

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A./T.A No. OA 49/2007

R.A./C.P/No.

E.P./M.A No.

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SECTION OFFICER (Judl.)

Sahta
22.9.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDERS SHEET

28.2.07. This is the second round of litigation. Earlier the applicant has approached this Tribunal by filing O.A.No.162 of 2006 for grant of ACP Scheme. He was working as Junior Engineer, Civil, but the applicant have

joined the department as sub Observer with educational qualification as

1. Original Application No. 49/07 matriculate. Now the applicant was retired
2. Miscellaneous Petition No. on 31.01.2006. The applicant filed
3. Contempt Petition No. representation before the authorities as
4. Review Application No. per direction of this Tribunal. The

authorities vide speaking order dated

Applicant(s) R. S. Das VS Union of India & Ors. 13.9.2006 the claim of the applicant was

Advocate for the Applicant(s) B. Chakraborty rejected contending that the post of Supdt

S. Chakraborty

contd/-

Advocate for the Respondant(s) CASE. U. K. Ahmed

Notes of the Registry	Date	Order of the Tribunal
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26.2.07.

The application is in form
is filed for Rs. 50/-

by 346651316

Dated 20.2.07

Am
Dy. Registrar

Di. 26.2.07

petition copy for issue
notices alongwith envelopes
are received.

Di.

At the request of
learned counsel for the applicant case is
adjourned to 28.2.07. Post the matter
on 28.2.07.

[Signature]
Vice-Chairman

28.2.07. This is the second round of litigation. Earlier the applicant has approached this Tribunal by filing O.A.No.162 of 2006 for grant of ACP Scheme. He was working as Junior Engineer, Civil, but the applicant have joined the department as sub Observer with educational qualification as matriculate. Now the applicant was retired on 31.01.2006. The applicant filed representation before the authorities as per direction of this Tribunal. The authorities vide speaking order dated 13.9.2006 the claim of the applicant was rejected contending that the post of Supdt

A. 49/07

28.2.07. This is a second round of hearing. Earlier the applicant has approached this Tribunal by filing O.A.No.162 of 2006 for grant of ACP Scheme. He was working as Junior Engineer, Civil, but the applicant has joined the department as sub Observer with educational qualification as matriculate. Now the applicant was retired on 31.01.2006. The applicant filed representation before the authorities as per direction of this Tribunal. The authorities vide speaking order dated 13.9.2006 the claim of the applicant was rejected contending that the post of Supdt B/R-II and B/R -1 are merged in one post and re-designated as Junior Engineer (Civil). The SRO also makes it mandatory of a qualification of "Diploma in Civil Engineering. Admittedly, the applicant was not neither Diploma nor Degree in Civil Engineering. In Annexure -VII the higher authority passed a speaking order, which relevant is quoted below:

"If you have documents in favour of your passing departmental examination/diploma in Civil engineering then, forward the same to this HQ for further consideration of your case"

I have heard Mr. S.Chakraborty learned counsel for the applicant and Mr. G. Baishya, learned Sr.C.G.S.C. for the respondents. When the matter came up for hearing the learned counsel for the respondents prays for time to get instructions. Liberty is given to the respondents to file written statement. Post the matter on 12.4.07.

ce
Member

Vice-Chairman

L.M.

Amud
Chakraborty
Sr. Case
8.03.07

No Wks has been
Wksel.

in
9.5.07.

Notes of the Registry	Date	Order of the Tribunal
No Wb has been filed.	10.05.2007	Mr.M.U.Ahmed, learned Addl. C.G.S. submits that he may require some more time file reply statement. Accordingly, four week time is granted.
3 1.6.07	5.6.2007	Post on 5.6.2007. Mr. M. U. Ahmed, learned Addl. C.G.S.C. could not be present due to Vice-Chairman.
No Wb filed.	/bb/	
22.6.07	5.6.2007	Mr. M. U. Ahmed, learned Addl. C.G.S.C. could not be present due to personal inconvenience. Post after two weeks.
25.6.07		Post the case on 25.6.2007.
For compliance		Vice-Chairman
Steps not taken	/bb/	
19/7/07	25.6.07	At the request of learned counsel for the respondents three weeks time is granted to file written statement.
Steps taken on 18/7/07.		Issue notice on the respondents.
Notice & order sent to D/Section for issuing to R-1 to 4 by regd. A/D post.	lm	Post the matter on 26.7.07
D/Nb-747 to 750	26.7.07	Vice-Chairman
Dk= 23/7/07		Four weeks further time is sought for by the respondents to file written statement. Post on 27.8.2007 for written statement and further order.
Wb not filed.		Vice-Chairman
19/7/07 25.7.07 Notice duly served on R-4.		

Wks not filed.

24.8.07.

27.8.07. Counsel for the respondents wanted time to file written statement. Let it be done. Post the matter on 27.9.07 as a last chance.

Vice-Chairman

lm

No Wks filed.


26.9.07.

27.9.2007 In this case no reply has been filed, despite several adjournments.

Call this matter on 08.11.2007 awaiting reply from the Respondents.

Wks not filed.

7.11.07.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

08.11.07.

Heard Mr.B.Chakraboprtty, learned counsel for the applicant and Mr.M.U.Ahmed, learned Addl.C.G.S.C. for the Respondents. Counsel for the Respondents seeks more time to file written statement. Six weeks further time is granted as a last chance to file written statement. If written statement not filed within the time, matter may be heard without record. ^{with prejudice on}

Call this matter on 3.01.08


Member(A)

Lm

Wks not filed.

2.1.07.

03.01.2008

Despite several adjournments given to the Respondents/ learned Addl. Standing counsel appearing for the Respondents, no written statement has yet been filed in this case.

Subject to legal pleas to be examined at the final hearing, this case is admitted.

Call this matter on 07.02.2008 for hearing. Reply, if any, may be filed by the Respondents by 1st February, 2008.

Contd

04.49/07

Contd
03.01.2008

Send copies of this order to all the Respondents in the addresses given in the Original Application.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

Dt. 3.1.08

Pl. send the order copies to all the Respondents.

/bb/

4.1.08

07.02.2008

Mr.M.Chanda, learned counsel appearing for the Applicant is present. Mr.M.U.Ahmed, learned Addl. Standing Counsel appearing for the Respondents seeks an adjournment till 10th March, 2008.

Call this matter on 10.03.2008 for hearing.

Reply, if any, in this case may be filed by 5th March, 2008.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

Lm

Order dt. 3/01/08

Sent to D/Section for issuing to resp. nos. 1 to 4 by post.

4/1/08 D/No-54 to 57
Dt- 4/1/08.

W/s not filed.

6.2.08

~~10.03.2008~~ ~~not filed~~ On the prayer of Mr.M.U.Ahmed, learned Addl. Standing Counsel appearing for the Union of India, call this matter on 22.04.2008.

(M.R.Mohanty)
Vice-Chairman

lm

10.03.2008

On the prayer of Mr.M.U.Ahmed, learned
Addl. Standing Counsel appearing for the
Union of India, call this mater on 22.04.2008.

(M.R.Mohanty)
Vice-Chairman

lm

10.03.2008

On the prayer of Mr.M.U.Ahmed, learned
Addl. Standing Counsel appearing for the
Union of India, call this mater on 22.04.2008.

(M.R.Mohanty)
Vice-Chairman

lm

10.03.2008

On the prayer of Mr.M.U.Ahmed, learned Addl. Standing Counsel appearing for the Union of India, call this matter on 22.04.2008.

W/s not filed.

21.4.08.

lm

(M.R.Mohanty)
Vice-Chairman

22.04.08

Call this matter on 10.06.2008 for hearing before the Division Bench.

(M.R.Mohanty)
Vice-Chairman

pg

10.06.2008

None appears for the Applicant nor the Applicant is present. However, Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, is present. In order to give one more chance to the Applicant call this matter on 03.07.2008 for hearing.

W/s not filed.

02.07.08

Mrs U. Dutta, Advocate, undertakes to inform the learned Counsel for the Applicant about the next date of hearing.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

nkm

O.A. 49/07

O.A. 93 of 07

07.2008

None appears for the either parties.

Call this matter on 21.08.2008.

O.A. No. 81 of 08

02.07.2008

Mr. B. Sarma, learned counsel appearing for the Applicant is present.

U.P.S.C has already filed written statement in this case; after serving the copy of the learned

03.07.2008

None appears for the Applicant. Mr. M.U.Ahmed, learned Addl.Standing Counsel appearing for the Respondents is present.

Call this matter on 07.07.2008.

(R.C.Panda)
Member(A)

(M.R.Mohanty)
Vice-Chairman

07.07.08

On the prayer of the counsel for the Applicant made in presence of counsel for the Respondents call this matter on 18.08.2008 for hearing.

(R.C.Panda)
Member(A)

(M.R.Mohanty)
Vice-Chairman

pg

8-

~~OA-49/08~~

CA 49/07

18.08.2008


In this case no written statement has yet been filed by the Respondents.

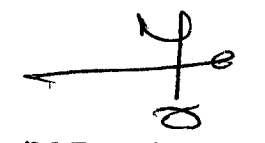
This matter was, ultimately, admitted on 03.01.2008 and is in the hearing list since last February, 2008 and listed on last six (6) occasions.

Mr B.Chakraborty, learned counsel appearing for the Applicant seeks an adjournment of hearing of the case and makes a statement that a copy of the written statement has been served on him in Court today. But the Respondents have not filed any written statement in this case ^{as yet}. Even today the Respondents are not in a position to file written statement. In the said premises, the ground for which Shri Chakraborty sought for an adjournment is not sustainable. Mr M.U.Ahmed, learned Addl. Standing counsel states that he shall verify the matter relating to filing of counter in this case.

However, on the prayer of the counsel for both the parties, call this matter on 22.09.2008 for hearing.


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


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

Dt. 18.8.08


Pl. send copies of this order to the respondents in the addresses given in the O.A.

 21.8.08


Copies of order dated 18/8/08 sent to D/Sec. for issuing to respondents by post.

~~CA~~ 28/8/08. D/No-3548 to 3553
DT= 20/8/08.

NOW/s filed.


2.09.2008.

NOW/s filed.


19.9.08.

0 A 49/07

22.09.2008

Mr. T. B. Sarma, Advocate, appearing for Mr. B. Chakraborty, learned counsel appearing for the Applicant is present. Mr. M. U. Ahmed, Addl. Standing Counsel appearing for the Respondents is absent for the reason of bereavement of his family.

Call this matter on 17.11.2008 for hearing

(S.N. Shukla)
Member(A)

(M.R. Mohanty)
Vice-Chairman

W/s not filed

14.11.08

17.11.2008

Call this matter on

02.12.2008.

(S.N. Shukla)
Member(A)

(M.R. Mohanty)
Vice-Chairman

20.11.08

W/s submitted by the Respondents. Copy not served.

pg

02.12.2008

Call this matter on 02.02.2009 for

hearing.

(S.N. Shukla)
Member (A)

(M.R. Mohanty)
Vice-Chairman

20.11.08

Rejoinder submitted by the Applicant. Copy served.

nkm

2.2.09

Bench is not available. List on 19.3.09.

