

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 29.7./2006

R.A/C.P No.

E.P/M.A No. 48/2010

49/2010

171/2011

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SECTION OFFICER (Judl.)

FROM NO. 4
(SEE RULE 24)
CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH:

1. Original Application No. 297/06
2. Miscellaneous Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(S) Montul Das Gupta & am

Respondant(S) U.O.I Govt

Advocate for the Applicant(S) J.L. Sankar.....

..S.N.Tamuli.....

Advocate for the Respondent(S) C. Bal. M. M. D. A.

Notes of the Registry	Date	Order of the Tribunal
<p>The application is in form is filed in the Registry dated 28.11.06 No. 286959458 Date 28.11.06 for Dy. Registrar 7.12.06</p>	08.12.2006	<p>Present: Hon'ble Sri K.V. Sachidanandan Vice - Chairman.</p> <p>The Applicants were engaged in the Indian Council for Medical Research (ICMR) in different research projects for Malaria Eradication and they were appointed as Driver in year 1986 and 1987. Some of the employees approached the different Benches of the Central Administrative Tribunal claiming regularization of service from initial appointment and other benefits. After several rounds of litigation, all the Applicants were granted benefits including pensionary benefits from their initial appointment. Promotion scheme and ACP scheme has also already been granted. However, promotion has not been granted to the applicants counting the service prior to merger for the purpose of pension. Hence, this Application.</p>

OA 297/06

2

Contd/-

08.12.2006

Heard Dr. J.L. Sarkar, learned Counsel for the Applicant and Mrs. M. Das, learned Addl. C.G.S.C. represented the Respondents.

Considering the issue involved, I am of the view that the notice is to be issued. Accordingly, issue notice to the Respondents. The Respondents are directed to file reply statement within six weeks.

Post on 23.01.2006.

Vice-Chairman

Copy of order dated 8-12-06 already hand over to Mrs M. Das. Addl. C.G.S.C.

NS
15.12.06

R/
~~For Rly SC~~

order and notice sent /mb/
to D/Section for issuing
to R-1 to 5 by regd.
Ald post.

23.1.2007

Post on 9.2.2007.

Vice-Chairman

Cons D/No-09 to 13
4/11/07 DE 5-1-07

/bb/

9.2.2007

Considering the larger issue involved that is of implementation of the scheme for promotion and pension in this case I am of the view that this O.A. has to be admitted. Accordingly, O.A. is admitted. Six weeks time is granted to the Respondents to file reply statement.

Post the matter on 26.3.2007.

Vice-Chairman

No Wls has been filed.

22
22.1.07.

No Wls has been filed.

22
8.2.07.

No Wls has been filed.

22
23.3.07.

/bb/

26.3.2007

Mrs.M.Das, learned Addl.C.G.S.C. submitted that reply statement is being filed today. Let it brought on record if it is otherwise in order. Four weeks time is granted for filing of rejoinder post on 26.4.2007.

27.3.07

WS Submitted
by Respondent Nos. 3, 4 and 5,
page contains 1 to 9.

Vice-Chairman

bb

26.4.07

Dr. J. L. Sarkar learned counsel for the applicant has sought for time to file rejoinder. Post the matter before the 'next available Division Bench. In the meanwhile, the applicant is permitted to file rejoinder.

Member(A)

Member(J)

Lm

① WS filed on behalf
of R.No-1, 3, 4 & 5.

② No rejoinder has been
filed.

25.4.07.

22.5.07

Rejoinder filed
by the Applicant
page 1 to 6. Respondent's
copy served.

Dis.

The case is ready
for hearing.

9.05.08.

OA 297/06

= 4 -

12.05.2008

Dr J.L. Sarkar, learned Counsel for the Applicant and Mrs M. Das, learned Addl. Standing Counsel for the Union of India, are present.

On the prayer of the learned Counsel for the parties, call this matter on 10.06.2008 for hearing.

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

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

nk

10.06.2008

On the prayer of Dr.J.L.Sarkar, learned counsel appearing for the Applicant (made in presence of Mrs. M.Das, learned Addl. Standing Counsel), this case stands adjourned and to be taken up for hearing on 7th July, 2008.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

lm

07.07.08

Dr J.L.Sarkar, learned counsel for the Applicant and Mrs M. Das, learned Addl. Standing counsel for the Respondents are on accommodation.

Call this matter on 20.08.2008.

(R.C.Panda)
Member(A)

(M.R.Mohanty)
Vice-Chairman

pg

The case is ready
for hearing.

3
04.07.08

The case is ready
for hearing.

19.08.2008

5
O.A.297/2006

20.08.2008

On the prayer of Dr.J.L.Sarkar, learned counsel appearing for the Applicant (made in presence of Mrs.M.Das, learned Addl. Standing Counsel for the Union of India) this case stands adjourned to be taken up on 16.09.2008 for hearing.

the case is ready for hearing.

15.9.08

/bb/

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

16.09.2008

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

the case is ready for hearing.

14.11.08

lm

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

17.11.2008

Call this matter on 2nd January, 2009 for hearing.

the case is ready for hearing.

1.1.09

lm

(S.N. Shukla)
Member(A)

(M.R. Mohanty)
Vice-Chairman.

02.01.2009

None appears for either of the parties.
Call this matter for hearing on 04.02.2009.

the case is ready for hearing.

3.2.09

/bb/

(M.R.Mohanty)
Vice-Chairman

- 6 -
DA. 297/2006

04.02.2009

Call this matter on 19.03.2009 for hearing.

The case is ready
for hearing.

/bb/


(M.R. Mohanty)
Vice-Chairman


3
18.3.09


19.03.2009

Mrs. U. Dutta states that Dr. J. L. Sarkar is
ailing and he is not in a position to argue the
matter. The case is adjourned.

No hearing

Put up this case on 24.04.2009 for hearing.


19/3/09


(A.K. Gaur)
Member (J)

/bb/

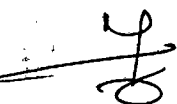
The case is ready
for hearing.

24.04.2009

Call this matter on 05.06.2009 for hearing.

3
22.4.09.

/bb/

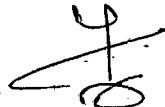

(M.R. Mohanty)
Vice-Chairman

21.05.2009

Dr J.L. Sarkar, learned Counsel
appearing for the Applicant, and Mrs M.
Das, learned Addl. Standing Counsel for the
Union of India, are present.

No time today. On consent of the
learned Counsel for the parties, call this
matter on 25.05.2009.


(N.D. Dayal)
Member (A)


(M.R. Mohanty)
Vice-Chairman

0. A-297/06

25.05.2009

On the consent of learned counsel for both the parties, call this matter on 26.06.2009.

The case is ready for hearing.

lm

(N.D. Dayal)
Member(A)

(M.R. Mohanty)
Vice-Chairman

23
24.6.09.

26.06.2009

Call this matter on 28.07.2009 for hearing.

(M.R. Mohanty)
Vice-Chairman

The case is ready for hearing.

/bb/

23
27.7.09.

28.07.2009

On the prayer of learned counsel for both the parties, call this matter on 04.09.2009 for hearing.

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

The case is ready for hearing.

/bb/

23
3.9.09

04.09.2009

On the prayer made on behalf of the Respondents, call this matter on 22.10.2009.

(M.K. Chaturvedi)
Member(A)

(M.R. Mohanty)
Vice-Chairman

The case is ready for hearing.

23
21.10.09

Lm.

22.10.2009

Mrs. U. Dutta, learned counsel for the Applicant prays for an adjournment as her senior counsel is out of Station.

List on 27.10.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

22.10.2009

Mr. S.N.Tmuli learned counsel for the Applicant prays for an adjournment as her senior counsel has fallen sick. .

List on 27.10.2009.

12/11/2010

Judgment / Final order dated 27/10/2009 prepared and sent to the J/Sdho for issuing the all respondents. /lm/

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

27.10.2009.

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

Copy of the order dated 27/10/2009.

10/11/09

Received copy of order dt. 27.10.09

For Mrs. M. Das

Dr. C.G.S.C.

CS Hazarika

10.11.09

Advocate

/lm/

28.03.2011

Dr. J.L. Sarkar, learned counsel for Applicant in the O.A. appeared and placed before this Bench a copy of the order of Hon'ble Gauhati High Court dated 3rd March 2011 in case No. WP(c) 4576/2010. By this order, Hon'ble Gauhati High Court restored the O.A. No. 297/2006 before this Tribunal. Learned counsel submitted that this is a Division Bench matter, as such it should be placed for hearing soon after the availability of Division Bench.

List on 19th May 2011 for hearing.

(Madan Kumar Chaturvedi)
Member (A)

29-3-11

Vakalatnama filed by Mrs. M. Das, Sr. C.G.S.C. on all respondents.

/PB/

5/5/11

WP(c) 4576/10 has

been received from Gauhati High Court on 26/4/11 for listing the matter here for disposal.

19.05.2011

Mrs.U.Dutta, proxy counsel on behalf of Dr.J.L.Sarkar, learned counsel for the applicant states that Dr.Sarkar is still unwell. Mrs.M.Das, learned Sr. C.G.S.C. is present.

The matter is adjourned at the request of the applicant to 14.06.2011.

(M.K.Chaturvedi)
Member (A)

(N.A.Britto)
Member (J)

The case is ready for hearing.

13.6.2011

9-
O.A.297/2006,

14.06.2011 This is a Division Bench matter. List
before the next available Division Bench.
Adjourned side die.

d.
(Madan Kumar Chaturvedi)
Member (A)

nkm

1-9-2011

05.09.2011 Heard Dr. J.L. Sarkar, learned counsel for
the Applicants and Mrs. M. Das, learned Sr.
CGSC for the Respondents.

Remanded in High Court
Guwahati.

Hearing concluded. Reserved for orders.

bb
(S.K. Kaushik)
Member (J)

d.
(M. K. Chaturvedi)
Member (A)

/bb/

14.9.11

Final Order dtd. 9.9.11
issued to the parties
side No. 1415-1420
Dtd. 15.9.11

09.09.2011

Judgment pronounced in open Court.
Kept in separate sheets. Application is allowed.
No costs.

bb
(S.K. Kaushik)
Member (J)

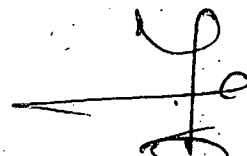
d.
(M.K. Chaturvedi)
Member (A)

bb
R copy of the
order dated 9/9/11
S.N. Tomelli
Advocate for
applicants

Received
by S. Prasad
for Mrs. M. Das
16/9/11

Order dated 25.3.2008

Call the matter for hearing
on 12-5-08


(M.R. MOHANTY)
Vice-Chairman

12

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI:

Original Application Nos. 297 2006

Date of Decision: 09. 09. 2011

Sri Mantulal Das Gupta & another.

..... Applicant/s

Dr J.L. Sarkar

..... Advocates for the
Applicant/s

- Versus -

Union of India & Ors.

..... Respondent/s

Mrs M. Das, Sr.C.G.S.C

..... Advocate for
the Respondents

CORAM :

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

HON'BLE MR. SANJEEV KUMAR KAUSHIK, MEMBER (J)

1. Whether reporters of local newspapers may be allowed
to see the Judgment ?

~~Yes/No~~

2. Whether to be referred to the Reporter or not ?

~~Yes/No~~

3. Whether their Lordships wish to see the fair copy
of the Judgment ?

~~Yes/No~~

Judgment delivered by


MEMBER (A)

13

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 297/2006.

Date of Order: This 9th Day of September, 2011.

THE HON'BLE MR M.K.CHATURVEDI, ADMINISTRATIVE MEMBER

THE HON'BLE MR SANJEEV KUMAR KAUSHIK, JUDICIAL MEMBER

1. Shri Mantulal Das Gupta
S/o Late H.R. Das Gupta
Driver.

2. Shri Lamphrang Rumnong
S/o Late K. Kharpor
Driver.

Office of the Regional Director
Regional Office for Health & Family Welfare
Govt. of India, Dhankheti
Shillong – 793 003.

...Applicants.

By Advocate: Dr. J.L. Sarkar.

-Versus-

1. Union of India
Represented by the Secretary
To the Govt. of India
Ministry of Health, Nirman Bhawan
New Delhi – 1.

2. Secretary to the Govt. of India
Ministry of Personnel & Public Grievances
North Block, New Delhi-1.

3. The Director General of Health Services
Nirman Bhawan, New Delhi – 1.

4. Director
National Malaria Eradication
(NVBDGP) Programme
22-Shamnath Marg, Delhi – 110054.

5. Regional Director
Regional Office for Health & Family Welfare
Govt. of India, Dhankheti
Shillong – 793 003.

...Respondents

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

d/

ORDERMADAN KUMAR CHATURVEDI, MEMBER (A):

By this O.A applicants make a prayer for the grant of promotion, as per the scheme for Staff Car Drivers sanctioned by the Government of India, Ministry of Personnel etc. vide its O.M. dated 15.01.2001 and to issue order for confirmation by reckoning the past service and to grant all consequential benefits.

2. Indian Council for Medical Research (ICMR) is conducting different research project in Malaria Eradication throughout India. 156 members including the applicants were appointed in one of such project i.e. P. Falciparum Monitoring Scheme (MOFRS) in different parts of India in different capacities. Applicants Shri Mantulal Das Gupta and Shri Lamphrang Rumnung were appointed as Driver on 29.5.1986 and 4.5.1987 respectively with temporary status.

3. A promotion scheme for Staff Car Drivers was circulated by DOPT. It was intimated that all ex MOFRS employees including the drivers will be eligible for Assured Career Progression (ACP) from the date of merger i.e. 29.9.1995 and will be eligible for first ACP after 12 years of regular service. Consequent upon absorption of ex MOFRS staff they demanded promotion as per scheme for Staff Car Drivers as envisaged vide O.M. dated 15.2.2001. This O.M reads as under:

"OFFICE MEMORANDUM

Subject : Promotion Scheme for Staff Car Drivers.

The undersigned is directed to say that the Principal Bench of the Central Administrative Tribunal

2/

(CAT), New Delhi in their judgment dated 5.5.2000 in the case of Central Government Staff Car Drivers' Association and Bikram Singh Vs. Union of India in O.A.No.2529/96 has directed as under:-

".....to grant the applicants the pay scale of Rs. 1400-2300/- for the Master Craftsman/Head Staff Car Driver, presently existing in the Railways, from the date of filing of the O.A and to grant arrears and to allow consequential benefits."

2. Accordingly, the matter has been examined in consultation with the Ministries of Law, Finance and Railways and it has been decided to implement, with effect from 8.11.1996 (which is the date of filing of the O.A.No.2529/96), the above mentioned direction of CAT as in the succeeding paragraphs, in modification of the existing orders (copies enclosed) on the subject:-

- i) DoP&TO.M.No.22036/1/92-Estt.(D) dated 30.11.1993
- (ii) DoP&T O.M. No.22036/1/92-Estt.(D) dated 27.7.1995; and
- (iii) DoP&T O.M.No.35034/3/97-Estt (D) dated 1.6.1998

3. A new Grade for Staff Car Drivers to be called "Special Grade" shall be introduced in the scale of pay of Rs.5000-8000/- with effect from 8.11.1996.

4. Promotion to the Special Grade shall be by non-selection (seniority-cum-fitness) from Grade 1 with 3 years regular service in Grade-1 of Staff Car Drivers. The revised ratio in which the posts of Staff Car Drivers shall be placed in different grades of Staff Car Drivers shall be as follows:-

S.No.	Grade	Pay scale	Percentage
1.	Ordinary Grade	Rs.3050-4590	30
2.	Grade-II	Rs.4000-6000	30
3.	Grade-I	Rs.4500-7000	35
4.	Special Grade	Rs.5000-8000	5

5. These orders shall take effect from 8.11.1996. Hence, the posts of Staff Car Drivers as on 8.1.1996

should be apportioned among the four grades in terms of the ratio mentioned above and promotions should be made to different grades accordingly with effect from 8.11.1996 to the extent of short fall in the relevant grade(s). Arrears of pay and allowances should also be allowed with effect from 8.11.1996 as directed by the CAT.

6. If as on the date of issue of this Office Memorandum there is excess regular promotion already made in any grade as compared to the revised ratio mentioned above, such promotion shall be allowed to the excess incumbents on personal basis from the date of their initial promotion to that grade till they are covered within the revised ratio prescribed above but the period of such promotion on personal basis shall not count towards the eligibility service for further promotion.

7. All Ministries/Departments are requested to bring the above decisions to the notice of all concerned for immediate action including necessary amendments in the Recruitment Rules.

Sd/-
(K.K.JHA)
Director (Establishment)"

The promotion was denied by the respondent authorities. Being aggrieved applicants approached before this Tribunal. Tribunal vide its order dated 27.10.2009, directed the respondents to take steps to grant the benefits of promotion to the applicants in the light of the O.M dated 15.02.2001 taking into account their past services rendered from the date of initial appointment and to give them all other benefits as per entitlement.

4. Being aggrieved with the order of the Tribunal respondents filed Writ before the Hon'ble Gauhati High Court. High Court vide its order dated 03.03.2011 in Writ Petition(C) No.4576/2010 has held:

".....Since there is no clear adjudication by the Tribunal on the issue whether the respondents are entitled to the benefit of the Office Memorandum

dated 15.02.2001 and if so, the reasons therefore, we have no option but to set aside the order of the Tribunal dated 27.10.2009 and direct it to consider the matter afresh in accordance with law."

5. In the office order dated 26.03.1996, it is stipulated that consequent upon the merger of MOFRS the applicants are transferred to the post of Driver in the same pay scale in a temporary capacity on the same duty station. They would draw the same pay and allowance as admissible prior to their transfer on the strength of NMEP. It is mentioned in letter No.T.14011/4/93-MAL issued by the Ministry of Health & Family Welfare on the subject of NMEP-integration of Malaria operational Field Research Scheme (MOFRS) with the National Malaria Eradication Programme (NMEP) that the posts will be filled up by transfer of the existing incumbents working under the Health Operational Field Research Schemes. The conditions includes, inter alia, that no new recruitment shall be made in any of 156 posts being created, due to any reasons including death, retirement, resignation, dismissal etc.

6. Dr J.L.Sarkar, learned counsel for the applicant appeared before us and invited our attention on aⁿ unreported judgments of the Apex Court rendered in Civil Appeal Nos. 444-450 of 2002, **Union of India & Ors. vs. C.B. Gangadharaiah & Ors.** In this case consequent upon the merger of the MOFRS, Laboratory Assistant in the MOFRS attached to the office was transferred on the strength of NMEP in the same pay scale in a temporary capacity at the same duty station. Hon'ble Supreme Court has held that:

"He will be entitled for other benefits as applicable to other employees of Govt. of India as per the locality of his posting. Other conditions regarding the counting of

past service and other retirement benefits and carry forward of leave is under consideration.

We see no reason to interfere with the judgment impugned herein. The appeal is disposed of accordingly. There shall be no order as to costs.

However, it is made clear that with regard to Assured Career Progression respondents would be entitled to get benefit only from the date of absorption."

7. Mrs. M.Das, learned Sr. C.G.S.C appeared for the respondents submitted that the O.M dated 15.02.2011 was issued in the context of Railway employee as such it is not applicable in respect of the present applicants. Besides all the applicants are holding isolated post as such they are not entitled to get the benefit of O.M dated 15.02.2001 issued by the DOPT. According to Mrs. Das applicants are entitled only to the benefit of the ACP Scheme.

8. We have heard the rival submissions. The O.M dated 15.02.2001 was issued by the DOPT. It is in the context of the promotion scheme for Staff Car Drivers. No distinction is made in the O.M for the Railway employees and other Central Govt. employees. As such it cannot be said that it is applicable only in the context of Railway employees. Adverting to the next argument advanced by Mrs Das, we find that this issue is no longer res-integra. Hon'ble Supreme Court has made it abundantly clear in the case of **Union of India & Ors. vs. C.B. Gangadharaiiah & Ors (supra)** that "the employees who were transferred on the strength of NMEP shall be entitled for all benefits as applicable to other employees of Government of India as per locality of his posting."

9. Taking into consideration the entire conspectus of the case we hold that the applicants are entitled to the benefits of DOPT O.M dated 15.02.2001, we hereby direct the respondents to take steps to grant them

6/

the benefits of promotion taking into account their past services rendered from the date of initial appointment and give them all other benefits to which they are entitled, as per law within a period of 3 months from the date of receipt of the copy of this order.

In the result, O.A stands allowed. No costs.

(Signature)

(SANJEEV KUMAR KAUSHIK)
JUDICIAL MEMBER

(Signature)

(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

76

W.P.(C) No. 4576 of 2014

Appellant
Petitioner

Shri. Montu Lal Das Gupta & Co

Appellant Mr. R. Sharma
For _____
Petitioner Asstt S.G.I.

Respondent Mr. S. Dutta
For MS. M. Choudhury
Opposite Party Mr. D. Chakraborty } Adv. for the
caveator.

Noting by Officer or Advocate	Serial No	Date	Office notes, reports orders or proceedings with signature
1	2	3	4

WP(C) 4576/2010

BEFORE
HON'BLE THE CHIEF JUSTICE MR. MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. GOSWAMI

03.03.2011

(Madan B. Lokur, CJ)

The petitioner (Union of India) is aggrieved by an order dated 27.10.2009 passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No.297/2006.

It appears that on 29.9.1995 approval of the President was conveyed for merging the Malaria Operational Field Research Scheme (MOFRS) with the National Malaria Eradication Programme (NMEP). As a consequence of the merger, 156 temporary posts under the Directorate of National Malaria Eradication Programme and Regional Offices of Health and Family Welfare were created.

The respondents who were working as Staff Car Drivers with the MOFRS were transferred to the newly merged organization.

The contention of the respondents was that they were entitled to the benefit of the Office Memorandum dated 15.2.2001 issued by the Department of Personnel, Public Grievance and Pension. This Office Memorandum provided for a promotion scheme for Staff Car Drivers.

According to the petitioner, the respondents were not entitled to the benefit of the Office Memorandum dated 15.2.2001, but they were entitled to the benefit of the Assured Career Progression Scheme (ACP).

On the basis of this dispute, the respondents approached the Central Administrative Tribunal claiming the benefit of the Office Memorandum dated 15.2.2001 and it seems that an alternative prayer (which was given up) was made to the effect that they should be given the benefit of the ACP Scheme.

The petitioner resisted the original application and contended that the respondents were only entitled to the

22

~~benefit of the ACP Scheme~~ and that the Office Memorandum dated 15.2.2001 was not applicable to them.

The Tribunal appears to have mixed up both the issues in its order as it seems on a reading of paragraphs 3 and 5 of the order passed by the Tribunal. Thereafter, in paragraph 7 of its order, the Tribunal came to the conclusion, without giving any reason, that the respondents are entitled to the benefit of the Office Memorandum dated 15.2.2001 and that they should be given the benefits under that Office Memorandum. On a reading of the order of the Tribunal, it appears that the rationale for this is that since the respondents were given the benefit of pensionary services as indicated in the order dated 9.9.2004, they should be given the benefit of the Office Memorandum dated 15.2.2001. We cannot see any legal reasons for coming to this conclusion.

