure examination or a diploma is a condition precedent for grant of ACP. It is also stated that the applicant is not a direct recruit nor a diploma holder. The respondents have also made various other averments to justify their stand.

3. Mr M.Chanda, learned counsel for the applicant submits that the applicant had completed 24 years of service under the MES as on 13.5.1992 and that he could get only one promotion that too on 6.2.95 to the post of Superintendent Grade-II. Counsel submits that on completion of 24 years service the applicant is entitled to the second ACP as on 9.8.99 i.e. the date of coming into force of Annexure-2 Scheme. Counsel also submits that for grant of ACP under the scheme, passing of the MES Procedure examination or possessing diploma in civil engineering is not a condition precedent. Counsel further submitted that the second respondent did not consider any of the crucial aspects and rejected the claim as per Annexure-IX. Counsel pointed out that the respondents have not even referred to the ACP scheme of 9.8.99. Counsel submits that there is total non application of mind to the crucial question, which led to the filing of this application.

4. Mr M.U.Ahmed, learned Addl.C.G.S.C submits that the applicant is not entitled to the benefit of ACP Scheme as he has not passed the MES procedure examination and did not possess the diploma in civil engineering. He further submitted that the scheme of 9.8.99 has no application to the applicant's case. He further submitted

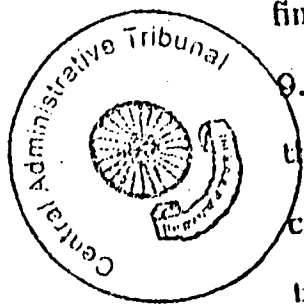


*[Handwritten signature]*

that the decision of the Supreme Court and the Tribunal relied on by the applicant also has no application in the instant case.

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

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



*[Signature]*

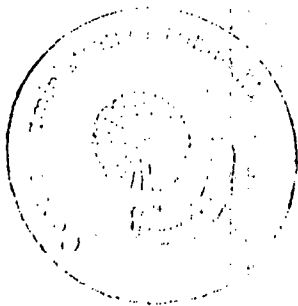
for the Tribunal to consider the claim on merits at this stage. The matter has to be considered by the authorities themselves at the first instance.

Accordingly the applicant is directed to make a detail representation setting out his claim for grant of second financial upgradation with effect from 9.8.99 based on the scheme (Annexure-II) before the second respondent within a period of one month from today. If any such representation is made the respondents will consider the same with reference to the ACP Scheme of 9.8.99 (Annexure-II) and in the light of the decisions relied on by the applicant and referred to in this order and pass an appropriate order within four months from the date of receipt of the representation. We make it clear that we have not expressed any views on the merits of the claim made by the applicant.

The application is disposed of accordingly. No costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)



*Affected  
Advocate*

TRUE COPY  
MAILED

01/09/05  
Section (General)  
Central Board of Secondary Education  
GOVERNMENT OF INDIA

Tele :23019376

Dte General Personnel  
Military Engineer Service  
Engineer in Chief's Branch  
Army Headquarters  
Kashmir House  
New Delhi-110011.

90237/9213/EIC(Legal-C)

28 Sep 2005

**IMPLEMENTATION OF HON'BLE CAT GUWAHATI BENCH  
ORDER DATED 21 JUL 2005 IN OA NO 241/04 FILED BY SHRI ML  
GOSWAMI**

**SPEAKING ORDER**

1. Reference OA No 241/04 filed by Shri ML Goswami at CAT Guwahati Bench. The applicant sought following relief's in the OA :

(a) That the Hon'ble Tribunal be pleased to set aside the impugned letter No 131841/CAT Bang/214/Engrs/EID dated 10.6.04.

(b) To direct respondents to grant 2<sup>nd</sup> financial upgradation wef 9.8.99 in terms of ACP Scheme without insisting for passing of any departmental examination with all consequential service benefits including arrear pay etc by refixing the pay in the scale of Rs 5500-9000.

2. The Hon'ble Tribunal decided the case and issued order vide Judgement dated 21 Jul 2005. The operative part of the Judgement reads as under :-

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



order and pass an appropriate order within four months from the date of receipt of the representation. We make it clear that we have not expressed any views on the merits of the claim made by the applicant. The application is disposed of accordingly. No costs".

3. As per above judgement, you have directed to submit your representation within one month from 21.7.2005, i.e. by 20 Aug 2005. You have submitted the representation only on 28 Aug 2005, i.e. after 7 days granted by the Court. However, in compliance of Tribunal's direction, the representation has been considered, as a special case and decided in succeeding paragraphs.

4. The grant of financial upgradation was introduced to erstwhile Supdts B/R, E/M, SA Gde II/I (now designated as Junior Engineers) after completion of 5 years/15 years of service in the pay scales of Rs 5000 – 8000 and 5500 – 9000 respectively, as per Govt of India, Min of Def letter No PC-90237/4603/EIC (Legal)/1993/D(Works dated 25 Apr 96.

The ACP Scheme has been introduced vide DOP&T OM No 35034/1//97-Estt (D) dated 09 Aug 99 making the financial upgradation after completion of 12/24 years instead of 5/15 years. Due to various representations from JEs regarding applicability of ACP Scheme to JEs, the earlier order dated 25 Apr 96 has been amended in respect of JEs and new Govt order has been issued vide Govt of India, Min of Def letter No 85610/ACP/47/SUPDTS/CSCC/236/D (Works) dated 23 Jan 2002. As per para 9 of this letter, the earlier scheme of granting financial upgradation introduced on 25 Apr 96 has been ceased to be operative wef 9.8.99. Further, as per Appendix 'A' to this letter, the Supdts who have been placed in the pay scale of Rs 5500 – 9000 after completion of five years of regular service as per the old scheme shall be brought back to the scale of Rs 5000-8000. Fall in pay shall be protected by granting personal pay in the scale of Rs 5000-8000, to be adjusted against future increments.

5. As per clarification No 53 of DOP&T OM No 35034/1/97/Estt (D) Vol IV dated 18.7.07, only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACP Scheme. Therefore, various stipulations and conditions specified in the recruitment

rules for promotion to the next higher grade, including educational/additional educational qualifications, if any prescribed, would need to be met even for consideration under ACP Scheme. As per the instructions, passing Departmental Procedure Examination is pre-requisite for grant of scale of Rs 1640-2900 (Rs 5500-9000 revised).

6. You are quoting reference of DOP&T OM dated 9.8.99 and asking for the pay scale of Rs 5500-9000 which is ceased to be operative. It is also pertinent to mention here that eligibility for appointment to Supdts (now JEs) is Degree/Diploma in Civil Engineering and passing departmental examination is mandatory.

7. In view of above facts and since the scale of Rs 5500-9000 is ceased to be in operation, not cleared the Departmental Procedure Examination, which is a mandatory requirement for promotion for erstwhile Supdt B/R Gde II to Gde I as per the recruitment rules, the reliefs sought by you cannot be considered for second financial upgradation in the scale of Rs 5500-9000.

8. By issue of this Speaking Order, the Hon'ble CAT Guwahati Bench Judgement dated 21 Jul 2005 in OA No 241/04 has been fully complied with and your representation dated 28 Aug 2005 is disposed off accordingly.

( RK Gupta )

SE

Director (Legal)

For E-in-C

Shri Mohan Lal Goswami  
Junior Engineer (Civil)  
Chief Engineer Shillong Zone  
Spread Eagle Falls  
SHILLONG - 793 011

( Through CE Eastern Command )

Attested  
Advocate

- 51 -

ANNEXURE - XII

BY SPEED POST / *Conf.*

भारत सरकार  
Controller of Defence Accounts (BR)  
1999  
श्रीमती काउन्सिल, नई दिल्ली  
Kathleen House, New Delhi

Most Immediate  
No. AN/X/11651/ACP  
Office of the CGDA,  
West Block-V, R.K. Puram,  
New Delhi - 6  
Dated :- 1<sup>st</sup> September '99

The CDA (BR)  
New Delhi

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

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

Salient features of the ACP scheme-

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

(i) The financial benefits under the ACP scheme will be granted from the date of completion of the eligibility period prescribed under the scheme or from the date of issue of these instructions i.e. 9-8-1999 whichever is later.

(ii) Two financial up-gradations under the ACP shall be available to group 'B' 'C' and 'D' employees, if no regular promotions have been availed during the prescribed periods in their grade, on completion of 12 years and 24 years of

*Attested*  
*Advocate*

regular service respectively. The first financial up-gradation under the scheme shall be allowed after 12 years of regular service and second up-gradation after 12 years of regular service from the date of first financial up-gradation subject to the fulfillment of prescribed conditions. The ACP scheme does not cover Group 'A' i.e. IDAS officers in the Deptt in terms of para 2.1 of DOPT's OM dated 9-8-99.

- (iii) In case the first up-gradation gets postponed on account of employee not found fit or due to departmental proceedings etc., the same would have consequential effect on the second up-gradation and the same would also get deferred accordingly.
- (iv) Regular service for the purpose of ACP scheme is interpreted to mean the eligibility service counted for regular promotion in terms of relevant service/recruitment rules. Further the regular service for the grant of benefit under this scheme shall be counted from the grade in which an employee was appointed as direct recruit.
- (v) Two financial up-gradations under the said scheme in the entire Govt. service career of an employee shall be counted against regular promotions including merit promotion (granted in terms of Min. of Fin Deptt. of Exptd. OM No. 10/1/E-11/88 dated 13<sup>th</sup> Sep'91) and fast track promotions available through limited departmental competitive examinations, from the grade in which the employee was appointed as direct recruit. Briefly, two financial up-gradations are assured in the Govt. service career under the scheme. If an employee has already got one promotion, he/she will qualify for second financial up-gradation only on completion of 24 years of regular service. In case an employee has completed 24 years of regular service without any promotions, two financial up-gradation will be given as per provisions contained in para 4.5.1 and 15 of Annexure I of above mentioned OM dated 9-8-99. In case two promotions have already been received by an employee, no benefit under scheme shall accrue to him/her.



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

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

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

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

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

(xi) Under the ACP Scheme, the pay of an employee, on up-gradation, shall be fixed under the provisions of FR-22(1) a (1) subject to minimum financial benefit of Rs. 100/- as per DOPT OM No. 1/6197/Pay- dt 5/7/1999 as referred in para 9 of Annexure-I to OM dated 9-8-99. The financial benefit allowed

- 54 -

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

- ii) Grant of higher pay scale under the ACP scheme shall be conditional on the fact that an employee, while accepting the said benefit, shall be deemed to have given his/her unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he/she refuses to accept the regular promotion, it would entail forfeiture of the period of debarment towards the qualifying service for the next financial up-gradation in accordance with the provisions of para 10 of Annexure-I to OM Dated 9/8/99 referred to above.
- iii) The regular service of an employee in his/her previous organisation where he/she was declared surplus, shall be counted along with his/her regular service in the Department for the purpose of financial up-gradation under the scheme in terms of Para 14 of Annexure-I to DOPT's OM dt 9/8/99.
- iv) The ACP scheme has become operational w.e.f. 9/8/99 i.e. date of issue of DOPT's OM mentioned above.

#### Application of the ACP Scheme in DAD.

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

##### Group 'B'

1. Indl Officer

In case of direct recruitment.