W.

The case is ready for hearing.

1.12.08

19.03.2009

None for the Applicant. Mr. M. U. Ahmed for the official Respondents. Case is adjourned. List the case on 27.04.2009 for hearing.

The case is ready for hearing.

24.2.09

Kharimul

(A.K. Gaur)
Member (J)

/bb/

19/3

27.04.2009

Call this matter on 08.06.2009 for hearing.


(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.

/bb/

08.06.2009

Call this Division Bench matter on
03.08.2009 for hearing.

5.6.09.

~~Send copies of this order to the Applicant
who should remain present at the time of
hearing of this case.~~


(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.

31.7.09

/bb/

03.08.2009

Heard Mr.S.Chakraborty, learned
counsel appearing for the Applicant and
Mr.Kankan Das, learned Addl. Standing
counsel for the Respondents in part.

The case is ready
for hearing.

12.8.09.

Call this matter on 13.08.2009 for
further hearing.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.

/bb/

13.08.2009

Call this matter on 08.10.2009.

7.10.09


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

11

O.A. 49-07

08.10.2009

This case is not to be listed as part heard.

Call this matter on 18.11.2009 for hearing before the Division Bench.

(M.R. Mohanty)
Vice-Chairman

/bb/

18.11.2009

On the request of learned counsel for applicant, adjourned to 25.11.2009. Mr M. U. Ahmed, learned Addl. C.G.S.C. for the respondents has no objection.

The case is ready for hearing.

24.11.09

nkm

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

25.11.2009

Short question involved in the present case is whether the applicant satisfied 24 years of service on 9.8.99 when the DOPT issued circular for second financial upgradation governed by SRO 71 and which was made effective from 30.10.2001. According to respondent the said SRO 299 of 10.11.93 is applicable. Respondents are directed to produce copy of SRO 299/93 on the next date.

List on 4.12.2009.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

O.A.49/07

25.11.2009

Short question involved in the present O.A is whether applicant is entitled to second financial upgradation in terms of DOPT O.M. dated 9.8.99. According to respondents he did not satisfy the condition prescribed vide SRO 78 of 30.4.2001. On the other hand we noticed that said SRO had superseded earlier SRO No.299 of 10.11.1993. SRO 78 of 30.4.2001 was prospective in nature though we are concerned as to whether applicant is entitled to second financial upgradation on 9.8.99 i.e. when SRO 79 was not in existence. Therefore, respondents are directed to produce copy of SRO 299 of 10.11.93 on the next date.

List on 4.12.2009.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

04.12.2009

vide order dated 25.11.2009

Respondents were directed to produce copy of SRO 299 to determine as to whether Applicant is eligible for financial benefits for ACP Scheme or not. Learned counsel for the Respondents seeks time to produce the said documents and allowed.

List the matter on 18.12.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

The case is ready
for hearing.

3
3.12.09

04.12.2009 vide order dated 25.11.2009

Respondents were directed to produce copy of SRO 299 to determine as to whether Applicant is eligible for financial benefits for ACP Scheme or not. Learned counsel for the Respondents seeks time to produce the said documents and allowed.

List the matter on 18.12.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

18.12.2009

Proxy counsel for Respondents states that Mr. M. U. Ahmed, learned Addl. Standing Counsel for Respondents is unable to attend the court today due to his family bereavement in his family.

List the matter on 20.01.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

20.01.2010

Vide order dated 25.11.09 respondents were required to produce SRO 299 dated 10.11.1993 as well as SRO 78 of 30.4.2001. Learned counsel for the respondents makes a categorical statement that the copy of the said SROs are not available in the respondents office. This is not expected to be stated by the Government and its department. SRO being a published document, duly gazetted, in such circumstances it cannot be just accepted by Court that published documents were not available in the respondents office.

11.12.09

Reply to the
Refunder filed
by the Respondents

11/12/09

The case is ready
for hearing

/lm/

16.12.09

The case is ready
for hearing.

19.1.2010

/PB/

20.01.2010

Let a specific affidavit be filed by the respondents on this aspect within a period of 3 weeks as a last and final opportunity. It is made clear that no further opportunity will be allowed to the respondents and in the absence of clear stand taken as directed above necessary adverse inference will be drawn.

List on 11.2.2010 for hearing.

Copy of this order be sent to

Respondent No.3 for necessary compliance ^{if available.} besides making to Mr M.U.Ahmed.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

List on 15.02.2010.

(Madan Kumar Chaturvedi)
Member (A)

15.02.2010

Proxy counsel for Applicant seeks adjournment. List on 16.02.2010. It is made clear that no further adjournment on either side will be allowed.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

16.02.2010

List the matter on 17th February, 2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/pb/

Khairul.

Copy of this order be sent to the Respondent No. 3 for necessary compliance. urgently.

21/1/10

21-1-2010

Copy of the order Dated- 20.1.2010, prepared and send to D. Section for issuing of the same to the respondent No- 3 and Mr M.U. Ahmed, Addl. case.

Vide D.No - 213-214 O.A. 49-07
Date - 21-1-2010 11.02.2010

The case is ready for hearing. /bb/

10.2.2010

The case is ready for hearing.

12.2.2010

O.A.49-07

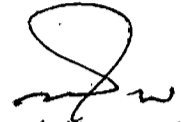
17.02.2010

Heard Mr.S.Chakraborty, learned counsel for Applicant and Mr.M.U.Ahmed, learned Addl.C.G.S.C. for Respondents. Hearing concluded.

Reserved for orders.



(Madan Kumar Chaturvedi)
Member (A)

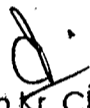


(Mukesh Kumar Gupta)
Member (J)

/bb/

19.02.2010

Order pronounced in open Court, kept in separate sheets. Application is dismissed in terms of the order.



(Madan Kr. Chaturvedi)
Member (A)



(Mukesh Kr. Gupta)
Member (J)

/pg/

18-3-2010

Judgment/Final order
dated 19/2/2010 rendered
and sent to the J/Secy for
issuing the order to
respondents by post.
vide NO. 617 to 620
dated 18-3-2010

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 49 of 2007

DATE OF DECISION: 19.02.2010

R.S.Das

.....Applicant/s.

Mr.S.Chakraborty

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

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

.....Advocate for the
Respondents

CORAM

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

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

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Judgment delivered by

Hon'ble Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 49 of 2007

Date of Decision: This, the 19th day of February 2010.

HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

Shri Ranjit Sankar Das
Son of Late Sailaja Sankar Das
Resident of L.D. Sarma Road
Tezpur, Assam.

...Applicant

By Advocate: Mr.S.Chakraborty

-Versus-

1. The Union of India represented by the
Secretary, Ministry of Defence
Government of India South Block,
New Delhi-1.
2. The Engineer-in-Chief
(Engineering Branch), MES,
Kashmir House,
New Delhi-110 011.
3. The Chief Engineer, MES
Eastern Command
Fort William
Kolkata-21.
4. The Garrison Engineer, MES
Air Force, P.O: Salonibari, Tezpur
District: Sonitpur
Assam.

.. Respondents

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

ORDER**MUKESH KUMAR GUPTA, MEMBER (J):**

In this second round of litigation Shri Ranjit Sankar Das challenges letter dated 24.12.2004 as well as order dated 13.09.2006 rejecting his representation dated 10.07.2006. He also seeks direction to the Respondents to grant second financial upgradation under ACP scheme with all consequential benefits.

2. Admitted facts are that he initially joined as Sub Overseer in Military Engineering Services, in December 1969. Later on, he was promoted to the post of Superintendent B & R Grade-II w.e.f. 10.11.1998 in the pay scale of Rs.5000-8000/-. Said post was redesignated as Junior Engineer. Union of India, DoP&T issued O.M. dated 09.08.1999 providing relief to those who were stagnating in their service due to lack of promotional avenues. It provided two financial upgradations on completion of 12 and 24 years of regular service respectively. Since he was not considered for second financial upgradation, he submitted a representation on said subject and in response thereto vide communication dated 16.10.2001 he was informed that his claim has been examined by the Headquarter but his case could not be considered as he had not cleared departmental examination. Therefore, he appeared in departmental examination and passed Part-I and Part II departmental examination in January, 2003 and January 2004 respectively. Vide letter dated 20.05.2004, he states that he informed said aspect to the Respondent No.3.



3. It is stated that that he was shocked and surprised to receive a communication dated 24.12.2004 intimating him that benefits of second financial upgradation under ACP Scheme is available to only those Junior Engineers who were holding degree and as he did not possess said educational qualification, he was not eligible. Therefore, he filed another representation dated 17.05.2005 and during its pendency, he attained age of superannuation on 31.01.2006. As such, he preferred O.A. No.162/2006, which was disposed of at admission stage vide order dated 28.06.2006 requiring him to file comprehensive representation, which in turn was required to be disposed of by the Respondents within the time limit prescribed therein. Therefore, he submitted another detailed and comprehensive representation dated 10.07.2006 highlighting his grievances. In purported compliance thereto, detailed and speaking order dated 13.09.2006 was passed rejecting aforesaid representation. Said communication dated 13.09.2006 is impugned in the present proceeding.

4. Learned counsel for Applicant Mr.S.Chakraborty strongly urged that communication dated 16.10.2001 required only to pass departmental examination, which aspect had been satisfied successfully and no such condition regarding educational qualification holding degree/diploma had been specified therein. As such, he was under legitimate expectation that on passing departmental examination, he would be granted second financial upgradation. Despite passing said departmental examination in 2003 and 2004, said legitimate expectation had been belied. Communication dated 24.12.2004 has misinterpreted initial communication dated 23.01.2002 on the subject of second financial

upgradation. It only required adjustment of scale under the ACP Scheme. It nowhere required holding a particular educational qualification. The Respondents' action in categorizing the cadre of Junior Engineer based on educational qualification as degree holder as well as non-degree holder thus, discriminated them, is illegal, arbitrary and unjustified. It is based on no intelligence differentia, which is violative Article 14 of the Constitution of India. The impugned order dated 13.09.2006 is illegal and arbitrary. It is only in the second round of litigation the Respondents have raised the plea of non-holding diploma, and therefore, the Respondents' action is misconceived besides being arbitrary. He had rendered 36 years of meritorious service and yet he had been denied second financial upgradation.

In the above backdrop, it was emphasized that the Respondents action in denying him the benefits of second financial upgradation is unsustainable in the eyes of law.

5. By filing reply and contesting the claim laid, it was stated that competent authority has rightly not allowed him second financial upgradation due to lack of holding essential qualification prescribed for the promotional post. Vide communication dated 23.01.2002, the Government had adopted the Assured Career Progression Scheme notified by DoP&T O.M. dated 09.08.1999 and the earlier scheme granting two higher pay scales on completion of certain number of years of service was dispensed with. The new ACP Scheme in respect of Junior Engineer (Civil) as par para 4 thereto was adopted in the manner indicated in Appendix A to said communication. Vide para 7 thereof, it was conveyed

that other terms and conditions of ACP Scheme as notified vide DoP&T O.M. dated 09.08.1999 shall remain applicable. The speaking order dated 13.09.2006 is only relevant and supported by all relevant rule position and earlier departmental communications issued on 16.10.2001, 07.07.2006 and 27.09.2006 are not supported by any rule position and are thus not the authority for promotion/upgradation. Educational qualification prescribed is an essential criteria for upgradation. Unless an official fulfills all the criteria prescribed by aforesaid DoP&T OM, he is not entitled to financial upgradation irrespective of number of years he has to his credit.