In these circumstances, ~~since there is no clear adjudication by the Tribunal on the issue whether the respondents are entitled to the benefit of the Office Memorandum dated 15.2.2001~~ and if so, the reasons therefor, we have no option but to set aside the order of the Tribunal dated 27.10.2009 and direct it to consider the matter afresh in accordance with law.

Since both the parties are present before us, we direct them to appear before the Tribunal on 28.3.2011, whereafter the Tribunal will pass appropriate orders for listing the matter for disposal.

A copy of this order be sent to the Central Administrative Tribunal.

The writ petition stands disposed of in view of the above terms.

Sd/- A.K. GOSWAMI
JUDGE

Sd/- MADAN B. LOKUR
CHIEF JUSTICE

URGENT

Memo No. HC.XXI.....R.M.Dtd.....

Copy forwarded for information and necessary action to: -

1. The Union of India, represented by the Secretary, Govt. of India, Ministry of Health, Nirman Bhawan, New Delhi-1.
2. The Secretary, Govt. of India, Ministry of Personal & Public Grievances, North Block, New Delhi-1.
3. The Director General of Health Service, Nirman Bhawan, New Delhi-1.
4. The Regional Director, Regional Office for Health & Family Welfare, Dhankheti, Shillong-793003, Meghalaya.
5. The Central Administrative Tribunal (CAT), Guwahati Bench, Guwahati, Assam.

By order

Deputy Registrar
Gauhati High Court, Guwahati.

SP
26/3/11

12
27

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI:

O.A. No 297 of 2006

Date of Decision 27.10.2009

Sri Montu Lal Das & Ors.

.....

Applicant/s

Dr. J. L. Sarkar

.....

Advocates for the
Applicant/s

- Versus -

U.O.I. & Ors.

.....

Respondent/s

Mrs. M. Das, Sr. C.G.S.C.

.....

Advocate for the
Respondents

CORAM :

HON'BLE MR. MUKESH KUMAR GUPTA MEMBER (J)

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

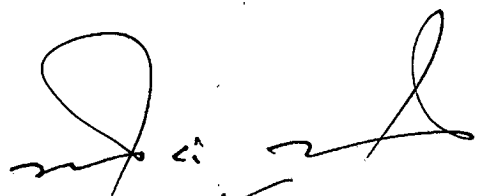
1. Whether reporters of local newspapers may be allowed
to see the Judgment ?
2. Whether to be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy
of the Judgment ?

Yes/No

Yes/No

Yes/No

Judgment delivered by



MEMBER(J) / MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.297 of 2006

Date of Order : This the 27th Day of October 2009

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

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

1. Shri Montu Lal Das Gupta,
S/O (L) H.R. Das Gupta,
Driver, Age 47 years
2. Shri Lamphrang Rumnong
S/O Late K.Kharpor,
Driver, Age 39 years

Office Address for both:-

Office of the Regional Director,
Regional Office for Health & Family Welfare,
Govt. of India, Dhankheti
Shillong-793003.

..... Applicants

By Advocate : Dr.J.L.Sarkar

- Versus-

1. Union of India,
Represented by the Secretary
to the Govt. Of India, Ministry of Health
Nirman Bhawan, New Delhi-1.
2. Secretary to the Govt. of India
Ministry of Personnel & Public Grievances
North Block, New Delhi-1.
3. The Director General of Health Services
Nirman Bhawan, New Delhi-1.
4. Director
National Malaria Eradication
((NVBDCP) Programme
22-Shamnath Marg, Delhi-110054.
5. Regional Director,
Regional Office for Health & Family Welfare,
Dhankheti, Shillong-793003.

...Respondents

By Advocate : Mrs. M.Das, Sr.C.G.S.C.




ORDER (O R A L)
27.10.2009

MUKESH KUMAR GUPTA, MEMBER(J):

By present O.A. two Applicants Mr. Montu Lal Das Gupta and Mr. Lamphrang seek directions to the Respondents to grant them promotion as per scheme formulated and notified by DOPT dated 15.02.2001 (Annexure- 11) in super session of earlier scheme vide which Staff Car Drivers have been placed in different grades, namely; Ordinary Grade, Grade II, Grade 1, & Special Grade, in scale of Rs. 3050-4590, Rs.4000-6000, Rs.4500-7000 and Rs.5000-8000 respectively. Said Scheme has come into force from 08.11.1996. They further seek directions to the Respondents to count their past service.

Admitted facts are that vide communication dated 29.9.1995 approval of the President was conveyed for merging of Malaria Operational Field Research Scheme (MOFRS) with the National Malaria Eradication Programme (NMEP). Vide Para 3 thereof, sanction of the President of India was also conveyed for creation of 156 temporary posts under the Directorate of National Malaria Eradication Programme and Regional Offices of Health and Family Welfare Scheme. Said posts were required be filled up by transfer of the existing incumbents working under the Health Operational Field Research Schemes. Consequent upon the merger of the Malaria Operational Field Research Scheme, as



per Govt of India, Notification dated 29.09.1995 (Annexure-3) of Ministry of Health, vide letter dated 26.3.1996, (Annexure-6) Applicants were transferred in a temporary capacity and they were made entitled to same pay and allowance, as admissible prior to their transfer on the strength of NMEP.

3. Dr.J.L.Sarkar, learned counsel for Applicants contends that limited prayer which he is pressing in present O.A. is regarding implementation of promotional Scheme of DOPT dated 15th February, 2001 (Annexure-11). Our attention was drawn to Judgment and Order of Hon'ble Supreme Court dated 10.09.2003, placed on record along with written statement of Respondent No.3, which Civil Appeal arose out of judgment and order dated 20th April, 2001 in W.P. Nos. 2722/2001 & 12395-12396 of 2001 passed by High Court of Karnataka. Said order also noted the order dated 12th March, 1996 passed by the Regional Director. Complete text of said Judgment read thus:

"We have heard the learned counsel for the parties.

These appeals arise out of the judgment and order dated 20th April, 2001 in W.P. Nos.2722/2001 and 12395-12396/2001 passed by the High Court of Karnataka at Bangalore.

We have considered the reasons recorded by the High Court as well as the order dated 12th March 1996 passed by the Regional Director, absorbing the Respondents which reads as follows:-



"Consequent upon the merger of the Malaria Operational Field Research Scheme (MOFRS), known as P.Falciparum Monitoring Scheme as per Govt. of India, Ministry of Health & F.W.letter No.T 14011 / 4 / 93 - MAL dated 29th September, 1995. Shri P. EKANTHAM Designation LABORATORY ASSISTANT in the MOFRS attached to this office is transferred on the strength of NMEP, which is presently approved up to the end of 8th Five Year Plan period w.e.f. 29.09.1995 (F.N) in the same pay scale of Rs. 975-25-1150-EB-30-1540/- in a temporary capacity at the same duty station. He will draw the same pay and allowances as admissible prior to his transfer on the strength of NMEP.


The above transfer of Shri K.EKANTHAM to the post of Laboratory Assistant is subject to the Medical Examination Certificate of Fitness as well as the character and antecedents verification certificate from the appropriate authority, if not done already.

He will be entitled for other benefits as applicable to other employees of Govt of India as per the locality of his posting. Other conditions regarding benefits and carry forward of leave is under consideration".

We see no reason to interfere with the Judgment impugned herein. The appeal is disposed of accordingly. There shall be no order as to costs.

However, it is made clear that with regard to Assured Carrier Progression respondents would be entitled to get benefit only from the date of absorption."

(emphasis supplied)



3. By filing reply it was emphasized by the respondents that in terms of aforesaid order counting of their past service of the Applicants from the date of initial appointment, as per Govt. of India's orders. as well as aforesaid judgment towards benefits A.C.P.Scheme is not applicable in their case in view of regular promotion Scheme. ACP scheme is applicable for employees having no prospects of promotion. The Applicants are entitled only for benefits of promotional Scheme, in terms of DOPT's letter dated 15.2.2001.


4. Mrs. M.Das, learned Sr.Standing counsel for the Respondents on the other hand contended that 156 posts which were sanctioned by the Presidential order dated 29.09.1995 was a temporary measure and their past services are not countable for grant of ACP.

5. We have heard learned counsel for both sides, perused the pleadings and other materials placed on record. Respondents there was also taken on the strength of NMEP in terms of order dated 29.09.1995, which is clear as bare perusal of Hon'ble Supreme Court Order as noticed hereinabove. On perusal of Hon'ble Supreme Court's Order, we are of the view that the Respondent therein was similarly placed as of applicants herein. Such being the facts we do not find justification to take view in the matter. Therefore, the Applicants are entitled to get the same benefit.

6. Learned counsel for the Respondents has contended that in compliance of aforesaid judgment of Hon'ble Supreme Court dated 10.09.2003 it has been decided by the Respondents that their services rendered under the Scheme of MOFRS, prior to their merger with NMEP on 29.09.1995, may be counted for pensionary and other benefits in accordance with Rules. When the applicants are entitled to Pension and other benefits, based on their past service we hold the same very service could not be ignored for the purpose of promotion.

7. Thus on consideration of all aspects of the matter, we hold that the applicants are entitled to benefits of DOPT OM dated 15.2.2001 & the Respondents are accordingly directed to take steps to grant them the benefits of promotion taking into account their past services rendered from the date of initial appointment, and give them all other benefits to which they are entitled, as per law. The above noted direction should be complied with & necessary exercise be completed with within a period of three months from the date of receipt of the copy of this order.

Accordingly, O.A. is disposed of. No costs.


(MADAN KUMAR CHATURVEDI)
MEMBER (A)


(MUKESH KUMAR GUPTA)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI, GUWAHATI BENCH 94

GA.No 297/06 ✓

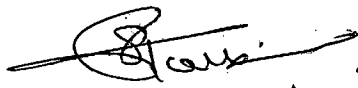
M.L. Das Gupta KORS

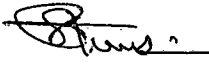
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VOI KORS.

The above GA. may come for
hearing on 21/5/09

I undertake to ~~be~~
inform the counsel for
Respondents Mrs. M.L. Das
Addl CGSC


(Advocate.)


Advocate
18/5/09

Allowed to be listed in
for the month of May 2009
18/5/09

25

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

(An application under Section 19 of A.T. Act – 1985)

OA No./2006

Shri Mantulal Das Gupta & ORS

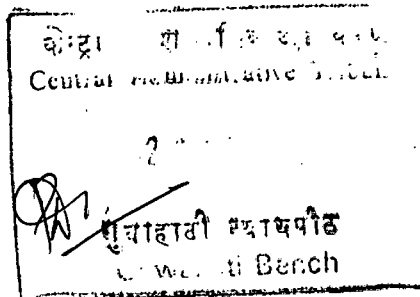
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UOI & ORS

Synopsis

Indian Council for Medical Research (ICMR) is conducting different research project in Malaria Eradication throughout India since 1950. 156 members including the applicants were appointed in one of such project i.e. P. Falciparum Monitoring Scheme (MOFERS in short) in different parts of India in different capacities. Applicants Shri Mantulal Das Gupta and Shri Lamphrang Rumnung were appointed as driver on 29/05/1986 and 4/05/1987 respectively with temporary status. Few persons appointed under the said scheme i.e. MOFERS filed OA's before different benches of Central Administrative Tribunal in different parts of India claiming regularization of service from initial appointment and all other benefits admissible to the permanent central government employees. As per the direction of the Hon'ble Tribunal's (Bangalore and Hyderabad Bench) all the persons appointed under this scheme were merged with National Malaria Eradication Programme (NMEP) (presently known as NVBDCP) with all benefits from 29/9/1995. Thereafter, after several rounds of litigation in different Central Administrative Tribunals all persons (i.e. all 156 Ex MOFERS employees) were given all benefits including pensionary benefits from their initial appointment. Meanwhile a promotion scheme for staff car drivers was circulated (Annexure A-H) by department of Personal and Training. By an order dtd 2.6.2005 issued from Director NVBDCP, it was intimated that all Ex MOFERS employees including the drivers will be eligible for Assured Career Progression (ACP in short) from the date of merger i.e. 29/9/95 and will be eligible for first ACP after 12 years of regular service. They have been purportedly denied the promotions under the original promotion scheme and they have also been purportedly denied counting of the services prior to merger for the purpose of pension hence this application is filed.

Filed by
S.N. Tamuli
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ASSAM, MEGHALAYA, NAGALAND, MANIPUR, TRIPURA, MIZORAM
AND ARUNACHAL PRADESH AT GUWAHATI.

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL
ACT, 1985.

OA NO. 297

Montulal Das Gupta and another. Applicants.

- Versus -

Union of India and 4 others. Respondents.

I N D E X

S1.No.	Description of documents relied upon	Annexure	Page No
1.	Application		1-16
2.	Copy of Appointment Orders	A- 1	17
3.	Copy of order of CAT Bangalore, dated 30.11.91	A- 2	18
4.	Copy of order of CAT Hyderabad dated 8.8.94	A- 3	19-27
5.	Copy of Govt. of India, Ministry of Health & F.W. dated 29.9.95 regarding integration of MOFR Scheme with NMEP w.e.f. 29.9.95	A- 4	28-31
6.	Copy of order of transfer of Applicants on strength of NMEP	A- 5	32-33
7.	Copy of order dated 15.9.98 for deduction of G.P.F., CGEIS, w.e.f. 1.1.86 by Director NMEP.	A- 6	34
8.	Copy of order CAT Bangalore dated 20.10.2000	A- 7	35
		A- 8	36
		A- 9	37-5

contd..2...

Sl. No.	Description of documents relied upon	Annexure	Page No.
9.	Copy of order of CAT, Hyderabad dated 15.3.2001	A- 10	52-55
10.	Order of Govt. of India, Ministry of Personnel dated 15.1.2001, 30.11.93, 27.7.95 and 1.6.98 reg. sanction of promotion scheme of Staff Car Drivers;	- A- 11 to A- 14	56-61
11.	Copy of order dated 9.9.04 from Regional Director, Shillong counting of service prior to 29.9.95 for pensionary and other benefits under C.C.S. (Pen) Rules, 72.	- A-15	62
12.	Director, NVBDCP's letter dated 2.6.05 reg. entitlement for A.C.P. of EX - MOFRS employees w.e.f. 29.9.95.	- A- 16	63
13.	Representation of applicants reg. entitlement of promotion under promotion scheme of Staff Car Drivers.-	A- 17	64
14.	Copy of A.C.P. Scheme dated 9.8.99	- A- 18	65-68
15.	Seniority list of EX- MOFRS Staff Car Drivers including applicants dated 15.9.99	- A- 19	69-70
16.	Promotion and Drivers of the same Regional Office for Health & Family Welfare under Promotion Scheme	- A- 20	71
17.	Redesignation of Drivers as Staff Car Driver under Director NMEP's letter dated 13.4.99	- A- 21.	72

contd...3...

Sl.No. Description of documents Annexure Page No.
relied upon.

18. Director, NAEP's order dated 31.5.99
promoting staff car drivers under the - A- 22 - 73-74
Promotion Scheme of Staff Car Drivers.

19. Representation and reminders by applicant-
for promotion to Grade I Staff Car
Drivers under the Promotion Scheme.

A-

A- 23

to

A- 29

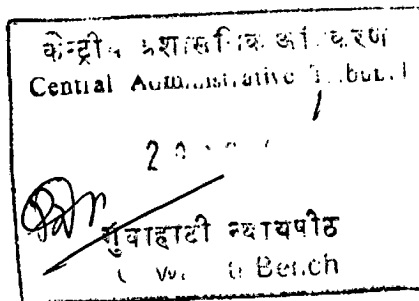
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1. Masgep
2. Lamphrang Rummong
Applicants

1. Date of filing : For office use.

2.

3.



APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT, 1985

For use in office

1. Date of filing : 7.12.06
2. Date of receipt :
by post.
3. Registration No. :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O.A. No. 297 (SH) of 2006

B E T W E E N

1. Shri Montu Lal Das Gupta,
S/O (L) H. R. Das Gupta,
Driver, Age 47 years.
2. Shri Lamphrang Rumnong,
S/O Late K. Kharpor,
Driver, Age 39 years

Office Address for both :-

Office of the Regional Director,
Regional Office for Health & Family Welfare,
Govt. of India, Dhankheti,
Shillong-793003.

... APPLICANTS.

- VERSUS -

contd..2..

39
Filed by the applicant's
through S.N. Tamuli
Advocate 28/11/06.

11/11/06

1

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT, 1985

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 297 (SH) of 2006

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Govt. of India, Dhankheti,
Shillong-793003.

... APPLICANTS.

- VERSUS -

contd..2..

40

Filed by the Applicants
through S.N. Tomuli
Advocate. 28/11/06

64

- 2 -

- VERSUS -

1. Union of India,
Represented by the Secretary,
to the Govt. of India,
Ministry of Health,
Nirman Bhawan,
New Delhi- 1.
2. Secretary to the Govt. of India,
Ministry of personnel & Public Grievances,
North Block, New Delhi-1.
3. The Director General of Health Services,
Nirman Bhawan,
New Delhi-1.
4. Director,
National Malaria Eradication,
(NVBDC) Programme,
22-Sham Nath Marg,
Delhi- 110054.
5. Regional Director,
Regional Office for Health & Family Welfare,
Dhankheti, Shillong-793003.

- - - RESPONDENTS.

1. Particulars of the Order against which the
Application is made.
1. Order No.....12-6/96 - NMEP (Admn)

contd..3..

ii. Date - - - - 2.6.2005

iii. Passed by - Director,

National Vector Bone Diseases,

Control Programme,

22 - Sham Nath Marg,

Delhi - 110054.

(iv) Denial of promotion to the applicant to the Grade II and Grade I, Staff Car Drivers after rendering service of 9 years in ordinary grade and 6 years in Grade II respectively and thereafter to Special Grade as per promotion Scheme for Staff Car Drivers sanctioned by Govt. of India w.e.f. 8.11.96 for Central Govt. Staff Car Drivers in implementation of the Judgement of the Hon'ble Principal Bench of the Central Administrative Tribunal dated 5.5.2000.

2. Jurisdiction of the Tribunal.

The Central Administrative Tribunal, Gauhati Bench, Guwahati alone has jurisdiction to adjudicate the case as per notification dated 26.7.1985 issued by the Central Government under section 18 of Administrative Tribunal Act.

contd..4..

3. Limitation :

The application is well within the period of limitation prescribed under section 21 (b) of the Administrative Tribunal Act, 1985.

4. Facts of the Case:

- (I) That the Indian Council of Medical Research were undertaking different Research Project in Malaria right from the past in 1950. The Research work of P. falciparum monitoring scheme has been undertaken throughout India entrusting to the Regional Directors, Regional Health and Family Welfare of the concerned area. There are 156 employees in all categories employed in this Research Project in all Regional Centres including the Regional Director, Shillong. The applicants were initially recruited as Drivers under the I C MR Scheme in temporary capacity w.e.f. 29.5.1986 and 4.8.1987 respectively, vide Regional Director (H & F.W)'s No.25/52/86 dated 29.5.1986 and 4.8.1987.

(Annexure - A- 1 and A-2)

- (II) This application is made jointly as the applicants have common grievances under Rule 4 (5)(a) of C.A.T. Procedure Rules 1987. That the employees of the P.F.C.P. monitoring project including the applicants were serving temporarily for more than 15 - 20 years without

contd..5..

without confirmation, retirement benefits as well as without any welfare measure like Provident Fund, Group Insurance, Medical facilities etc. The employees were pursuing the matter with the higher authorities for granting these benefits, but without any results. The employees Association thereafter approached the Government with their grievances. Meanwhile, the employees working in different regions had approached the respective Central Administrative Tribunals for justice. The Hon'ble Administrative Tribunals, Hyderabad Bench, and Bangalore Bench in O.A. No. 175/1991 and O.A. No. 292/91 issued directions vide their orders dated 30.10.91 and 8.8.94 to the respondents to take decision within the period specified for integration of the Research team of Malaria into the Directorate of N.M.E.P. and such decision for integration should give credit to the past service rendered by the applicants for the purpose of seniority and other service benefits.

- (IID) As a result approved of the President for merging of Malaria Operational Field Research Scheme (MOFRS) under ICMR with the National Malaria Eradication Programme (NMEP) was accorded and sanction of the President of India to the creation of 156 temporary posts under the Directorate of National Malaria Eradication Scheme

contd..6..

Scheme Programme and Regional Offices of Health and Family Welfare under 8th Plan was conveyed by the Ministry of Health and Family Welfare vide letter No. T. 14011/4/93/ MAL dated 29.9.95. Accordingly, the Regional Director, Health & Family Welfare, Shillong vide his office order No. 2-ICMR/ADMN/GENL/1/96/^{/911}dated 26.3.96 and No. 2-ICMR/ADMN/GENL/1/96-1019 transferred the Applicants w.e.f. 29.9.1995 on the strength of N.M.E.P. and stating him to be entitled for other benefits as applicable to other employees of the Govt. of India with the reservation that conditions regarding the counting of service and other retirement benefits and carry forward of leave was under consideration.

(Annexures- A-5, A-6, A-7)

- (IV) Thereafter, a clarification was given by the Director, NMEP, Delhi (Respondent No. 4) vide letter No. 1-2/95/ NMEP (Admn) dated 15.9.98, that MOFRS staff and officers are entitled for G.P.F. deductions, C.G.E.I.S. deduction from 1.1.1986 and other C.G.H.S. facility after their integration with NMEP w.e.f. 29.9.1995.

(Annexure- A-6)

- (V) That as the orders of the transfer of the EX-MOFORS staff to the N.M.E.P. to be treated as regular Central Government employees w.e.f. 29.9.95 consequent on

contd..7..

consequent ■ absorption in N.M.E.P. did not specify the conditions of service regarding counting of the past service, pensionary benefits, seniority, promotion, carry forward of leave and all other service benefits consequent on absorption, some of the employees of erstwhile Malaria Research Scheme, approached the Central Administrative Tribunals, Bangalore Branch and Hyderabad Branch vide O.A. No. 595 of 1999 and O.A. No. 50 of 2000 for issuing specific directions to the Respondents in this regard. The Hon'ble Central Administrative Tribunal, Bangalore vide their order dated 20.10.2000, after allowing the O.A. directed the Respondents to count the past service of the applicants from the date of ■ initial appointment and give them all other benefits to which they are entitled as per because of absorption and also to issue necessary orders within a period of three months from the date of receipt of the order. The Hon'ble Central Administrative Tribunal, Hyderabad vide order dated 15.3.2001 also issued direction to the Respondents to count the past service of the applicant from the date of initial appointment and give the applicant all other benefits to which he is entitled as per law.