##### Group 'C'

Senior Auditors

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

Librarian/Information Assistant (if any)

In case of direct recruitment

Record Clerk  
Peon  
Sweepers  
Bhist  
Maj  
Dairi  
Jamaat Peon  
Peon - Testimonial Operator  
(Promoted from directly recruited Daftri)

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

Screening Committee

With a view to implement the ACP Scheme in the department it has been decided that a departmental screening committee may be constituted at your end for the purpose of processing the cases in respect of various groups of employees, as mentioned in para -3 above, for grant of financial upgradation as provided for in the said scheme. The composition of the screening committee shall be the same as that of the TTC prescribed under the relevant recruitment/Service Rules for regular promotion to the higher grade. The screening committee, so constituted, will consider the cases that have already been matured or would be maturing upto 31st March 2000 for grant of benefits under the scheme.

It has also been decided with reference to Para 5.3 and 6.4 of Department of Personnel and Training OM dt 9/8/99 that the controllers may also constitute the next screening committee for smooth implementation of the ACP scheme in the department and screening committee may meet twice in a financial year preferably in the first week of January and July for advance processing of the cases. Cases maturing during the month (April to Sept.) of a particular financial year for grant of benefits under the

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

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

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

As the scheme is required to be introduced immediately, Controllers may ensure that the screening committees complete their work by 30<sup>th</sup> September 99. The complete details of the employees who have been recommended for financial up-gradation within the parameters of ACP Scheme by the screening committee will be furnished to the HQrs office by 10<sup>th</sup> October '99 in the proforma enclosed at Annexure A. The recommendations made by the screening committee before their transmission to HQrs office, are required to be put up to the Chief Controllers/Controllers for their acceptance. The cases of Hindi Officers and Sr. Auditor shall be sent to AN-II Section and AN-XI Section respectively, which deal with the promotions of the respective grades. The cases in respect of the other grades, Record Clerk and all the grades of Group 'D' identified in para 3 above shall be sent to AN-XII Section, which deals with promotions of those grades. AN-II, AN-XI and AN-XII Sections will put up the cases for clearance/approval by the screening committee constituted in HQrs office.

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

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

The controllers are aware, a in situ promotion scheme was introduced by the Government of India Ministry of Finance, Department of Expenditure OM No. '0(1)/F-13/88 dated 13-9-91 as circulated under our letter No. AN/II/12409/GP C&D dated 15<sup>th</sup> Aug '92. Various employees falling in Gp 'C' & 'D' in our Department have been given in situ promotion. As this promotion will have to be taken into account for the purpose of implementation of the ACP Scheme, the screening committee must ensure that if any such in situ promotion has been granted, the same has been taken into account by them.

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

Please acknowledge receipt.

Dy CGDA (AN)

Copy to:-

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

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

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

AN-III Section.

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

*Attested  
Mulla  
Advocate*

Dy CCDA (AN)

ANNEXURE-XIII

(Typed true copy)

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

Estt-I (M) Order No. 297

Dated 14-3-2001

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

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

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

*Attested  
With  
Signature*

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

(ii) The Financial benefits under ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of the govt. of India O.M dated 9.8.99 whichever is later.

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

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

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

(v) Fulfilment of normal promotion norms (bench mark, departmental examination, seniority-cum-fitness in the case of group 'D' employees etc) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with the retention of old designations, financial upgradations as personal to the incumbent for the stated purpose and restriction of the ACP Scheme for financial and certain

other benefits (house building advance, allotment of govt. accommodation, advance etc) only without conferring any privileges, related to higher status (e.g. invitation to ceremonial functions deputation to higher posts, etc.) shall be ensured for grant of benefits under ACP Scheme.

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

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

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

(ix) Grant of higher pay scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular grade. However, as and when he accepts the regular promotion thereafter he shall become eligible for the second upgradation under the ACP Scheme only after he completes the



required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose.

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

Sd/-

Sr. Deputy Accountant General (Admn)

Cont.....

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

Dated 14-3-2001

Copy forwarded for information and necessary action to:-

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

*Attested  
Mulla  
Advocate*

Sd/-

Establishment Officer.

(2004) 9 Supreme Court Cases 65

(BEFORE V.N. KHARE, C.J. AND S.B. SINHA, J.)

a STATE OF TRIPURA AND OTHERS

Appellants;

Versus

K.K. ROY

Respondent.

Civil Appeal No. 6253 of 1998<sup>†</sup>, decided on December 12, 2003

b A. Service Law — Promotion — Right to promotion — Held, promotion being a condition of service, avenues have to be provided therefor

B. Service Law — Promotion — Right to promotion — No avenue for promotion — Relief — Scheme of Assured Career Promotion not framed — Yet, taking into consideration the fact that the employee was appointed to a single-cadre post with no promotional avenues and keeping in view his educational qualifications, held, he was entitled to two higher grades, one upon expiry of twelve years from the date of joining service and the other on expiry of twenty-four years thereof — Failure on the part of the State to frame such a scheme when such schemes had been framed by other States on recommendations of the Pay Commission, deprecated

c *Council of Scientific and Industrial Research v. K.G.S. Bhatt*, (1989) 4 SCC 635 : 1990 SCC (L&S) 45 : (1989) 11 ATC 880; *O.Z. Hussain (Dr) v. Union of India*, 1990 Supp. SCC 688 : 1991 SCC (L&S) 649 : (1991) 16 ATC 521, considered and relied on

d C. Service Law — Promotion — No avenue for promotion — Applicability of the principle of estoppel — Held, State cannot escape from its constitutional obligations and take a stand that the employee accepted the offer of appointment knowing well that there was no avenue for promotion — In such cases, principle of estoppel, inapplicable — Constitution of India, Arts. 16 &amp; 14 and 12

e D. Constitution of India — Art. 226 — Interference in service matters — Held, mandamus cannot be issued directing the State to grant pay scale equivalent to Grades I and II of the State Judicial Service — Service Law — Promotion — Right to promotion — Absence of avenue for promotion — Direction by the High Court to provide "graded scale" for promotion — Propriety of

f The respondent employee, who held a Master's degree and a degree in Law, was appointed as Law Officer-cum-Draftsman in the Directorate of Cooperation, Government of Tripura in 1982, which was a single-cadre post with no promotional avenues. His several representations for upgrading the said post or in the alternative for providing two promotional avenues were not considered by the appellant State and hence he filed a writ petition seeking a specific direction to the appellant to provide at least two promotional avenues. The said contention was accepted by the High Court and by the impugned judgment the appellant State was directed to provide "the graded scale" with pay scale equivalent to Grade I and Grade II officer of the Tripura Judicial Service. Hence the present appeal by the appellant State.

h

<sup>†</sup> From the Judgment and Order dated 7-4-1997 of the Assam High Court at Gauhati in WA No. 10 of 1997Attested  
Dutta  
Advocate

The appellant contended that the respondent did not have any legal right to be promoted to a higher post far less the right to get the scale of pay of Grade I officer of the Tripura Judicial Service.

Disposing of the appeal, the Supreme Court held as above.

P-M/Z/29429/SL

Advocates who appeared in this case :

Navin Prakash, Anurag Sharma and Gopal Singh, Advocates, for the Appellants;  
S.V. Deshpande, Advocate, for the Respondent.

*Chronological list of cases cited*

on page(s) b

1. 1990 Supp SCC 638 : 1991 SCC (L&S) 649 : (1991) 16 ATC 521, O.Z.

*Hussain (Dr) v. Union of India*

67d-e

2. (1989) 4 SCC 635 : 1990 SCC (L&S) 45 : (1989) 11 ATC 880, Council of

*Scientific and Industrial Research v. K.G.S. Bhatt*

67a

The Judgment of the Court was delivered by

**S.B. SINHA, J.** — Having been selected by the Tripura Public Service Commission, the respondent herein was appointed as Law Officer-cum-Draftsman in the Directorate of Cooperation, Government of Tripura. There was only one post in the same cadre and it had no promotional avenues. He filed a representation that his post be upgraded or two promotional avenues be provided to him. Several representations made by him having not received consideration at the hands of the appellants, the respondent herein filed a writ petition seeking for a specific direction upon the appellant herein to provide at least two promotional avenues. The said contention of the respondent was accepted by the High Court and by reason of its impugned judgment the appellant was directed to provide "the graded scale" to the respondent by providing three grades, the initial being Grade III which is the post of Law Officer-cum-Draftsman and thereafter Grade II and Grade I officer of the Tripura Judicial Service. It was further directed:

"The scale of pay of Grade II Law Officer-cum-Draftsman shall be same as Grade II officer of the Tripura Judicial Service. The scale of pay of Grade I Law Officer-cum-Draftsman shall be equal to the scale of pay of Grade I officer of the Tripura Judicial Service."

2. Questioning the said direction, the appellants are before us.

3. The learned counsel appearing on behalf of the appellant would submit that the High Court went wrong in issuing the aforementioned direction. The learned counsel would urge that the respondent herein did not have any legal right to be promoted to a higher post far less the right to get the scale of pay of Grade I officer of the Tripura Judicial Service. Such a direction by the High Court, the learned counsel would contend, is wholly without jurisdiction. The learned counsel, appearing on behalf of the respondent, however, has supported the said order.

4. Indisputably, the post of Law Officer-cum-Draftsman is a single cadre post. It is also undisputed that there does not exist any promotional avenue therefor. The respondent is holder of a Master's degree as also a degree in Law. He was appointed in the year 1982. If the contention of the appellant is

\* Ed.: Para I corrected vide Corrigendum No. E3/Ed.B.J/4/2004 dated 15-1-2004

a to be accepted, the respondent would be left without being promoted throughout his career. In almost an identical situation, a Bench of this Court in *Council of Scientific and Industrial Research v. K.G.S. Bhatt*<sup>1</sup> held: (SCC pp. 638-39, para 9)

"It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See *Principles of Personnel Management*, Flipo, Edwin B., 4th Edn., p. 246.) Every management must provide realistic opportunities for promising employees to move upward. 'The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.' (See *Personnel Management*, Dr Udai Pareek, p. 277.) There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions."

5. The matter came up for consideration again in *O.Z. Hussain (Dr) v. Union of India*<sup>2</sup> wherein this Court in no uncertain terms laid down the law stating: (SCC pp. 691-92, para 7) :

"Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers."

6\*. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom. It is not a case where the

1 (1989) 4 SCC 635 : 1990 SCC (L&S) 45 : (1989) 11 ATC 880

2 1990 Supp SCC 688 : 1991 SCC (L&S) 649 : (1991) 16 ATC 521

\* Ed.: Para 6 corrected vide Corrigendum No. E3/Ed.B.J./4/2004 dated 15-1-2004

principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the appellant should have followed the said principle.

7. We are, thus, of the opinion that the respondent herein is at least entitled to grant of two higher grades, one upon expiry of the period of 12 years from the date of his joining of the service and the other upon expiry of 24 years thereof.

8\*. The learned counsel appearing for the appellant, is, however, correct in his submission that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India could not have issued a writ of or in the nature of mandamus directing the appellant herein to grant a scale of pay which would be equivalent to Grade II or Grade I of the judicial service of the State.