6. We have heard Mr.S.Chakraborty, learned counsel for the Applicant as well as Shri M.U.Ahmed, learned Addl. C.G.S.C. for the Respondents. We have also perused the pleadings and other materials placed on record. In order to appreciate as to whether Applicant is (was) eligible for promotion to next higher post, which is a condition prescribed under aforesaid DoP&T OM dated 09.08.1999 for grant of financial upgradation, we required the Respondents to produce SRO No.299 dated 10.11.1985 as well as SRO No.161 dated 12.05.1988. Said SROs were indeed produced by the Respondents though a lot of exercise had to be undertaken by this Tribunal on this aspect. The matter had been listed on 25.11.2009, 04.12.2009, 18.12.2009 and 20.01.2010, but at last Respondents indeed complied with the direction of this Tribunal by producing the said SROs. Para 6 of Appendix 'A' appended to DoP&T OM dated 09.08.1999 prescribes fulfillment of normal promotional norms before granting benefits under ACP Scheme. Thus, one has to necessarily satisfy the conditions prescribed under Recruitment Rules. Under SRO 299 dated 10.11.1985 in column 9, for the said post of Superintendent (B&R) Grade-I,

Superintendent (B&R) Grade-II seeking promotion to said Grade-I had to satisfy qualification prescribed in column 12, which reads thus:-

"Promotion

1.(a) Superintendents Buildings/Roads Gde II who are Engineer Graduates in Civil Engineering or equivalent and have a minimum of three years regular service in the grade

Or

(b) Superintendents Building/Roads Grade II who hold a recognized Diploma in Civil Engineering with a minimum of five years regular service in the grade and have passed procedure examination for Superintendents (Building/Roads and Electrical/Mechanical) Gde I after 1951 or had passed a School of Military Engineering/College of Military Engineering course accepted by the Engineering-in-Chief for this purpose upto 1951 in lieu of procedure examination.

Or

I Persons appointed in the grade of Superintendents Building/Roads Grade II with minimum of 10 years service in the grade in whose case educational/technical qualifications have been relaxed by the Government and have passed School of Military Engineering/College of Military Engineering course accepted by Engineering-in-Chief for this purpose upto 1951 in lieu of procedure examination.

Note: Persons who hold the appointment of Surveyor Assistant Gde II before their merger in Engineer

1. Cadre as Superintendent Buildings/Roads Grade II hold a recognized Diploma in Civil Engineering or their qualifications have been relaxed by the Government and also passed the first examination (Sub Divisional II) of the Institution of Surveyors India before June 1964 accepted by the Engineer-in-Chief in lieu of procedure examination for Superintendents (Buildings/Roads and Electrical/Mechanical) Grade I after Jun 1964 will also be eligible."

(emphasis supplied)

Admittedly said SRO had been amended vide SRO No.161 dated 12.05.1988. Column 12 of the earlier SRO was "substituted" with the following:-

(a) Superintendents Buildings/Roads Gde II who are Engineer Graduates in Civil Engineer or equivalent and

have minimum of three years regular service in the grade.

Or

(b) Superintendents Building/Roads Grade II who hold a recognized Diploma in Civil Engineering with a minimum of five years, regular service in the grade and have passed procedure examination for Superintendents (Building/Roads and Electrical/Mechanical) Grade I after 1951 or had passed a School of Military Engineering/College of Military Engineering course accepted by the Engineer-in-Chief for this purpose upto 1951 in lieu of Procedure Examination.

Or

(c) Persons appointed in the grade of Superintendents Building/Roads Grade II with minimum of 10 years service in the grade in whose case educational/technical qualification have been relaxed by the Government and have passed School of Military Engineering/College of Military Engineering course accepted by Engineer-in-Chief for this purpose upto 1951 in lieu of procedure examination."

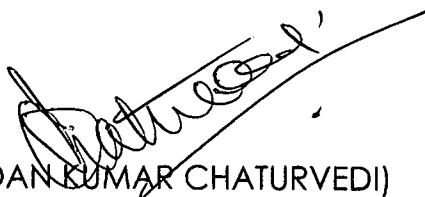
(emphasis supplied)

It is an admitted fact that Applicant was neither a Graduate Engineer nor possessed diploma in Civil Engineering. Strong reliance was placed on clause 12 (c) of the amended SRO of 1988 to suggest that since Applicant had passed procedural examination, he was deemed qualified for grant of second financial upgradation. Perusal of the above clause (c) would show that it prescribes two conditions, namely, persons in whose case educational/technical qualifications have been relaxed by the Government **and** have passed the procedure examination. In our considered opinion, the term "**and**" in said clause has to be read as conjunctive not disjunctive. It is not in dispute that there was no relaxation granted by the Government for either holding educational or technical qualification by the Applicant. Feeble attempt was made to suggest that Superintendent B & R Grade-II and Grade-I have since been merged and redesignated as Junior Engineer (Civil) vide Engineer-in-Chief Branch Army

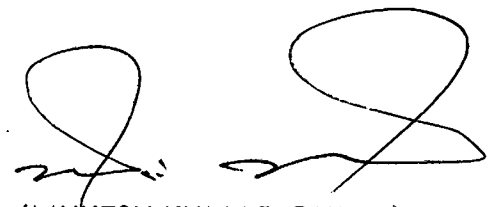


Headquarters letter dated 02.11.2000. We may note at the cost of repetition that the entire claim laid in present application is based on the fact that he had passed the departmental examination, and therefore, he was entitled for second financial upgradation. It was also nowhere been suggested in the entire pleadings that the post of Superintendent B&R Grade II and Grade I have been merged, and therefore, he is entitled to higher pay scale. This being the factual aspect, we do not find any illegality in the speaking order dated 13.09.2006 that the Applicant is not entitled to second financial upgradation because of not passing diploma in Civil Engineering, a condition prescribed under the SRO concerned. Even in view of SRO 78 of 2001 Applicant was not eligible for promotion to the rank of Assistant Engineer, another higher post.

7. In view of the fact and discussions made hereinabove, we do not find any justification in the claim laid by the Applicant and finding no merits, O.A. is dismissed. No costs.

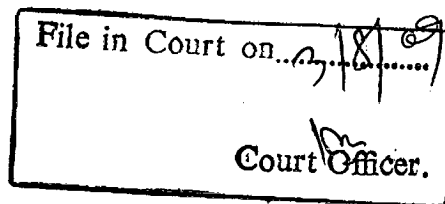


(MADAN KUMAR CHATURVEDI)
MEMBER (A)



(MUKESH KUMAR GUPTA)
MEMBER (J)

/BB/



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

Original Application No.49/2007

RANJIT SANKAR DAS APPLICANT.

-VERSUS-

UNION OF INDIA & ORSRESPONDENTS.

LIST OF DATES

1.12.1969 The Applicant was appointed as sub-overseer in Military Engineering Service (MES).

Para-4 (b) , Page-3.

10.11.1998 The Applicant was promoted to the post of Junior Engineer (Erstwhile Superintend, B & Rd, Grade -II) in the pay Scale of Rs.5000/- to Rs.8000/-.

Para-4 (b) , Page-3.

9.8.1999 The Government of India formulated and adopted Assured Career Progression Scheme (ACP).

Para-4 (c) , Page-3.

-The Applicant having completed more than 24 years as on 8.9.99, claimed his second pay up-gradation under the ACP Scheme to the Scale of Rs.6,500/-to Rs10,500/- of the post Assistant Engineer, MES.

Para-4 (d) , Page-4.

16.10.2001 Respondent No-3 intimated that second financial up-gradation would not be available to the applicant as he did not pass the Departmental Examination.

ANNEXURE-I, Page-20

Jan/2003 The Applicant passed the Departmental Examination, Part-I.

Annexure-I (A) , page-21

Jan/2004 The Applicant passed the Departmental Examination, Part-II.

Annexure-I (B) , page-22

20.5.04 Applicant informed respondent no.3 by a representation about the passing his departmental examination by and prayed for his second pay up-gradation.

Para-4 (g) , Page-6

24.12.04 Applicant was intimated by letter issued by respondent no.3 that he not being a degree holder Junior Engineer, is not eligible for second pay up-gradation as per Government of India Letter dated 23.1.02. The Applicant was however, asked to produce Diploma Certificate if any.

Annexure-II, page-23

31.1.2006 The applicant retired from his service.

17.5.06 The applicant submitted representation before the Respondent no. 2 and 3, praying for second pay up-gradation claiming his eligibility for passing the departmental examination. However, the pay Scale was not granted.

Annexure-III, page-28.

28.6.06 The O.A. No.162/06, filed by this Hon'ble Tribunal was disposed of directing the applicant to file a fresh representation which was to be disposed of by the authority with a speaking order within two months.

Annexure-IV, page-31

7.7.06

The respondent no.3 intimated the applicant to submit document in support of his passing Departmental Examination or Diploma for consideration of his case for second pay up-gradation under ACP Scheme. This was issued in connection with the representation filed by the applicant before the Cabinet Secretariat, Public Grievances, New Delhi.

Annexure-VII, Page-41

10.7.06

Applicant filed representations before the respondent no.2 & 3 as per order of the Tribunal dated 28.6.08.

Annexure-V, page-34

13.9.06

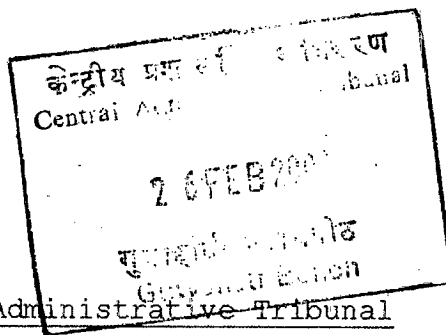
The respondent no.2, passed order on the representation of the applicant dated 10.7.06, stating that applicant was not eligible for second up-gradation since he was not a Diploma holder in Civil Engineering.

Annexure-VI, page-37.

27.9.06

In the vigilance clearance for promotion to the post of Assistant Engineer for the year 2005-06 and 2006-2007 the name of applicant was considered which shows that he was eligible for promotion for the post.

Annexure-VIII, page-43.



In the Central Administrative Tribunal

Guwahati Bench : Guwahati

Original application No. 49 / 2007

Sri Ranjit Sankar Das.....Applicant

VERSUS

Union of India and Ors. Respondents

I N D E X

PARTICULARS

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Filed by

Santanu Chakrabarti
Advocate

In the Central Administrative Tribunal

Guwahati Bench :Guwahati

Original application No. / 2007

Sri Ranjit Sankar Das.....Applicant

VERSUS

Union of India and Ors.Respondents

Synopsis

The applicant was in the services of the MES and he approached the authorities for financial up-gradation under the ACP scheme by way of filing representation. The representation of the applicant was not disposed by the authorities; he approached this Hon'ble Tribunal by way of filing O.A No. 162/2006. This Hon'ble Tribunal by order dated 28.6.2006 was pleased to dispose of the application directing the authorities to dispose the representation of the applicant. The authority by impugned order dated 13.9.2006 was pleased to reject the claim of the applicant in respect of the financial up-gradation under the ACP scheme. Hence , this application is filed against the illegal rejection of the claim of the applicant.