(Annexure - A-9. A-10)

(VI) That meanwhile on the basis of the Judgements and direction issued by the Principal Bench of the Central Administrative Tribunal, New Delhi in O.A. No. 2957/91

contd..8..

and O.A. No. 2529/96 filed by the Central Govt. Staff Car Association against the Union of India, the Govt. of India, Ministry of Personnel etc., (Department of Personnel and Training) vide their O.M. Nos (i) 43019/54/976 dated 15.2.2001, (ii) 22036/1/92- ESTT(D) dated 30.11.1993, (iii) No. 22036/1/92- ESTT(D) dated 27.7.1995 and (iv) No. 35034/3/97-ESTT(D) dated 1.6.1998 sanctioned a promotion scheme for staff Car Drivers w.e.f. 1.8.1993 (subsequently) modified to 8.11.1996) as stated below :

1. The nomenclature of various post and eligibility criteria will be as under :

Sr.No.	Scale of pay	Revised Scale	Nomenclature	Eligibility
1.	Rs.950-1500	3050-4590	Staff Car Driver grade ordinary Gr.	<u>Basic grade</u>
2.	Rs.1200-1800	4000-6000	-do- Gr.II	9 Yrs of regular service ordinary Gr.
3.	Rs.1300-2040	4500-7000	-do- Gr. I	6 Yrs of regular service in Gr.II
4.		5000-8000	Specified Grade w.e.f. 8.11.96	3 Yrs of regular service in Gr.I.

Staff Car Drivers rendering service of not less than 15 years may be considered for appointment to Gr-I direct subject to availability of vacancy, seniority cum fitness and passing of trade test.(Annexures- A-11,A-12, A-13, A-14)

contd..9..

(VII) That as a result of the subsequent directions issued by the Central Administrative Tribunals referred to above, for counting the past services of the Ex-MOFORS the Regional Director (H & F.W.), Shillong, issued an office order vide No. RHFV/ADMN/Service-matter)2004 dated 9.9.2004 stating that

" In pursuance of the letter No. T. 14020/21/2004 - MAL dated 19.8.2004 from the Ministry of H & FW, New Delhi, and No. 3-68/99-NMEP (Admn) Pt.III dated 1.9.04 from Directorate NVBDCP, Delhi, the Service period of employees under MOFERS prior to mergess with NMEP (Present NVBDCP) on 29.9.95, will be counted for pensionary and other benefits in accordance with CCS (Pension) Rules, 1972 and instructions issued from time to time.

As regard A.C.P. (Assured carrear Progression) to the employees will be entitled to get the benefits from the date of their absorption i.e. 29.9.2005 with NMEP (~~present~~ (present) NVBDCP) as clarified by the Hon'ble Supreme Court."

The aforesaid order is silent about, confirmation, seniority cum regular promotion as per new promotion scheme, carry forward of leave etc. Moreover, service will not qualify for pension under the Pension Rules unless confirmed in the same or any other post.

(Annexure- A-15)

contd..10..

(VIII) That consequent upon the absorption of the EX -MOFORS Staff and transfer on the strength of N.M.E.P) as regular Central Govt. employees, the EX - MOFOR Staff Car Drivers having fifteen to twenty years of service without any promotion were demanding promotion to Grade II and Grade I posts in the scale of 4000-6000/4500-7000 for Staff Car Drivers in accordance with the promotion scheme sanctioned for staff Car Drivers, by the Govt. of India, but without granting them any promotion, the Director, NVBDCP, Delhi intimated vide his letter No. 12-6-96- NMEP (Admn) dated 2.6.2005 that EX MOFRS employees including Drivers will be entitled for A.C.P. (Assured Carrear Progression) from the date of merger with NVBDCP (earlier N.M.E.P.) w.e.f. 29.9.95 and will be eligible for First ACP after completion of 12 years regular service w.e.f. 29.9.95. However, if they are stagnating in the scale of Rs.3050-4590, they will be entitled for stagnating increment as per Rules.

(Annexure- A-16)

By the aforesaid order, the Directorate have illegally denied their propects of promotion as per the promotion scheme sanctioned for staff Car Drivers by the Govt. of India even after their absorption with the strength of NMEP and allowing their past service for pension and other benefits.

contd..11..

The applicants submitted representation dated 16.8.05 to the Director, NVBDCP, Delhi stating that the aforesaid order is contrary to the Govt. of India order dated 29.9.95 and 30.11.93 (Annexure-A 5 and A-12) and requested for their promotion to Gr-II and Gr- I post of Staff Car Drivers as per Govt. of India's Orders as A.C.P. Scheme is not applicable in their case in view of regular promotion scheme. In this connection, it may be mentioned that A.C.P. Scheme is applicable for employees having no prospects of promotion and not for the applicants staff Car Drivers for whom promotion scheme has been sanctioned by the Govt. of India. Hence this application before the Hon'ble Tribunal for the ends of justice. A copy of A.C.P. scheme sanctioned by the Govt. of India vide D.O.T'S No. 35034/1/97-ESTT(D) dated 9.8.99 is enclosed for Hon'ble Tribunal's perusal.

(Annexure- A- 17, A-18)

(IX) That after integration of EX- MOFORS Staff with NMEP in the year 1995, the Director, NAMP, Delhi, vide his letter No. 1-2/95-NMEP(ADMN) dated 15.9.1999 circulated the Internal Seniority List of Erstwhile MOFRS Drivers integrated with NMEP(now NAMP) including the applicants wherefrom it will be evident that the applicants have already rendered more than 20 years and 19 years of service respectively as Staff Car Drivers. But they

contd..12..

But they have ^{not} been promoted either as Staff Car Driver Grade I or Grade II till date. On the contrary the Drivers serving in Regional Offices for Health and Family Welfare (F.W. Side) have been promoted to Grade-I and Grade-II posts vide D.G.H.S., New Delhi's letter No. A- 32021/2/96-RD Cell dated 15.9.1999 and Director NMEP's letter No. 1-5/99- NMEP (Admn) dated 13.4.99 and No.1-5/99- NMEP (Admn) dated 31.5.99, which includes one S.K. Deb of Shillong Regional Office by re - designation of Drivers as Staff Car Drivers. But the Staff Car Drivers of EX MOFORS who have been transferred to N.M.E.P after absorption and for whom regular 156 Posts including 15 posts of Drivers have been sanctioned by the Govt. of India w.e.f.29.5.95. This is a clear case of discrimination in employment violating the fundamental right of the Applicants guaranteed under Article of the Constitution of India and denial of equal opportunity to the applicants, which calls for interference of the Hon'ble Tribunal.

(Annexure- A- 19, A-20, A-21, A-22)

5. Details of the remedies exhausted.

The applicants declare that they have availed of all the remedies available to them under the relevant Service Rules.(Annexures A- 17 and Annexures- A-23 to A- 30) are representations and reminders issued to Authorities

contd..13..

Authorities for remedial measures but with no results.

6. Matter not previously filed or pending with any Court.

The applicants further declare that they had not previously filed any application, Writ Petition or Suit in respect of the matter for which this application is made before any Court or other Authority or any Tribunal nor such application, Writ Petition or Suit is pending before any of them.

7. Relief Sought.

In view of the facts mentioned in para 6 above, the applicants pray for the grant of following reliefs:

1. The Hon'ble Tribunal may be pleased to issue direction to the Respondents in respect of the following :
 - (a) to grant promotions to the applicants as per the promotion scheme for Staff Car Drivers sanctioned by the Govt. of India, Ministry of Personnel etc. for Central Govt. Departments vide O.M. dated 30.11.93, 27.7.95, 1.6.98 and 15.1.2001 (Annexure - A-10, A-11, A-11(1) and A-9).

As the Scheme is applicable to all Central Govt. Ministries and Departments including Ministry of Health and Family Welfare and the

and the applicants have been absorbed with the strength of the Directorate of NMEP under the Ministry of Health and Family Welfare w.e.f. 29.9.95 as regular Central Govt. employees, they are entitled to promotions as Staff Car Driver @ Grade- I & II, and special Grade in accordance with the promotion Scheme.

- (b) to issue orders for confirmation of the applicants and count their past service from the date of appointment for all purposes including pension as otherwise the order dated 9.9.2004 issued by the Regional Director (H & F.W.), Shillong (Annexure-A-12) in pursuance of the Ministry of Health and Family Welfare letter dated 19.8.04 and Directorate of NVBDCP's letter dated 1.9.04, for counting the services periods of employees under MOFRS prior to their mergess with NMEP w.e.f. 29.9.95 for pensionary and other benefits in accordance with C.C.S (Pension) Rules 1972 will be infructuous as temporary service does not qualify for pension unless the employer is confirmed in any post.
- (c) to issue orders to grant of all consequential benefits to the applicants as is admissible to Central Govt. employees consequent on their absorption on the strength

contd..15..

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strength of NMEP w.e.f. 29.9.95 as regular Central Govt. Servants as ordered by the Hon'ble Central Administrative Tribunal, Bangalore, and Hyderabad (Annexure)

8. Interim Relief if any prayed for :

Since all consequential benefits of absorption on the strength of NMEP w.e.f. 29.9.95 are subject to the counting of past services of the applicants for all purposes as per existing rule, the applicants pray for an earliest hearing final orders.

9. Particulars of postal order in respect of application fees.

1. No. of Indian Postal Order. 280-959458
2. Name of issuing Post Office. G.P.O
3. Date of issue of Postal Orders. 28-11-2006.
4. Post office at which payable. G.P.O

10. List of enclosures :

All the enclosures are filed duly indexing the same. Details of index.- An index in duplicate containing the description of documents relied upon is enclosed.

1. M. Dasgupta -
 2. Lamphrang Remuany
- Counsel for Applicant Signature of Applicants.

VERIFICATION

I, Shri Montulal Das Gupta, s/o (L) H. R. Das, aged about 47 years, working as Driver in the Office of the Regional Director, Health & Family Welfare, Govt. of India, resident of Motinagar, Shillong, on behalf of myself and applicant No. 2, do hereby verify that the contents of paras, 1,2 are true to my personal knowledge and paras 3 to 10 believed to be true on legal advice and that I have not suppressed any material fact.

Dated: 28/11/02

Place : Shillong

MDasgupta
Signature of Applicant

To

The Registrar,

Central Administrative Tribunal,

Guwahati Bench,

Guwahati, Assam.

(17)

Annexure - A-1

56

No. 25(52)/86-1122
Government of India

Regional Office for Health and Family Welfare
'Felli Ville' Lumshohpoh, Shillong-793014.

Dated Shillong the 29th May '86.

OFFICE ORDER

Sri Mantu Lal Das Gupta is hereby appointed as a Driver under ICMR Scheme entitled "to study the monitoring of P. falciparum resistance strain to chloroquine" on a basic pay of Rs. 260/- P.M. in the scale of Rs. 260-6-320-EB-350/- plus usual allowances admissible to ICMR Ad-Hoc scheme staff stationed at Shillong w.e.f. 15th May '86 (AN).

The post is subject to the following terms and conditions.

1. The appointment is purely temporary.
2. The appointee on this Research Scheme will not be treated as regular employee either of central Govt. or of the Indian Council of Medical Research and will not be a liability either of Central Govt. or ICMR after termination of the service/Scheme.
3. The appointee will be a temporary project employee.
4. His service are liable for termination at any time by serving one month's notice or in lieu thereof one month's salary to be given by either side i.e. the appointee or appointing authority without assigning any reason.
5. He is liable to be transferred to any where in India.
6. For any dispute regarding interpretation of rules, decision of principal investigator of the scheme i.e. the Director, NMEP, Delhi will be final.
7. Candidate is not eligible for any benefits like pension, GPF contribution.

B. N. Kakaty
(DR. B. N. BAKKATY)
REGIONAL DIRECTOR (H&FW)

Copy to:-

1. The Director, NMEP, 22-Sham Nath Marg, Delhi-110054 (four copies) letter No. 25(52)/86/1475 dated 14th May '86 an offer offered to Sri Mantu Lal Das Gupta is enclosed herewith for your information.
- ✓ 2. Sri Mantu Lal Das Gupta, Driver, RH&FW, Shillong.
3. The Accounts section (Local) ICMR.
4. File.

A. Hestel
B. Hestel
(Advocate)

18

Annexure - A-2

5X

No. 25(52)/86
Government of India
Regional Office for Health and Family Welfare
'Felli Ville' Lumshohpoh, Shillong-793014.

OFFICE ORDER

Sri. Lamphrang Rumnong is hereby appointed as a Driver under ICMR Scheme entitled " to study the monitoring of P.falciparum resistance strain to chloroquine" on a basic pay of Rs. 260/- P.M in the scale of Rs. 260-6-320-EB-350/- plus usual allowances admissible to ICMR Ad-Hoc Scheme staff stationed at Shillong., w.e.f 4th August '87 (AN).

The Post is subject to the following terms and conditions.

1. The appointment is purely temporary.
2. The appointee on this Research Scheme will not be treated as regular employee either of central Govt. or of the Indian Council of Medical Research and will not be a liability either of Central Govt. of ICMR after termination of the service/scheme.
3. The appointee will be a temporary project employee.
4. His service are liable for termination at any time by serving one month's notice or in lieu thereof one month's salary to be given by either side i.e., the Appointee of appointing authority without assigning any reason.
5. He is liable to be transferred to any where in India.
6. For any dispute regarding interpretation of rules, decision of principal Investigator of the scheme i.e. the Director, NMEP, Delhi will be final.
7. Candidate is not eligible for any benefits like pension, GPF contribution.

Sd/-

(DR. B.N.BARKAKATY)
REGIONAL DIRECTOR (H&FW)

Copy to :-

1. The Director NMEP, 22-Sham Nath Marg, Delhi-110054 (Four copies) Letter No. 25(52)/86/ dated 4-8-87 an offer offered to Sri Lamphrang Rumnong is enclosed herewith for your information.
2. Sri Lamphrang Rumnong, Driver, RH&FW, Shillong.
3. The Accounts section (Local) ICMR.
4. File.

Certified to be true
copy
B.N.Barkakaty
Advocate

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Annexure - A-2 58

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE THIRTIETH DAY OF OCTOBER 1991

Present :

Hon'ble Shri P.S. Hameed Mohamed ... Member (A)

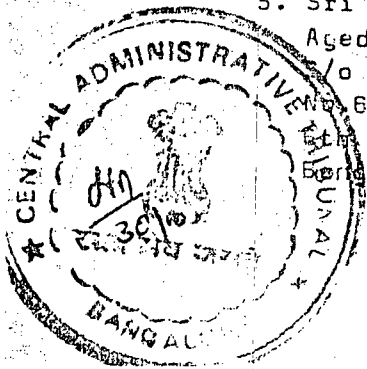
Hon'ble Shri Syed Fazlulla Razvi ... Member (J)

APPLICATIONS NO. 106 TO 175/1991

1. S. Gururaja Rao,
Aged 38 years,
S/o late Sri G. Srinivasa Rao,
No. 28, Maruthinagar,
Near Vijayamandir,
Kogilu Road,
Yelahanka,
Bangalore-4.
2. Dr. C. Mageraj,
Aged 41 years,
S/o Sri S. Chandrasekharan,
No. 34, Sajjan Rao Road,
Visveswarapuram
Bangalore-4.
3. Smt. K.M. Kamalakshmi,
Aged 37 years,
W/o S. Gururaja Rao,
No. 28, Maruthinagar,
Near Vijayamandir,
Kogilu Road,
Yelahanka,
Bangalore-4.
4. Sri C.G. Gangadharaiah,
Aged 38 years,
S/o C. Boregowda,
No. 8, 9th Cross,
Jaimaruthinagar,
Near Nandini layout-quarters,
Bangalore-2.
5. Sri K. Ekantham,
Aged 38 years,
S/o late Sri P. Kannaiah,
No. 6/373(2), 6th Cross,
6th Block, Rajajinagar,
Bangalore-560 010

... Applicants

Certified to be true copy
Sund.
(Advocate)



6. Smt. C. Padma,
Aged 35 years,
W/o Sri H.S.Srinath,
No.425, 1st 'C' Cross,
8th Main, III Stage,
IV Block, Basaveswaranagar,
Bangalore-79.
7. Sri J.N. darasimha Murthy,
Aged 37 years,
S/o Sri Narasimhaiah,
No.42, 6th Cross,
Agrahara Dasarahalli,
Bangalore-58.
8. Sri K. Siddartha Reddy,
Aged 35 years,
S/o Sri R. Krishna Reddy,
No.84/1, (188), R.V.Road,
Basavanagudi,
Bangalore-560 004.
9. Sri R. Srinivasa,
Aged 32 years,
S/o late Rangappa,
187, II Stage, II Phase,
West of Chord Road,
Mahalakshmi layout,
Bangalore-560 086.
10. Sri N. Joseph Surendran,
Aged 33 years,
S/o Sri Nathan,
No.16/A, Appaya Garden,
I Cross, Behind Corporation
Girls High School,
Ulsoor, Bangalore-8.

... Applicants

(Dr.M.S. Nagaraja ... Advocate)

v.

1. The Secretary to
Government of India,
Ministry of Health &
Family Welfare,
(Department of Health),
Nirman Bhavan,
New Delhi.
2. The Director General,
Indian Council of Medical Research,
Government of India,
Ministry of Health & Family Welfare,
New Delhi.

3. The Regional Director,
Regional Office for Health
& Family Welfare,
Bangalore.

... Respondents.

(Shri M. Vasudeva Rao ... Advocate)

(Shri M. Sulaiman Sait for R-2)

These applications having come up for orders before this Tribunal today, Hon'ble Shri Syed Fazlulla Razvi, Member (J) made the following:

ORDER

The 10 applicants above named have filed these applications under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

To direct the respondents to regularise the services of the applicants from the dates of their initial appointment and to absorb them in posts on a regular basis by making the posts permanent.

To direct the respondents to treat the applicants as permanent employees and to extend all the benefits as admissible to the permanent Central Government employees.

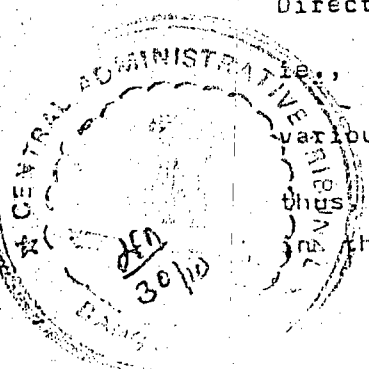
To grant all consequential benefits.

To award cost of these applications; and

to grant such other relief(s) as this Hon'ble Tribunal deems fit and expedient in the circumstances of the case in the interest of justice and equity.

2. The case of the applicants briefly put is as follows:

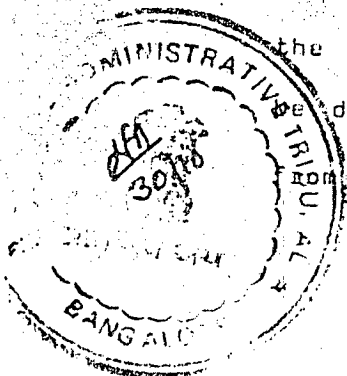
The applicants joined service in the office of the Regional Director, Regional Office for Health and Family Welfare, Bangalore, the 3rd respondent, with effect from various dates in the various posts as detailed in para 4 of the applications; that, thus, most of the applicants have been working over 10-12 years in the establishment of the third respondent; that Annexures



A-1 and A-2 are two of the appointment ^{orders} appointing two of the applicants. under the Ministry of Health and Family Welfare under the scheme for the Study of Plasmodium falciparum Monitoring Resistance to Chloroquine; that the said scheme has been continued from time to time as per Annexures A-3 and A-4 and ultimately the existing sanction expired on 31.3.1991; that the Director General had indicated to the employees that though the project has not been completed, the Government of India may not continue the scheme beyond 31.3.1991 and that the employees would stand terminated on 31.3.1991 ^{but} ~~A~~ no written communication, however, has been received so far; that, thus; the employees who have worked for over a decade ~~and~~ have given their best are facing termination adversely affecting their life and livelihood. It is further the case of the applicants that they have given representation as per Annexures A-5 to A-8 but no action has been taken on those representations; that the applicants are getting the benefits of the regular increments, pension, LTC, medical reimbursement, children education allowance, casual leave, medical leave and other leave as per rules applicable to those in continuous regular government service but they are still treated as temporary employees even after 10-12 years of service and they have not been allowed to contribute to provident fund and have not been allowed the benefit of house building advance and other advances and further they have not been given any promotion and have been working in the same post in the same scales; that when similar situation of threats of terminations was hanging over the heads of the employees the Indian Council of Medical Research, Malaria

Project Workers Association had approached the Hon'ble Supreme Court in W.P. Nos. 5656 and 5657/1985 and at the time of hearing of the writ petitions, the respondents had filed an affidavit stating that the petitioners in those writ petitions would be absorbed and the Hon'ble Supreme Court then gave a direction to regularise the services from the dates of their initial employment as per the order dated 14.8.1987, a copy of which has been enclosed as per Annexure A-C; that the respondents are morally and legally bound on equitable grounds to continue the services of the employees on regular basis and in the absence of response from the respondents and the non-continuation of the scheme beyond 31.3.1991 and the applicants having exhausted all the departmental avenues are constrained to approach this Tribunal. Hence these applications.

3. Of the three respondents, 1st and 3rd respondents have filed a joint reply while respondent No.2 has filed a separate reply. The respondents have contended mainly that the appointments of the applicants was purely on temporary basis having regard to the nature of the scheme which was being extended from year to year and that the applicants cannot claim the status of regular Government servants. It is also pleaded that their services have not been terminated and no termination orders have been issued to any of the applicants and as such the grievance of the applicants is unfounded and the applications are liable to be dismissed. The respondents have raised other grounds apart from the grounds mentioned supra in resisting the applications.



4. On the filing of these applications and on the interim prayer sought, this Tribunal vide its order dated 20.3.1991 directed the respondents not to discontinue the applicants from the posts they were holding for a period of 14 days and thereafter by subsequent order dated 1.7.1991 directed interim order to continue until further orders.

5. We have heard the learned counsel appearing for the parties and examined the respective contentions urged in the light of the material on record.

6. Dr. M.S. Nagaraja, learned counsel appearing for the applicants submitted that by a notification dated 14.10.1991, a copy of which he placed before the Tribunal on the date of hearing, the scheme has been continued upto 31.3.1992. Shri M.Vasudeva Rao learned counsel for R-1 and 3 also submitted that the scheme has been continued upto 31.3.1992 and there is no possibility of any of the applicants being discontinued from the posts they are holding. R-2 was not represented on the date these applications were heard and as such arguments of Dr.Nagaraja for the applicants and Shri Vasudeva Rao for R-1 and 3 only were heard. Even otherwise it is clear from the pleadings as well as the submissions made on behalf of the applicants that the 2nd respondent is only a formal party in these applications and the reliefs that the applicants have sought are against R-1 and 3 only who have been represented by Shri Vasudeva Rao.

7. Dr. Nagaraja submitted that in view of the extension of the

scheme upto 31.3.1992 as per the notification dated 14.10.1991 there is no threat of any of the applicants being terminated or being discontinued from the posts held by them upto 31.3.92. Shri Vasudeva Rao for the respondents also submitted the same. Dr. Nagaraja further contended that having regard to the order passed by Hon'ble Supreme Court as per the copy produced at Annexure A-9, and having regard to the fact that the applicants have put in continuous service for more than a decade even though the scheme in which they have been working came to be continued from year to year and having regard to the averments made in the reply statement of R-1 and 3 a direction may be given to the respondents not to discontinue the service of the applicants from the posts they have been holding until the expiry of the period of the scheme i.e., upto 31.3.1992 or any further period that the scheme may be extended and further a direction may be given to the respondents to consider the cases of the applicants for regularisation of the services from the dates of their initial appointment and to absorb them in the posts on regular basis and also to direct the respondents to treat the applicants as permanent employees and to extend all the benefits that are admissible to permanent central Government employees. Shri Rao learned counsel for the respondents submitted that since the respondents are not likely to discontinue the services of the applicants from the posts they have been holding upto the extended time of the scheme upto 31.3.1992 no direction to that effect is necessary. He further contended that the applicants are not entitled for regularisation of services from the dates of their



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appointment and absorption in the regular posts and they cannot also claim the status of permanent employees. He, therefore, contended that since there is no immediate threat of any termination of the applicants from the posts they are holding and the grievance ventilated by them being not warranted, the applications may be rejected.