9. For the reasons aforementioned, we direct that the respondent herein be paid two promotions in the next higher scale of pay upon his completion of 12 years and 24 years in service. This appeal is disposed of with the aforementioned directions. No costs.

(2004) 9 Supreme Court Cases 68

(BEFORE S. RAJENDRA BABU AND RUMA PAL, JJ.)

BASIC SHIKSHA PARISHAD AND ANOTHER

Appellants;

Versus

SUGNA DEVI (SMT) AND OTHERS

Respondents.

Civil Appeal No. 3957 of 1998<sup>†</sup>, decided on December 12, 2003

A. Service Law — Appointment — Non-appointment/Denial of appointment/Right to appointment — Respondent employee, an Assistant Teacher not allowed to resume services after prolonged absence — No termination orders served either — Vide U.P. Basic Education Act, 1972, basic education taken over by the Basic Shiksha Parishad from the Zila

\* Ed.: Para 8 corrected vide Corrigendum No. F.3/Ed.B.J./4/2004 dated 15-1-2004

† From the Judgment and Order dated 29-7-1997 of the Allahabad High Court in WP No. 8585 of 1986

1988 (Supp) Supreme Court Cases 519

(BEFORE RANGANATH MISRA AND M. M. DUTT, JJ.)

RAGHUNATH PRASAD SINGH

Appellant ;

Versus

SECRETARY, HOME (POLICE) DEPARTMENT,  
GOVERNMENT OF BIHAR AND OTHERS

Respondents.

Civil Appeal No. 2439 of 1982†, decided on December 11, 1987

Service Law — Appointment — Signal (Wireless) Wing separated from the combined police force in State of Bihar w.e.f. May 6, 1970 — Held, recruit of 1972-73 in the separated wireless organisation not entitled to avail the benefit of option to go to the general police cadre conferred by GOs dated May 9, 1970 and January 1, 1974 — However, State Government directed to provide at least two promotional opportunities to officers of the wireless organisation

Appeal dismissed

R-M/8765/SLA

Advocates who appeared in this case :

G. L. Sanghi, Senior Advocate (M/s K. R. Nagaraja, R. H. Hegde and B. Krishna Prasad, Advocates, with him), for the Appellant ;  
D. Goburdhan, Advocate, for the Respondents.

## ORDER

1. This appeal by special leave is directed against the decision of a Division Bench of the Patna High Court rejecting the writ petition of the appellant who had claimed for being absorbed in the regular police force on the basis of exercise of option.

2. It is not disputed that until May 6, 1970, there was a combined police force in the State of Bihar raised under the Police Act of 1861 which included regular police personnel and those serving in the Signal (Wireless) branch. On May 6, 1970, the wireless wing was separated. Admittedly, the appellant was recruited as a constable in the wireless wing after May 1970. A Division Bench of the Patna High Court in C.W.J.C. 21 of 1968, disposed of on May 9, 1969, while dealing with the case of literate constable recruited into the Bihar Police Signals directed :

We, therefore, direct the respondents to treat the petitioner as a member of the single police force until two separate cadres are created for the wireless and the general sections by asking the personnel to opt for one or the other and to consider his case in the matter of promotion along with the other literate constables of the general police force.

On May 9, 1970, the State Government issued the following direction to the Inspector General of Police :

Sub : Declaration of the General Wireless Organisation of the police department as a closed cadre and separate from the general police cadre

Orders—Sanctioned with effect from the date of issue of the order.

†From the Judgment and Order dated February 24, 1981 of the Patna High Court in C.W.J.C. No. 374 of 1977

Attested  
With  
Advocate

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2. All the existing permanent and temporary posts of the police wireless organisation will be deemed to be a part and parcel of the above cadre.

3. The existing staff of the police wireless organisation will have the option either to remain within the abovementioned cadre or to opt for the general police cadre. The option will have to be exercised within three months from the date of issue of the order....

On January 1, 1974, further instructions were issued to the Inspector General of Police to the following effect :

Sub : C.W.J.C. No. 21/68—*Sh. Ramdev Singh v. State of Bihar and Others.*—for the implementation of the orders of the Patna High Court

Sir,

With reference to the G.O. letter No. 3247 dated July 27, 1974 of Shri T. P. Sinha, Assistant Inspector General of Police (Communication) on the subject abovementioned, I have been directed to say that the State Government has taken the decision that fresh option be taken from the existing staff of Police Wireless Organisation in connection with their adjustment in the general police cadre. The option can be taken within two months of the issue of the orders....

The appellant claimed that he was entitled to exercise option and since option was not asked from him, he may be reverted to the general cadre. When that was not done, he applied to the High Court for direction. The High Court found that the benefit of option was confined to recruits prior to May 6, 1970 and since the appellant had been recruited long after that date, he was not entitled to the exercise of benefit of option. The writ application was accordingly dismissed and that decision is the subject matter of the appeal.

3. We have read the judgment of the High Court with reference to the documents placed and heard learned counsel for parties. There is no doubt that the High Court was right in finding against the appellant that the option in terms of the instructions dated October 1, 1974 was available to those who came within the ambit of the earlier judgment. Thus the appellant being a recruit of 1972-73, not in the combined cadre but in the wireless organisation, was not entitled to the benefit of option. His appeal is, therefore, liable to be dismissed.

4. Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organisation. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar

to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply with this direction, it should, within two months thereafter, give a fresh opportunity to personnel in the police wireless organisation to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organisation. 11

5. The appeal is dismissed with the directions indicated above. There would be no order for costs.

### 1988 (Supp) Supreme Court Cases 521

(BEFORE RANGANATH MISRA, M. M. DUTT AND M. H. KANIA, JJ.)

STATE OF TAMIL NADU AND OTHERS ... Appellants ;

*Versus*

K. V. SESHADIRI AND OTHERS ... Respondents.

Civil Appeal No. 274 of 1988,  
decided on January 20, 1988

Service Law — Judiciary — Pay — Special pay — In accordance with recommendation of Chief Justice of Madras High Court, PAs and Judgment Writers attached to the High Court judges directed to be paid special pay of Rs 100 per month only in addition to pay at par with Reporters of Legislative Assembly

Appeal disposed of

R-M/8870/SLA

### ORDER

1. Special leave granted.

2. Heard learned counsel for the parties. We find that the learned Chief Justice of the High Court of Madras had recommended to the State Government to put the Personal Assistants and the Judgment Writers attached to the judges at par with the Reporters in the Legislative Assembly in regard to payability of the special pay of Rs 100 per month in addition to pay. While disposing of the writ petition, the High Court has directed that the respondents would get special pay of Rs 100 in addition to the special pay which they have been receiving already. This obviously was not the recommendation of the learned Chief Justice. On the basis of the recommendation the respondents become entitled to Rs 100 as by way of special pay and Mr Shanti Bhushan appearing for State has no objection to accept that part of the decision relating to monthly payment of Rs 100 as special pay to each of the respondents.

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Annexure - XV

*of Delhi v. Purshotam Dass Jhunjunwala*<sup>3</sup> proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere.

5. We, therefore, allow the appeal, set aside the impugned order and direct that the proceedings before the Magistrate shall be restored and disposed of in accordance with the law.

1990 (Supp) Supreme Court Cases 688

(BEFORE RANGANATH MISRA, P.B. SAWANT AND K. RAMASWAMY, JJ.)

DR MS. O.Z. HUSSAIN

.. Petitioner;

*Versus*

UNION OF INDIA

.. Respondent.

Writ Petition (Civil) No. 1018 of 1989<sup>†</sup>, decided on November 15, 1989

Service Law — Seniority and Promotion — Promotion — Is a normal incidence of service

Service Law — Parity in employment — Avenue for promotion — Discrimination in making provision for — Absence of provision for promotion channel for Non-medical Group 'A' scientists in the establishment of Director General of Health Services under the Ministry of Health and Family Welfare, in presence of such provision for similarly placed officers in other Ministries — Held, unjustified — Hence, making of similar provisions, with necessary modifications, for the said scientists directed — Constitution of India — Articles 14 and 16

Promotion is a normal incidence of service. There is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the Non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed. (Paras 7 and 8)

Service Law — Parity in employment — Allowances — Book allowance, Higher degree allowance, Risk allowance, Conveyance allowance — Equality in admissibility — The said allowances having been made admissible to Group 'A' scientists in the medical wing of the establishment of Director General of Health Services, held, admissible to Group 'A' scientists in the non medical wing as well — However question of entitlement to non-practising allowance left open — Constitution of India, Articles 14 and 16 — Equal pay for equal work (Paras 6 and 8)

Service Law — Pay — Parity in pay — Different pay scales for Group 'A' scientists in medical and non medical posts under the Establishment of Director General of Health Services — Whether justified — Opinion not expressed — Department directed to examine the question (Paras 6 and 8)

Writ petition allowed

H-M/9682/SLA

Advocates who appeared in this case :

Ranjit Kumar, Advocate, for the Petitioner;  
A.D. Singh, Senior Advocate (R.B. Misra, and Ms A. Subhashini, Advocates, with him) for the Respondents.

ORDER

1. This is an application under Article 32 of the Constitution and the President of the National Council of Bio-Medical Scientists is the petitioner. The reliefs asked for are on the allegation that the Group 'A' scientists of the Ministry of Health and Family Welfare who are the members of the Council, are being discriminatively treated; they have not been given any promotional benefits and, therefore, there is a large-scale stagnation in the service. It has been alleged that the Group 'A' scientists are recruited through the Union Public Service Commission. These scientists possess a Master's Degree in the relevant disciplines and 3 years' experience to entitle them to be recruited. It has been indicated in a chart filed along with the writ petition that the total posts in this category are 243 including post of Drug Controller of India. The promotional posts available are filled up by direct recruitment and open competition and there is no promotional channel provided. Similar scientists in other ministries, such as Ministry of Science and Technology, Ministry of Defence, Ministry of Environment and Ministry of Oceanography are recruited in terms of rules made under the proviso to Article 309 of the Constitution and for their Group 'A' scientific and technical officers, promotional avenues are available. The petition further alleges that on their representations from time to time, meetings have been held but decisions taken in such meetings have not been given effect to and, therefore, all the representations have gone unheeded. Particular reference has been made to the minutes of a meeting held on May 15, 1989, where Shri Basudeven, Joint Secretary in the Ministry of Health and Family Welfare presided; several officers from different wings of the Ministry attended and representatives of the petitioner's Council

<sup>3</sup> (1983) 1 SCC 9; 1983 SCC (Cri) 123; (1983) 1 SCR 895

<sup>†</sup> Under Article 32 of the Constitution of India

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participated. It has been alleged that though several demands were pressed by the representatives of the Council, only a few were considered and yet there was no follow-up action for their implementation.

2. Notice was issued to the Union of India in the Ministries of Health, Human Resources, Science and Technology and Bio-Technology and the notice indicated that the matter would be taken up for final disposal. Though no return has been filed to the rule nisi, counsel appeared for the respondents and upon appropriate instructions, participated in the hearing of the matter.