Filed by

Santanu Chakrabarty

Advocate

In the Central Administrative Tribunal

Guwahati Bench :Guwahati

Original application No. / 2007

Sri Ranjit Sankar Das.....Applicant

VERSUS

Union of India and Ors.Respondents

List of dates

1.12.1969: The applicant was appointed as Sub Overseer in the MES.

1998: The applicant was promoted to the post of the Junior Engineer, Civil (re-designated)

16.10.2001: Respondent no. 3 intimated that for getting 2nd pay up-gradation, the applicant has to pass Departmental Examination (**Annexure- I**)

Applicant sat in the departmental examination and passed the same and made an application for 2nd pay up gradation under the ACP scheme (**Annexure - IA &IB**)

24.12.2004: Respondent no. 3 intimated that 2nd pay up gradation is available only for the degree holder civil engineers as per Govt. of India letter dated 23.1.2002. (**Annexure-II**)

17.5.2005: The applicant filed representation before the authorities. (**Annexure-III**)

- 28.6.2006: The applicant filed a O.A No. 162/2006 for non consideration of the representation of the applicant and this Hon'ble Tribunal disposed of the O.A by order dated 28.6.2006
(**Annexure - IV**)
- 10.7.2006: The applicant filed representation before the authorities as per direction of this Hon'ble Tribunal (**Annexure-V**) .
- 13.9.2006: The authorities by the impugned order dated 13.9.2006 was pleased to reject the claim of the applicant. (**Annexure-VI**) .
- 07.07.2006: The respondent authorities asked the applicant to submit document as regards passing of departmental examination (**Annexure-VII**) .
- 27.9.2006: The respondent authorities published a list for vigilance clearance of the eligible Junior Engineers for promotion and the name of the applicant figures at serial no. 88.
(**Annexure-VIII**) .

Filed by

Santanu Chakraborty

Advocate

*Filed by
36 Applicant
36 Applicant
Santana Chakraborty
Advocate*

Ranjit-Sankar Das

In the Central Administrative Tribunal
Guwahati Bench : Guwahati

(An application under Sec.19 of the Administrative
Tribunal Act, 1985)

Original application No. /07

1. Sri Ranjit Sankar Das
Son of Late Sailaja Sankar Das,
Resident of L.D Sarma Road,
Tezpur. Assam.

Applicant

VERSUS

1. Union of India, Represented by the
Secretary, Ministry of Defence,
Govt. Of India. New
Delhi. 1.
2. The Engineer - In - Chief
(Engineering Branch), MES, Kashmir
House, New Delhi-110011.
3. The Chief Engineer, MES, Eastern
Command, Fort William , Kolkata-
21.

- 2 -
4. The Garrison Engineer, MES, Air Force, P.O Salonibari, Tezpur, District Sonitpur, Assam.

Respondents

1. Particulars of the orders against which the application is made.

i. Letter No. 131841/ACP/MES/167/Engrs/EID dated 24.12.2004 issued by the respondent no. 3 intimating that 2nd Assured Career progression Scheme is available only to the Degree holder Junior Engineers and therefore not applicable to the applicant, not being a Degree holder.

ii Order No. 131900/162/.2006/16/Engrs/E1 (Legal) dated 13.9.06, rejecting the representation dated 10.7.2006 of the applicant praying for 2nd ACP under the scheme. Which was passed pursuant to the order passed by this Hon'ble Tribunal in O.A. No. 162/2006.

2. Jurisdiction of the Hon'ble Tribunal. :

The applicant declares that the subject matter of the order against which they want redressal, is within the jurisdiction of this tribunal.

3. Limitation. :

The applicant further declares that the application is within the limitation prescribed under section 21 of the Administration Tribunal, Act, 1985.

4. Facts of the case :

br

a. That the applicant passed HSLC examination and also passed part- I of the Diploma course in civil engineering.

b. That the applicant joined in the services of MES under the Ministry of Defence , Government of India, on 1.12.1969 after being duly appointed to the post of Sub-Overseer in the year 1969 . Subsequently, after serving as sub- overseer, the applicant was given promotion to the rank of Superintendent Buildings & Roads, Gde-II (re-designated as Junior Engineer, (Civil) in the year 1998 , in which rank the applicant served till his retirement on attaining the age of superannuation on 31.1.2006 when he was posted in the office of the respondent no. 4.

c. That to deal with the problem of genuine stagnation in service faced by the employees of the Central Government Civilian Employees for lack of promotional avenues, the Government accepted and implemented Assured Career Progression Scheme (in short the scheme) w.e.f 9.8.1999 on the basis of recommendations made in the Fifth Pay Commission. Under the scheme, two financial up gradations of the next higher posts to be given to the employees on completion of 12 years and 24 years of regular service. Under the scheme, if the incumbent earns any

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numbers of regular promotions that would be set off with the financial up gradations under the scheme. The grants of financial upgradation are in the form of the pay scale of two promotional ranks above the post held by the incumbent. The scheme is subject to certain conditions mentioned in the scheme.

d. That during the whole service career of the applicant, he has been given promotion only once as stated above and taking into account the total period of service, the applicant was entitled to the 2nd financial up-gradation of his pay scale of the next higher rank as per the scheme, w.e.f 9.8.99, since the applicant had already completed his 24 years of services prior to 9.8.99.

e. That however, the case of the applicant was not considered for his due 2nd financial up-gradation and as such, the applicant filed a representation before the respondent praying for his up-gradation of pay scale under the ACP Scheme and in response to the representation of the applicant the respondent no.3, by his letter No. 81427/737/EID dated 16.10.2001, intimated that the Head Quarter, Eastern Command, Engineering Branch issued letter No 131841/ACP/1127/Engrs/ EID dated 3.10.2001, stating that the representation of the applicant had been examined by the Head Quarter and that his case for second financial up



gradation could not be considered in view of the fact that the applicant had not cleared departmental examination.

A copy of the letter dated 16.10.2001 is annexed herewith and marked as Annexure -I.

f. That the applicant states that at that stage when he was communicated the letter dated 16.10.2001 he was at the fag end of his service career when he was too old to pass out departmental examination. However, since the applicant was made to understand that for the second up-gradation in the scale under the scheme, he was required to pass the departmental examination, he put in his entire endeavor in the departmental examination. The applicant states that he sat in the examination with his colleagues who were very much junior to him in service. The applicant passed the part-I of the departmental examination in January/2003 and thereafter he passed part -II of the departmental examination in January/2004.

Copies of the result of part -I and part -II of the departmental examination passed by the applicant is annexed herewith and marked as Annexure - I A and I B.

- 6 -

g. That Immediately thereafter the applicant duly intimated the respondent no. 3 the fact of his passing of the departmental examination by letter dated 20.5.2004, wherein, he also mentioned that his retirement was due in January 2006 and made a request to grant him the second financial up-gradation at an early date. The letter dated 20.5.2004 was duly forwarded to the Head Quarter.


h. That thereafter to the great shock and surprise of the applicant, by letter no. 131841/ACP/JEs/167/Engrs/EID dated 24.12.2004 issued by the office of the respondent no.3 it was intimated that the second up-gradation to the next pay scale under the ACP scheme is available only for Degree holder Junior Engineers and therefore the applicant was not eligible for the 2nd financial up-gradation as sought for by him, not being a degree holder Junior Engineer. In the said letter it was mentioned that the same was issued pursuant to the letter issued by the Government Of India, vide No. 85610/ACP/47/47/Supdts/CSCC/236/D (works) dated 23.1.2002 which was also enclosed with the letter dated 24.12.04.

A copy of the letter dated 24.12.2004 with enclosure is annexed herewith and marked as

Annexure -II.

B

i. That the applicant begs to state that after passing the departmental examination in accordance with the letter dated 16.10.2001 (Annexure - II) , the applicant was eligible to get his 2nd financial up gradation . However, by the impugned order dated 24.12.2004 the claim of the applicant was turned down by the authorities on the ground that as per the Government of India letter dated 23.1.2002 (Annexure - III) the 2nd financial up gradation is available only to the Degree/ Diploma holder Junior Engineers and he was not entitled to claim 2nd financial up gradation.

j. That it appears that the impugned order dated 24.12.2004 was issued based on the Government of India letter dated 23.1.2002 enclosed therewith. From the letter,  it appears that the same was issued only as regards adjustment of pay scale of the incumbents under the Time Bound Pay Promotion Scheme (which was implemented earlier to mitigate the grievance of stagnation in the service) with the pay scale under the Assured Career progression Scheme in respect of erstwhile Supdts B/R and E/M Gde 1. and Gde'II(re-designated as Junior Engineer (Civil) (E/M). The chart enclosed with the letter dated 23.1.2002 shows only as to how the scale of pay is to be adjusted. The applicant states that, the letter does not in any manner lay down or clarifies any eligibility criteria for



grant of 2nd financial up gradation to the incumbents. The plain reading of the entire letter does not substantiate in any manner that the incumbent not possessing Degree in Civil Engineering do not qualify for his 2nd financial up gradation. The applicant states that the authority, while issuing the impugned order dated 24.12.2004, misread the letter dated 23.1.2002 and arrived at an erroneous finding as to the non eligibility of the applicant for the 2nd financial up gradation. The applicant states that he is entitled for his 2nd financial up gradation as per the scheme which is denied by the authorities illegally. ✓

k. That the applicant begs to state that being highly prejudiced by the above action of the authority in unduly rejecting the claim, the applicant filed a representation on 17.5.2005 before the respondent incorporating the whole fact and the said representation was duly received by the authorities. However, the representation of the applicant had not been considered. During the pendency of the representation of the applicant, the applicant retired from the services of the respondent on 31.1.2006 on attaining the age of superannuation.

A copy of the representation dated 17.5.2005 is annexed herewith and marked as Annexure -

III.

6

L. That being aggrieved by the order of the authority in denying the 2nd financial up gradation under the ACP scheme, the applicant in an illegal and unreasonable manner, the applicant filed an application before this Hon'ble Tribunal being numbered as O.A No. 162/2006 seeking justice in the matter. The Hon'ble Tribunal by order dated 28.6.2006 was pleased to dispose of the said application allowing the applicant to file a representation before the respondent no.3, which was directed to be disposed by the authority within a period of two months.

Copy of the order dated 28.6.2006 passed by this Hon'ble Tribunal in O.A No. 162/2006 is annexed herewith and marked as Annexure -IV.

M. That pursuant to the order of this Hon'ble Tribunal the applicant submitted a representation in detail setting out the facts and circumstances of the case making a prayer for grant of 2nd financial up gradation under the ACP scheme on 10.7.2006.

Copy of the representation dated 10.7.2006 is annexed herewith and marked as Annexure - V.