6. It is seen from the reply filed by R-1 and 3 particularly from the averments made in paras 5 and 6 of the reply that the Plasmodium Falciparum Monitoring scheme is still undertaking research activities and there is no cause for disbanding this scheme till such time the objectives were achieved for which the scheme was sanctioned and further that the High Power Board had made recommendation that the P.F. monitoring is a regular activity and it should be made an integral part of the directorate of NMEP and this recommendation is under the consideration of the Government. Having regard to these averments put forth and in the facts and circumstances of the case we feel that these applications have to be disposed of by giving the following directions to the respondents 1 and 3:

i. the respondents 1 and 3 shall not discontinue the services of the applicants from the posts they have been holding until the extended date of the scheme i.e., upto 31.3.1992 or any further date to which the scheme may be extended;

ii. to consider the cases of the applicants for regularisation of their services from the dates of their initial appointment in the posts held by them and to absorb them in such posts on a regular basis and to extend all the benefits to them as admissible to the permanent central government employees, in accordance with law and in the light of the representations

Confidential to be free
copy

B. S. Singh
(Advocate)

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- 9 -

made by the applicants as per Annexures A-5 to A-8 with all consequential benefits.

9. We accordingly give the above directions and dispose of these applications with no order as to costs.



bsv

Sd-
MEMBER (A)

Sd-
MEMBER (J)

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

(28)

Amesure A-4 68

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No., 292/91.

Dt. of Decision : 8-0-94.

1. T.V.Sitarama Hari Dutt

2. Smt. Manjula.A.

.. Applicants.

Vs

1. The Union of India rep. by its
Secretary to Government, Ministry
of Health & Family Welfare,
Nirman Bhavan, New Delhi.

2. The Director, National Malaria
Eradication Programme, 22,
Sham Nath Marg, Delhi-110 054.

3. The Regional Director, Health &
Family Welfare, H.No. 1-14-256/8-1,
Prakashnagar, Near Airport,
Hyderabad.

.. Respondents.

Counsel for the Applicants : Mr. N.Ramamohan Rao

Counsel for the Respondents : Mr. N.V.Ramana, Addl.CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

..2

Certified to be
true copy
(Advocate)

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-2-

O.A. No. 292/91.

Dt. of Decision : 8-8-1994.

¶ As per Hon'ble Shri A.V. Haridasan, Member (Judl.) ¶

The applicants being sponsored by the District Employment Exchange, Hyderabad have been appointed and continuously working as Laboratory Assistants under the Indian Council of Medical Research Scheme No.2(A) P.Falci Perum Monitoring Scheme, Hyderabad under the control of Regional Director of Health and Family Welfare, Hyderabad. Their grievance is, that though they have been continuously working from 1983 onwards, their services have not ^{been} regularised though there was a proposal for integrating the project with the Department of Health and Family Welfare. They have been making repeated representations and till now no final decision has been taken in this behalf by the Government. Therefore, the applicants pray for the following reliefs:-

- 1) Direct the 1st respondent to finalise the issue of integration of the Research teams on Malaria into the Directorate of NMEP forthwith.
- 2) Direct the respondents to regularise the service of the applicants by conferring attending benefits arising out of continuity of their service.
- 3) Till such time direct the respondents not to terminate the services of the applicants and to continue them in service under the Directorate of NMEP and pass such other order or orders as are deemed fit and proper.

2. It has been alleged that the Hon'ble Supreme Court of India has in an almost similar case in W.P.Nos. 5876-57 Indian Council of Medical Research Workers Association Vs. Union of India, on the basis of the assurance given by the respondents before the Supreme Court directed that the Government should give continuity of service to the applicants from the date of their initial employment on regularisation and that the applicants in this case are also entitled to the same relief as they are similarly situated.

3. In the reply statements the respondents have stated that the High Power Board had made a recommendation that P.F. Monitoring is a regular activity and that it should be made an integral part of Directorate of NMEP and that this recommendation is under consideration of the Government. They have also indicated that as the projects in which the applicants are working is not likely to be wound up in the near future. There is no threat to the continuance of service of the applicants.

4. We have heard learned counsel for ^{both} the parties and we have gone through the material papers. The respondents have admitted that the High Power Board has opined the P.F. Monitoring is a regular activity and it should be integrated with the NMEP. What remains is taking a policy decision by the Government we are of the view that in the light of this admission by the respondents it would be proper if the application is disposed of directing the respondents to take a final decision in the matter within a reasonable time and to extend to the

(31)

70 applicants the benefit of their service in case the decision is in the affirmative. The counsel on either side also agreed that the application would be disposed of with the above direction.

5. Hence, the application is disposed of with a direction to the respondents to take a final decision in the matter of integration of the Research team of Malaria into Directorate of NMEP within a period of 6 months from the date of communication of this order and if a decision is taken to integrate, on such integration, to give credit to the service rendered by the applicants from the date of their initial employment for the purpose of seniority and other service benefits.

CERTIFIED TO BE TRUE COPY

Date: 17/8/94
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

292/91
8/8/94
22/8/94

sd/spr.

Copy to:

1. The Secretary to Government, Union of India, Ministry of Family & Welfare, Nirman Bhavan, New Delhi.
2. The Director, National Malaria Eradication Programme, 22, Shammath Marg, Delhi - 110 054.
3. The Regional Director, Health & Family Welfare, H.NO.1-11-256/B-1, Prakashnagar, Near Airport, Hyderabad.
4. One copy to Mr.N.Rammohan Rao, Advocate, CAT Hyderabad.
5. One copy to Mr.N.V.Ramana, Addl.CGSC, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

YLKR

(32) A-5

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NO.T.14011/4/93-MAL
MINISTRY OF HEALTH & FAMMLY WELFARE.

To,

The Director General Health Services,
Nirman Bhawan,
New-Delhi.

Subject: NMEP-integration of the Malaria operational Field
Research Scheme (MOFRS) with the National Malaria
Eradication programme (NMEP)

Sir,

I am directed to refer to the correspondence resting with
the Dtd. of NMEP's U.U.NO.411-4/88-NMEP(R)/R.P.Dated 13th June 1991
on the above subject and to convey the approval of the President
for morging of Malaria Operational Field Research Schemes (MOFRS)
presently doing continued under the auspices of Indian Council of
medical Research with the national Malaria Eradication Programme
(NMEP).

I am also directed to convey the sanction of the President
to the ~~am~~ creation of the following 156 temporary posts under
the Directorate of National Malaria Eradication Programme and
Regional Offices of Health and Family ~~Affairs~~ Welfare for 8th Plan
period :-

S.No. & Designation	No. of Posts	Scale of Pay
1. Senior Research Officer (Non Medical)	1 (One)	Rs. 3000-4500.
2. Research Officer (Medical	11 (Eleven)	Rs. 2200-4000 + MPA.
3. Asstt. Research Officer (Non Medical)	1 (One)	Rs. 2000-3200
4. UDC-Cum-Computer	2 (two)	Rs. 1200-2040
5. Junior Stenographer	14 (fourteen)	Rs. 1200-2040.
6. Laboratory Assistant.	99 (ninety nine)	Rs. 950- 25 1540
7. Driver	<u>15 (fifteen)</u>	Rs. 950-1500
8. Category 'D'	13 (thirteen)	Rs. 750-940
	<u>156</u>	

3. The above post will be fill up by transfer of the existing
incumbants working under the Health Operational Field Research Schemes.

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(Advocate)

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4. This is subject to the condition that :-
- (i) the present number of post of the MFRS will not be changed
 - (ii) ☒ no new recruitment shall be made in any of 156 posts being created under the regulating vacant due to any reasons including death, retirement, resignation, dismissal etc;
 - (iii) the states would be encouraged to carry out operational research activities from the existing staff; and
 - (iv) the Dts. of NMEP would collect data from state government and would develop mechanism to take appropriate strategies from the existing staff.
5. The expenditure involved will be met from the ~~un~~ sanctioned budget grant of National Malaria Eradication Programme under Demand No. 39-Department of Health (Plan).
6. This issues with the approval of the Ministry of Finance (Deptt. Expenditure) vide their U.O. No. 3771/E-Coord/95 dated 15.9.95.

Yours faithfully,

sd/-

(P.K. CHAKRABARTI)
DESK OFFICER (MAL).

Copy to:-

(34) Annemur A-6
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NO. 2-ICMR/ADMN/GENL/1/9A- 911
Government Of India.
Regional Director
Regional Office For Health & Family Welfare
Shillong.

Dated: Shillong the.. 26.03.96.....

OFFICE ORDER:

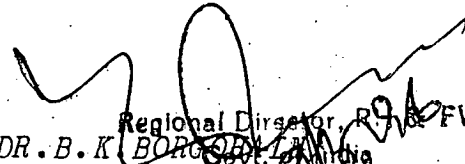
Consequent upon the merger of the Malaria Operational Field Research Scheme (MOFRS), known as p.falciparum Monitoring Scheme, as per Govt. of India, Ministry of Health and F.W. letter No. T.14011/4/93-MAL dated 29th September, 1995, Shrt./Smt/Km. Monlu Lal Dasgupta

Designation Driver in the MOFRS attached to this office is transferred on the strength of NMEP, which is presently approved upto the end of 8th Five Year Plan period w.e.f. 29.9.1995 (F.N.) in the same pay scale of Rs 750-80-1150-150-25-1500 in a temporary capacity at the same duty station. He/She will draw the same pay and allowances as admissible prior to his/her transfer on the strength of NMEP.

The above transfer of Shri/Smt/Km. Monlu Lal Dasgupta to the post of Driver.

is subject to the Medical Examination Certificate of Fitness as well as the Character and antecedents verification Certificate from the appropriate authority, if not done already.

He/She will be entitled for other benefits as applicable to other employees of Govt. Of India as per the locality of his/her posting. Other conditions regarding the counting of past service and other retirement benefits and carry-forward of leave is under consideration.


Regional Director, R.O. & FW
(DR. B. K. BORGOHAIN)
REGIONAL DIRECTOR
Shillong

Copy to:

✓ 1. Sh/Smt/Km. Monlu Lal Dasgupta.

2. Office order File.

3. Recruitment file.

4. Increment file.

5. Superintendents file.

6. Personal File.

7. Accounts section with two spare copies.

8. Pay & Accounts Officer, Pay & Accounts Office, MOH&FW,
Calecutta

9. Service Book.

10. The Director, NMEP, Delhi for information and record.

Gratified to be
True copy
(Advocate)

(35) (Annexure A-7) 24

NO. 2-ICMR/ADMN/GENL/1/96- 1019
Government Of India,
Regional Director
Regional Office For Health & Family Welfare
Shillong.

Dated: Shillong the.. 26.03.96.....

OFFICE ORDER:

Consequent upon the merger of the Malaria Operational Field Research Scheme (MOFRS), known as p.falciparum Monitoring Scheme, as per Govt. of India, Ministry of Health and F.W. letter No. T.14011/4/93-MAL dated 29th September, 1995, Shri./Smt./Km. Ramphang Rungmay

Designation Senior in the MOFRS attached to this office is transferred on the strength of NMEP, which is presently approved upto the end of 8th Five Year Plan period w.e.f. 29.9.1995 (F.N.) in the same pay scale of Rs. 250-20-1150-EB-25-1500/- in a temporary capacity at the same duty station. He/She will draw the same pay and allowances as admissible prior to his/her transfer on the strength of NMEP.

The above transfer of Shri./Smt./Km. Ramphang Rungmay to the post of Senior

is subject to the Medical Examination Certificate of Fitness as well as the Character and antecedents verification Certificate from the appropriate authority, if not done already.

He/She will be entitled for other benefits as applicable to other employees of Govt. Of India as per the locality of his/her posting. Other conditions regarding the counting of past service and other retirement benefits and carry-forward of leave is under consideration.

(DR. B. K. BORGOHAIN) Regional Director, RH & FW
Govt. of India
REGIONAL DIRECTOR, Shillong.

Copy to:

1. Sh./Smt./Km. Ramphang Rungmay
2. Office order File.
3. Recruitment file.
4. Increment file.
5. Superintendents file.
6. Personal File.
7. Accounts section with two spare copies.
8. Pay & Accounts Officer, Pay & Accounts Office, MOH&FW, Calcutta
9. Service Book.
10. The Director, NMEP, Delhi for information and record.

Confidential to be
true copy
(Advocate)

(36) A-8 75

No.1-2/ NMEP (ADMN)
Government of India
National Malaria eradication Programme
22-Shamnath Marg
Delhi-110054

Dated the 15 Sept. 1998.

The Regional Director
Regional Office for Health and
Family Welfare,
Anand Estate Corner,
Amedabad.

AHMEDABAD 024

Subject : Various Facilities to MOFRS Staff and Officer-reg.

Sir,

Kindly refer your Office letter No. 4-43/Admn./98/936, dated 9/7/98 on the subject cited above. In this connection, it is informed that ~~and~~ MOFRS staff and MOFRS Officers are entitled for GPF Deduction, CCEIS deduction w.e.f. 1.1.85 and CGHS Facility after they were integrated with NEMP, w.e.f. 29.9.95,

Action when in the matter may please to intimated to this Dt:

Yours faithfully,

sd/-

(V.V.MARAR)
Administrative Officer
for Director
NMEP.

Copy for information and necessary action to:

The Regional Director, Regional Office for Health and Family Welfare, BANGALORE/BHUBANESWAR/CALCUTTA/CHANDIGARH/LUCKNOW/PATNA/BHOPAL/SHILLONG/HYDERABAD/JAIPUR. Action taken in the matter may please intimated to this Dtd.

sd/-

(V.V. MARAR)
Administrative officer
for Director
NMEP.

*Gifted to be free copy
Advocate /*

(37)

Annexure - A-9

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
+++++

2nd Floor, BDA
Commercial Complex,
Indiranagar,
BANGALORE - 560028.

DATED: 20 OCT 2000

ORIGINAL APPLICATION NO. 595 of 1999.

MISCELLANEOUS APPLICATION NO. :

REVIEW APPLICATION NO. :

CONTEMPT PETITION NO. :

APPLICANTS (S) : B. B. Gangadharaiah and six others,

- v/s -

RESPONDENTS : Secretary, M/o. Health & Family Welfare, N.D.H.
and others,

10:

1. Sri S Ranganatha Jous Advocate,
No 200/23, Laxmi Towers,
R.V. Road, Bangalore-56004.

2. Sri. S. Cheliah, Addl. CGSC, No. 40,
MICO Layout, Attiguppe, Bangalore-40.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal Bangalore.

A copy of the order passed by this Tribunal in the
above said application(s) is enclosed herewith for your
information and further necessary action.

The Order was pronounced on Dated: 18-10-2000

Certified to be
True Copy
(Advocate)

[Signature]
FOR Deputy Registrar
Judicial Branches.

27

(38)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.595/99

WEDNESDAY THIS THE 18TH DAY OF OCTOBER 2000

Shri G. Ramakrishna Rao ... Member (J)

Shri S. K. Ghosal ... Member (A)

1. C.B. Gangadharaiiah,
S/o late C. Boregowda,
Aged about 46 years,
residing at No.2289,
11th Main 'E' Block,
II Stage, Rajajinagar,
Bangalore-560 010.
2. S. Gururaja Rao,
S/o late G.Srinivasa Rao,
Aged about 46 years,
residing at No.10/A,
Near Patalamma Temple,
Bangalore - 560 068.
3. Ekantham, K.,
S/o late P. Kannaiah,
Aged about 46 years,
residing at No.6/375(2),
VI Cross VI Block,
Rajajinagar,
Bangalore - 560 010.
4. Smt. Padma, C.,
W/o H.S. Srinath,
Aged about 43 years,
First 'C' Cross, VIII Main,
III Stage, IV Block,
Basaveshwaranagar,
Bangalore-560 079.
5. J.N. Narasimha Murthy,
S/o Narasimhaiah,
Aged about 45 years,
residing at No.2883/1,
14th Main VIII E-Cross,
Attiguppe,
Bangalore-560 040.
- K.Siddartha Reddy,
S/o late Krishna Reddy,
Aged about 43 years,
residing at Venkataswamy
Reddy Building,
Kasuvinahalli, Bellandur Post,
Bangalore-560 037.
- T. Mir Waheeduddin,
S/o late T.M. Zainullabuddin,
Aged about 45 years,
residing at No.4,
Marappa Garden,
III Cross, J.C. Nagar,



All are working as
Laboratory Assistants,
in the Regional Office
of the Health and Family
Welfare, Second Floor,
'F' Wing,
Kendriya Sadana,
Koramangala,
Bangalore-560 034.

(By Advocate Shri S.Ranganatha Jois)

v.

1. The Union of India,
represented by its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi-110 011.
2. The Director General of Health
Services, Nirman Bhavan,
New Delhi - 110 011.
3. The Director,
National Anti Malaria Programme,
No.22, Shanth Marg,
New Delhi - 110 054.
4. The Senior Regional Director,
Regional Office for Health and
Family Welfare, Second Floor,
'F' Wing, Kendriya Sadana,
Koramangala,
Bangalore - 560 034.

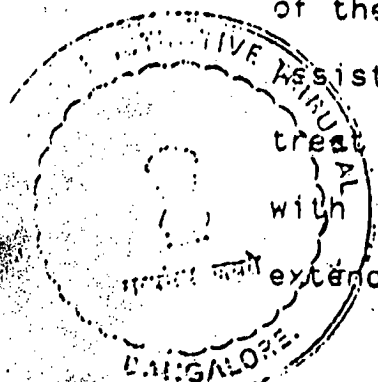
Respondents

(By Advocate Shri S. Chellaiah ...
Addl. Standing Counsel for Central Government)

O R D E R

Shri G. Ramakrishna Rao, Member (J):

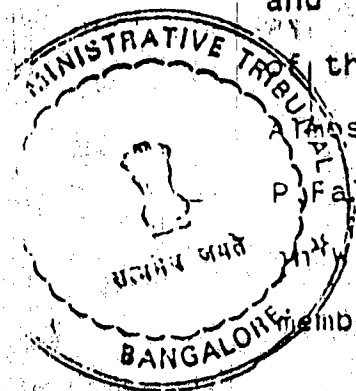
1. In this O.A. the applicants are seeking for grant
of the benefit of absorption in the post of Laboratory
Assistants and for a direction to the respondents to
treat the applicants as having been regularly appointed
with effect from their date of initial appointment and
extend to them all their service benefits consequent on



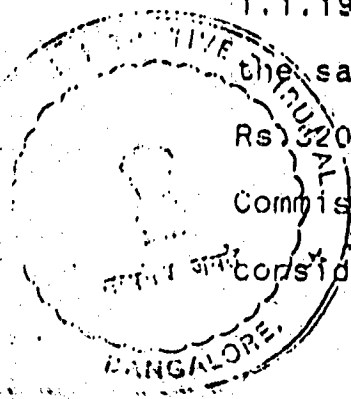
-3-

their transfer and absorption as per the court order and also monetary benefits and set aside the decision mentioned in Annexure A-15 letter and for consequential reliefs.

2. The facts of the case as stated in the O.A. briefly are that all the applicants are working in the cadre of Laboratory Assistants having been appointed in the regular time scale of pay of Rs.260-430 with effect from 9.2.1978. Though the appointment order shows the appointments as temporary but they have been continued without any break and all the applicants have so far rendered 21 years of service. Their initial appointment was under the scheme known as National Malaria Eradication Programme (NMEP) which scheme continued from time to time and still continues except that the scheme is now called as National Anti Malaria Programme (NMAP). Since they have put in a long and continuous service they have approached this Tribunal in O.A. No.166 to 175/91 to regularise their services and for a direction to absorb them permanently and for consequential benefits which O.A. was disposed of on 30.10.1991 as per Annexure A-2 directing the respondents to continue their service and also to consider their regularisation from the date of their initial appointment by process of absorption. At the same time the Association of All India P. Falcifarm Welfare, approached the Apex Court of India in W.P. No. 402/93 for conferring regular status to the members of the petitioner association and for grant of



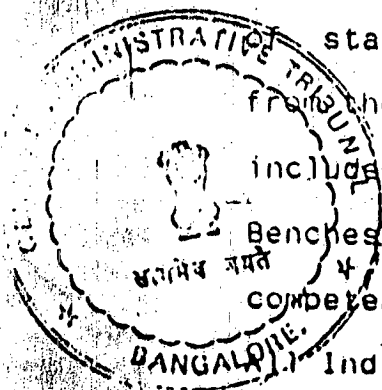
service benefits which was allowed by the Apex Court in its order dated 13.10.1995 (Annexure A-3). A similar direction was also issued by Central Administrative Tribunal, Hyderabad Bench, in O.A. No.292/91 as per Annexure A-4. A Board was constituted to consider bringing the service of the applicants on regular cadre which had resolved on 6.11.1987 to transfer the applicants to the regular cadre as per Annexure A-5. In implementation of the said resolution and judicial verdict, the posts were created and the applicants were transferred from the scheme of NMEP to regular cadre by similar orders dated 12.3.1996, one of which is at Annexure A-6. The last para of the said order reads that the conditions regarding the counting of past services and retirement benefits, leave, etc. would be finalised within short time. Though repeated letters were addressed to the respondents 1 and 2 seeking final decision regarding the retirement benefits and counting of past service, second respondent has intimated that a decision would be taken soon as per Annexure A-7. In the meanwhile consequent on introduction of 5th Central Payment Commission, the pay scales of Junior Technicians/Lab Assistants have been revised from Rs.975-1540 to Rs.4500-7000 for direct recruits with effect from 1.1.1996. However, the applicants have not been granted the said benefits and have been granted only the scale of Rs.3200-4900 consequent to the recommendation of Pay Commission. The grievance of the applicant is not considered even till the date of the applications and the



question of counting their past service and extension of the 5th Pay Commission report pay scales on par with Lab Technicians is under consideration. Since no decision have been taken inspite of recommendations the applicants approached this Tribunal by this O.A.

3. Subsequently the O.A. was amended contending that their services were transferred from the scheme of NMEP to the Department of Health and Family Welfare Services in 1996 but the period of service before their absorption has not been finally decided but after filing of this O.A. the respondents have issued an endorsement dated 1.10.1999 rejecting the request for counting their past service. According to the rules of provident fund the temporary service shall count for grant of retiral benefits and gratuity etc. and the employees working in similar scales in other states the GPF contribution and and CGEIS contribution have not only been taken but they have been given the benefits after their absorption. Hence this O.A.