3. Annexure P-1 indicates the institutions located in different parts of the country where the posts of 'A' Group scientists, who are members of the Council, work. Their total number is 243 and this is not disputed. The petitioner has placed on record the rules framed in exercise of powers under proviso to Article 309 of the Constitution in the Ministry of Science and Technology, covering Group 'A' scientists. Rule 13 thereof provides avenues for promotion. This also is not disputed. Annexure P-3 is a tabular statement prepared by the petitioner, showing the disparities in the service conditions between the Bio-Medical scientists and other similar scientists and the discrimination that Group 'A' specialists/scientists under the establishment of Director General of Health Services suffer. The pay scale for different categories of Group 'A' scientists in the non-medical posts and of doctors in the medical posts have been separately shown. It has been pointed out therein that while there is a difference in the pay scale in the establishment of Director General of Health Services, there is no disparity in respect of similar posts in the Indian Council of Medical Research (ICMR) or in the All India Institute of Medical Sciences, Delhi or the Post-Graduate Institute at Chandigarh. It has been further pointed out in the said chart that various kinds of allowances are admissible to the doctors in the medical wing, such as book allowance, higher degree allowance, risk allowance and conveyance allowance in the establishment of Director General of Health Services while the non-medical category manned by the 'A' Group scientists is denied all these allowances. It has also been alleged that while the medical category doctors get non-practising allowance the benefit of such allowance is not extended to the non-medical category. Such discrimination, according to the petitioner, is not noticed in the ICMR or in the two Institutes at Delhi and Chandigarh respectively.

4. The Fourth Pay Commission in Chapter 29, paragraph 29.8 recommended:

"The question of granting incentive to officers and staff who acquire higher qualification has also engaged our attention. Railways have suggested a scheme for giving such incentives in the con-

text of the need for updating the skills of the employees for the more efficient discharge of their duties in these days when modernisation and adoption of advanced technology is being undertaken in different fields of railway working. Suggestions have also been made for grant of post-graduate allowance to veterinary surgeons and special allowances to EDP personnel. Some such schemes are in existence in the defence services. We suggest that some incentive should be given to employees who acquire qualifications which are useful for their work and contribute to their efficiency."

5. On December 15, 1986 the Office Memorandum in the Ministry of Personnel, Public Grievances and Pension indicated that this recommendation of the Pay Commission has been accepted by the government.

6. Undoubtedly, in regard to the three other allowances, namely, book allowance, risk allowance and conveyance allowance, there is no scope for discrimination between Group 'A' scientists in non-medical and medical wings. In fact, at the hearing of the writ petition, respondent's counsel found it difficult to support the prevailing position. We are of the opinion that these four kinds of allowances, which are admissible to the medical doctors, are also admissible to the Group 'A' scientists under the non-medical category employed in the establishment of Director General of Health Services. The claim for non-practising allowance stands on a somewhat different footing and we do not think on the present state of the record of this proceeding, we can come to a definite conclusion that the Group 'A' scientists in the non-medical category would be also entitled to such allowance. We, however, leave the question open and government at their level in the appropriate Ministry would examine tenability of this claim as and when raised. It has been canvassed by petitioner's counsel at the hearing that there is no justification for the disparity in the scale of pay between the two categories of officers. Government counsel has taken the stand that the qualifications of officers in the two wings are different and the difference in the pay scales has always existed. It is difficult for us on the material available to take any final view of the matter but the respondent should examine tenability of the claim to equal scales of pay.

7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an

efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate.

8. This writ petition is allowed and the following directions are issued:

- (1) Within four months from today, the Ministry of Health and Family Welfare of the Union of India shall frame a set of appropriate rules, inter alia, providing suitable promotional avenue for the 'A' Group scientists in the non-medical wing of the establishment of Director General of Health Services;
- (2) These 'A' Group scientists shall be entitled to book allowance, higher degree allowance, risk allowance and conveyance allowance at the same rate as is admissible to doctors in the medical wing in the Directorate w.e.f. April 1, 1989;
- (3) Government shall examine the tenability of the claim of equal pay scales for this category of officers within four months from today.

9. There shall be no directions for costs.

#### 1990 (Supp) Supreme Court Cases 692

(BEFORE RANGANATH MISRA AND P.B. SAWANT AND K. RAMASWAMY, JJ.)

ANAMICA MISHRA AND OTHERS

Appellants;

*Versus*

U.P. PUBLIC SERVICE COMMISSION, ALLAHABAD  
AND OTHERS

Respondents.

Civil Appeals Nos. 4582-4585 of 1989<sup>f</sup>, decided on November 9, 1989

Service Law — Appointment — Examination — Recruitment examination — Cancellation of, for error at the stage of calling candidates for interview — Justifiability — Written test and interview — Some candidates with better performance in written examination omitted from being called for interview while others with inferior performance not only called but selected as a result of improper feeding in the computer — In such circumstances cancellation of the entire examination, held, unjustified — Cancellation of the recruitment and holding fresh interviews on the basis of the same written examination would have sufficed

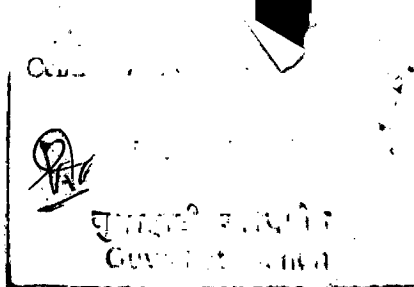
(Paras 4 & 5)

Appeals allowed

H-M/9674/SLA

<sup>f</sup> From the Judgment and Order dated July 29, 1988 of the Allahabad High Court in C.M.W.P. Nos. 11933 & 16493 of 1987, 15731 of 1987 and 12373 of 1987

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Filed by the respondents  
Monogla Grantham Bui Singh  
Srlksc  
28.6.07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI  
BENCH, GUWAHATI

O.A. No. 220 of 2006

Mohan Lal Goswami

.....Applicant.

-VS-

Union of India & Ors

.....Respondents.

The written statement on behalf of the  
Respondents abovenamed:

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regards to the statement made in paragraph 1 of the instant application the respondents beg to state that as per the para-6 of Annexure-II to Govt. of India, Ministry of Personal, Public Grievances and Pensions (Department of Personal & Training) letter No. 35034/1/97-Estt(D) dated of August, 1999 (Annexure-11 of the O.A.) grant of financial upgradation under ACP Scheme to the Central Govt. Civilian Employees on completion of 12/24 year's are subject to fulfillment of normal examination Seniority-cum-fitness etc. as prescribed for regular promotion recruitment/service Rules for regular promotion to Higher Grade to which financial upgradation is to be granted.

*Mohari*

Contd....P/

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2. That with regards to the statement made in paragraphs 2 and 3 of the instant application the answering respondents beg to state that those are within the specific knowledge of the applicant and the respondent can not admit or deny the same.

3. That with regards to the statement made in the paragraph 4.1 of the instant application the answering respondents have no comment.

4. That with regards to the statement made in the paragraph 4.2 of the instant application the answering respondents beg to state that facts brought out in this para are agreed except the statement made by him that Deptt. could spare him only in 1995 even though his promotion order was issued in September, 1994 has cause for delay in relieving him on promotion as Supdt. (B/R) Grade-II cannot be commented upon at this stage.

5. That with regards to the statement made in the paragraph 4.3 of the instant application the answering respondents beg to state that as per clarification given against point No. 16 of DOP&T OM No. 35034/1/97/Estt.(D) Vol (IV) dt. 10 Feb, 2004, all promotion norms have to be fulfilled for grant of upgradation under the ACP Scheme and no upgradation shall be allowed if any employee fails to qualify the departmental test prescribed for the purpose of regular promotion. As he has not passed the procedure examination, he is not eligible for grant of 2nd ACP.

*[Signature]*

Contd....P/

[3]

6. That with regards to the statement made in the paragraph 4.4 of the instant application the answering respondents beg to state that in view of the reply of para-1 above the applicant is not entitled for 2nd ACP and therefore, no financial upgradation on this account is Admissible to him.

7. That with regards to the statement made in paragraphs 4.5 and 4.6 of the instant application the answering respondents beg to state that benefits granted due to implementation of CAT, Bangalore Bench Judgment are not applicable to the applicant as he had not completed 5/15 year's of service as JE before 9th August, 1999 therefore no benefit under this Scheme was admissible to him.

8. That with regards to the statement made in paragraph 4.7 of the instant application the respondents beg to reiterate the statement made in the paragraph 1 and 5 of the instant written statement and hence the applicant is not eligible for grant of 2nd ACP.

9. That with regards to the statement made in paragraph 4.8 of the instant application the respondents beg to state that E-in-C's branch, Army HQ vide their letter No. 75011/RR/JE(Civil)/CSCC dated 12 June 2002 has desired to take up case with Govt. for grant of one time special sanctioned for JEs also were promoted from lower post and have completed 5 year's regular service as on 01 Jan 86 or after but before 09 Aug 99. As the applicant was promoted as B/R Grade-II on 06 Feb-1995, his case was not covered for such sanction.



Contd....P/

[4]

10. That with regards to the statement made in paragraphs 4.9 and 4.10 of the instant application the answering respondents state that those are matters of record and the respondent does not admit anything which is not borne out of records.

11. That with regards to the statement made in paragraph 4.11 of the application the respondents begs to state that the respondent department has correctly intimated to applicant vide its letter dated 10/06/04 that applicant is not entitled for 2nd ACP, Respondent Department has not intermingled the two scheme i.e. the departmental scheme dated 25.04.96 and the ACP scheme dated 09/08/99 of the Govt. of India. In both the scheme it is mandatory to have diploma in Civil Engineering and applicant should have pass departmental examination to be promoted to the next higher rank, which in present case the applicant does not possess. upgradation in higher pay scale under ACP scheme can only be given to a Govt Servant if he is eligible for the post on promotion. In present case applicant is a matriculate and recruited as Sub- Overseer in the apy scale of 260-8-300-EB-8-340-10-380EB-10-430 (pre revised & 3200-4900 revised (S-6) promoted as JE (Civ) in pay scale of Rs. 5000-150-8000 (S-9) which is the highest scale can be tenable by a matriculate applicant.

12. That with regards to the statement made in paragraphs 4.12 of the instant application the answering respondents begs to state that these are matter of records and the respondents do not admit anything which are not borne out of record.

*Mewari*

Contd....P/

[5]

13. That with regards to the statement made in paragraph 4.13 of the application the respondents beg to state that the order dated 28/09/05 by respondent department has been issued as per Govt of India DOP & T OM & clarification on the subject matter. There is no ambiguity in the order.

14. That with regard to the statement made in para 4.14 of the application the respondent denied the same. In present case applicant has not been granted 2nd ACP in view of provision in OM issued in Govt of India, DOP & T dated 09/08/99. Where it is clearly mentioned that higher pay scale under ACP Scheme shall be given to those Govt Official who will fulfill all criteria of promotion. In present case applicant has not fulfilled all criteria of next promotion, Hence higher pay scale under ACP Scheme has been denied.

15. That with regard to the statement made in paragraph 4.15 of the application the respondents begs to deny the correctness of the statement. The Respondent beg to reiterate the statement made in paragraphs-11 and 14 of the instant written statement.

16. That with regard to the statement made in paragraph 4.16 of the application the respondents not agreed with the same. In para 6 of Annexure-I to the Govt of India, DOP & T OM dated 09/08/99, it is clearly stated that financial upgradation under ACP scheme can only be given subject to fulfillment of normal promotional norms. In present case applicant has failed to fulfill all promotional norms i.e. required educational qualifi-

*Hewari*

Contd....P/

[6]

cation and passing of departmental examination etc. Respondent has not imposed any rider, rather these are already stipulated by Govt of India, who is competent authority on the subject matter.