6

N. That thereafter, the respondent no.3 issued order no. 131900/162/2006/16/Engrs/E1(Legal) dated 13.9.2006, whereby, the representation of the applicant was disposed of as per direction of this Hon'ble Tribunal. In the said order dated 13.9.2006 it has been mentioned, inter alia, that to get the scale of Assistant Engineer (civil) of Rs, 6,500/-- 10,500/- as 2nd financial up gradation under the ACP scheme the applicant must have the qualification for the post of Assistant Engineer (civil) which is Diploma in Civil Engineering as laid down by the SRO 78 of 30.4.2001. Therefore, since, the applicant did not have the essential qualification for the post of Assistant Engineer (civil) he was not entitled for 2nd financial up gradation as claimed by him. Accordingly the prayer of the applicant was rejected.

Copy of the said order dated 13.09.2006 is annexed herewith and marked as Annexure -VI.

O. That it may be relevant to mentioned herein that the applicant, before approaching this Hon'ble Tribunal also filed a representation before the Cabinet Secretariat , Public Grievances, New Delhi-11, stating , his grievances for being deprived of the 2nd financial up gradation. In reply to his representation, the applicant received a letter No. 1311970/Misc/A/F/CE/187/EIR (D) dated 7.7.2006,

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from the respondent no. 3 stating that as per Govt. order on the subject the 2nd financial up gradation under the ACP scheme on completion of 24 years of service subject to passing of Departmental Examination or having Diploma/Degree in civil engineering. It was further mentioned that there is no record available in the department showing that the applicant has passed the Departmental Examination. The applicant was therefore, asked to submit documents of either passing the Departmental Examination or having Diploma in civil engineering for consideration of his case for 2nd financial up gradation.

Copy of the letter 07.07.2006 is annexed herewith and marked as Annexure -VII.

P. That it may be relevant in the context to mention that the Department published a list for vigilance clearance of eligible Junior Engineers (civil), of the MES for being promoted to the post of Assistant Engineers (Civil) for the year 2005-2006 and 2006-2007 and in the said list the name of the applicant appears at serial no. 88. In the said list also stress has been laid down only on passing of the Departmental Examination.

Copy of the letter dated 27.09.2006 is annexed herewith and marked as Annexure -VIII.


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- 12 -

Q. That from what is stated above it would appear that having passed the Departmental Examination, the applicant is eligible for being promoted to the rank of Assistant Engineer and from the communication of the authority dated 16.10.2001(Annexure- I), dated 7.7.2006(Annexure- VII) and dated 27.9.2006 (Annexure- VIII) it would be apparent on the face of the record that the applicant having completed more than 24 years (about 36 years) of service before his retirement was eligible for 2nd financial up gradation under the ACP scheme and its consequential benefits. The applicant states that the impugned order dated 13.9.2006 passed by the authority is illegal and unreasonable while holding that the applicant must have Diploma in Civil engineering for getting the pay up gradation and the same is illegal and not maintainable in law.

5. Grounds for relief with legal provisions

i. (For that on the basis of the letter dated 16.10.01 (Annexure-II) issued by the authorities the applicant passed the departmental examination with the legitimate expectation that he could be granted 2nd pay up gradation under the ACP scheme and in view of this the authorities are barred by the principle of Promissory



Estoppel in denying the entitlement of the applicant on the ground that the applicant would not get 2nd pay up gradation in as much as he has no degree/diploma in Civil Engineering and as such the impugned order dated 24.12.04 is not maintainable in law and the applicant is entitled for his 2nd financial up gradation and for its consequential benefits.

ii. For that the letter dated 24.12.2004 it would appear that same has been issued on the misreading of the letter dated 23.1.02 in as much as the letter dated 23.1.02 has nothing to do with the grant of 2nd pay up gradation and it is only as regard adjustment of scale of pay under A.C.P scheme with that of Time Bound Pay Promotion Scheme which was granted earlier and as such the authorities rejected the claim of the applicant with utter non application of mind and the action is not sustainable in law.

iii. For that the applicant submits that after passing the departmental examination he is eligible for being promoted to the next higher post and he is also entitled for the second pay up gradation and its consequential benefits from the date of his passing departmental examination which is being illegally denied by the authorities.

6


iv. For that Since, the applicant has been duly promoted to the rank of Junior Engineer as per seniority and adhering the service Rules, the action of the authority in categorizing the Junior Engineers in two categories as degree holders and non degree holders and discriminating the non degree holders in granting ACP scheme is not based on any intelligible differentia and such discrimination is in fact contra to the object sought to be achieved by the beneficial scheme of ACP, which basically tries to remedy the hardship of the situation of long stagnation in service without promotions. Therefore, at any rate such discriminations between degree holders and non degree holders at the same rank only for depriving from ACP scheme, is not sustainable in law and is unreasonable and arbitrary on the face of it.

v. For that only on the basis of letter dated 16.10.2001, The applicant sat in the departmental examination, with a great expectation that he would be given the financial up gradation after clearing the departmental examination ,as reflected in the letter dated 16.10.2001 issued by the respondent No.3 and accordingly the applicant cleared the departmental examination in his old age, only to avail the benefit under the ACP scheme and now the action of the authorities in rejecting the prayer



of the applicant on the ground of not having degree in Civil Engineering is highly unreasonable and improper on the part of the authority. The applicant begs to state that after passing the departmental examination on the basis of the intimation by letter dated 16.10.2001, he has a legitimate expectation to get the second financial upgradation in the pay scale and the denial of the same is illegal.

VI. For that the applicant having passed the Departmental Examination, is eligible for being promoted to the rank of Assistant Engineer and from the communication of the authority dated 16.10.2001(Annexure-I), dated 7.7.2006(Annexure- VII) and dated 27.9.2006 (Annexure- VIII) it would be apparent on the face of the record that the applicant having completed more than 24 years (about 36 years) of service before his retirement was eligible for 2nd financial up gradation under the ACP scheme and its consequential benefits. The applicant states that the impugned order dated 13.9.2006 passed by the authority is illegal and unreasonable while holding that the applicant must have Diploma in Civil engineering for getting the 2nd pay pay up gradation under the scheme and the same is illegal and not maintainable in law and as such the impugned order dated 13.9.2006 is liable to be set aside.



VII For that the applicant is eligible fro being promoted to the rank of Assistant Engineer having passed the Departmental Examination and as such he is eligible for the 2nd pay up gradation to the scale of Assistant Engineer having completed more than 24 years of service as required under the ACP scheme and as such the action of the authorities denying such legitimate entitlement of the applicant is bad in law and liable to be set aside.

6. Details of remedies exhausted.

The applicant filed a representation before the authorities claiming his 2nd financial up gradation under the ACP scheme as per direction of this Hon'ble Tribunal order dated 28.6.2006 passed in O.A No. 162/2006 but the same was rejected by the respondent no. 3 by order dated 13.9.2006.

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

The applicant further declares that he have filed an application before this Hon'ble Tribunal which was numbers as O.A No. 162/2006 and the same was disposed of by order dated 28.6.2006 (Annexure - IV) to this application and no other application is pending before any court or any other authority or any other Bench of the Tribunal, nor any such



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application, writ petition or suit is pending before any of them.

8. Relief sought for

In the premises aforesaid, it is, therefore, prayed that Your Lordships may be pleased to admit this application, issued notices to the respondents to show cause as to why the letter/ order dated 24.12 2004 (Annexure II) and the order dated 13.9.2006 (Annexure- VI) shall not be quashed and set aside as illegal and as to why the applicant should not be given the benefit of the second financial up gradation as per Assured Career Progression Scheme as formulated by the Government, from the date the applicant became eligible for the post of Assistant Engineer passing the departmental examination, call for the entire records of the case and after hearing the parties , be pleased to allow the petition issuing direction to the respondents to pay all the benefits of the second financial up-gradation to the applicant as per Assured career Progression Scheme and or pass such further order / orders as Your Lordships may deem fit and proper .

And for this act of kindness the applicants, as in duty bound, shall ever pray.

6

9. Particulars of bank draft/postal order in respect of the application fee

- (i) I.P.O. No. 340651316
- (ii) Date 20.2.07.
- (iii) Issued by Guwahati Post Office
- (iv) Payable at Guwahati.

10. List of enclosures.

As stated in the INDEX

- 19 -

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

I, Shri Ranjit Sankar Das , son of Late Sailaja Sankar Das, aged about 61 years , retired central Govt. servant, resident of Tezpur in the district of Sonitpur , Assam , do hereby verify that the statements made in paragraphs Nos. 4a to 4e are true to my personal Knowledge ; those made in paragraph nos 1,2,3,7 are matters of record and the statements made in paragraph nos. 5(i) to 5(vi) are believed to be true on legal advice and I have not suppressed no material fact.

And I sign this verification on this 19 th day of February / 2007 , at Guwahati .

Place : Guwahati.

Ranjit Sankar Das

Date. 19.2.07.

HQ Chief Engineer (AF)
Shillong Zone
Elephant Falls Camp
Nonglier Post
Shillong- 793 009

Annexure - II

Oct 2001

GE (I) (AF) Tezpur

FWD OF APPLICATION MES-232943 SHRI
RS DAS, JE (CIV)

1. Ref this HQ letter No 81427/ACP/TUE/EID dated 03 Sep 2001.
2. ^{g/c} ~~As~~ ^{has been} intimated by HQ Eastern Comd Engrs Branch vide letter No 131841/ACP/1127/Engrs/EID dt 03 Oct 2001 that the representation of M/S-232943 Shri RS Das, JE (Civ) dt 13 Aug 2001 in connection with grant of 2nd financial upgradation has been examined at this HQ with reference to relevant instructions. The effective date of ACP is 09.08.99 as such 2nd financial upgradation on completion of 24 years in respect of suboverseer is subject to passing departmental examination. Since Shri RS Das, JE (Civ) though ~~has completed~~ 24 years service, his case for 2nd financial upgradation could not be considered as he is lacking in Departmental Examination.

(DC Das).
AO-I
SO-III (Pers)
for Chief Engineer (AF)

certified to be true Copy

Advocate

~~6274~~

ANNEXURE - 1A

DATE : 01 (AP) 1954
 TIME : 11:30

Page No : 32

Dated : 11.8.03

Sheet No : 1

(Dist. PEO No. 31 dt 4.8.03)

[illegible]

2 3 4 5

PART I

FILE

PART II

【附】

Result of MS Procedure Suplt by
A.E.M. on Tissue Section 6-4-1971
Jen 03

Roll No

Rapor I

Рис. 11

1.
HIS/232943 JE (Civ)
Shri RS Das

BC
2043

1135

Fail

2. MS/281506 JE (Civ)
Shri SA Titm.

EO
2045

Ms 3

Fail

(Part II. onls with SI No. 2)

PART III

3. 105/235017 CMD- I
 4. Babul Ch
 5. Singh

21.6.03

Get 24 days credit leave on M/C ref
21.6.03 to 14.7.03 debit to
48 days NPL

15.7.03

Rejoined duty

LA/232923 Chow
 Pri Normal Ch (Meto ATP)
 Metakl

18-7-93

Est 9 days credit leave on M/C and
18.7.03 to 26.7.03 debit to the
18 days NPL

28.7.03

R/D (27.7.03 being S/day)

(Ram Chandler) -
AB E/M
for GE (H). Tezpur

Child 7/2

... true Copy

Advocate

ANNEXURE — 1B

(Sheet No. 02)

GE (AF) Tezpur PIO No. 20 dt. 17.04

PART II

EVALUATION:

3. MES/232943: Shri P. S. Das JE (Civil) 19/20-01.04 Appeared in MES Procedure Supdt B/R Gde-I Exam held on 19/20.01.04.

Result declared:

Paper - II : Passed.