4. The respondents in the reply have admitted the factual aspects of the case as narrated in the O.A. but they contend that the claim of the applicants for grant status and benefits at par with the regular employees from the date of their initial appointment which was also included in the directions of the Bangalore and Hyderabad Benches of the CAT was under consideration of the competent authority. In the meantime the Association of India P.Falcifarm Welfare Welfare approached the Apex

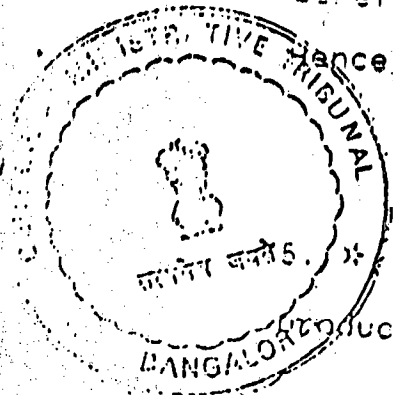


Court in W.P. No.402/93 for conferment of regular status. The President of India had given his sanction to the creation of 156 temporary posts under the Director, NMAP for 8th plan period. In the orders passed by the Apex Court a direction was given that these posts will be filled up by transfer of the existing incumbents working under MOFRS. As per those directions the scheme was merged with NMAP with effect from 29.9.1995. Regarding the counting of past service the matter was taken up with MOH&FW, the controlling Ministry. The MOH&FW further took up the matter with nodal department i.e., Department of Expenditure and also Department of Pension and Pensioners Welfare but the same could not be agreed for the reason that those employees were not subscribing to GPF/CPF and those employees were not paid any pensionary or terminal benefit at the time of absorption in NMAP. The grant of pay scales to direct recruits and promotees under NMAP as mentioned in that O.A. is as per the recommendation of 5CPC for the grant of these scales to a specific number of employees under NMAP. The Lab Assistants under MOFRS has been granted replacement pay scales as per general recommendation of 5th CPC. Hence ultimately it is contended that the applicants are not entitled for the counting of past services and other benefits from the date of their initial appointments. Hence the respondents pray for dismissal of the O.A.

Arguments on both sides heard.

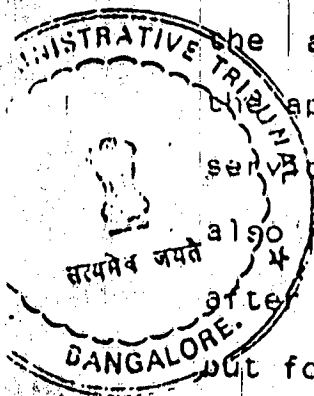
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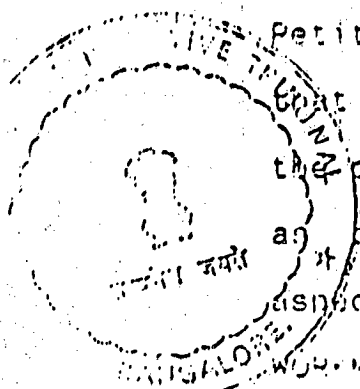
6. Though in the O.A. the applicants apart from seeking counting of past services and grant of other benefits of absorption they have also sought for revision of pay scales on par with the Lab Technicians. These two reliefs are not consequential but they are separate and distinct reliefs. They could not have prayed these two reliefs in the same O.A. and in fact arguments on both sides are addressed regarding granting of past service and granting of other benefits arising out of absorption only and not regarding grant of revision of pay scales as included in the prayer sought for in the O.A. Since both sides have addressed arguments regarding counting of past service and other benefits after absorption, this O.A. is disposed of regarding that prayer only and the prayer regarding revision of pay scales is not considered in this O.A. as it is a different and distinct prayer leaving it open for the applicants if they choose to take action as per law regarding that relief.

7. The only point for consideration in view of the pleadings is that whether the applicants are entitled for counting of past service which they have put in before absorption and for the benefit of absorption as prayed. The learned counsel for the respondents argued that since the absorption was effected with effect from 29.9.1995 the applicants are not entitled for counting of past services which they have put in prior to that date and also for other benefits from their initial appointments after absorption. In support of this contention he has put forth one argument that the Association of AIP

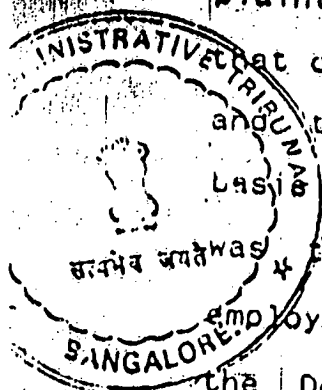


Falsiform Welfare approached the Apex Court by filing W.P. No.402/93 in which writ petition the prayer for counting past service and other benefits were also included. But the Apex Court has not granted those reliefs and, therefore, that would amount to res judicata and because of that the applicants are not entitled for the relief. Secondly he has argued that since the applicants have not subscribed for GPF/CPF and they have not paid any notional terminal benefits at the time of absorption they are not entitled as mentioned in the orders above by the Department.

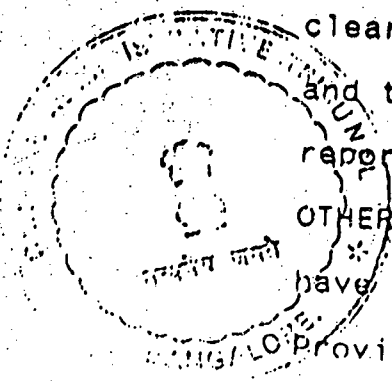
8. Learned counsel for the respondents has produced the orders of the Apex Court in W.P. No.402/93. There was a reference in this order about the President giving approval for merging MOFRS with NMEP and also about the President giving sanction for creation of 156 temporary posts under the Directorate of National Malaria Eradication Programme and Regional Offices of Health and Family Welfare for 8th plan period and there was a direction that these posts will be filled up by transfer of existing incumbents working under MOFRS. Thereafter the Apex Court has observed that "no further directions are necessary in view of the said order. The Writ Petition is disposed of accordingly." It has to be stated that the order itself does not specifically mention that the past services of those persons should not be counted as prayed and there was no discussion regarding that aspect. In a case reported in GOVERNMENT OF INDIA V. WORKMEN OF S.M. AND OTHERS, 1994 SCC (LJS) 323, the Apex



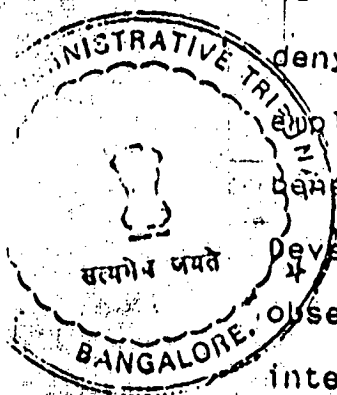
Court has hold that when the Supreme Court's decision is not a speaking order neither facts nor reasons are stated in the order it is not a binding precedent. In view of this decision that in the writ petition the applicants therein had prayed for counting past service, Their Lordships have felt that in view of the orders passed above, no further directions are necessary, that would not amount to a speaking order regarding their prayer for counting past services or other benefits arising out of that absorption. It is also evident that the said absorption placed before the Hon'ble Supreme Court did not at all deal with the question of how to count the past service of those whose services were being merged. The order of the Hon'ble Supreme Court will have to be read against this background. Therefore, the argument of the learned counsel that this would amount to res judicata and so the applicants are barred from claiming the same cannot be accepted. he also relied upon another decision reported in B.B. LAL AND OTHERS V. UNION OF INDIA, 1988(8)ATC 6. The brief facts of the case as noted in the decision are that the plaintiff therein had been working in the S.S.L.R. from 1.2.1941 which was a private employment under M/s. Martin & Co. In 1955 the plaintiff was promoted as Station Master and worked in that capacity till August 1970 when the SSLR was wound up and the staff were taken over as fresh recruits on the basis of their suitability. Accordingly when the SSLR terminated on 1.9.1970 the plaintiff applied for employment under the Northern Railways on 14.1.1971 and the Deputy Chief Personnel Officer on the margin of his



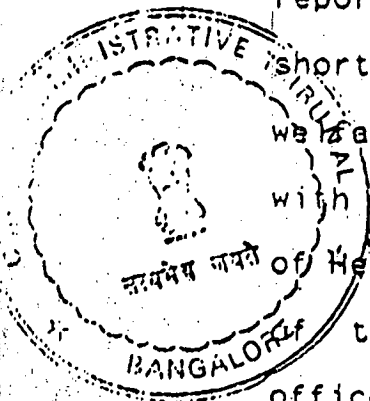
application ordered that 'he may be appointed in Kumbh Mela like others'. Accordingly he reported for work and was appointed as Supervisor, Booking Office from 19.1.1971 to 1.2.1971. When the work at Kumbh Mela was finished he was not given any work after 1.2.1971. In the meantime in accordance with the policy decision of the Railways, the plaintiff along with other retrenched staff of the SSLR was screened by a Screening Committee in February 1971 which on 22.2.1971 declared the plaintiff as suitable for the post of Assistant Station Master. Under those circumstances his claim for pensionary benefits was not upheld. It has to be stated that the facts of the case are quite different. The subsequent post to which the plaintiff therein was appointed was by way of his application after retrenchment of the previous service under a private employer and after finding him suitable he was appointed. It is a new appointment. This decision in no way applies to the facts of the present case. A perusal of the pleadings would clearly show that in accordance with the directions given by the Supreme Court in the order dated 13.10.1935 the schemes were merged and the officials working under those schemes "were transferred" to the present posts. The absorption and the transfer would clearly indicate that their previous service is continued and there is no cessation of the past service. In a case reported in *BALESHWAR DAS AND OTHERS V. STATE OF UP AND OTHERS* (1980) 4 SCC 226, Their Lordships of the Apex Court have held that Rule 3(b) and 4 of the Rules of United Provinces Service of Engineers Class II, Irrigation



Branch Rules 1936 make it clear that a cadre post can be permanent or temporary and if Engineers were appointed substantively to a temporary or permanent post he becomes a member of the Service. The touchstone then, is the substantive capacity of the appointment. Substantive capacity refers to the capacity in which a person holds the post and not necessarily to the nature or character of the post. The appointment need not necessarily be to a permanent post. It is sufficient even if it is to a temporary post of long duration. A person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration. A person is said to hold a post in a substantive capacity when he holds it for a definite or temporary period or holds it on probation subject to confirmation. In another case reported in ILR Kar. 3394 NAGENDRA V. STATE OF KARNATAKA, similar facts were considered by His Lordship i.e., regarding absorption of officers of Development Department of Gulbarga, Bidar and Raichur Districts, Panchayat Extension Officers and Taluk Development Boards in corresponding posts of Revenue Department wherein it was held that from the scheme of absorption of various officers in Revenue Department it is not possible to infer that the respondents intend to deny the benefits of previous service in respect of employees of Taluk Development Board and confer the benefit of previous service in so far as the officials of Development Branch are concerned. Further it was observed that 'it is fallacious to infer that State intends to discriminate and/or intends to treat the



differently.' In this decision His Lordship has referred to a decision reported in *Hasabins v. State of Mysore* 1967(1) Mys L.J. 118, wherein His Lordship has observed that 'consequences emanating from such absorption is continued by service without break'. Further it was observed in that decision that 'By such assimilation there is a coalescence and fusion of the two services, as such union make the service in the absorbing unit a continuation of the service in the other'. His Lordship also referred to another decision in W.P.No.12629/1977 *Sharanappa Vs. State*, wherein His Lordship in that Writ Petition had held that 'Admittedly, the first petitioner has been absorbed in the Revenue department in the interest of public service. When that is so, whatever may be the cadre to which the petitioner has been absorbed, he is undoubtedly entitled to count his previous services on his absorption in the Revenue Department' and His Lordship also referred to *Hasabins* case and also there is a reference in 1985 ILR case and another decision in W.P. No.11907/77 taking the same view. In another case reported in *SMT. USHA RANI DUTTA, AAYA/ATTENDANT AND OTHERS V. STATE INDUSTRIAL COURT, INDORE AND OTHERS*, 1985 SCC (L&S) 651. The facts of the reported case are that Urban Family Clinic ('Clinic' for short) was set up at Bhilai for implementation of family welfare schemes of the Government of India in accordance with approved pattern set out in the letter of Ministry of Health dated May 16, 1963. The Chief Medical Officer of the Bhilai Steel Plant was to be the administrative officer for the Clinic. The entire expenditure of the



Clinic was met by the Government of India by giving 100% grant though it was stated as a fact that this amount was not brought into the bank account of Bhilai Steel Plant but was deposited in a separate bank account in the State Bank of India under the name and style of Bhilai Steel Plant Urban Family Planning Clinic Grant-in-aid Account. Subsequently on the recommendation of Bureau of Public Enterprises, the clinic was treated as an integral part of the administration of Bhilai Steel Plant and the employees working in the Clinic were absorbed as employees of the Bhilai Steel Plant effective from February 4, 1956. The applicants in this decision were serving as Aaya/Attendants and moved the Labour Court praying that they were wrongly treated as fresh employees from the date of absorption and their services should be treated from the date of the commencement of their employments somewhere in 1984 for the purpose of gratuity, retirement, leave, etc. The Apex Court has upheld the decision of the Labour Court that the employees of the Clinic were the employees of the Bhilai Steel Plant since inception and the absorption was an acceptance of reality avoiding the pretence.

In view of these decisions it has to be held that the contention of the respondents that the applicants cannot be permitted to count their past service in the previous scheme prior to the absorption cannot be upheld. They are entitled for counting the past service prior to the date of absorption and all other benefits that arise from the absorption as per law. Though the records would

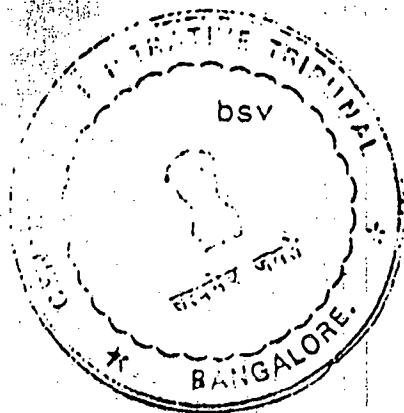
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True copy
(Advocate)

show that subsequent to the filing of this O.A. a representation was given for consideration of this request which the Government of India is still considering but since this was done after the O.A. was admitted we do not propose to defer the decision in view of the legal position quoted above.

10. Hence the O.A. is accordingly allowed directing the respondents to count the past service of the applicants from the date of their initial appointment and give them all other benefits to which they are entitled as per law because of the absorption. Necessary orders shall be passed in this regard within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Sd/-
Member (A)

Sd/-
Member (J)



TRUE COPY

Sd/-
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore
20/10/2000

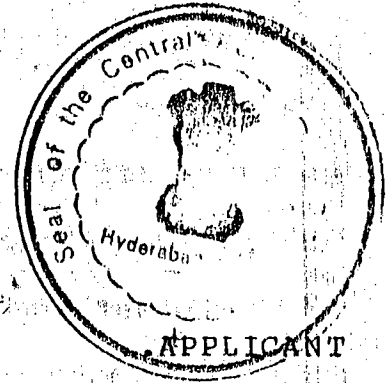
CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A. NO.50/2000.

Date of Order : 15-3-2001.

Between :

M. Satyanarayana, s/o M.Subba Rao,
aged 44 years, Driver, Malaria
Operational Field Research Scheme,
National Anti Malaria Programme,
Regional Health & Family Welfare,
Kendriya Sadan, Government of
India, Koti, Hyderabad-500 195.



A N D

1. The Union of India, represented
by the Secretary to Ministry of Health,
Government of India, Nirman Bhavan,
New Delhi - 110 001.
2. The Secretary to the Ministry of
Personnel, Public Grievances &
Pension, Department of Personnel &
Training, North Block,
New Delhi -110 001.
3. The Director, General,
of Health Services, Nirman Bhavan,
New Delhi- 110 001.
4. The Director, National Malaria
Eradication Programme,
22-Sham Nath Marg, Delhi-110 054.
5. The Regional Director,
Regional Health & Family Welfare,
III Floor, Block-B,
Kendriya Sadan, Sultan Bazaar,
Koti, Hyderabad.-500 195.

..RESPONDENTS.

Counsel for Applicant : Mr. S.K. Sharma

Counsel for Respondents : Miss Shyama, ACGSC

Coram :

The Honourable Mr. Justice V. Rajagopala Reddy, Vice-Chairman

Notified to be
true copy
(Advocate)

53 2

O R D E R.

M.V. NATARAJAN, MEMBER(A) :

1. Sri M. Satyanarayana, the applicant, was recruited as Driver in the scale of pay of Rs.260-6-326-EB-8-380/- by the Regional Director, Regional Health and Family Welfare, Hyderabad and he had reported to duty on 28.9.1979 against a vacancy for the said post available in a Research Project of P.Falciparum Monitoring Scheme of the Indian Council of Medical Research. The Ministry of Health and Family Welfare, Government of India through their letter No.T.14011/4/93.MAL dated 29.9.1995 had conveyed the approval of the President for merging the Malaria Operational Field Research Scheme (MOFRS), with the National Malaria Eradication Programme and conveyed the sanction for the creation of 156 temporary posts under the Directorate of National Malaria Eradication Programme for the Eighth Plan period which had included 15 posts of Drivers in the pay scale of Rs.950-1500/-. The said 156 posts were to be filled up by transfer of the existing incumbents working under the Malaria Operational Field Research Scheme, subject to the conditions as specified in the said order. Pursuant to these orders, the Regional Director, in the Regional Health and Family Welfare, issued an order on 6.3.1996 posting the applicant in a temporary capacity at the same duty station subject to his medical examination certificate of fitness as well as character and antecedents verification certificate from the appropriate authority, if not done already. The order had specified that Sri Satyanarayana will be entitled for other benefits as applicable to other employees of Government of India as per

benefits and carry forward of leave were under consideration. The relief sought by the applicant in this O.A. is as under:

"To direct the respondents to give credit and count past service of 16 years from initial appointment i.e. 29.9.1979 as Central Government employee and allow all the consequential benefits like promotion, pension, and other service benefits."

2. The applicant made a series of representations to the higher authorities for counting his past service, seeking promotion as Grade I Staff Car Driver and orders regarding pensionary benefits to which he is entitled. The O.A. has been filed as he has not received favourable orders from the Senior Regional Director.

3. The respondents have filed their reply statement in which it is submitted that the conditions regarding counting of past service and other retirement benefits and carry forwarding of leave are still under consideration of the Government; that the Regional Director, NAMP cannot take a decision independently as it involves a policy decision and that the O.A. is not maintainable.

4. We have heard the learned counsels on either side at length. A similar issue pertaining to one of the 156 employees had been heard by the Central Administrative Tribunal, Bangalore Bench, in OA No.595/99. Through their orders dated 28.10.2000 while allowing the OA, the Bench directed the respondents -

" to count the past service of the applicants from the date of their initial appointment and give them all other benefits to which they are entitled as per law because of the absorption."

5. After perusal of the documents filed before us and

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[Signature]
(Advocate)

service prior to the date of his transfer to the Department and all other benefits that arise from the absorption as per law. Accordingly, we direct the respondents to count the past service of the applicant from the date of initial appointment and give him all other benefits to which he is entitled as per law.

6. The O.A. is accordingly allowed. No costs.

प्रमाणित प्रति
CERTIFIED TRUE COPY

कम संख्या
CASE NUMBER 01/10/2000
निर्णय दिनांक
DATE OF DECISION 14/3/2001
थीटिफिकेशन दिनांक
COPY MADE READY ON 14/3/2001

प्रमाणित प्रति
Section Officer

केंद्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal

हैदराबाद बेंच
HYDERABAD BENCH

Copy of Min. of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.A.No.43019/54/96-Estt.(D) dated 15.2.2001

OFFICE MEMORANDUM

Subject: Promotion Scheme for Staff Car Drivers...

The undersigned is directed to say that the Principal Bench of the Central Administrative Tribunal (CAT), New Delhi in their judgement dated 5.5.2000 in the case of Central Government Staff Car Drivers' Association and Bikram Singh Vs. Union of India in O.A.No.2529/96 has directed as under: -

".....to grant the applicants the pay scale of Rs.1400-2300/- for the Master Craftsman / Head Staff Car Driver, presently existing in the Railways, from the date of filing of the OA and to grant arrears and to allow consequential benefits."

2. Accordingly, the matter has been examined in consultation with the Ministries of Law, Finance and Railways and it has been decided to implement, with effect from 8.11.1996 (which is the date of filing of the O.A.No.2529/96), the above mentioned direction of CAT as in the succeeding paragraphs, in modification of the existing orders (copies enclosed) on the subject:-

- (i) DoP&T O.M.No.22036/1/92-Estt.(D) dated 30.11.1993;
- (ii) DoP&T O.M.No.22036/1/92-Estt.(D) dated 27.7.1995; and
- (iii) DoP&T O.M.No.35034/3/97-Estt.(D) dated 1.6.1998.

3. A new Grade for Staff Car Drivers to be called "Special Grade" shall be introduced in the scale of pay of Rs.5000-8000/- with effect from 8.11.1996.

4. Promotion to the Special Grade shall be by non-selection (seniority-cum-fitness) from Grade I with 3 years regular service in Grade-I of Staff Car Drivers. The revised ratio in which the posts of Staff Car Drivers shall be placed in different grades of Staff Car Drivers shall be as follows:-

S.No.	Grade	Pay Scale	Percentage
1.	Ordinary Grade	Rs.3050-4590	30
2.	Grade II	Rs.4000-6000	30
3.	Grade-I	Rs.4500-7000	35
4.	Special Grade	Rs.5000-8000	5

5. These orders shall take effect from 8.11.1996. Hence, the posts of Staff Car Drivers as on 8.11.1996 should be apportioned among the four grades in terms of the ratio mentioned above and promotions should be made to different grades accordingly with effect from 8.11.1996 to the extent of short fall in the relevant grade(s). Arrears of pay and allowances should also be allowed with effect from 8.11.1996 as directed by the CAT.

6. If as on the date of issue of this Office Memorandum there is excess regular promotion already made in any grade as compared to the revised ratio mentioned above, such promotion shall be allowed to the excess incumbents on personal basis from the date of their initial promotion to that grade till they are covered within the revised ratio prescribed above but the period of such promotion on personal basis shall not count towards the eligibility service for further promotion.

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true copy
(Advocate)

7. All Ministries/Departments are requested to bring the above decisions to the notice of all concerned for immediate action including necessary amendments in the Recruitment Rules.

Sd/-

(K.K.JHA)

Director(Establishment)

Copy of Min. of Personnel, Public Grievances and Pensions (Department of Personnel & Training)'s O.M.NO.22036/1/92-Estt.(D) dated 30.11.1993

OFFICE MEMORANDUM

Annexure - A-12

Subject: Promotion Scheme for Staff Car Drivers.

The undersigned is directed to say that the Principal Bench of CAT, New Delhi in their judgement in the case of Staff Car Drivers' Association and Others Vs Union of India (OA No.2957/91) were pleased to pass orders directing the Government "to devise a promotional scheme for Staff Car Drivers with the graded structure (Rs.950-1500, 1200-1800, 1320-2040) similar to one provided by the Ministry of Railways".

2. Accordingly, the matter has been examined in consultation with the Ministry of Law, Ministry of Finance and the Ministry of Railways and the following orders are issued in this regard.