17. That as regard to the statement made in paragraph 4.17 of the application the respondents beg to deny the same. ACP Scheme has been introduced by GOvt of India to grant financial upgradation to those eligible govt servant who are stagnated for a long time in same rank due to non availability of adequate promotional avenue. Govt of India has categorically clarified that higher pay scale under ACP scheme can not be given to those Govt servant who does not fulfill promotional criteria. In the case of state of Tripura and other V/s KK Roy, Hob'ble Supreme Court has directed to extend ACP scheme to those Govt servant who stagnated due to improper cadre structure otherwise they are eligible for higher post. Applicants case is not similarly situated to the above ref case.

18. That with regard to the statement made in para 4.18 of the application the respondents beg to dent the same. Ld. Advocate of applicant has misinterpreted the noble idea of ACP scheme Govt of India has introduced ACP scheme for these Govt servant who are otherwise eligible for higher post, but could not be placed due to inadequate vacancy. In present case no special consideration is implied on applicant to deny the higher pay scale under ACP scheme. Respondent has acted as per guidelines of Govt of India instruction and clarification on the subject matter.



Contd....P/



[7]

19. That with regard to the statement made in paragraph 4.19 of the application the respondents beg to state that applicants case is not similiarly situated as the case of C & AG of India.

20. That with regard to the statement made in paragraph 4.20 of the application the respondents beg to state that applicants case is not similarly situated as the case of accountant general (A & E) Meghalaya. Whereas senior accountants have been granted 2nd ACP in the pay scale of Rs.5500-9000, being eligible for next higher grade. In present case applicant is not eligible for the next higher grade.

21. That with regard to the statement made in paragraph 4.21 of the application the respondents beg to offer no comment.

22. That with regard to the statement made in paragraph 4.22 of the application the respondents beg to state that these are untrue and false, hence denied. All conditions laid down in Annexure-1 of OM dated 09/08/99 is simultaneously and concurrently applicable to all individuals. No individual can be granted by mere consideration of a particular para or paras in isolation but all other conditions stipulated elsewhere have to be fulfilled before granting financial upgradation. In present case, condition laid down in SL No.6 of Annexure-I of OM dated 09/08/99 should be and must be fulfilled in case of any Govt. official.



Contd....P/

[8]

In the case of a Madhava Rao Vs UOI and other, Ld Tribunal has observed in paragraph (vii) that fulfillment of normal promotional norms for promotions from one grade to the other should be fulfilled. In present case all promotional norms e.g. educational qualification and passing of departmental examination alongwith ACR for last three years have been considered before issuing financial upgradation to applicant. Applicant cannot dictate respondent department while considering his case to suit his own requirement. However department has to obey conditions and instruction laid down by Govt. of India time to time on the subject matter.

23. That with regard to the statement made in paragraph 4.23 of the application the respondents beg to state that it is agreed that promotion is a condition of service, but it can be granted subject to fulfillment of all promotional criteria. In present case applicant has not fulfilled all promotional criteria. Under any circumstances promotion cannot be granted to a non-eligible person, who is otherwise lacking in educational qualification. Applicants case is not similarly situated to any of the case referred in OA. Where those applicants are otherwise eligible for higher post and hence may be considered for ACP even though they have limited promotional prospects.

24. That with regard to the statement made in paragraph 4.24 of the application the respondents beg to state that learned Advocate of Applicant is trying to misguide the learned Tribunal by misconstrued/misinterpreting provision of Govt. of India OM dated 09/08/99



Contd....P/

[9]

and further clarification on the subject matter. Govt. of India has introduced financial upgradation of those Govt. servant, who are otherwise eligible for higher post but stangnated in lower post due to inadequate vacancy in higher post. Govt. of India has accordingly imposed condition Sl. No. 6 of Annexure-I and further clarified in para-53 of DOP & T letter dated 18/07/2001.

25. That with regard to the statement made in paragraph 4.25 of the application the respondents beg to offer no comment.

26. That with regards to the statement made in paragraphs 5.1 and 5.2 of the instant application the answering respondents have already stated in the paragraphs 13 and 14 of the instant reply.

27. That with regards to the statement made in paragraph 5.3 of the instant application the answering respondents have no comment and as reference has been made to the Deptt. of C & A.G.

28. That with regards to the statement made in paragraph 5.4 of the instant application the respondent beg to state that contention made in this para is false, fabricated and incorrect hence denied. As no requirement of 5/15 years of service has been imposed for grant of 2nd ACP. The same has not been granted to him because he has not passed the procedure Exam.

29. That with regards to the statement made in paragraphs 5.5, 5.6 and 5.7 of the instant application the



Contd....P/

[10]

respondents beg to state that requirement of passing procedure examination is essential as per clarification given by DOP & T letter and E-in-C's Branch, Army HQ letter stated in reply to above paras. As per the letter, all promotion norms have to be fulfilled and no upgradation shall be allowed if an employee fails to qualify departmental test prescribed for the purpose of regular promotion. The applicant for the purpose of regular promotion. The applicant is trying to claim upgradation without fulfilling requisite qualification required for such upgradation. Decision given on the application of the individual is as per rules applicable for grant of ACP.

30. That with regards to the statement made in paragraphs 5.8 & 5.9 of the instant application the respondents beg to state that the contention made in this paras are untrue, false and incorrect have denied Respondents further begs to state that he is neither eligible for deptt. scheme dated 25 April 96 nor is he eligible for grant of ACP. No alteration/supersession of rules has been done as alleged.

31. That with regards to the statement made in paragraphs 5.10 & 5.11 in the instant application the Respondent begs to state that the contention's made in those paras are false, untrue and incorrect hence denied. Further beg to state that he is neither eligible for deptt. scheme 25 Apr 2006 nor he is eligible for grant of 2nd ACP. No alternation/supersession of Rules has been done as all accorded.

*Mewar*

Contd....P/

[11]

32. That with regards to the statement made in paragraphs 5.12 and 5.13 of the instant application the respondents beg to state that the applicant is asking for 2nd ACP for which he is not qualified and therefore his case has not been considered. The Respondent further beg to state that the ground set forth in the instant application are not good ground and also not tenable in law 'as well as' on facts and therefore this instant application is liable to be dismissed.

33. That with regards to the statement made in paragraphs 6,7 and 8 to 8.5 the respondents have no comment.

34. That with regards to the statement made in paragraph 9 of the instant application the respondents beg to state that the claim of the applicant is illegal and ill founded and the applicant is not entitled to get any interim relief.

35. That the respondents submit that the application has no merit and as such the same are liable to be dismissed.

*Hevari*

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[12]

VERIFICATION

I, ..... Sanjay Tewari .....  
being authorised to hereby verify and declare that the  
statement made in this reply of OA ..... in  
para 1 to 35 ..... are true in my knowledge, these made  
in para ..... being matter of records  
are true to my information and believe and I have not  
suppressed any material fact.

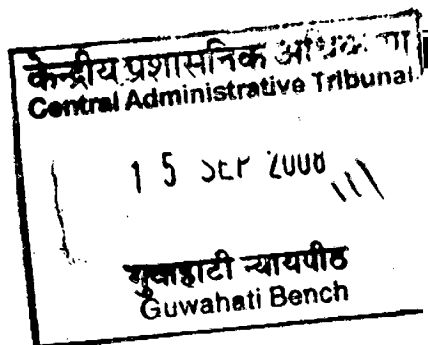
And I sign this verification on this ..... 18th day  
of ..... June ....., 2007.

*Sanjay Tewari*

DEPONENT  
*Sanjay Tewari*  
Lt Col  
So-1 (Adm)  
Chief Engineer

*Sanjay*

(83) - 0 -



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

Additional Rejoinder in O.A. No. 220/2006

Shri Mohan Lal Goswami

-Versus -

Union of India & Others.

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04.	B	Copy of the judgment passed by the Hon'ble Andhra Pradesh High Court on 05.06.2007 in WP No. 24603 of 2007.	9-10

Date: 15.09.08

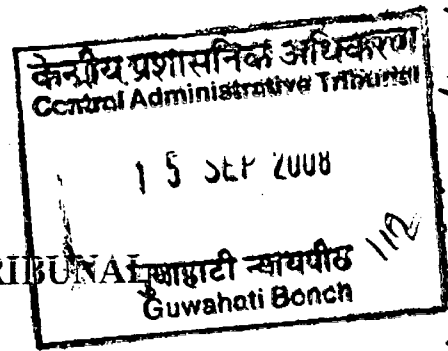
Filed by

*W. Datta*  
Advocate

- 1 -

(84)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI



Filed by the applicant  
Through V. Sultia, advocate  
On 15.09.08

In the matter of: -

O.A. No. 220 / 2006

Shri M.L. Goswami.

.... Applicant.

-Versus-

Union of India and Others.

.... Respondents.

-And-

In the matter of :-

Additional rejoinder filed by the  
applicant against the written statement  
submitted by the respondents.

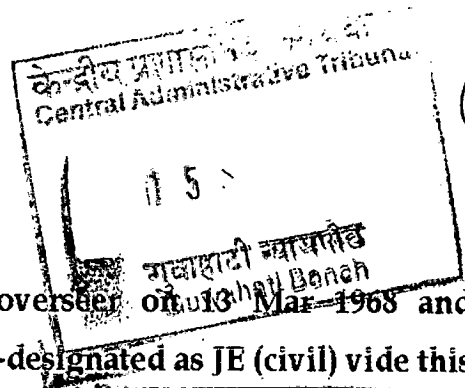
The above named applicant most respectfully begs to state as under: -

1. That in paragraph 11 of the written statement, it has been stated by the respondents Union of India that the applicant was a matriculate and recruited as Sub-overseer and promoted as J.E (Civil) in the pay scale of Rs. 5000-8000/-, which is a highest scale can be tenable by a matriculate candidate.

✓ It is pertinent to mention here that in the earlier written statement in O.A No. 241/2004 of the same applicant, it has been stated in para 1 (C) and (d) of the written statement as follows:-

"(C) As per earlier Recruitment Rules of Supdt B/R Gde-II (Re-designated as JE (civil) published in SRO-299 dated 10 Nov 1983 as amended vide SRO-161 dated 12 may 1988 (Annexure R-III). 10% vacancy of Supdt B/R Gde-II was filled up by promotion from direct entry Matriculate Sub-Overseers having 15 years regular service in the grade. MES/228556 Shri Mohan Lal Goswami, J.E





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(CIVIL) was appointed as Sub-overseer on 13 Mar 1968 and promoted to Supdt B/R Gde-II (Re-designated as JE (civil) vide this HQ letter No. 131841/4/473/Engrs/E1D dated 24 Sep 1994 (Annexure-I of OA) as per above Rules, which is counted as first financial up gradation to the applicant. It is also intimated that there is no provision for promotion from Sub-overseer to JE (Civ) in the revised recruitment Rules of JE (Civil) published vide SRO-78 dated 30 Apr 2001 (Annexure-R-IV).