4. MES/281506: Shri Goutam Chakraborty JE (Civil) 19/20-01.04

Appeared in MES Procedure Supdt B/R Gde-I Exam held on 19/20-01.04.

Result declared:

Paper-I : Fail
Paper-II : Passed

5. MES/281506: Shri Suman Anjan Patra JE (Civil) 19/20-01.04

Appeared in MES Procedure Supdt B/R Gde-I Exam held on 19/20.01.04.

Result declared:

Paper-II : Passed.

Authy: (Srl No. 3 to 5)

GME/PO, Pune letter No. 2853/Result/Supdt 04/MES dt. 21.04.04 and HQ CE-EC Kolkata letter No. 131813/5/154 dt. 06.05.04.

PART III

MES/232634: Shri Vikram Dora S/wala 08.04.04

Gtd EOL for 07 days wef 08.04.04 to 14.04.04 on P.W.

15.04.04

Rejoined duty.

(SC Chakraborty)
RSD
For GE (AF) Tezpur

Contd...3

certified to be true Copy



Advocate

Tele No. 2222-2527

Chief Engineer
HQ, Eastern Command
Fort William
Kolkata-700021

131841/ACP/JEs/167/Engrs/EID

24, Dec, 2004

GE(AF) Tezpur
P.O. Salonibari
Distt : Sonitpur (Assam)

DEPARTMENTAL SCREENING COMMITTEE FOR GRANT OF ACP :
SUBORDINATE

1. Ref your letter No. 1624/AF/ACP/769/EID dated 10Dec, 2004 addressed to CWE (AF) Jorhat with a copy to this HQ.
2. In this connection it is intimated that as per Govt. of India, Min of Defence letter No. 85610/ACP/47/Supdts/CSCC/236/D (Works) dated 23 Jan, 2002, Diploma Engineer recruited as erstwhile Supdt B&R/E&M Gde II (re-designated as JEs) or recruited as JEs in the scale of Rs 5,000-150-8,000/, are eligible for first financial up gradation in the scale of Rs 6,500-10,500/- . As per above Govt. order only Degree holder JEs are eligible for grant of 2nd ACP.
3. Since MES/232943 Shri R.S Das, JE (Civ) was appointed as Sub overseer and subsequently promoted to JE (Civil) , which is counted as 1st up. gradation to hq. He is not eligible for further up gradation under ACP scheme as per Govt. order mentioned above.
4. However, if he has passed Diploma in Civil Engineering, please forward copy of Final Diploma certificate for taking up the case with higher HQ for decision.

Sd/-
Illegible
(Kalyani Deshpande)
Capt, SO3 (Pers)
For Chief Engineer.

Copy to:-

CWE(AF) Jorhat - For information and similar action as above wrt GE(AF) Tezpur letter quoted at Para 1 above.

Assumed to be true Copy

[Signature]
Advocate

-24-

85610/ACP/47/SUPDTS/CSCC/236/D(Works)

Government of India

Ministry of Defence

New Delhi

The 23 , Jan 2002

To,

The Engineer -In - Chief

Engineer -In - Chief's Branch

Army Headquarters

Kashmir House

New Delhi-110011

Subject: ADOPTION OF ASSURED CAREER PROGRESSION SCHEME
FOR THE CENTRAL GOVT EMPLOYEES IN RESPECT OF SUPDTS
B&R/E&M/SAs (REDESIGNATED AS JEs)

Sir,

I am directed to refer to DOP&T OM no. 35034/1/97-ACP dated 09 Aug 99, introducing the Assured Career Progression Scheme for the Central Government Civilian Employees. Condition 13 of Annexure 1 of the DOP&T OM stipulates that the existing time bound pay promotion scheme shall not run concurrently with the ACP scheme. The administrative Ministries have been given the option to choose between the two scheme i.e. the existing time bound pay promotion scheme or the ACP scheme, which has to be adopted in its totality.

2. A scheme of granting two higher pay scales on completion of certain number of years was introduced in respect of Supdts B&R/E&M/SA Gde I & Gde IIs of MES (since re-designated as JEs) vide this Ministry letter No. PC-90237/4603/ETC(Legal)/1993/D(works) dated 25 April 1996 consequent to CAT Bangalore Judgement in various O.As, to bring them at par with the JEs of CPWD in the matter of time bound pay promotion . This scheme envisaged grant of pay scale of Rs 5,500-9,000/-(revised) on completion of 5 years of service to SUPDTS

from entry grade of Rs 5,000/--8,000(revised), with effect from 01.01.1986 and pay scale of Rs 6,500 - 10,000 (revised) on completion of 15 years of service, with effect from 01.01.1991, subject to fitness in respect of Diploma Engineers, Degree Engineers, directly recruited as Supdt B&R/E&M/SA Gde I in the equivalent pay scale of Rs 5,000 - 9,000, were granted one time bound single pay promotion in the pay scale of Rs 6,500 - 10,500 (revised) after completion of 10 years of service , subject to fitness with effect from 01.01.1991 vide Ministry of Defence letter No. 85605.RR/B&R I & II/CSCC/3040/D(Works) dated 31 July 98.

3. In view of the above and in view of the fact that the new ACP scheme introduced by DOP&T vide OM dated (AUG 99, is more beneficial to JEs of MES, I am directed to convey the sanction of the Department for adoption and introduction of the said ACP scheme , involving pay up gradations after 12 and 24 years of regular service respectively , as applicable , as per terms and condition laid in the said scheme in respect of JEs (civil) , JEs (E&M) and JEs (QS&C) of MES, with effect 09 Aug 99.

4. The new ACP scheme in respect of JEs (civil) and JEs (E&M) shall be adopted in the manner and with effect from dates as indicated in Appendix "A" attached to this letter. For JEs (QS&C), the manner and the effective date of adoption of new ACP scheme are as per Appendix "B" attached with this letter.

5. Simultaneously the existing time bound pay promotion scheme introduced under this Ministry letter no. PC-90237/4603/EIC(Legal)/1993/D(Works) dated 25 April 96 and 85605/RR/B&R GdeI & GdeII/CSCC/3040/D(Works) dated 31 July 98, shall cease to be operative with effect from 09 Aug,99. in respect of the concerned categories.

6. With the adoption of ACPS, the posted of AE 9(civil) Grade I, AE (E&M) Grade I and AE (QS&C) Grade I in the pay scale of Rs

7,500-12,000 created under Ministry of Defence No 85401/16/VCPC/3/CSCC/173/D(Works) dated 19 Jan2000, also simultaneously stand cancelled.

7. The other terms and condition of ACP Scheme and the procedure to be followed, shall be as laid down in DOP&T OM dated 09 Aug, 99. Also while implementing the scheme DOP&T clarificatory instructions circulated vide OM No. 35034/1/97-Estt(D)/VOL IV dated 10.2.2000 and OM of even No dated 18 July 2001, shall be kept in view.

8. This issues with the concurrence of Ministry of Defence (Finance) vide their U.O. No. 235/F/WFL/02 dated 22.1.2002.

Yours faithfully

Sd/ Illegible

(B.P.Sharma)

Deputy Secretary to Government of India

Copy to:

CGDA, New Delhi

02 copies signed in ink

CDA SC Pune, CDA NC C/o 56 APO, CDA CC Lucknow, CDA WC

Chandigarh, CDA EC Calcutta -2 copies each signed in ink

All AAO sod CDA -20 copies.

DFA CAQ /PB - 2 copies E-In-C's Branch/CSCC - 30 copies

DFA/AG/PB - 2 copies, Def (fin/works-I)

D (W-II) CAQ /A-6.

**Adoption of Assured Career Progression Scheme (ACPS) in lieu of Time Bound Pay Promotion Scheme
in respect of Erstwhile Supdts B/R & E/M Gde Is & Gde IIs. Redesignated as JEs (Civil) & JEs (E&M)**

Srl No.	Category	Present pay scale of entry grade post	First Financial upgradation		Second Financial upgradation		Remarks
			Scale of Pay	Effective Date	Scale of Pay	Effective Date	
1	2	3	4	5	6	7	8
1.	Diploma Engineer recruited as Erstwhile Supdts B&R/ E&M Gde IIs (redesignated as JEs) and promoted as AEs before 09 July '91	Rs 5000-150-8000	Not applicable	Not applicable	* Rs 10,000-325-15,200	09 Aug 99 or on completion of 24 years of regular service, whichever is later.	* As per note given in Schedule III of IDSE rules notified vide SRO 4-E dated 09 Jul 1991, Diploma Engineers promoted as AEs upto promulgation of these rules shall continue to be eligible for promotion to the post of Executive Engineers, which is the grade of 2 nd ACP for them.
2.	Degree Engineer directly recruited as erstwhile Supdt B&R/E&M Gde Is (redesignated as JEs) already promoted as AEs or yet to be promoted	Rs 5500-175-9000	@ Rs 6500-200-10,500	09 Aug 99 or on completion of 12 years of regular service, whichever is later.	Rs 10,000-325-15,200	09 Aug 99 or on completion of 24 years of regular service, which ever is later.	@ Those erstwhile Supdts Gde Is who received promotion on personal basis in this pay scale after 10 years, in terms of MOD letter No. 85605/RR/B&R I&II/CSCC/3040/ D- (Works) dt 31 July 98, shall continue to draw the same, as personal to them.
3.	Incumbent recruited as Erstwhile Supdts B&R/E&M Gde IIs (redesignated as JE) but possessing degree in Engineering or equivalent at the time of recruitment or have acquired the same during service.	Rs 5000-150-8000	Rs 6,500-200-10,500	09 Aug 99 or on completion of 12 years of regular service, whichever is later.	Rs 10,000-325-15,200	09 Aug 99 or on completion of 24 years of regular service, which ever is later.	# Those erstwhile Supdt B&R/E&M Gde IIs, who have been placed in the pay scale of Rs 5500-9000 after completion of five years of regular service as per the old scheme, shall be brought back to the scale of Rs 5000-8000. Fall in pay shall be protected by granting personal pay in the scale of Rs 5000-8000, to be adjusted against future increments.
4.	Diploma Engineer recruited as erstwhile Supdts B&R/E&M Gde IIs (redesignated as JEs) or recruited as JEs and promoted as AEs after 09 July 91 or yet to be promoted.	Rs 5000-150-8000	Rs 6500-200-10,500	09 Aug 99 or on completion of 12 years of regular service, whichever is later.	S	S	# Diploma Engineers, who have been placed in the pay scale of Rs 5500-9000 after completion of five years of regular service as per the old scheme, shall be brought back to the scale of Rs 5000-8000. Fall in pay shall be protected by granting personal pay in the scale of Rs 5000-8000, to be adjusted against future increments.