SCHEME

2.1 The posts of Staff Car Drivers in the existing scale of Rs.950-1500 will be placed in the following three scales, viz. Rs.950-1500, Rs.1200-1800 and Rs.1320-2040 in the ratio of 55:25:20 (for example, if there are five posts of Staff Car Drivers 55% of 5 posts i.e. 3 will be in the scale of Rs.950-1500, 25% of 5 i.e. 1 will be in the scale of Rs.1200-1800 and 20% of 5 i.e. 1 will be in the scale of Rs.1320-2040).

2.1.1 The nomenclature of the posts in the various scales will be as under:-

S.No.	Scale	Nomenclature
1.	Rs.950-1500	Staff Car Driver Ordinary Grade
2.	Rs.1200-1800	Staff Car Driver Grade II
3.	Rs.1320-2040	Staff Car Driver Grade I

2.1.2 If any fresh vacancies are created as additions to the existing strength of Staff Car Drivers, they will be created only in the scale of Rs.950-1500.

2.2 Where the Cadre is too small for the purpose of creation of higher grades, the possibility of combining of different cadres on a nodal basis may be considered by the concerned Ministries / Departments. In such cases, movement of personnel may not be required and the seniormost driver(s) in the combined seniority / eligibility list who are assessed fit for promotion may be promoted in situ.

2.3 The minimum eligibility criteria for appointment to the posts in the above scale will be as under:-

Grade	Eligibility Period
Ordinary Grade (Rs.950-1500)	Basic Grade
Grade II of Staff Car Driver (Rs.1200-1800)	9 years of regular service in the Ordinary Grade.
Grade I of Staff Car Driver (Rs.1320-2040)	6 years of regular service in Grade II of Staff Car Drivers

- 2.4 The method of appointments to the posts in Grade II and Grade I of Staff Car Driver will be by promotion on Non-Selection (Seniority-cum-Fitness) basis and will be further subject to passing of a Trade Test of appropriate standard, contained in the Annexure I to this OM.
- 2.5 For the purpose of conducting Trade Test as required at these levels, a scheme indicating the syllabus has been enclosed as Annexure I to this OM.
- 2.6 All the above appointments will be subject to the application of reservation orders as applicable to these grades.
- 2.7 As the powers to frame Recruitment Rules for Group C&D posts have already been delegated to Ministries / Depts, they may frame the rules in accordance with the guidelines, by indicating the eligibility criteria laid down in this OM.
- 2.8 If any Department had promoted any Staff Car Driver in terms of the Ministry of Finance (Department of Expenditure) OM No.10(1)-R.III/88 dated 13.9.91 to the next higher scale on an ad hoc basis such officers may be allowed to come over to this scheme, as these orders will no longer be applicable to the case of Staff Car Drivers.
- 2.9 These orders come into force w.e.f. 1.8.93.

INITIAL APPOINTMENT

3. While making initial appointment to the above newly created scales, each Ministry/ Department will screen the list of Staff Car Drivers, who have rendered not less than 15 years of service, may be considered for appointment to posts in Grade I direct to the extent of availability of vacancies in that grade subject to being found fit by DPC on the basis of seniority-cum-fitness and passing of Trade Test. In the same manner Staff Car Drivers, who have rendered not less than 9 years service (including those who could not be accommodated in Grade I inspite of putting in 15 years of service, for want of vacancies), may be considered for appointment to Grade II by following the same eligibility and other criteria prescribed for appointment to these posts.

EXCEPTION:

4. These orders would not apply in the Ministries / Departments where drivers already have more than one scale of pay.
5. Ministry of Finance etc. are requested to take further action to implement the scheme urgently.

Sd/-
(Y.G.PARANDE)
DIRECTOR

certified to be true copy
(Advocate)

29

SCHEME OF TRADE TEST

I. Appointment to Grade II of Staff Car Drivers (Syllabus)

1. Must be able to read English Numerals and figures.
2. Must have good knowledge of Traffic Regulation.
3. Must be able to locate faults and carry out minor running repairs.
4. Must be able to change wheels and correctly inflate tyres.

TEST

- (a) Practical test based on the above.

II. Appointment to Grade I of Staff Car Drivers (Syllabus)

1. Must be able to read English numerals & figures.
2. Must have a thorough knowledge of Traffic Regulation.
3. Must have good knowledge of petrol & Diesel Engine working and be able to locate faults and rectify minor running defects.
4. Must be able to clear carburetor, plug etc.

TEST

- (a) Practical test based on the above.

OFFICE MEMORANDUM

Subject: Promotion Scheme for Staff Car Drivers.

The undersigned is directed to invite the attention of the Ministries / Departments to the provisions contained in this Department's O.M. of even number dated the 30th November, 1993 introducing a Promotion Scheme for Staff Car Drivers.

2. According to the para 2.3 of the aforesaid C.M., the minimum eligibility criteria for appointment to the post in the above scale were indicated as under:-

<u>Grade</u>	<u>Eligibility Period</u>
Ordinary Grade (Rs.950-1500)	Basic Grade
Grade II of Staff Car Driver (Rs.1200-1800)	9 years of regular service in the Ordinary Grade.
Grade I of Staff Car Driver (Rs.1320-2040)	6 years of regular service in the Grade-II of Staff Car Drivers.

3. Representations have been received from the number of Departments seeking clarification whether for the purpose of promotion to Grade-I under the Scheme, it is necessary for a Staff Car Driver to render a minimum of 6 years service in Grade-II alone or whether it would be sufficient that they possess 15 years of total service in the Grade of Staff Car Drivers in that Department.

4. The matter has been examined. Considering the fact, when initial appointments were made a number of officers who might have already rendered 15 years of total service might not have been adjusted in Grade-I for want of vacancies, and also the fact that many officers in the fringe might have been omitted for want of 15 years of qualifying service despite availability of vacancies, it has been decided that the eligibility criteria laid down in para 2.3 of the aforesaid O.M. should be modified as under:-

<u>GRADE</u>	<u>ELIGIBILITY PERIOD</u>
Ordinary Grade (Rs.950-20-1150-EB-25-1500)	Basic Grade
Staff Car Driver Grade-II (Rs.1200-30-1440-EB-30-1800)	9 years of regular service in the Ordinary Grade.
Staff Car Driver Grade-I (Rs.1320-30-1560-EB-40-2040)	6 years of regular service in the Grade-II 15 years in Grade and in Ordinary Grade put together.

5. Ministry of Finance, etc are requested to bring the above decision to the notice of all concerned for immediate action. The Recruitment Rules may be framed keeping in view the above requirements.

Sd/-
(DHAVANTHYAGRAJAN)
Director (ICA)

Certified to be
true copy
Sd/-
(Advocate)

(61)

A-14

96
Copy of Min. of Personnel, Public Grievances & Pensions (Department of Personnel & Training)'s O.M.No.35034/3/97-Estt.(D) dated 1.6.1998

OFFICE MEMORANDUM

Subject: Promotion Scheme for Staff Car Drivers.

The undersigned is directed to say that consequent upon the acceptance of the recommendations of the Fifth Central Pay Commission, the pay scales in respect of Staff Car Drivers governed by the scheme laid down in this Department O.M. No.22036/1/92-Estt.(D) dated the 30th November, 1993 read with O.M. dated 27th July, 1995 will be as follows:-

S.No.	Grade	Pay Scale
1.	Ordinary Grade of Staff Car Drivers	Rs.3050-75-3950-80-4590
2.	Grade-II of Staff Car Drivers	Rs.4000-100-6000
3.	Grade-I of Staff Car Drivers	Rs.4500-125-7000

2. The above pay scales will be effective from 1.1.1996 subject to the same terms & conditions as contained in this Department's O.M.No.22036/1/92-Estt(D) dated the 30th November, 1993 read with O.M.dated 27th July, 1995.

3. All Ministries / Departments are requested to bring the above decision to the notice of all concerned for immediate action including necessary amendments in the Recruitment Rules.

Sd/
(Smt. Dhavani Thyagarajan)
Director

(62)

Annexure - A-15

97

No.RHFW/ADMN/Service-matter/2004/
Government of India
Regional Office for Health and Family Welfare
Dhankheti : Shillong - 793 003

14/14

Dated : Shillong the 9th September, 2004OFFICE ORDER :

In pursuance to the letter No. T.14020/21/2004-Mal dated 19.08.2004 from Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi and No. 3-68/99-NMEP (Adam)-pt.III dated 01-09-2004 from Directorate, NVBDCP, Delhi, the service periods of the employees under MOFRS prior to their merger with NMEP (Presently NVBDCP) on 29.09.1995 will be counted for pensionary and other benefits in accordance with CCS (Pension) Rules 1972 and instructions issued there under from time to time.

As regards, ACP to the employees will be entitled to get the benefits from the date of their absorption i.e. 29.09.1995 with NMEP (Presently NVBDCP) as clarified by the Hon'ble Supreme Court vide their judgement referred to herein. The benefits shall be extended to all 156 post created vide Ministry's letter No. T.14011/4/93-Mal dated 29.09.1995.

(DR. M PALIT)

Regional Director (H&FW)
Shillong.

No. RHFW/ADMN/Service-matter/2004/
Copy to :

Dated : 9th September, 2004

1. All Concerned staff of ROH&FW, Shillong and Guwahati (Erstwhile MOFRS staff now merged with NVBDCP).
2. Service Book of the concerned staff.
3. Personal file of the concerned staff.
4. Accounts Section (Local)
5. Pay and Accounts Office, Ministry of Health and Family Welfare, NICD, 22- Shammath Marg, Delhi - 110054
6. Pay and Accounts Office, Min. of Health & Family Welfare, 15/1 Chowringhee Square, Kolkata - 700 069
7. Director, N.V.B.D.C.P, Delhi for information and necessary action.

(DR. M PALIT)

Regional Director (H&FW)
Shillong.

Notified to be
true copy
(Advocate)

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Amr... (A-16)

No.12-6/96-NMEP(Admn.)
Government of India
National Vector Borne Diseases Control Programme
22-Sham Nath Marg
Delhi-110054.

Dated the:

02 JUN 2005

The Regional Director I/c,
Regional Office for Health and Family
Welfare,
SHILLONG/ BHUBANESWAR/ KOLKATTA/
PATNA/ AHMEDABAD/ BANGALORE/ BHOPAL/
LUCKNOW/ HYDERABAD/ JAIPUR/ CHANDIGARH.

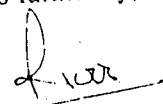
Subject:- Representations of Ex-MOFRS Drivers - reg.

Sir,

This Dte. is in receipt of various representations from Ex-MOFRS Drivers for grant of promotional scale of Rs.4000-6000. In this connection, it is informed that all Ex-MOFRS employees including Drivers will be entitled for ACP from the date of their merger with NVBDCP, i.e w.e.f. 29/9/95. They will be eligible for First ACP after completion of 12 years regular service w.e.f.29/9/95. However, if they are stagnating in the pay scale of Rs.3050-4590/- they will be entitled for stagnation increment as per rules.

All concerned may please be informed accordingly.

Yours faithfully,


(Dr. R.K. Das Gupta)
Deputy Director
for Director
NVBDCP

25/6/06
entitled to be true copy
(Advocate)

(64) 99
Annexure - A-17

To

The Director,
N V B D C P, Govt. of India,
22 - Sham Nath Marg,
Delhi - 110059.
(Through proper channel)

Sub : Representation of EX - MOFRS Drivers.

Sir,

With reference to your letter No. 12-6/96 - NMEP(Adm.) dated 2.6.2005 I have to state that EX - MOFRS Staff have been merged with the NMEP under Govt. of India, Ministry of Health & F.W NO. T. 14011/4/93 - MAL dated 29.9.1995 and as such they are entitled to the promotion scheme for staff Car Drivers sanctioned by the Ministry of Personnel Public Grievances and Pensions OM No.22036/1/92/ESTT (D) dated 30.11.1993 as Grade II after 9 years of regular service and Grade- I after 6 years of regular service in Grade- II.

In view of the above the clarification containing in your letter that EX- MOFRS Drivers are eligible for first ACP after completion of 12 years regular service w.e.f.29.9.95 is contrary to the Govt. of India Order dated 29.9.95 and 30.11.93.

It is, therefore, requested that necessary orders for our promotion to Grade-II and Grade-I may be issued as per Govt. of India Orders.

A very early action is requested.

Dated, Shillong,
The 16th Aug/ 05.

Yours faithfully

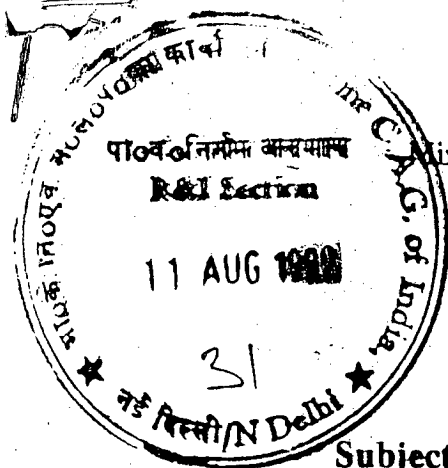
M. Dasgupta
M. L. Dasgupta
DRIVER

R.H. & F.W. (NVBDCP,
SHILLONG.

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copy
Bund
(Advocate)

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Annexure (A-18)

MOST IMMEDIATE

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

Government of India

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

North Block, New Delhi 110001

August 9, 1999

OFFICE MEMORANDUM

**Subject:- THE ASSURED CAREER PROGRESSION SCHEME FOR
THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.**

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

2. GROUP 'A' CENTRAL SERVICES

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

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

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

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Advocate

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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

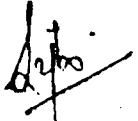
6.1 A departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.

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.

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.



(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

**CONDITIONS FOR GRANT OF BENEFITS
UNDER THE ACP SCHEME**

1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis 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;

69

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REGISTERED

No. 1-2/95-NMEP (ADMN.)
Government of India
National Anti Malaria Programme
22-Sham Nath Marg
Delhi-110054.

Amesme-A-19

Dated the: 15 SEP 1999

The Regional Director,
Regional Office for Health and
Family Welfare,
AHMEDABAD / BANGALORE / BHUBANESWAR /
CHANDIGARH / BHOPAL / CALCUTTA /
PATNA / LUCKNOW / HYDERABAD / JAIPUR /
SHILLONG.

Subject: Circulation of Internal Seniority list of Ex-MOFPS staff, now integrated with NAMP.

Sir,

Kindly find enclosed herewith Internal Seniority list of Ex-MOFPS staff, now integrated with NAMP. The seniority list may be circulated among the staff of erstwhile MOFPS and qualifications of candidates, where, it is not having mention, may be mentioned alongwith the proof of certificate and the same may be sent back to this Dte. for taking further action in the matter. All listed employees must sign as having read and correct, or their observation, if any.

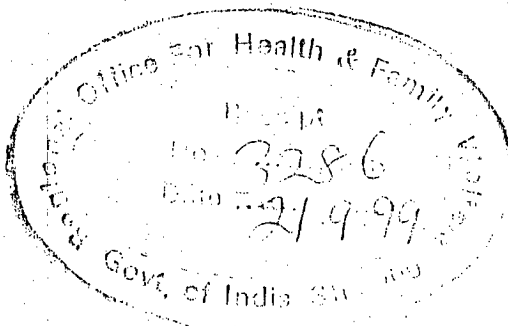
MATTER MAY BE TREATED AS URGENT.

Yours faithfully,

A.K. Majumdar 14.9.99
(A.K. MAJUMDAR)
Asstt. Malaria Engineer
for Director
NAMP.

Encls: As above.

Gifted to be free
copy
Stamul
(Advocate)



70

105 (234)

INTERNAL SENIORITY LIST OF EARSTWHILE MOFRS DRIVERS INTEGRATED
WITH NAMP.

S.No.	Name	Region	Date of Birth	Date of entry in Govt.Ser.	Qualification
1.	Sh.B.K.Behra	Bhubaneswar	23.1.55	18.5.79	5th
2.	Sh.Sh.M.Satya naraya	Hyderabad	1.1.55	29.8.79	7th
3.	Sh.R.Srinivas	Bangalore	1.6.69	15.10.85	
4.	Sh.Surjit Singh	Jaipur	5.7.63	1.5.86	10th
5.	Sh.M.L.Das Gupta	Shillong	10.9.60	15.5.86	8th
6.	Sh.P.C.Sahu	Bhubaneswar	5.8.61	19.8.86	
7.	Sh.P.P.Tanti	Shillong	12.3.48	16.2.87	
8.	Sh.R.K.Magre	Bhopal	10.1.61	21.4.87	3rd
9.	Sh.L.Ramnong	Shillong	31.12.67	4.8.87	
10.	Sh.Arun K.Updhaya	Patna	25.3.62	15.9.87	
11.	Sh.Mangal Singh	Delhi	22.1.54	3.7.90	
12.	Sh.Ram Nath Paswan	Calcutta	13.2.63	29.9.95	9th

Certified to be true copy
[Signature]
(Advocate)

MOST IMMEDIATE
BY SPEED POST

No.A.32021/2/96-RD Cell
DIRECTORATE GENERAL OF HEALTH SERVICES
(RD CELL)

NIRMAN BHAVAN, NEW DELHI,
DATED THE:15.9.1999

To

The Regional Director,
Regional Office for Health & FW.,
Shillong.

Sub: Introduction of promotional Scheme for Drivers in Regional
Office for Health and FW (Family Welfare side) reg.:

Sir/Madam,

In Continuation of this Directorate letter
No.A.32021/2/96-RD Cell, dated the 10th February, 1999 on the
subject mentioned above and to convey the permission of DDG(LME)
to you to promote the following Drivers from ordinary Grade to Grade I
(Rs.4000-100-6000) and Grade I (Rs.4500-125-7000) respectively in
the manner as reflected below:

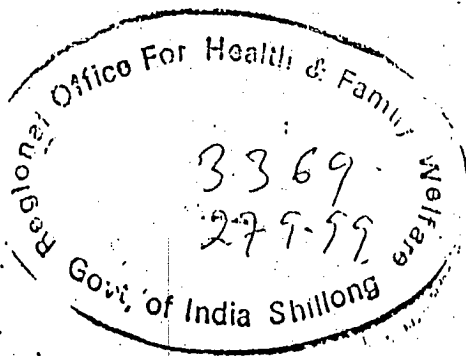
Name	Date of appointment in ordinary Grade.	On completion of 9 yrs. of regular ser- vice in ordi- nary Grade, the date of placement in Grade II	on Completion of combined service of 15 yrs. in ordinary Grade and Grade I the date of placement in Grade I
1.Sh. L.N.Sharma	30.1.67	1.8.93	1.8.94 (Imphal)
2.Sh. S.K.Dev	5.7.69	1.8.93	1.8.94 (Shillong)
3.Sh. K.C.Ramesh (ST)	4.5.74	1.8.93	1.8.94 (Hyderabad)
4.Sh. Bishnu Ram (SC)	10.10.77	1.8.94	(Calcutta)
5.Sh. Onkar Singh	22.4.80	1.8.94	(Shimla)
6.Sh.J.D.Chavda	12.9.85	12.9.94	(Ahmedabad)

The terms and the conditions, the eligibility
and the other criteria for appointment would be governed as
prescribed in this Directorate letter No.A.32021/2/96-RDC, dated
10.2.99.

Yours faithfully,

(LALA RAM)

DEPUTY DIRECTOR ADMN.(RD)



Certified to be true
Copy
Shillong
(Advocate)

SPEED POST

72

No. 1-5/99-NHEP (Admn.)

Govt. of India,

National Anti Malaria Programme,

22-Sham Nath Marg,

Delhi-110054.

Annex (A-21)

157

Delhi, dated the

13 APR 1999

OFFICE ORDER

Promotion Scheme for Drivers in the Dte. of NAMP, Delhi for re-designation of the post of "Drivers" as "Staff Car Drivers" has been approved by the D.G.H.S., PH(CDL) Section according to DOPT norms vide the D.G.H.S. letter No. A-11015/1/94-PH(CDL) dated 31.3.99.

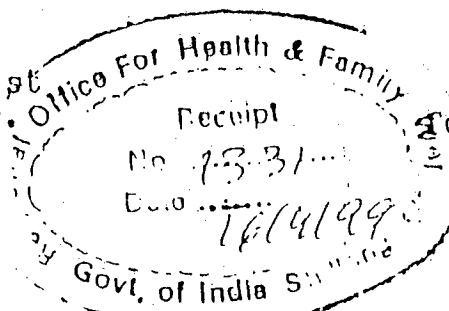
According to the Scheme 6 posts of Drivers Grade-II with a scale of Pay of Rs. 1200-1800 (pre-revised) will be filled in from the candidates having 9 years of service in the initial grade and 5 posts of Grade-I with a scale of Pay Rs. 1320-2040 (pre-revised) will be filled in from the candidate having 15 years of service in the initial grade. To qualify for promotion to these posts, they are required to appear for a trade test covering the prescribed syllabus attached herewith.

Therefore, the following candidates are required to appear in the trade test to be held in the Dte. of National Anti Malaria Programme, 22-Sham Nath Marg, Delhi-110054 on 29th April, 1999 at 10.00 A.M.

1. Shri L.N. Shaikh, Driver, ROH&FW, Ahmedabad.
2. Shri Ganga Ram, Driver, ROH&FW, Lucknow.
3. Shri Manwar Singh, Driver, NAMP, Delhi.
4. Shri Girdhari Lal, Driver, ROH&FW, Jaipur.
5. Shri R.S. Yadav, Driver, ROH&FW, Bhopal.
6. Shri M.V. Bansode, Driver, ROH&FW, Pune.
7. Shri Madan Lal, Driver, N.A.M.P., Delhi.
8. Shri S.B. Deb, Driver, ROH&FW, Shillong.
9. Shri P. Jana, Driver, ROH&FW, Calcutta.
10. Shri Rajender Singh, Driver, NAMP, Delhi.
11. Shri Uma Bahadur, Driver, NAMP, Delhi.

They will be entitled for T.A./D.A. as per Rules for the purpose.

Encls: Trade test syllabus.



For Director,
N.M.E.P.

Copy to the Regional Director, Regional Office for Health and Family Welfare, Dhamketi (Near Shillong Law College) Shillong-792003 with the request to allow Shri S.B. Deb, Driver to appear for the trade test being held on 29-4-1999 at 10.00 A.M. in the Dte. of NAMP, 22-Sham Nath Marg, Delhi-110054.

Copy to be
true copy
(Advocate)

73

C/O Post

Annexure-A-22 103

No. 1-5/99-NMEP (Admin.)
Government of India
National Anti Malaria Programme
22 - Sham Nath Marg, Delhi - 54.