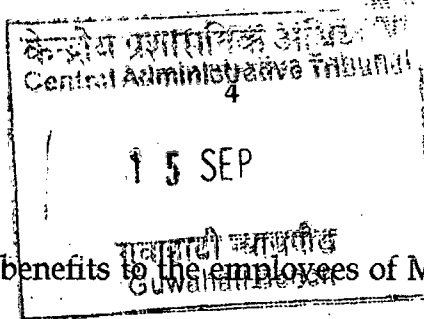
(d) On completion of 24 years of service the applicant was due for second financial up gradation under ACP scheme in the grade of Supdt B/R Gde-I which was next higher grade to Supdt B/R Gde-II as per earlier Recruitment Rules. Since passing of MES procedure examination was mandatory for further promotion to the post of Supdt B/R Gde-I, the second ACP to the applicant would be due only on passing of the requisite examination and completion of 24 years of service or 99 Aug 1999 whichever is later. This has also been clarified by E-in-C's Branch, AHQ letter No 84619/47/ACP/CSCC dated 02 Nov 2000 (Annexure R-V). The applicant has not yet passed the requisite examination hence got ineligible for second financial up gradation under ACP scheme. Moreover the post of Supdt B/R Gde-I has now been abolished consequent on re-designated of Gde-II & Gde-I as JE under revised Recruitment Rules."

It is quite clear from the above categorical statement of Union of India that as per amended recruitment rule of 1983 dated 12.05.1988, 10% of vacancy of Superintendent B/R Grade-II was filled up by promotion from direct entry matriculate Sub-overseer having 15 years of regular service in the grade, accordingly applicant who was matriculate and appointed as Sub-overseer on 13.03.1968 was promoted to the post of B/R, Grade-II vide letter dtd. 24.09.1994 after a lapse of about 27 years and this was the first promotion granted to the applicant. It is relevant to mention here that the post of B/R, Grade-II against which the applicant was promoted under 10% quota without having any diploma in Civil/ Electrical/Mechanical. The

M.L. Goswami

said B/R, Grade-II was subsequently redesignated as J.E, Civil, but applicant although were redesignated as J.E, but he has been promoted to the said category without having any diploma in engineering as required under the statutory recruitment rule now in force. As such question of passing of procedure examination or possessing the diploma as one of the statutory qualification is required under the existing RR does not arise in the instant case of the applicant. Sine he was promoted in the cadre of Superintendent BR, Grade-II from the cadre of Sub-overseer under 10% quota by way of relaxing the statutory recruitment qualification. Therefore once the statutory qualification has been relaxed in the case of the applicant while promoting him from the post of Sub-overseer to the cadre of Superintendent, BR, Grade-II, which was subsequently re-designated as J.E as such respondents are barred by law of estoppel to insist that the applicant is required to fulfill the statutory recruitment qualification and also require the passed them procedural examination for the purpose of benefit of 2<sup>nd</sup> ACP. Rather applicant is entitled to relaxation in the matter of educational qualification and passing of departmental examination.

2. That it is stated that once the applicant who entered into service with the basic qualification of matriculation in the cadre of Sub-overseer without having any diploma in civil engineering or any other branch in engineering course, but promoted to the cadre of Superintendent, B/R, Grade-III under 10% quota without having any diploma in civil engineering rather it can be said that the respondents U.O.I made specific provision for granting promotion to the cadre of Superintendent, B/R, Grade-II, without any recruitment of diploma in civil engineering. But subsequently at the instance of the respondents U.O.I, the post of Superintendent, B/R, Grade-II and B/R Grade-I have been redesignated as JE, Civil and accordingly the applicant also redesignated as JE, Civil without having any diploma in civil engineering. As per new RR i.e. recruitment rule, 2001 holding the field, diploma in civil engineering and recruitment of passing of the procedure examination are necessary for further promotion to the cadre of Asstt. Engineer and as such the aforesaid qualification are also the pre-condition



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for granting ACP benefits to the employees of MES working in the cadre of JE (Civil).

It is pertinent to mention here that since the applicant, who is holding the post of JE, Civil without any diploma in civil engineering and promoted under the erstwhile recruitment rule and promoted to the cadre of Superintendent, Grade-II under the erstwhile RR in relaxed standard under 10% quota. As such the respondents at this stage cannot insist for grant of benefit of 2<sup>nd</sup> ACP for acquiring the statutory qualification prescribed in the new recruitment rule. Moreover, recruitment rule which is now holding the field which prescribed recruitment qualification for diploma to the cadre of Asstt. Engineer cannot be imposed at this stage to the section of re-designated JE without having diploma in civil engineering and at the same time applicant cannot be made to suffer by not extending the benefit of 2<sup>nd</sup> ACP on account of non possession of recruitment qualification for promotion to the cadre of Asstt. Engineer. It is a known fact to the administration that the erstwhile matriculate Sub-overseer have been promoted to the cadre of Superintendent B/R, Grade-II without requirement of diploma in civil engineering. Therefore it can be rightly be said that the applicant although re-designated as JE, Civil but they fall in a separate category of JE, Civil without having any statutory recruitment qualification. Therefore, authorities are not entitled to insist upon the applicant that they should possess diploma in civil engineering and to qualify in the procedure examination for the purpose of granting benefit of 2<sup>nd</sup> ACP.

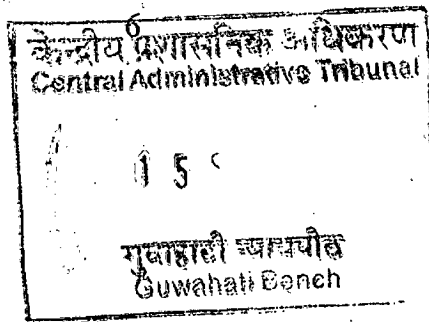
3. That it is stated that once an employee promoted in a particular cadre under relaxed standard without having any particular statutory qualification, such qualification cannot be insisted by the respondents at a subsequent stage for further promotion for grant of any benefit and ACP scheme. It is relevant to mention here that the procedure examination in fact meant for diploma holder Junior Engineer. Therefore denial of benefit of 2<sup>nd</sup> ACP to the applicant on the alleged ground of non-fulfilling the eligibility condition such as non passing of procedural examination and non possession of diploma in civil engineering cannot be ground of denial

M.L. Goswami

of 2<sup>nd</sup> ACP. The very object of ~~granting~~ benefit of ACP for stagnation of the employees in a particular cadre. In this connection the applicant relies upon the decision of the Hon'ble Apex Court in the case of Raghunath Prasad Singh -Vs- Secretary, Home (Police) Department, Govt. of Bihar reported in 1988 (Suppli) SCC, Page-519. It is also relevant to mention here that the benefit of ACP under O.M dtd. 09.08.1999 has been extended by the Govt. of India in lieu of promotion. After a lapse of 12 years and 24 years provided, the employees concern did not avail any benefit of promotion in the meanwhile. In the instant case applicant is a matriculate and with the said qualification the applicant have been selected for appointment in the year 1968 in the cadre of Sub-overseer. Thereafter he was promoted only once during his entire service carrier in the cadre of Superintendent, B/R, Grade-II that too under 10% quota as such applicant cannot be denied the benefit of 2<sup>nd</sup> ACP only alleged ground of non fulfillment of recruitment qualification and also on the alleged ground of non passing of procedural examination The applicant further relies the judgment of the Division Bench of Andhra Pradesh High Court in the case of S. Chittaranjan Das and others -Vs- Secretary, A.P. Residential Educational Institutions Society, Hyderabad and others, reported in (2007) 6 SLR 434.

(Copy of the Hon'ble Apex Court's judgment dated 11.12.1987 in Civil Appeal No. 2439 of 1982 and the judgment passed by the Hon'ble Andhra Pradesh High Court on 05.06.2007 in WP No. 24603 of 2007 are enclosed herewith as Annexure- A and B respectively).

4. That in the facts and circumstances stated above, the applicant most humbly submits that he is entitled to the relief prayed for, and the O.A deserves to be allowed with costs.



### VERIFICATION

I, Shri Mohan Lal Goswami, S/o Late Bimal Behari Goswami, aged about 57 years, working as Junior Engineer (Civil), MES No. 228556 in the office of the Chief Engineer, Shillong Zone, MES, Spread Eagles Falls, Shillong-793001, do hereby verify that the statements made in paragraph 1 to 4 of the additional rejoinder are true to my knowledge and belief and I have not suppressed any material facts.

And I sign this verification on the 13<sup>th</sup> day of September 2008.

M.L. Goswami

11588 (Supp) Supreme Court Cases 518

(BEFORE E. S. VENKATARAMIAH AND K. N. SINGH, JJ.)

M/s D. A. V. COLLEGE AND OTHERS

Guwahati Bench

Petitioners;

Versus

REGIONAL PROVIDENT FUND COMMISSIONER  
AND OTHERS

Respondents.

Writ Petitions Nos. 8000-01 of 1982 with Writ Petitions  
Nos. 6976 of 1982, 2834, 5852, 5333-55, etc.  
of 1983 and 12791-94, 12642-54 and 1603  
of 1984, decided on January 29, 1988

Labour Law — Employees' Provident Funds and Miscellaneous  
Provisions Act, 1952 — Section 1 — Act applies to educational institutions  
viz. D. A. V. College

Writ petitions dismissed

R/M/8872/SL

# ORDER

1. Shri S. K. Bagga, learned counsel appears for the petitioners. We do not find any substance in the contention of the petitioners in these cases that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') has no application to the educational institutions who are petitioners in these cases. We, therefore, dismiss all these cases.

2. We direct that the petitioners shall comply with the Act and the schemes framed thereunder regularly with effect from February 1, 1988. Whatever arrears they have to pay under the Act and the schemes in respect of the period between March 1, 1982 and February 1, 1988 shall be paid by each of the petitioners within such time as may be granted by the Regional Provident Fund Commissioner. If the petitioners pay all the arrears payable from March 1, 1982 up to February 1, 1988 in accordance with the directions of the Regional Provident Fund Commissioner he shall not levy any damages for the delay in payment of the arrears. Having regard to the special facts of these cases the subscribers (the employees) shall not be entitled to any interest on the arrears. The writ petitions are disposed of accordingly. No costs.

Attested  
Mulla  
Adh

1988, (Supp) Supreme Court Cases 519

(BEFORE RANGANATH MISRA AND M. M. DUTT, JJ.)

RAGHUNATH PRASAD SINGH

Appellant;

Versus

SECRETARY, HOME (POLICE) DEPARTMENT,  
GOVERNMENT OF BIHAR AND OTHERS

Respondents.

Civil Appeal No. 2439 of 1982†, decided on December 11, 1987

Service Law — Appointment — Signal (Wireless) Wing separated from the combined police force in State of Bihar w.e.f. May 6, 1970 — Held, recruit of 1972-73 in the separated wireless organisation not entitled to avail the benefit of option to go to the general police cadre conferred by GOs dated May 9, 1970 and January 1, 1974 — However, State Government directed to provide at least two promotional opportunities to officers of the wireless organisation

Appeal dismissed

R-M/8765/SLA

Advocates who appeared in this case :

G. L. Sanghi, Senior Advocate (M/s K. R. Nagaraja, R. H. Hegde and  
B. Krishna Prasad, Advocates, with him), for the Appellant ;  
D. Goburdhan, Advocate, for the Respondents.