§ Diploma Engineers promoted as AEs after promulgation of IDSE rules as mentioned at remarks against item 1 above are not eligible for promotion to the post of Executive Engineer. Consequently they shall be eligible for grant of second ACP, in the scale of Rs 10,000-15,200, only on acquisition of Degree in Engineering or equivalent, and on completion of 24 years of regular service or 09 Aug 99, whichever is later.

- 27 - A

Appendix - 'B' to MOD letter No.

85610/ACP/47/SUPDTS/QSCC/ 22 (10/Work)

dated 23 Jan 2002

Attention of Assured Career Progression Scheme (ACPS) in lieu of time bound Pay Promotion Scheme
In respect of Erstwhile Surveyor Assistant Gde I & Gde IIs. Redesignated as JE(QS&C).

1.	2.	3.	4.	5.	6.	7.	8.
1.	Erstwhile Surveyor Assistant Gde I/II holding degree in Civil Engineering or having passed Final/Direct Final Exam of IS(I) with 5 years of regular service in the grade or SA Gde I having passed Intermediate Exam of IS(I) or holding Diploma in Civil Engineering with 10 years regular service in the grade and promoted as Assistant Surveyor of Works before 21 Jul 1994 or yet to be promoted in accordance with Recruitment Rules notified vide SRO 39 dt 16 Jan 85.	Degree Engineers and equivalent recruited directly as SA-Gde I Rs 5500-175-9000 Diploma Engineers and equivalent recruited as SA Gde II Rs 5000-150-8000	Not applicable	Not applicable	# Rs 10,000-325-15,200	09 Aug 99 or on completion of 24 years of regular service, whichever is later	# Before notification of RRs vide SRO 142 dated 21 Jul 94 the RRs for the post of ASW notified under SRO 39 dt 16 January 85 were applicable. According to these RRs, the hierarchical grades above the posts of erstwhile SA Gde I were Assistant Surveyor of Works and Surveyor of Works. Accordingly Surveyor of Works in the pay scale of Rs 10,000-15,200 is the grade for second ACP for this category.
2.	Erstwhile Surveyor Assistant Gde I, holding degree in Civil Engineering or having passed Final/Direct Final Exam of IS(I) and erstwhile Surveyor Assistant Gde II holding diploma in Civil Engineering or having passed Intermediate Exam of IS(I) now redesignated as JE(QS&C) or those recruited as JE(QS&C) and promoted as JSW (redesignated as AE, QS&C) after 21 Jul 1994 or yet to be promoted	Degree Engineers and equivalent recruited directly as SA-Gde I Rs 5,500-175-9000 @ Diploma Engineers and equivalent recruited as SA Gde II/JE(QS&C) Rs 5000-150-8000	Junior Surveyor of Works {redesignated as AE(QS&C)} Rs 6,500-200-10,500	09 Aug 99 or on completion of 12 years of regular service, whichever is later.	* Assistant Surveyor of Works Rs 8000-275-13,500	09 Aug 99 or on completion of 24 years of regular service, whichever is later.	• As per Recruitment Rules notified vide SRO 142 dated 21 Jul 1994, 50% of the post of ASW are to be filled up by promotion from the post of JSW (redesignated as AE, QS&C). The post of ASW in the pay scale of Rs 8000-13,500 is the grade for second ACP for this category. • @ Diploma Engineers and equivalent, who have been placed in the pay scale of Rs 5500-9000 after completion of five years of regular service as per the old scheme, shall be brought back to the scale of Rs 5000-8000. Fall in pay shall be protected by granting personal pay in the scale of Rs 5000-8000, to be adjusted against future increments

To

1. The Engineer -In- Chief (Engr. Branch)
Kashmir House
New Delhi-110011.

2. The Chief Engineer,
Eastern Command
Fort William
Kolkata-21.

Reference:- A) Letter No 81427/737/EID dated 16.10.2001.
B) Letter No. 131841/ACP/MES/167/Engrs/EID
dated 24.12.2004.

Subject:- Representation for benefits under Assured
Career Progression Scheme.

Sir,

I respectfully beg to state that, I am in service of M.E.S for a long period of time with all my sincerity and devotion and at no point of time, there has been any blemish in my service record. However, at the end of my career, when I am reaching my age of superannuation from service, a grave prejudice is being caused to me in denying my due scale of pay illegally. Therefore, this representation.

I joined in the service of MES in the year 1969 as Sub-overseer. Subsequently, in due course of time, I was given promotion to the rank of B/R, Gde-II (redesignated as Junior Engineer, Civil) in the year 1998, in which rank I am serving at present.

I have been given promotion only once in my service career and taking in account my total period of service, I am entitled to financial up-gradation of my pay scale of the next higher rank as per, the Assured Career Progression (ACP) scheme formulated and adopted by the Govt. of India.

I, therefore, made a representation before the authority in due manner praying for my up-gradation of my pay scale under the ACP Scheme and by letter dated 16.10.2001 under reference, issued by the Chief Engineer, I was intimated that the Head Quarter, Eastern Command, Engineering Branch issued letter No 131841/ACP/1127/Engrs/EID dated 3.10.2001, stating that my representation had been examined by the Head Quarter and that my case for second financial up gradation

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[Signature]

Advocate

could not be considered since I had not cleared departmental examination.

A copy of the letter dated 16.10.2001 is annexed herewith and marked as Annexure -I.

That I have grown old to pass out departmental examination at this stage of life. However, since, I understood that for my second up-gradation, in the scale under the scheme I must clear the departmental examination, I put in my all endeavour and sat in the departmental examination with my much junior colleagues. I passed out the part-I examination in January 2003 and part -II examination in January 2004. Immediately thereafter, I intimated the fact of my passing of the departmental by letter dated 20.5.2004, wherein, I also mentioned that my retirement is due in January 2006, with a request to grant me the second financial up-gradation at an early date. I understood that my representation was forwarded to the Head Quarter and to my great shock and surprise, now, I have been intimated by letter dated 24.12.2004, that the second up-gradation in the next pay scale under the ACP scheme is available only for Degree holder/ diploma holder Junior Engineers and therefore, I was not eligible for the financial up-gradation as sought for by me, not being a degree holder / diploma holder Junior Engineer.

A copy of the letter dated 24.12.2004 is annexed herewith and marked as Annexure -II.

I am highly prejudiced by the above action of the authority in unduly rejecting my claim, which is not sustainable on the following counts:-

- I) That Since, I have been duly promoted to the rank of Junior Engineer as per seniority and adhering the service Rules, the action of the authority in categorising the Junior Engineers in two categories as degree/diploma holders and non degree/diploma holders and discriminating the non degree/diploma holders in granting ACP scheme is not based on any intelligible differentia and such discrimination is in fact contra to the object sought to be achieved by the beneficial scheme of ACP, which basically tries to remedy a situation of long stagnation in service without promotion. Therefore, at any rate such discriminations between degree/ diploma holders and non degree / diploma holders at the same rank, only for

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depriving from ACP scheme is not sustainable in law and is unreasonable and arbitrary on the face of it.

- II) That only on the basis of letter dated 16.10.2001, I cleared my departmental examination in the year 2003 and 2004 at this age, only to avail the benefit under the ACP scheme and now, the action of the authorities in rejecting my prayer on the ground that I am not having degree or diploma, after I passed my departmental examination, is highly unreasonable and improper on the part of the authority. I beg to state that after passing the departmental examination on the basis of the intimation by letter dated 16.10.2001, I have a legitimate expectation to get the second financial up-gradation in the pay scale and the denial of the same is illegal.

I therefore, pray before you to kindly consider the above facts and circumstances in its due prospective and grant me the benefit of second financial up gradation under the ACP Scheme, failing which, irreparable loss and injury will be caused to me, which is not due at this far end of my service career.

Yours faithfully

MES/232943
Sri Ranjit Shekhar Das
JE (Civil)

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ANNEXURE - IV

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 162 of 2006.

Date of Order: This the 28th day of June 2006.

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

Sri Ranjit Sankar Das
Son of Late Sailaja Sankar Das
Resident of L.D. Sarma Road,
Tezpur, Assam.

... Applicant

By Advocates Mr . Chakrabarty and Mr S. Chakrabarty.

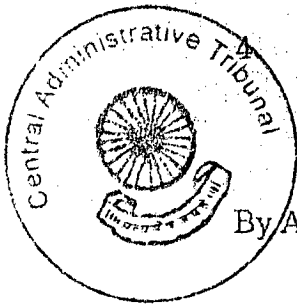
- Versus -

1. Union of India, Represented by the
Secretary, Ministry of Defence
Government of India, New Delhi.
2. The Engineer-in-Chief
(Engineering Branch), MES, Kashmir House,
New Delhi - 110 011.
3. The Chief Engineer, MES,
Eastern Command, Fort William,
Kolkata - 21.

The Garrison Engineer, MES,
Air Force, P.O. - Salonibari,
Tezpur, District - Sonitpur, Assam.

... Respondents.

By Advocate Mr Baishya, Sr. C.G.S.C.



ORDER (ORAL)

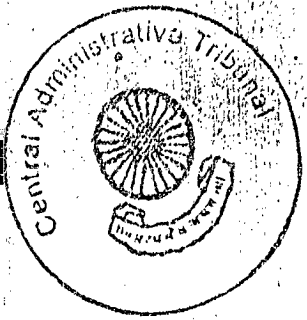
K.V. SACHIDANANDAN, (V.C.)

The applicant retired on 31.01.2006 as Junior Engineer from the respondent department. It is averred in the O.A. that in the year 1998, he was promoted to the post of Junior Engineer and taking into account the total period of service, he is entitled to get 2nd

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Advocate

financial upgradation under the Assured Career Progression Scheme before his retirement. He submitted representation before the respondent praying for upgradation of his pay scale under the Assured Career Progression Scheme and in response to the representation of the applicant, the Respondent No. 3 vide letter dated 16.10.2001 intimated the applicant that his case for financial upgradation could not be considered as he is lacking in the departmental examination. It is further averred in the application that subsequently before his retirement, he passed the departmental examination and therefore, he is entitled to get financial upgradation. He submitted representation on 17.05.2005, which is not yet answered. Aggrieved by the said action of the Respondents, he has filed this application seeking the following reliefs: -



"In the premises aforesaid, it is, therefore, prayed that your Lordships may be pleased to admit this application, issued notices to the respondents to show cause as to why the letter/order dated 24.12.2004 (Annexure - III) shall not be set aside and illegal and as to why the applicant should not be given the benefit of the second financial upgradation as per Assured Career Progression Scheme as formulated by the respondent, call for the entire records of the case and after hearing the parties, be pleased to allow the petition issuing direction to the respondents to pay all the benefits of the second financial upgradation to the applicant as per Assured career Progression Scheme and or pass such further order/orders as Your Lordships may deem fit and proper."

2. Heard Mr B. Chakrabarty, learned counsel for the applicant and Mr C. Baishya, learned Sr. C.G.S.C. for the respondents.