Dated the, 31.5.99

OFFICE ORDER

In pursuance of DCHJ letter No.A.11015/1/94-PH(CDL) dated 31.3.1999 and on recommendation of the Departmental Promotional Committee, the Director, NAMP is pleased to promote the following Staff Car Drivers to the posts of Staff Car Driver Grade-I and Grade-II w.e.f. the dates and in the pay scales as mentioned against each. Their pay will be fixed under FR-22 (1) (a) (1) by the Hqrs.Delhi and the Regional Directors concerned where they are working:-

GRADE-I - Pay Scale: Rs.4500-125-7000

Sl.	Name	Date of Promotion	Station	Remarks
1.	Sh. L.N. Shaikh	1.8.1993	Ahmedabad	
2.	Sh. Ganga Ram	1.8.1993	Lucknow	
3.	Sh. Manwar Singh	1.8.1993	Hqrs.Delhi	
4.	Sh. Girdhari Lal	1.10.1993	Jaipur	
5.	Sh. R.S. Yadav	10.1.1998	Bhopal	

GRADE-II - Pay Scale: Rs.4000-100-6000.

Sl.	Name	Date of Promotion	Station	Remarks
1.	Sh. Girdhari Lal	1.8.1993	Jaipur	Promoted to Gr.I on 1.10.96
2.	Sh. R.S. Yadav	1.8.1993	Bhopal	Promoted to Gr.I on 10.1.98
3.	Sh. M.V. Bangode	1.8.1993	Pune	
4.	Sh. Madan Lal	1.10.1993	Hqrs.Delhi	
5.	Sh. S.B.Dev	20.12.1998	Shillong	
6.	Sh. E.Jana	29.1.1999	Calcutta	
7.	Sh. Rajender Singh	20.3.1999	Hqrs.Delhi	Vice Shri Girdhari Lal
8.	Sh. Uma Bahadur	20.3.1999	-do-	Vice Shri R.S. Yadav

They are entitled to get the arrears of Pay and Allowances as per rules.

Other terms and conditions of their service will be governed by relevant rules and orders issued by Govt. of India from

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(Advocate)

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time-to time. They are liable to be transferred anywhere in India at the Regional Offices for Health & F.W functioning under the Administrative control of Dte. NAMP.

M. K. Mazumdar 31/5/93
(A.K. MAZUMDAR)
ASSTT. MALARIA ENGINEER
for DIRECTOR, NAMP.

Copy to:-

- 1-11. All Individuals concerned.
- 12-22. Service Book of all individuals.
- 23-33. P. File of all individuals.
34. Office Order file.
35. Guard file.
- 36-38. Accounts Section (local) with 2 spare copies.
39. The Pay & Accounts Officer, PAO, NICD/NAMP, 22- Sham Nath Marg, Delhi-110054.
- 40-46. The Regional Director, Regional Office for Health & F.W. Ahmedabad/
Lucknow/Jaipur/Bhopal/Pune/Shillong/Calcutta. They are request to fix the pay of individual concerned to them and send a copy of Pay Fixation Orders for record of this Dte.

date 13/2/98.

(Annexure - A-23)

From:

Sh. M.L.Das Gupta,
Driver, M.O.F.R.S.
Office of the Regional Director,
Regional Office for Health & F.W.
Dhankheti, Shillong.

To

The Director, NMEP,
22-Sham Nath Marg,
Delhi - 110054.

Sub: (THROUGH PROPER CHANNEL)

Sub: Promotional Scheme for staff car drivers from 1.8.93,
as per the judgement of Principal Bench of CAT,
New Delhi request for the implementation - reg.

Sir,

I beg to bring to your kind notice the following facts
for your kind consideration and favourable action please.

I was appointed as a Driver on 15th May, 1986 in
malaria Operational Field Research Scheme (erstwhile P.f. Moni-
toring Scheme). Since then, I have been rendering my services
devotedly and sincerely to the satisfaction of all and have com-
pleted as of now about 10 years eight months of committed service
in our esteemed organisation.

Sir, while, I profusely thank the government and the
department for having regularised my services through merger
into NMEP vide Govt. of India, Ministry of Health and Family
Welfare New Delhi letter No. T-14011/4/93-MAL, dated 29.9.95
I am constrained to say that I was not given a single promotion
so far.

Sir, I may be kindly permitted to bring to your notice
the orders of CAT, Govt. of India, Department of Personnel &
Training OM No. 22036/1/92-Estt.(D), dated 30th Nov., 1993
(copy enclosed) on the above mentioned subject which clearly
spells out the eligibility for my promotion. I am also to state
that my name stands eighth in the seniority list of
combination of Drivers of all the team of Malaria Operational
Field Research Scheme.

In view of the above, I humbly request your goodself to
consider my case favourably and issue orders for promotion as
Grade-I staff driver for which act of your kindness, I remain
ever grateful.

Thanking you,

Shillong:

Yours faithfully,

M Das Gupta
(M.L. DAS GUPTA)

Confidential to be true copy
Jung
(Advocacy)

(76)

110

From
Shri M.L. Dasgupta
Driver, MOFRS
RH&FW
Dhankheti
Shillong-3

Annexure A-2A
~~Reminder~~ 112

Dated: 3rd, July '98

To

The Director
NMEP
22 Sham Nath Marg
Delhi-110054

(Through proper Channel)

Sub: Promotional scheme for staff car drivers from 1-8-93
as per the Judgement of Principal Bench of CAT, New Delhi
request for the implementation-Reg.

Sir,

I beg to bring to your kind notice the following facts
for your kind consideration and favourable action please.

I was appointed as a Driver on 15th, May 1986 in Malaria
Operational Field Research Scheme (erstwhile) P.F. Monitoring
Scheme. Since then, I have been rendering my services devotedly
and sincerely to the satisfaction of all and have completed
as of now about 13 years of committed service in our esteemed
organisation.

Sir, while, I profusely thank the government and the
department for having regularised my services through merger
into NMEP vide Govt. of India, Ministry of Health and family
welfare New Delhi letter No. T.14011/4/93-MAL, Dated 29th Sept.
1995, I am constrained to say that I was not given a single
promotion so far.

Sir, I may be kindly permitted to bring to your notice
the orders of CAT, Govt. of India, Department of Personnel &
Training OM No. 22036/1/92-Estt.(D), dated 30th Nov. 1993 (copy
enclosed) on the above mentioned subject which clearly spells
out the eligibility for my promotion. I am also to state that
my name stands sixth in the seniority list of combination
of Driver of all the team of Malaria Operational Research
Scheme.

In view of the above, I humbly request your goodself
to consider my case favourably and issue orders for promotion
as Grade-II Staff driver for which act of your kindness, I
remain ever grateful.

Thanking you.

Yours Faithfully,

M Dasgupta
(Shri M.L. Dasgupta)
Driver MOFRS RH&FW
Dhankheti, Shillong-3.

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copy
Bund.
(Advocate)

(77)

Annexure - A-25^{NI}

RE: INDEX - 111

Dated : April '99

From : Sh. M. L. Das Gupta,
Driver, MOFRS,
RHEW, Dhankhet, 1,
Shillong-3.

To : The Director, NMEP,
22- Shammath Marg,
Delhi- 110054.

(THROUGH PROPER CHANNEL)

Sub : Promotional scheme for Drivers and staff car
Drivers.

Sir,

I beg to bring to your kind notice the following facts for your kind consideration and favourable action please.

I was appointed as a Driver on 15th May, 1986 in Malaria Operation Field Research Scheme (erstwhile) P.F. monitoring scheme. Since then, I have been rendering my services devotedly and sincerely to the satisfaction of all and have completed as of now 13 years of committed service in our esteemed organisation.

Sir, while, I profusely thank the government and the department for having regularised my services through merger into NMEP vide Govt. of India, Ministry of Health and Family Welfare, New Delhi letter No. T. 14011/4/93- MAL, dt. 29th Sept. '95 I am constrained to say that I was not given a single promotion so far.

I am also to state that my name stands seventh in the seniority list of combination of Driver of all the team of Malaria Operational Research Scheme.

In view of the above, I humbly request your goodself to consider my case favourably and issue orders for promotion as Grade- II Staff Driver for which act of your kindness, I remain ever grateful.

Thanking you,

Dated, Shillong
the 16th, April, '99

Yours faithfully,

M. L. Das Gupta
(M. L. DAS GUPTA)
Driver, MOFRS, RHEW,
SHILLONG.

Confidential to be
True copy
(Advocate)

To
The Director,
NAMP,
22, Shannath Marg,
Delhi-110054.

78

RHE

Attachment - A-26

Dated: 10-5-2020

(Through proper channel)

Sub:- Promotional scheme for Driver.

Sir,

I beg to bring to your kind notice that I have sent three reminders before, for my promotional scheme to your office, but till date no response from your part. My service is according to your seniority list is going to be above 15 years, but till date I am not getting any benefit, which was given to our junior drivers. These benefits are also given to NAMP(NON-PLAN) drivers, but why I am deprived of it, it is out of my knowledge. I cannot understand it till now.

So, it is my request to you to kindly see into the matter and do the needful. I will be very grateful to you.

Thanking you.

From:-

Shri. M.L. Dasgupta
Drivers (Ex-MOPHS) NAMP (PLAN)
Regional office for health and
family welfare,
Dhankhet
Shillong-793003.

Yours faithfully,

M Dasgupta
10/5/2020
(Shri. M.L. Dasgupta)
Driver

Certified to be true
copy - Barney
(Advocate)

79
Annexure - A-27

From:

Shri M.L. Das Gupta,
Driver, Ex=MOFRS,
(Now integrated with NVBDCP)
Regional Office for Health & Family Welfare,
Dhankheti, Shillong - 793003.

To,

The Director,
NVBDCP,
22-Sham Nath Marg,
Delhi - 110054
(Through proper channel)

Sub: Promotion to the post of Staff - Car Driver, Grade-I after rendering of service for more than 15 years.

Ref: My letter dated 03.07.1998, 16.04.1999 and 10.05.2000.

Respected Sir,

I have the honour to invite a reference to my above mentioned letter (Copy enclosed) addressed to you regarding my promotion to the post of Staff - Car Driver, Grade-I, after rendering satisfactory service of more than 15 years (presently more than 18 years).

2. That Sir, I have joined Ex-MOFRS as Driver on 15.05.1986 and have served the department satisfactorily, but as ill luck would have it, I have not got a single promotion as yet even though I have served the department for a period of more than 18 years as Driver in the ordinary grade.

3. That Sir, as you are aware of the fact that all Ex-MOFRS Staff have been integrated with the NAMP. Accordingly, the seniority of Drivers have been fixed vide Directorate of NAMP's letter No. 1-2/95-NAMP(ADMN), dated 15.09.1999 at Sl. No. 5 of the Statement of Seniority of the Ex-MOFRS Staff - Car Drivers integrated with NAMP (vide copy of the statement enclosed). But till now, my case has not been considered for promotion. The Directorate, vide their letter No. 1-5/99-NEMP.(Admn), dated 31.05.1999, promoted only 11 Nos. of Staff-Car Drivers to the Grade-I (5-Nos.) and Grade-II (6 Nos.) on All India basis. Thereafter, no further promotion has been made.

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(Advocate)

4. That Sir, as per the Assured Career Promotion Scheme, sanctioned by the Government of India, Ministry of Personnel Public Grievances, etc., Department of Personnel, vide their letter No. 22036/1/92-Estt(D) dated 30.11.93 and 27.07.95, the Staff-Car Driver in the ordinary basic grade are entitled to two promotion in the Grade-II and Grade-I after 9 years of service in the ordinary grade and 6 years of service in the Grade-II respectively. But I have not received a single promotion till date, although it has been stated that in Regional Office for H&FW, Shillong Memo No. RHFW/ADMN/Service Matter/2004, dated 09.09.2004 with a copy to you that the benefit of promotion with reference to Assured Career Progression shall be extended to all 156 posts created vide Ministry's letter No. TA 4011/4/93 dated 29.09.1995. But no benefit under the A.C.P has been extended to me even though I have rendered 18 years of service in the ordinary grade of Driver.

5. In view of the facts stated above, I do hereby pray to Your Honour to look into the matter and take necessary steps so as to consider the case of promotion of the petitioner without further delay as I have been stagnant in the same post of Driver in the ordinary grade for the last 18 years.

And for this act of kindness I shall remain ever grateful to you.

Dated, Shillong

The 10/10/04.

Yours faithfully,

M. Dasgupta
(M.L.DAS GUPTA)
Driver
RH&FW, (NVBDCP)
Shillong-3

*Copy filed to be for copy
Bund.
(Advocate)*

(81)

R/V

115

Annexure - A-28

To

The Director,
NVBDCP
22-Shamnath Marg
Delhi-110054

Dated : Shillong the 9th March, 2005

(Through Proper Channel)

Sub: Promotion Scheme for Staff Car Drivers, Request for the
Implementation - Reg.

Respected Sir,

I am to bring to your kind notice, the following few facts for your
kind consideration and favourable orders.

I have been appointed as ordinary Grade Driver on 29.9.1995, Office
Order No. 2-ICMR/ADMN/GENL/1/96-911 dated 26.3.1996 (copy
enclosed). I have completed 9 years and 6 months of regular service in the
ordinary grade in the pay scale of Rs.3050-4590/-.

I am eligible for promotion as per Government of India, Ministry of
Personnel, Public Grievances and Pension Department of Personnel and
Training, New Delhi vide O.M. No. 22036/1/92-Estt.(D) dated 30.11.1993
and No. O.M. No. 43019/54/976-Estt.(D) dated 15.02.2001 (copy enclosed).

I am also en-submitting my internal seniority list circulated by
Directorate of NAMP vide letter dated 15th September 1999 of Ex-MOFRS
Staff now integrated with NAMP and presently called as NVBDCP date of
entry in Government service. I am No. 5 in all India list of MOFRS Driver
integrated with NAMP (copy is enclosed).

In the light of the above facts I request your honour to grant me
promotion in the next scale of Pay for which I remain ever thankful to you.

Yours faithfully,

M. L. Dasgupta

(M.L. DasGupta)

Driver, RH&FW

Dhankheti

Shillong - 793003

Original to be true
copy
G. L. Dasgupta
(Advocate)

82

1162/VH

Annexure - A

To

The Director General of Health Services
Ministry of Health & Family Welfare
Nirman Bhavan

New-Delhi - 110011 Dated: Shillong the 01-12-2001

Sub: Promotion Scheme for Staff Car Drivers, Request for the
Implementation - Reg.

Respected Sir,

I am to bring to your kind notice, the following few facts for your
kind consideration and favourable orders.

I have been appointed as ordinary Grade Driver on 29.9.1995, Office
Order No. 2-ICMR/ADMN/GENL/1/96-911 dated 26.3.1996 (copy
enclosed). I have completed 10 years 2 months of regular service in the
ordinary grade in the pay scale of Rs.3050-4590/-.

I am eligible for promotion as per Government of India, Ministry of
Personnel, Public Grievances and Pension Department of Personnel and
Training, New Delhi vide O.M. No. 22036/1/92-Estt.(D) dated 30.11.1993
and No. O.M. No. 43019/54/976-Estt.(D) dated 15.02.2001 (copy enclosed).

I am also en-submitting my internal seniority list circulated by
Directorate of NAMP vide letter dated 15th September 1999 of Ex-MOFRS
Staff now integrated with NAMP and presently called as NVBDCP date of
entry in Government service. I am No. 5 in all India list of MOFRS Driver
integrated with NAMP (copy is enclosed).

In the light of the above facts I request your honour to grant me
promotion in the next scale of Pay for which I remain ever thankful to you.

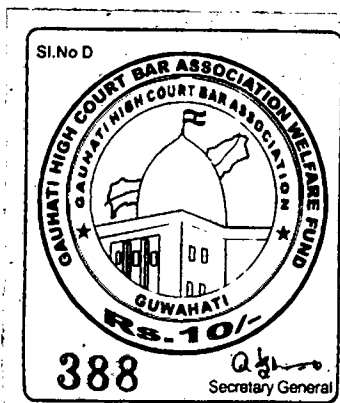
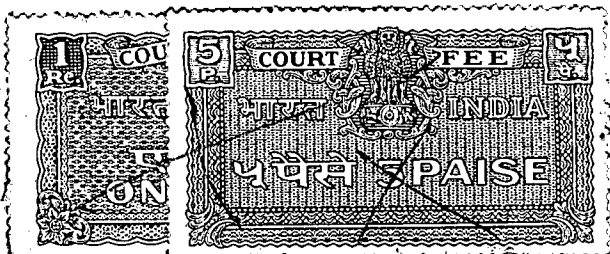
Yours faithfully,

M. Das Gupta
(M.L. Das Gupta) 01/12/01
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(Advocate)

SL. No. 117
DISTRICT 66977

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E GAUHATI HIGH COURT

SAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM
AND ARUNACHAL PRADESH]

NO. 297 OF 06

M. Das Gupta & ms.

VERSUS

Wot & ms

APPELLANT

PETITIONER

RESPONDENT

OPPOSITE-PARTY

Know all men by these presents that the above named applicant
do hereby nominate, constitute and appoint Sri/Smt. A. J. L. Sarker, Sri S. Tamuly
Advocate and such of the undermentioned Advocates as
shall accept this Vakalatnama to be my/our true and lawful Advocates to appear and act for me/us in the matter
noted above and in connection therewith and for that purpose to do all acts whatsoever in that connection
including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me/us and
on my/our behalf and I/We agree to ratify and confirm all acts to be done by the said Advocates as mine/ours
for all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate will be bound to
appear and act on my/our behalf.

In Witness whereof I/We hereunto set my/our hand on this 10 Day of April

M. Das Gupta

Lamphrang Rungong

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 SABYASACHI P. CHOUDHURY
 DEBA KUMAR BORDOLOI
 MANINDRA CHANDRA DAS
 MUL HOQUE AHMED
 BATU KRISHNA BORAH

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MANJIL BORGHAIN
BHRIGOO KR. KASHYAP
MOTIUR RAHMAN(3)
DIGANTA KALITA
SYEDA KHALIDA NARGIS
MRS. LOPAMUDRA AHMED

Received from the executant,
satisfied and accepted

Mr/Ms.....will lead
me/us in the case

And Accepted

Advocate

Advocate

Advocate

And accepted

Advocate

And accepted

Advocate

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Notice

123

From

S. N. Tammuli
Advocate

Date
28/11/06

To

SI CG S.C

CAT Guwahati
Guwahati

Sub: OA 197 2006

Montalal Das Gupta KORS

- VS -

UOI KORS

Sir

Please find enclosed herewith a copy of the
OA which is being filed today. This is for your
kind information and necessary action.

With regards

Yours Sincerely
S. N. Tammuli
(Advocate)
28/11/06

4 Received

SI (G. S. C.)

I under take to serve a
copy on the respondents
Advocate (G. S. C.)

[Signature]
S. N. Tammuli
Advocate
28/11/06

82
27 MAR 2006
GUWAHATI BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Filed by:-
Respondent No. 3
1 to 5 - 124
Shri Montulal Dasgupta
Newington, Dug
C.G.S.C
ATT 26/3/07

IN THE MATTER OF

O.A. No 297/06

Shri Montulal Dasgupta & another

-Vs-

Union of India and others.

-AND-

IN THE MATTER OF

Written statement on behalf of
Respondent no. 3 (Director General
of Health Services, Nirman Bhawan,
New Delhi-1), Respondent no.4
(Director, National Malaria
Eradication [NVBDC] Programme,
22-Shamnath Marg, Delhi-110054)
and Respondent no.5 (Regional
Director, Regional Office for Health
and Family Welfare, Dhankheti,
Shillong-793003).

(Written statement on behalf of Respondent no. 1 to 5)

I Shri Dr. Madhab Palit son of Late M.K. Palit presently working as the Regional Director, Regional Office for Health and Family Welfare, Dhankheti, Shillong-793003 do hereby solemnly affirm and state as follows:-

1. That I am the Regional Director, Regional Office for Health and Family Welfare, Shillong. The copies of the aforesaid application have been served upon the respondents. I have gone through the same and being the Regional Director of the Department, I have understood the contents thereof. I have been authorized to file this written statement on behalf of Respondent no. 1 and 4.
2. I do not admit any averments except which are specifically admitted hereinafter and the same are deemed as denied.
3. That with regard to the statements made in paragraph 4.(I) of the application, the humble answering respondent begs to state that the applicants were recruited under the research scheme of ICMR attached to Directorate of National Malaria Eradication Programme (NMEP) (now National Vector Borne Diseases Control Programme [NVBDCP]) during the year of 1986/87 for duration and having regards to the nature of works with the terms and conditions as appeared in annexure A-1 and A-2 of the application filed by the applicant.

4. That with regard to the statements made in paragraph 4.(II) of the application the humble answering respondents begs to state that the appointment of the applicant's infact was purely on temporary basis. In appointment order dated 29.05.86 annexures A-1 and A-2 of the application there are 7 nos. of terms and conditions incorporated and as per the said condition amongst others the appointments of the applicants are purely temporary having the transfer liability anywhere in India and is not eligible for benefits like pension, GPF contribution etc. Further their services are not counted as regular employee either of Central Government or of the Indian Council of Medical Research and will not be a liability of Central Government or ICMR after termination of the service scheme.

5. That with regards to the statements made in paragraphs 4.(III) and 4.(IV) of the application the humble answering respondents begs to state that in pursuance of the approval of the President of India for merging of Malaria Operational Field Research Scheme (MOFRS) under ICMR with the National Malaria Eradication Programme (NMEP) and as accorded and sanctioned of the President of India 156 temporary posts are created under the Directorate of National Malaria Eradication Scheme Programme and Regional Offices of Health and Family Welfare under 8th Plan which appears in annexure A-5 of the Original Application.

Thereafter the humble respondent in pursuance of the order date 29.09.95 issued by the Government of India, Minister of Health and Family Welfare issued orders dated 26.03.96 by transferring the applicants on the strength of NMEP now NVBDCP in a temporary capacity which appears in annexure A-6 and A-7 annexed to Original Application.

6. That with regards to the statements made in paragraphs 4.(V) of the application the humble answering respondent begs to state that the Union of India vide Civil Appeal nos. 444-445 of 2002 preferred appeal against the judgment and order dated 20.04.01 filed by Shri C.B.Gangadhariaiah and others in Writ petition nos. 2722/01 and 12391-12396/01 passed by the High Court of Karnataka at Bangalore. After hearing, the Hon'ble Supreme Court was pleased to pass an order dated 10.09.03 by disposing the appeal without interfering the judgment dated 20.04.01 passed by the High Court and the order dated 12.03.96 issued by the Regional Director absorbing the respondent. However it was made clear that with regard to Assured Career Progression respondents would be entitled to get benefit only from the date of absorption.

Thereafter the Under Secretary to the Government of India, Ministry of Health and Family Welfare and the Additional Director issued letters dated 19.08.04 and 02.09.04 to the Regional Directors including respondent requesting to take action and to implement the judgment dated 10.09.03 passed by the Hon'ble Supreme Court in Civil Appeal no. 444-450/02. In the said letter it is stated that it has been decided in consultation with Department of Personnel and Training, Department of Pension and Pensioner Welfare and Department of Expenditure that the services rendered by the employees under the Malaria Operational Field Research Scheme (MOFRS) prior to their merger with NMEP on 29.09.95 may be counted for

pensionary and other benefits in accordance with CCS (Pension Rules 1972). As regards ACP to the employees, the employees will be entitled to get benefits from the date of absorption i.e. 29.09.95.

Copies of the said order dated 10.09.03 and letters dated 19.08.04 and 02.09.04 is annexed herewith and marked as annexure 'A', 'B' and 'C'.