# ORDER

1. This appeal by special leave is directed against the decision of a Division Bench of the Patna High Court rejecting the writ petition of the appellant who had claimed for being absorbed in the regular police force on the basis of exercise of option.

2. It is not disputed that until May 6, 1970, there was a combined police force in the State of Bihar raised under the Police Act of 1861 which included regular police personnel and those serving in the Signal (Wireless) branch. On May 6, 1970, the wireless wing was separated. Admittedly, the appellant was recruited as a constable in the wireless wing after May 1970. A Division Bench of the Patna High Court in C.W.J.C. 21 of 1968, disposed of on May 9, 1969, while dealing with the case of literate constable recruited into the Bihar Police Signals directed :

We, therefore, direct the respondents to treat the petitioner as a member of the single police force until two separate cadres are created for the wireless and the general sections by asking the personnel to opt for one or the other and to consider his case in the matter of promotion along with the other literate constables of the general police force.

On May 9, 1970, the State Government issued the following direction to the Inspector General of Police :

Sub : Declaration of the General Wireless Organisation of the police department as a closed cadre and separate from the general police cadre

Orders—Sanctioned with effect from the date of issue of the order.

†From the Judgment and Order dated February 24, 1981 of the Patna High Court in C.A.W.J.C. No. 874 of 1977

2. All the existing permanent and temporary posts of the police wireless organisation will be deemed to be a part and parcel of the above cadre.

3. The existing staff of the police wireless organisation will have the option either to remain within the abovementioned cadre or to opt for the general police cadre. The option will have to be exercised within three months from the date of issue of the order....

On January 1, 1974, further instructions were issued to the Inspector General of Police to the following effect :

Sub : C.W.J.C. No. 21/68—*Sh. Ramdev Singh v. State of Bihar and Others.*—for the implementation of the orders of the Patna High Court

Sir,

With reference to the G.O. letter No. 3247 dated July 27, 1974 of Shri T. P. Sinha, Assistant Inspector General of Police (Communication) on the subject abovementioned, I have been directed to say that the State Government has taken the decision that fresh option be taken from the existing staff of Police Wireless Organisation in connection with their adjustment in the general police cadre. The option can be taken within two months of the issue of the orders....

The appellant claimed that he was entitled to exercise option and since option was not asked from him, he may be reverted to the general cadre. When that was not done, he applied to the High Court for direction. The High Court found that the benefit of option was confined to recruits prior to May 6, 1970 and since the appellant had been recruited long after that date, he was not entitled to the exercise of benefit of option. The writ application was accordingly dismissed and that decision is the subject matter of the appeal.

3. We have read the judgment of the High Court with reference to the documents placed and heard learned counsel for parties. There is no doubt that the High Court was right in finding against the appellant that the option in terms of the instructions dated October 1, 1974 was available to those who came within the ambit of the earlier judgment. Thus the appellant being a recruit of 1972-73, not in the combined cadre but in the wireless organisation, was not entitled to the benefit of option. His appeal is, therefore, liable to be dismissed.

4. Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organisation. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar

to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply with this direction, it should, within two months thereafter, give a fresh opportunity to personnel in the police wireless organisation to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organisation. 31

5. The appeal is dismissed with the directions indicated above. There would be no order for costs.

### 1988 (Supp) Supreme Court Cases 521

(BEFORE RANGANATH MISRA, M. M. DUTT AND M. H. KANIA, JJ.)

STATE OF TAMIL NADU AND OTHERS Appellants;

*Versus*

K. V. SESHADIRI AND OTHERS Respondents.

Civil Appeal No. 274 of 1988,  
decided on January 20, 1988

Service Law — Judiciary — Pay — Special pay — In accordance with recommendation of Chief Justice of Madras High Court, PAs and Judgment Writers attached to the High Court judges directed to be paid special pay of Rs 100 per month only in addition to pay at par with Reporters of Legislative Assembly

Appeal disposed of

R-M/8870/SLA

### ORDER

1. Special leave granted.

2. Heard learned counsel for the parties. We find that the learned Chief Justice of the High Court of Madras had recommended to the State Government to put the Personal Assistants and the Judgment Writers attached to the judges at par with the Reporters in the Legislative Assembly in regard to payability of the special pay of Rs 100 per month in addition to pay. While disposing of the writ petition the High Court has directed that the respondents would get special pay of Rs 100 in addition to the special pay which they have been receiving already. This obviously was not the recommendation of the learned Chief Justice. On the basis of the recommendation the respondents become entitled to Rs 100 as by way of special pay and Mr. Shanti Bhushan appearing for State has no objection to accept that part of the decision relating to monthly payment of Rs 100 as special pay to each of the respondents.



## ANDHRA PRADESH HIGH COURT

Before :- L. Narasimha Reddy, J.

WP No. 24603 of 2007

Decided on 5.6.2007

S. Chittaranjan Das and others

Versus

Secretary, A.P. Residential Educational Institutions Society, Hyderabad and others

Petitioners

Respondents

For the Petitioners : Ms. N. Usha Kiran for Mr. W.B. Srinivas, Advocates.  
For the Respondent No.1 : Mr. M. Subrahmanyam, Advocate.

**Constitution of India, Articles 16 and 226—Promotion—Seniority—Qualification—Petitioners appointed as Typist—Though petitioners not having required qualification but on account of non-availability of qualified candidates petitioners promoted as U.D. Clerks—Respondents No.2 to 11 shown junior to petitioners—However, respondent No. 1 promoted their juniors to post of Superintendents in violation of seniority list—Held, relaxation of qualification once given cannot be restricted to a particular stage—Respondent No.1 not justified in issuing order promoting respondents No. 2 to 11 as Superintendents in preference to petitioner in violation of seniority list.** (Paras 13, 14, 17 and 18)

**Cases referred :**

1. Government of Tamil Nadu v. M.N. Raghunathan, 1983 (1) SLR 22 [Para 15]
2. Jagdish Kumar v. State of H.P., 2005 (1) DT (SC) 1123 [Para 16]

**JUDGMENT**

L. Narasimha Reddy, J.—Petitioners challenge the proceedings dated 17.10.2005, through which respondents 6 to 11 were promoted as Superintendents from the category of Senior Assistants. They also challenge the action of the 1st respondent in not promoting them to the posts of Superintendents and not treating them as seniors to respondents 2 to 11.

2. The 1st respondent is a Society, registered by the Government of Andhra Pradesh, for the purpose of establishing Residential Educational Institutions. It is funded by the State and Central Governments. The 1st petitioner was appointed as Typist/LDC on 10.7.1972, and petitioners 2 and 3 were appointed into that category on 12.3.1981 and 29.7.1981, respectively. All of them were promoted as Senior Assistants on 11.11.1984. The respondents 2 to 11 are juniors to the 1st petitioner in the category of Typist/LDC and Senior Assistants. Petitioners 2 and 3 are seniors to respondents 4 to 8 and 11, in the said categories.

3. The 1st respondent framed Service Rules for its employees in the year 1972. Matriculation was prescribed as the qualification for the post of L.D. Clerk or Typist, in the educational institutions. For the post of U.D. Clerk, Graduation from any recognized University and pass in a departmental test was made essential, apart from five years experience in the feeder post. The petitioners and many of the respondents did not hold graduation degree qualification. However, on account of non-availability of qualified candidates, they were promoted to the higher posts of Senior Assistants. In the year 1988, the Society relaxed the requirement of holding degree qualification for promotion to the post of U.D.C.

4. Initially, provisional seniority in the category of UDC was published on 22.4.1992. W.P. No. 18506 of 1993 and Batch was filed by the petitioners and other similarly situated persons. The batch of writ petitions was disposed of

through order dated 4.4.2000, directing the 1st respondent to consider the objections raised for the provisional seniority list. Acting on the same, the 1st respondent considered the objections and cancelled the provisional seniority list of 1992, thorough proceedings dated 10.10.2002. A committee was constituted to examine the matter. On the basis of this exercise, another provisional seniority list, in the category of Senior Assistants, was published on 31.1.2003. The same was finalized through proceedings dated 5.8.2004 after considering the objections. In this list, the 1st petitioner was placed above respondents 2 to 11, and petitioners 2 and 3 were assigned seniority above respondents 4 to 8 and 11. The grievance of the petitioners is that, notwithstanding the seniority assigned to them, the 1st respondent has not only denied the promotion to the post of Superintendent, but also promoted their juniors to that post.

5. The 1st respondent filed a counter-affidavit, and an additional counter-affidavit. The facts pleaded by the petitioners as regards their dates of appointment, promotion, preparation of seniority list etc., are not denied. The principal contention advanced on behalf of the respondents is that the relaxation given by the Society for the degree qualification is confined to the post of UDC, and unless the petitioners acquire degree qualification, they are not eligible to be promoted to the post of Superintendent. It is also stated that in supersession of the 1972 Rules, new set of Rules were framed in the year 2004, and possession of degree qualification is mandatory under these Rules for promotion to the post of Superintendent.

6. Though respondents 2 to 11 are served with notices, they have not chosen to enter appearance.

7. Ms. N. Usha Kiran, learned Counsel for the petitioners submits that the action of the respondents in ignoring the seniority of the petitioners over respondents 2 to 11 is illegal, arbitrary and discriminatory. She contends that the petitioners and several other employees were promoted to the post of LDC/Typist, though they did not possess degree qualification, on account of exigency of service and a policy decision was taken in the year 1988 to relax that condition. Learned Counsel points out that the relaxation granted in favour of the petitioners for the promotion to the post of UDC, would ensure to their benefit, for subsequent promotions also. She contends that the 1st respondent acted in a discriminatory manner in applying different yardsticks to the petitioners, on the one hand, and the respondents 2 to 11, on the other hand.

8. Sri M. Subrahmanyam, learned Counsel appearing for the 1st respondent submits that the relaxation given to the petitioners and other similarly situated person was, for the limited purpose of promotion to the post of UDC. He points out that the Service Rules of 1972 as well as 2004 are clear in their purport, that a candidate must possess degree qualification for being promoted to the post of Superintendent. According to him, the petitioners can claim right to be promoted as well as seniority, only if they possess the degree qualification.

9. The 1st respondent framed Service (Recruitment) Rules in the year 1972. The posts of Typists, LDCs and Stenographers are in category II to Class III. UD clerks occur in category 3 and the post of Superintendent and Accountant are in category 6 of Class III. As regards the qualification for L.D. clerks, dichotomy was maintained for the posts in the office of the Society, and those in the institutions. For the former, a degree from a University is made essential whereas for the latter, Matriculation was treated as sufficient. The petitioners are appointed as L.D. clerks/Typist on the dates mentioned in the preceding paragraphs. It is not in dispute that in the said category, they are seniors to respondents 2 to 11.