7. That with regards to the statements made in paragraphs 4.(VI), 4.(VII), 4.(VIII) and 4.(IX) of the application the humble answering respondent begs to state that so far the ex-MOFRS employees are concerned there are no separate Notified Recruitment Rules as they were appointed under the project scheme on the basis of qualification mentioned in the Recruitment Rules of National Vector Borne Diseases Control Programme (NVBDCP) regular employee under the Directorate, NVBDCP through advertisement. Necessary orders as regards the promotional avenue exist only for the drivers of ex-MOFRS working at Regional Office of Health and Family Welfare, Shillong and various Regional Offices of Health and Family Welfares under the Directorate of NVBDCP, who were the employees of erstwhile MOFRS merged with NMEP (now NVBDCP) since 29th September 1995 upon creation of 156 posts on temporary basis. Hence these employees including the applicants hold isolated posts only.

Further it is to be stated here that vide letter no.T-14020/21/2004-MAL dated 19.08.04 (Annexure 'B' of this W.S.) issued by the Ministry of Health and Family Welfare in consultation with the department mentioned above for counting past services of ex-MOFRS from the date of their initial appointment for pensionary and other benefits in accordance with CCS (Pension Rules 1972).

Further the 1st ACP would be applicable to the employees in the light of Department of Personnel and Training of O.A.no.35034/1/97-Estt (D) dated 09.08.99 and Ministry of Personnel, Public Grievances and Pension (DOP&T) O.A.no.43019/54/97-Estt (D) dated 15.02.01 after completion of 12 years of regular services and 2nd ACP after completion of 24 years of regular services with effect from 29.09.95 i.e. from the date of their absorption.

Further it is stated that since said 156 posts are isolated posts and are not included in the General Department Seniority list as they are being ex-MOFRS staff and their past services prior to their merger with NVBDCP on 29.09.95 are not countable for the grant of ACP as clarified by the Hon'ble Supreme Court, New Delhi. They are not entitled to get benefits of promotion as they are not covered under the Office Memorandum no. O.A.no.4301/54/970-Estt (D) dated 15.02.01 issued by of Department of Personnel and Training (Annexure A-11 of the Original Application) for promotion scheme for staff car drivers.


8. That the humble answering respondent begs to submit that there is no merit in the instant application and is liable to be dismissed.

VERIFICATION.

I, Shri Dr. Madhab Palit - s/o Late M.K. Palit presently working as Regional Director, Health and Family Welfare Shillong the applicant do hereby solemnly verify and state that the statements made in paragraph 1, 2 and 7 are true to my knowledge ; those made in paragraphs 3 to 6 are being matters of records of the case derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

I have not suppress any material facts.

And I sign this verification on this 26th March, 07 at Guwahati.


Regional Director, H & F W
Govt. of India
Shillong
(DR. MADHAB PALIT)

ANNEXURE - CA,

ANNEXURE - A'

Annexure - IV

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ANNEXURE - G

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 444-450 OF 2002

UNION OF INDIA & ORS.

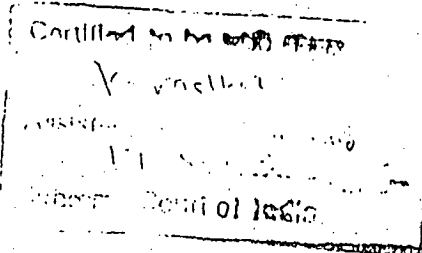
APPELLANT (S)

VERSUS

C.B. GANGADHARAI AH & ORS.

RESPONDENT (S)

ORDER



We have heard the learned counsel for the parties.

These appeals arise out of the judgment and order dated 20th April, 2001 in W.P. Nos. 2722/2001 and 12391-12396/2001 passed by the High Court of Karnataka at Bangalore.

We have considered the reasons recorded by the High Court as well as the order dated 12th March, 1996 passed by the Regional Director absorbing the respondents which leads as follows:-

"Consequent upon the merger of the Malaria Operational Field Research Scheme (MOFRS), known as P.falciparum Monitoring Scheme as per Govt. of India, Ministry of Health & F.W. Letter No. T. 14011/4/93-MAL dated 29th September, 1995, Shri P. EKANTHAM Designation LABORATORY ASSISTANT in the MOFRS attached to this office is transferred on the strength of NMEP, which is presently approved upto the end of 8th Five Year Plan period w.e.f. 29.09.1995 (F.N.) in the same pay scale of Rs. 975-25-1150-EB-30-1540/- in a temporary capacity at the same duty station. He will draw the same pay and allowances as admissible prior to his transfer on the strength of NMEP.

The above transfer of Shri K. EKANTHAM to the post of Laboratory Assistant is subject to the Medical Examination Certificate of Fitness as well as the character and antecedents verification certificate from the appropriate authority, if not done already.

He will be entitled for other benefits as applicable to other employees of Govt. of India as per the locality of his posting. Other conditions regarding the counting of past service and other retirement benefits and carry forward of leave is under consideration."

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We see no reason to interfere with the judgment impugned herein.
The appeal is disposed of accordingly. There shall be no order as to costs.

However, it is made clear that with regard to Assured Career Progression respondents would be entitled to get benefit only from the date of absorption.

Sd/-
.....J
(M.B. SHAH)

Sd/-
.....J
(DR. AR. LAKSHMANAN)

NEW DELHI;
SEPTEMBER 10, 2003.

certified to be true
ms 26/3/07

-8-

131 ANNEXURE - B
ANNEXURE - B

No. T.14020/21/2004-Mal
Govt. of India
Ministry of Health and F.W.
Deptt. of Health

S/78

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A

Nirman Bhawan, New Delhi.
Dated the 19th August, 2004.

To

✓ The Director
NVBDCP
22-Sham Nath Marg
Delhi-110054.

Subject:-Regarding implementation of the order /judgement dated 10.9.2003 passed by the Hon'ble Supreme Court of India in the Civil Appeal Nos. 444-450 of 2002 -filed by Union of India and others against Shri C.B. Gangadhariah and others regarding counting of past service of the employees of erstwhile MOFRS.

Madam,

In pursuance of the judgment dated 10.9.2003 by the Hon'ble Supreme Court of India in the Civil Appeal No. 444-450 of 2002- Union of India and others Vs C.B. Gangadhariah and others and with reference to your letter No. 3-68/99-NA.VP(Admn.) Pt.III dated 16.1.2004 on the above subject, I am directed to say that it has been decided in consultation with Deptt. of Personnel and Training, Deptt. of Pension & Pensioner's Welfare and Deptt. of Expenditure that the services rendered by the employees under the Malaria Operational Field Research Scheme (MOFRS) prior to their merger with NIEP (presently NVBDCP) on 29.9.95, may be counted for pensionary and other benefits in accordance with CCS(Pension) Rules, 1972 and instructions issued there under, from time to time.

As regards Assured Career Progression (ACP) to the employees, the employees will be entitled to get the benefits from the date of their absorption i.e. 29.9.95 as clarified by the Hon'ble Supreme Court vide their judgement referred to herein. The benefits shall be extended to all 156 posts created vide this Ministry's letter no. T.14011/4/93-Mal dated 29.9.95.

Yours faithfully,

P. K. Chakrabarti

(P.K.Chakrabarti)

Under Secretary to the Govt. of India

Copy to :-

1. Pay & Accounts Officer, MOH&FW, NICD, 22-Sham Nath Marg, Delhi-54.
2. PH(CDL) Section, Dte.GHS.
3. Finance Desk-II.
4. Sanction Folder

certified to
be true
P.K. 26/8/07

-9- 132 ANNEXURE - C
ANNEXURE - D
ANNEXURE - E
ANNEXURE - F
ANNEXURE - G
ANNEXURE - H
ANNEXURE - I
ANNEXURE - J
ANNEXURE - K
ANNEXURE - L
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ANNEXURE - U
ANNEXURE - V
ANNEXURE - W
ANNEXURE - X
ANNEXURE - Y
ANNEXURE - Z

No.3-68/99-NMEP(Admin)-PLIII
Government of India
National Vector Borne Diseases Control Programme
22-Sham Nath Marg, Delhi-110054.

Dated the:-

The Regional Director,
ROH&FW, AHMEDABAD/BHUBANESWAR/
BHOPAL/BANGALORE/CALCUTTA/
CHANDIGARH/LUCKNOW/HYDERABAD/
JAIPUR/SHILLONG/PATNA.

02 SEP 2004

Subject:- Regarding implementation of judgment dated 10.09.2003 passed by the Hon'ble Supreme Court of India in the Civil Appeal Nos.444-450 of 2002 filed by U.O.I. against Sh. C.B. Gangadhariah and others regarding counting of past service of the employees of erstwhile MOFRS.

Sir,

Kindly find enclosed herewith a copy of the letter No.T.14020/21/2004-Mal dated 19.08.2004 received from MOH&FW, Nirman Bhawan, New Delhi, on the subject cited above, conveying therein "that it has been decided in consultation with Deptt. of Personnel and Training, Deptt. Of Pension & Pensioner's Welfare and Deptt. of Expenditure that the services rendered by the employees under the Malaria Operational Field Research Scheme (MOFRS) prior to their merger with NMEP (Presently NVBDCP) on 29.09.1995, may be counted for pensionary and other benefits in accordance with CCS(Pension) Rules, 1972 and instructions issued there under from time to time. As regards Assured Career Progression (ACP) to the employees, the employees will be entitled to get the benefits from the date of their absorption i.e. 29.09.1995 as clarified by the Hon'ble Supreme Court vide their judgment referred to herein. The benefits shall be extended to all 156 posts created vide Ministry's letter No.T.14011/4/93-Mal. dated 29.09.1995."

Therefore, it is requested that necessary action may be taken in accordance with the instructions contained there, in the letter of MOH&FW referred above, dated 19/8/2004 in respect of the staff stationed at your regional office and to release death /retirement benefits to those who have retired/expired after 29.09.1995, while counting their services rendered by them under MOFRS prior to their merger with NMEP(now NVBDCP) on 29.09.1995.

Action taken in the matter may please be intimated to this Directorate.

Yours faithfully,

Encl: As above.

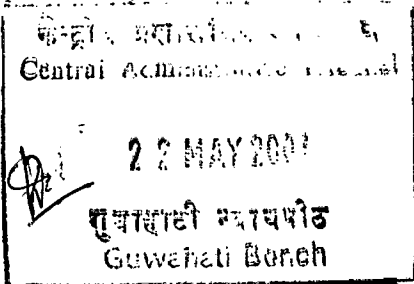
Copy to :-

1. Accounts Section(Local)
2. Pay & Accounts Officer, MOH&FW, NICD, 22-Sham Nath Marg, Delhi-54.

3. S.O.(RDC)

(P.L. Joshi)
Additional Director

certified to be true
26/9/07



1392
Filed by the applicants
through S.N. Tarmuli
Advocate. 22/5/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

O.A. NO. 297/06

IN THE MATTER OF:-

A rejoinder by the Applicants to
the Written Statement / Reply on
behalf of the Respondents Nos.
3, 4 and 5.

-AND-

IN THE MATTER OF:-

Shri Montulal Das Gupta &
Another Applicants.

-VERSUS-

Union of India & 4 others.
..... Respondents.

Most Respectfully Sheweth:-

We, Shri Montulal Das Gupta and Shri L. Rumnong Applicants in the
aforesaid OA No. 297/06 file this Rejoinder to the Written Statement / Reply of
the Respondents and do hereby solemnly affirm and state as follows:-

1. That this Written Statement / Reply does not appear to have been
furnished on behalf of all the Respondents. It has been stated in the
heading that the Written Statement is on behalf of the Respondents No. 3,
4 and 5 and thereafter it has been stated in the bracket given below
thereof that it is on behalf of the Respondents No. 1, 4 and 5 and lastly it
has been stated in Para 1 of the Reply that the same is on behalf of
Respondent No. 1 and 5. Therefore, the Authority signing the Written
Statement should clarify on whose behalf the Written Statement has been
filed.
2. That the facts of the case has been detailed in Para 4 of the O.A. and the
reply thereof given parawise are misconceived and not wholly correct
which are distortion and misleading of facts as it would appear from the
comments furnished below:

- (i) That as regard the averments made in paras 3, 4 and 5 it is stated that although it has been admitted by the Respondents in their reply in paragraph 3 that the Applicants were recruited as temporary employee under the Malaria Operational Field Research Scheme (i.e. MOFRS) of the Indian Council of Medical Research (ICMR) during the year 1986/87 wrongly stated as 1886/87 vide Annexure A-1 and A-2 of the O.A. and attached to the Directorate of National Malaria Eradication Programme [(now National Vector Borne Disease Control Programme (NVBDCP))] and served as project employee for the last 20 (twenty) years, the department should have regularized their service long before without disowning their responsibility in this regard by simply stating in para 4 that their service cannot be counted as regular service under Central Government or under ICMR when the Malaria Eradication Scheme is continuing since 1950 till today and as such the department cannot escape their liability after termination of their service even as temporary employee.

However, after long struggle by the employees, the Govt of India, Ministry of Health vide their letter No. T.14011/4/93-MAL dated 29.09.1995 (Annexure A-5 of O.A) conveyed the approval of the President for merging the Malaria operational Field Research Scheme (MOFRS) with the National Malaria Eradication Programme (NMEP) and sanctioned creation of 156 temporary posts under the Directorate of National Malaria Eradication Programme as detailed therein, which included 15 posts of Driver besides other categories of posts to be filled up by transfer of the existing incumbents. Consequently, as stated in para 5 of the O.A., the Respondent No. 5 in whose office the Applicants were working issued orders dated 26.03.2006 (Annexure A-6, A-7 of O.A) transferring the Petitioners on the strength of NMEP w.e.f. 29.09.1995 as regular temporary employee.

It has been clearly mentioned in the said order that the Petitioner will be entitled to other benefits as applicable to other employees of the Govt. of India as per locality of his posting and other benefits regarding the counting of past service and other retirement benefits and carry forward of leave was under consideration.

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- (ii) That as regards the averments made in paragraph 6 of the Written Statement it is stated that the orders of the Hon'ble Supreme Court dated 10.09.1993 in the case of Shri C.B. Gangadharaiah and others, Laboratory Assistants of Ex MOFRS (Annexure A) who were also merged with NMEP by transfer to the newly created posts w.e.f. 29.09.1995 as per sanction issued by the Govt. of India's order dated 29.09.1995 (Annexure A-5 of OA), clarified that the Respondents (Laboratory Assistant) would be entitled to promotion under ACP Scheme (Annexure A-18) from the date of absorption. The aforesaid order of the Hon'ble Supreme Court is not applicable in case of Ex MOFRS drivers transferred to NMEP, consequent on merger of MOFR Scheme, as separate promotion scheme for staff car Drivers of Central Govt. w.e.f. 08.11.1996 has been sanctioned by the Govt. of India, Department of personnel OM dated 15.01.2001 (Annexure A-11 of OA). It has also been decided by the Govt. of India, Ministry of Health and F.W. vide their letter dated 19.08.2004 (Annexure B of the W.S) that the service rendered by the Ex-MOFRS Staff prior to their merger with NMEP w.e.f. 29.09.1995 shall be counted for pensionary and other benefits as per CCS (Pension) Rules, 1972 and instructing issued from time to time (Annexure B of the W.S).
- (iii) That as regards the averments made in paragraph 7 of the Written statement, the Applicants state that it has been admitted by the Respondent that "necessary orders as regards promotional avenue exist only for the drivers of Ex-MOFRS Working at Regional Offices of Health and Family Welfare, Shillong and other Regional Offices of Health and Family Welfare under the Directorate of NVBDCP who were the employees of the erstwhile MOFRS merged with NMEP (now NVBDCP) since 29th September, 1995 upon creation of 156 posts on temporary basis.

As the promotion scheme of the Central Govt. Staff car drivers has been sanctioned by the Govt. of India, Department of Personnel w.e.f 08.11.1996 vide O.M. dated 15.02.2001 read with O M dated 30.11.1993, 27 .07 .1995 and 01.06.1998 (Annexure A-11 to A-14) and as the Ex MOFRS Drivers have been merged by transfer to the NMEP (now NVBDCP) w.e.f 29.09.1995 and the applicants have

been transferred to the newly created 156 posts which includes 15 posts of driver and as also the seniority list of Ex – MOFRS drivers integrated with NAMP including the Applicants have been fixed by the Directorate of NAMP (Annexure A-19 of OA) and promotions have been made in respect of the Drivers of NAMP under the promotion scheme of the drivers under the Directorate of NAMP the Applicants being the regular staff car Drivers of NAMP after merger are entitled to the promotions under the promotion scheme for drivers of the Central Govt. The ACP Scheme (Annexure A-18) is not applicable in case of Ex MOFRS Drivers merged with NMEP as regular promotion scheme promotion of Drivers of Central Govt. including NMEP has been sanctioned by the Govt. of India w.e.f. 08.11.1996 (Annexure A-11 of O.A)

The posts created by the Govt. of India (Annexure A-5 of OA) under the Directorate of NMEP for filling up by transfer of Ex MOFRS Staff after merger of the MOFRS Scheme with the NMEP and as such these posts can not be treated as isolated posts as stated by the Respondents.

As regards the past services of the Ex-MOFRS Staff, it has already been decided by the Govt. of India vide letter dated 19.08.2004 (Annexure B of the W.S). that the past services of the Ex-MOFRS Staff prior to merger with the NMEP w.e.f. 29.09.1995 should be counted for pensionary and other benefits in accordance with the CCS (Pension) Rules, 1972 and as such for the ends of justice and fair play Ex-MOFRS Staff cannot be denied all other service benefits as admissible to the regular employees of NMEP as already decided by the Central Administrative Tribunal, Bangalore and Hyderabad vide their Order dated 20.10.2000 and 15.03.2001 respectively (Annexure 9 and 10 of the O.A).

Further, the Applicants state that promotion is a condition of service and to deny the Applicants the benefit of promotion as per the promotion scheme for drivers of the Central Govt. sanctioned by the Govt. of India w.e.f. 08.11.1996 (Annexure A-11) as against the staff car drivers of same office of the Regional Directors of Health and Family Welfare, Shillong and other offices who have already been

promoted as per the promotion scheme of Drivers (Annexure 11-14 of OA) when the Applicants have been merged with the strength of NMEP of the same office, is a discrimination in the matters of employment and violates the fundamental right of the Applicants guaranteed under Article 16 of the Constitution of India. Besides, it also violates the Fundamental Right of the Applicants guaranteed under Article 14 of the Constitution of India for denial of equality as per the law arbitrarily.

3. That the Applicants have no comments on the statements made in paragraphs 1 and 2 except the comments made in paragraph 1 above.
4. That the Applicants submits that the Respondents are illegally denying the benefit of promotion to the Applicants as per the promotion scheme for drivers sanctioned by the Govt. of India w.e.f. 08.11.1996 (Annexure A- 1 to 14 of OA) even after their transfer against the sanctioned posts in the Directorate of NMEP consequent on the merger of MOFR Scheme within strength of the NMEP Directorate w.e.f. 29.09.1995, whereas promotions have been granted to the drivers of NMEP including two drivers from Shillong office of the Regional Director of Health and Family Welfare (Annexure A-20 to 22 of O.A) as per the promotional scheme of drivers sanctioned by the Govt. of India w.e.f. 08.11.1996 (Annexure A-11 of OA) which is a clear violation and denial of legal, constitutional and fundamental rights of the Applicants for which they have approached the Hon'ble Tribunal for the ends of justice, equity and fair play.
5. That the humble Applicant prays that the Hon'ble Tribunal would be pleased to grant the reliefs prayed for in the aforesaid original Application No. 297/06.

1. *MDasgupta*

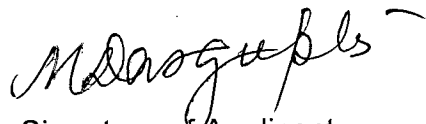
2. *Lamphray Rumong*
Signatures of Applicants

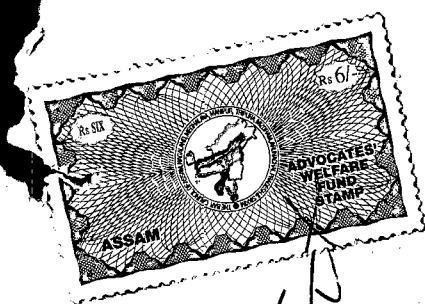
VERIFICATION

I, SHRI MONTULAL DAS GUPTA, son of (L) H.R. Das Gupta, aged about 47 years, working as driver in the office of the Regional Director, Health and Family Welfare, Govt. of India, resident of Motinagar, Shillong, on behalf of myself and Applicant No. 2 do hereby verify that the contents of paragraph 1 to 3 are true to my personal knowledge and information available from records which I believe to be true.

Date : 30/04.2007.

Place : Shillong.


Signature of Applicant



FORM NO. 11
(SEE Rule 62)

File in Court on <u>12/5/08</u>
Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH, GUWAHATI

O.A./R.A./C.P./M.A./P.T./ _____ / No. 297 of 200 6

Sri Montulal Das Gupta & another Applicant(s)
-VS-

Union of India & Ors. Respondent(s)

MEMO OF APPEARANCE

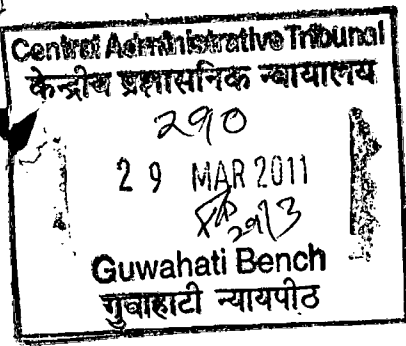
I Mrs. M. Das, Addl. C.G.S.C in the Central Administrative Tribunal, Guwahati Bench having been authorized by the Ministry of Law & Justice, Govt. of India being Respondents No. 1 to 5 authority notified under Sec. 14 of the Administrative Tribunals Act, 1985 hereby appear for Respondents No. 1 to 5 and undertake to plead and act for them in all matters in the aforesaid case.

Place : Guwahati

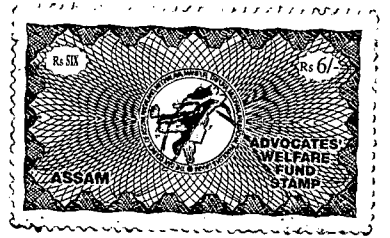
Date : 12/5/08

Mrs M. Das
Mrs M. Das, Addl C.G.S.C
Signature & designation of the
Counsel

Address of the
Counsel for Service



FORM NO. II
(SEE Rule 62)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH, GUWAHATI

✓
O.A/RA/CP/MA/PT/ O. A. /No. 297 of 20 06

Sri Manjula Das Gupta & Co. Applicant (s)

-Vs-

M.O.I. & Co. Respondent(s)

MEMO OF APPEARANCE

I, Smt. Manjula Das, Senior Central Government Standing Counsel, Central Administrative Tribunal, Guwahati Bench, Guwahati hereby enter appearance on behalf of the Union of India and Respondent No. all in the above case and I, hereby, undertake to plead and act for them in all matters in the aforesaid case.

Place: Guwahati

Date: 28/3/11

Mrs. Manjula Das,
Sr. Central Government Standing
Counsel, UOI, CAT, Guwahati Bench.