Accepted  
L. Narasimha Reddy  
Adv

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10. For the U.D. clerks, a Bachelor's Degree from a University is one of the qualifications, apart from pass in Accounts Test for Subordinate Officers, and certain other departmental tests. Petitioners were promoted in the year 1984 as UDCs, though they did not hold these qualifications. It is stated that this was resorted to, on account of dearth of qualified candidates. Obviously, having regard to the generality of the problem, the Society passed a resolution on 22.2.1988, relaxing the qualifications for the post of U.D.C. The resolution read as under:

"The existing non-teaching staff in the Society Office and Schools may be considered for promotion upto the post of Superintendent by giving relaxation from possessing Graduation Qualification provided they had duly put in 5 years of service and passed the Departmental Tests prescribed. Such relaxation shall not apply to future recruitment. Those who were already promoted by giving relaxation from passing the prescribed tests and who did not pass the Departmental Tests within the time limit prescribed, should be reverted, after giving two years' time and notice if they do not pass the tests within the time limit. Relaxation for Graduate qualification is applicable to all those promoted already. However, they must pass the departmental tests within 2 years (from two). A notice to that effect may be given."

11. Therefore, the ineligibility of the petitioners to be promoted to the post of U.D. Clerks stood wiped off. Administrative orders in terms of this resolution were issued on 11.7.1988. In addition to the petitioners, 16 others, including most of the respondents, were extended the benefit of promotion.

12. After the promotion of the petitioners as UDCs came to be legalized, in the year 1988, by virtue of a resolution of the Society, a provisional seniority list was prepared in the year 1992. The petitioners felt aggrieved, since they were placed below their juniors. A batch of writ petitions came to be filed, and as a result of the order passed therein, the provisional seniority list, issued in the year 1992, was cancelled. Fresh provisional seniority list was published on 31.1.2003 and the same assumed finality on 5.8.2004. Petitioners were assigned places at Sl. Nos. 18, 27 and 28 respectively. So far as respondents 2 to 11 are concerned, all of them are shown as juniors to the 1st petitioner, and respondents 4 to 8 and 11 figured as juniors to the petitioners 2 and 3.

13. Whatever may have been the rationale or justification for the 1st respondent in treating the petitioners as juniors to respondents 2 to 11 and denying them the promotion to the post of Superintendent, before the seniority list was finalized, there was absolutely no basis for continuing the same state of affairs, even after the final seniority list was published. Having declared the petitioners as seniors to respondents 2 to 11, the 1st respondent has chosen to issue the impugned order promoting some of the respondents as Superintendents, in preference to the petitioners and in violation of the seniority list. The reasons pleaded, either in the counter-affidavits, or during the course of arguments, for this action, are totally unsatisfactory and contrary to law.

14. It is strongly urged on behalf of the 1st respondent that the relaxation given in the year 1988 is confirmed to the post of U.D. Clerk, and it would not be available for subsequent promotions. Firstly, the text of the resolution, which is extracted in the preceding paragraphs, does not support this contention. Even otherwise, the relaxation of qualifications once given, cannot be restricted to a particular stage. On acquiring promotion, on the basis of relaxation, an employee joins others in the promoted category. He cannot be subjected to discrimination within that category, unless it was made specific in the orders of promotion, of those granting relaxation.

15. A similar situation arose before the Madras High Court. The Government relaxed the qualifications, that are required for the post of Assistant in the office of Board of Revenue. An employee was appointed to that post on the strength of relaxation, but was denied promotion to the next higher category, on the ground that he did not hold the necessary qualifications for the post. The aggrieved person approached the Madras High Court by filing a writ petition. The High Court allowed the writ petition. It was held that the relaxation once granted, would enable the employee to reap the benefit at subsequent stages also. The Government preferred writ appeal and a Division Bench dismissed the appeal (See Government of Tamil Nadu v. M.N. Raghunathan, 1983 (1) SLR 22 (Mad.)).

16. In Jagdish Kumar and others v. State of H.P. and others, 2005 (1) DT (SC) 1123, similar question fell for consideration before the Supreme Court. It was observed as under:

Para 16: "Further question is whether any relaxation was necessary while giving promotion as Assistant Draftsman. For being eligible to be considered for appointment as Assistant Draftsman, the requirements are indicated in Rule 6 (ii). Once the requirement of passing diploma of Draftsman Course is relaxed in terms of Rule 6(i) for appointment as tracer, there is no necessity for again having relaxation for being considered as Assistant Draftsman. That contingency is already taken care of when relaxation is given for appointment as Tracer. Otherwise, a person who has been found eligible to be appointed as a Tracer will not be considered for promotion as Assistant Draftsman, even though there is no illegality attached to the appointment as Tracer. Such a view would go against the logic of relaxation for appointment as Tracer." Therefore, the contention of the respondents cannot be accepted.

17. It was urged on behalf of the respondents that the Rules framed in 1972 were replaced in the year 2004, and the relaxation granted vis-a-vis the Rules of 1972, cannot be enforced, once the new set of Rules were framed. This contention is recorded only to be rejected. It hardly needs any emphasis that the rights that have accrued to the employees under a particular set of Rules cannot be taken away by framing a fresh set of Rules. Even if any changes are introduced, through new set of Rules, they will become operative prospectively, and cannot have the effect of taking away the rights of the employees, who are in service. The approach of the 1st respondent in the whole episode is far from satisfactory. An objective and fair consideration of the cases, at the relevant points of time, would have avoided unnecessary litigation.

18. During the pendency of the writ petition, the 1st respondent issued orders of promotion to the petitioners to the posts of Superintendents. A substantial part of the relief claimed in the writ petition stood extended to them. The seniority accorded to the petitioners in the seniority list, for the post of U.D. Clerks, published on 5.8.2004, must be reflected in the higher posts of Superintendents also. Notwithstanding the delay in promoting the petitioners, they shall be entitled to be treated as seniors on the basis of the seniority list dated 5.8.2004. This exercise shall be completed within two months from the date of receipt of a copy of this order.

19. The writ petition is accordingly allowed. There shall be no order as to costs.  
Petition allowed.

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Filed by the applicant  
through U. Bala, advocate  
on 18/11/09

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

**In the matter of: -**

O.A. No. 220 / 2006

Shri M.L. Goswami.

.... Applicant.

**-Versus-**

Union of India and Others.

.... Respondents.

**-And-**

**In the matter of: -**

Additional statement of facts submitted  
by the applicant in support of the  
contention raised in the Original  
application.

The above named applicant most respectfully begs to submit the following  
documents: -

1. That the applicant in support of his contention raised in the original application begs to refer order bearing No. 3/ESTT/ARC/DDM/2004 (113)-2121-24 dated 27.03.2009 issued by the Assistant Director (B) office of the Deputy Director (A), Aviation Research Centre, Govt. of India in connection with one Sri Natahar Nanda, Radio Operator working in the department of Aviation Research Centre, Doom Dooma, Tinsukia, Assam. In the order dated 27.03.2009, it has been stated that in pursuance of the ARC Hqrs. Order No. ARC/AW/53/99 (Pt)-9548 dated 29.10.1999 regarding grant of 1<sup>st</sup> and 2<sup>nd</sup> financial up-gradation under ACP Scheme in terms of DOP&T OM No. 35034/1/97-Estt (D) dated 09.08.1999 and further one time relaxation from passing departmental qualifying examination (DQE) has been granted the benefit of ACP Scheme with the approval of

M.L. Goswami

DOP&T vide Dy. No. 13123/CR/08 dated 03.02.2009 and Cab. Sectt. U/O. No. 28/67/2001-DO-II.66 dated 04.02.2009.

Copy of the order dated 27.03.2009 is enclosed herewith and marked as Annexure- D.

2. That it is stated that from the order dated 27.03.2009 it is evident that the Department of Personal and Training, Govt. of India has granted one time relaxation from passing of departmental qualifying examination (DQE) as required under the ACP Scheme DOP&T OM No. 35034/1/97-Estt (D) dated 09.08.1999. The present applicant is an employee of the Govt. of India, Ministry of Defence, as such he is also entitled to one time relaxation from passing of departmental qualifying examination/recruitment qualification for the grant of 2<sup>nd</sup> financial upgradation to the applicant w.e.f. 09.08.1999 in terms of ACP Scheme without insisting for passing of any departmental examination/recruitment qualification, with all consequential service benefits including arrear pay etc. by refixing the pay in the scale of Rs. 5500-9000/-.

Under the facts and circumstances as stated above the present applicant is also entitled to one time relaxation of passing of departmental examination as granted to Shri Natabar Nanda for the purpose of grant of 2<sup>nd</sup> financial upgradation.

M.L. Goswami

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VERIFICATION

I, Shri Mohan Lal Goswami, S/o Late Bimal Behari Goswami, aged about 61 years, Junior Engineer (Civil), MES No. 228556 (retired), do hereby verify that the statements made in paragraph 1 to 2 of the additional rejoinder are true to my knowledge and belief and I have not suppressed any material facts.

And I sign this verification on the 7<sup>th</sup> day of November 2009.

M. L. Goswami

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ANNEXURE-D 25

NO.3/ESTT/ARC/DDM/2004(113)- 2121-24  
O/O the Deputy Director (A)  
Aviation Research Centre  
Government of India  
Post: Doom Dooma: 786 151  
Dist: Tinsukia : (Assam)

Dated the, 27/03/05

**ORDER**

In pursuance of ARC Hqrs. Order No.ARC/AW/53/99(P)-9548 dated 29-10-1999 regarding grant of 1<sup>st</sup> and 2<sup>nd</sup> financial up-gradation under ACP Scheme in terms of DoP&T OM No.35034/1/97-Estt(D) dated 09-08-1999 and further one time relaxation from passing departmental Qualifying Examination (DQE) has been granted the benefit of ACP Scheme with the approval of DoP&T vide Dy.No.13123/CR/08 dated 03-02-2009 and Cab.Sectt. U/O.No.28/67/2001-DO-II.66 dated 04-02-2009, pay of Shri Natabar Nanda, Radio Operator is fixed in the recommended higher scale of pay as indicated below under 1<sup>st</sup> and 2<sup>nd</sup> ACP on completion of 12/24 years of service.

i)	Name & Designation:	Shri Natabar Nanda, Radio Operator
ii)	Date of 1 <sup>st</sup> & 2 <sup>nd</sup> ACP	09-08-1999
iii)	Pay as on 09-08-1999 in the pay scale of Rs.4000-100-8000/-	Rs.6000 + 100 = 6100/-
iv)	Add one notional increment (Min. of Rs.100/-)	Rs.6200/-
v)	Pay fixed in the scale of Rs.5000-150-8000/- w.e.f. 09-08-1999.	Rs.6350/-
vi)	Pay fixed in the scale of Rs.8000-275-13500/- w.e.f. 09-08-1999 under 2 <sup>nd</sup> ACP	Rs.8000/-
vii)	Date of next increment	01-08-2000 Rs. 8275/- 01-08-2001 Rs. 8550/- 01-08-2002 Rs. 8825/- 01-08-2003 Rs. 9100/- 01-08-2004 Rs. 9375/- 01-08-2005 Rs. 9650/- 01-08-2006 Rs. 9925/- 01-08-2007 Rs.10200/-

This is in supercession of our earlier Order No.3/ESTT/ARC/DDM/2004 (113)-11008-17 dated 03-12-2007.

(BHAGAT RAM)  
ASSISTANT DIRECTOR(B)

**Distribution:-**

1. The DACS, R.K.Puram, New Delhi.
2. The Accounts Officer, ARC, Doom Dooma.
3. Person Concerned.
4. Guard file.

Attended  
Mulla  
Adv