3. Learned counsel for the applicant submitted that he will be satisfied if a direction is given to the applicant to file a fresh

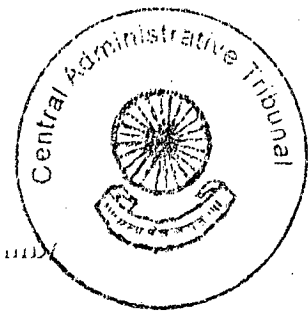
L

comprehensive representation and also to the respondents to dispose of the same within a time frame. Learned counsel for the respondents submitted that it will suffice the ends of justice.

4. Therefore, this Court directs the applicant to file a fresh comprehensive representation within a period of two weeks from today. On receipt of the same, the Respondents No. 3 or any other competent authority shall consider and dispose of the representation with a speaking order and communicate the same to the applicant within a period of two months thereafter.

The O.A. is disposed of at the admission stage itself as above. No order as to costs.

Sd/VICE CHAIRMAN



TRUE COPY

प्रतिनिधि

4.7.06

अनुभाग अधिकारी

Section Officer (Judl)

Central Administrative Tribunal

गुवाहाटी बेंच

GUWAHATI BENCH

कक्षा-5

4/7/06

To

1. The Engineer -In- Chief (Engr. Branch)
Kashmir House
New Delhi-110011.

2. The Chief Engineer,
Eastern Command
Fort William
Kolkata-21.

Reference:- A) Letter No 81427/737/EID dated 16.10.2001.
B) Letter No. 131841/ACP/MES/167/Engrs/EID
dated 24.12.2004.

Subject:- Representation for benefits under Assured
Career Progression Scheme.

Sir,

I respectfully beg to state that, I am in service of M.E.S for a long period of time with all my sincerity and devotion and at no point of time, there has been any blemish in my service record. However, at the fag end of my career, when I am reaching my age of superannuation from service, a grave prejudice is being caused to me in denying my due scale of pay illegally. Therefore, this representation.

I joined in the service of MES in the year 1969 as Sub-overseer. Subsequently, in due course of time, I was given promotion to the rank of B/R, Gde-II (redesignated as Junior Engineer, Civil) in the year 1998, in which rank I am serving at present.

I have been given promotion only once in my service career and taking in account my total period of service, I am entitled to financial up-gradation of my pay scale of the next higher rank as per, the Assured Career Progression (ACP) scheme formulated and adopted by the Govt. of India.

I, therefore, made a representation before the authority in due manner praying for my up-gradation of my pay scale under the ACP Scheme and by letter dated 16.10.2001 under reference, issued by the Chief Engineer, I was intimated that the Head Quarter, Eastern Command, Engineering Branch issued letter No 131841/ACP/1127/Engrs/EID dated 3.10.2001, stating that my representation had been examined by the Head Quarter and that my case for second financial up gradation

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Advocate

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could not be considered since I had not cleared departmental examination.

A copy of the letter dated 16.10.2001 is annexed herewith and marked as Annexure -I.

That I have grown old to pass out departmental examination at this stage of life, However, since, I understood that for my second up-gradation, in the scale under the scheme I must clear the departmental examination, I put in my all endeavour and sat in the departmental examination with my much junior colleagues. I passed out the part-I examination in January 2003 and part -II examination in January 2004. Immediately thereafter, I intimated the fact of my passing of the departmental by letter dated 20.5.2004, wherein, I also mentioned that my retirement is due in January 2006, with a request to grant me the second financial up-gradation at an early date. I understood that my representation was forwarded to the Head Quarter and to my great shock and surprise, now, I have been intimated by letter dated 24.12.2004, that the second up-gradation in the next pay scale under the ACP scheme is available only for Degree holder/ diploma holder Junior Engineers and therefore, I was not eligible for the financial up-gradation as sought for by me, not being a degree holder / diploma holder Junior Engineer.

A copy of the letter dated 24.12.2004 is annexed herewith and marked as Annexure -II.

I am highly prejudiced by the above action of the authority in unduly rejecting my claim, which is not sustainable on the following counts:-

- I) That Since, I have been duly promoted to the rank of Junior Engineer as per seniority and adhering the service Rules, the action of the authority in categorising the Junior Engineers in two categories as degree/diploma holders and non degree/diploma holders and discriminating the non degree/diploma holders in granting ACP scheme is not based on any intelligible differentia and such discrimination is in fact contra to the object sought to be achieved by the beneficial scheme of ACP, which basically tries to remedy a situation of long stagnation in service without promotion. Therefore, at any rate such discriminations between degree/ diploma holders and non degree / diploma holders at the same rank, only for

- 36 -

depriving from ACP scheme is not sustainable in law and is unreasonable and arbitrary on the face of it.

- II) That only on the basis of letter dated 16.10.2001, I cleared my departmental examination in the year 2003 and 2004 at this age, only to avail the benefit under the ACP scheme and now, the action of the authorities in rejecting my prayer on the ground that I am not having degree or diploma, after I passed my departmental examination, is highly unreasonable and improper on the part of the authority. I beg to state that after passing the departmental examination on the basis of the intimation by letter dated 16.10.2001, I have a legitimate expectation to get the second financial up-gradation in the pay scale and the denial of the same is illegal.

I therefore, pray before you to kindly consider the above facts and circumstances in its due prospective and grant me the benefit of second financial up gradation under the ACP Scheme, failing which, irreparable loss and injury will be caused to me, which is not due at this fag end of my service career.

Yours faithfully

MES/232943
Sri Ranjit Shekhar Das
JE(Civil)

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ANNEXURE-VI

(Typed copy)

Chief Engineer HQ Eastern Command
Fort William
Kolkata-21

131900/162/2006/16/Engrs/E1 (Legal)

13 Sep 06

SPEAKING ORDER

Sh Ranjit Sankar Das
Junior Engineer (Civil), MES (since Retd)
Resident of L.D. Sharma Road
Tezpur, District Sonitpur
Assam.

(Through GE (AF) Tezpur)

IMPLEMENTATION OF HON'BLE CAT GUWAHATI BENCH ORDER DATED 28 JUNE
2006 IN OA NO 162/2006 FILED BY SH RANJIT SANKAR DAS.

1. Whereas, you have sought the following relief under OA No 162/2006 filed at Hon'ble CAT Guwahati Bench:-

(a) That the Hon'ble Tribunal be pleased to allow the petition issuing direction to the respondent to pay all the benefits of the second financial up gradation to the applicant as per assured career progression scheme.

2. Whereas, Hon'ble Tribunal has disposed of the case vide their order dated 28.6.06 with the following direction:-

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Advocate

"Therefore this Court directs the applicant to file a fresh comprehensive representation within a period to two weeks from today. On receipt of the same the respondents No. 3 or any other competent authority shall consider and dispose of the representation with a speaking order and communicate the same to the applicant within a period of two months thereafter.

The OA is disposed of at the admission stage itself as above. No order to costs."

3. Whereas, you have submitted a detailed representation dated 10.7.2006 addressed to E-in C's Branch along with copies to others.

4. Now, therefore the following statutory provisions are enumerated to clarify your eligibility to 2nd financial up gradation under ACP scheme.

(a) You have join the department as "Sub Overseer" with educational qualification as matriculate. You were promoted to Supdt B/R -II as per recruitment rule of SRO - 299 of 10 Nov 1993. Further promotion to Supdt B/R - I in the pay scale of Rs5500-9000 was subjected to your possessing minimum qualification of Diploma in Civil Engineering and passing the procedure examination of Supdt B/R-I.

(b) SRO 299 of 10 Nov 1993 has been superseded by SRO 78 of 30 Apr 2001. As per SRO 78, the post of Supdt B/R-II and B/R- I are merged in one post and re-designated as Junior Engineer (Civ) .in the pay scale of Rs. 5000-8000. the SRO also makes it mandatory of a qualification of "Diploma in Civil Engineering" for further promotion of Assistant Engineer (Civil) in the scale of Rs. 6500-10500.

(C) The grant of financial up gradation was introduced to erstwhile Supdts B/R, E/M. SA Gde-II/I (Now designated as

Junior Engineers) after completion 5/15 years of service in the pay scale of rs 5000-8000 and 5500-9000 respectively , as per Govt of India, Min of Def letter No. PC-90237/4603/E1C (Legal) 1993/D (Works) dated 25.04.1996. the ACP Scheme has been introduced vide DOP&T OM No. 35034/1/97 Estt(D) dated 09.08.1999 making the financial up gradation after 12/24 years instead of 5/15 years. Consequent to introduction of new scheme of financial up gradation after 12/24 years of service, the earlier scheme of granting financial up gradation introduced on 25.04.1996 has been ceased to be operative w.e.f 09.08.1999. Further as per Appendix "A" to letter No. 85610/ACP/47/SUPDTS/CSCC/236/D(Wks) dated 23.01.02 the supdts who have been placed in the pay scale of Rs 5500-9000 after completion of five years of regular service as per the old scheme shall be brought back to the pay scale of Rs5000-8000. Fall in pay shall be protected by granting personal pay in the scale of Rs 5000-8000, to be adjusted against future increments.

(d) As per clarification No. 53 of DOP&T OM No 35034/1/97/Estt (D) Vol IV dated 18.07.01, only those employees who fulfill all promotional norms are eligible to be considered for benefit under the ACP scheme, Therefore, various stipulation and conditions specified in the recruitment rules for promotion to the next higher grade, including educational/ additional educational qualification, if any prescribed would need to be met even for consideration under ACP Scheme.

(e) Your first representation had been replied by this dept letter dated 16.10.2001 without verifying your personal records of not possessing Diploma in Civil Engineering. Hence communication was incomplete and misunderstood by you. This dept letter dated 24.12.2004 has been issued correctly and you have been conveyed vide para

- 40 -

4 of the said letter to submit authentic proof of holding Diploma in Civil Engineering for consideration of 2nd ACP, which you have failed to produce.

(f) Your case is considered in view of SRO78 of 2001 and your qualifications are not sufficient enough for next promotion to the rank of Assistant Engineer. Hence as per existing Govt. orders and policies for implementations/eligibilities of financial up-gradation under the Acp scheme, you are not eligible for your 2nd financial up gradation in the scale of Rs 6500-10500.

5. By issue of this speaking order, the Hon'ble CAT Guwahati Bench Judgement dated 28.6.2006 in O.A No. 162/2006 has been fully complied with and your representation dated 10.7.2006 is disposed of accordingly.

Sd/-

(Goutam Roy)

SE

Dir(Legal)

For Chief Engineer.

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ANNEXURE-VII

(Typed copy)

Registered with A/D
Chief Engineer
HQ Eastern Command
Engineers Branch
Fort William
Kolkata-700021

131970/Misc/A/F/CE/187/EIR(D)

07 Jul '2006

Shri RANJIT SHANKAR DAS,
VILL-L.D.SHARMA ROAD, TEZPUR
P.O. TEZPUR (SONITPUR)
ASSAM

REPRESENTATION SUBMITTED BY SHRI R.S. DAS, JE (CIVIL)
(RETD), MES-232943 REGARDING NON PAYMENT OF
RETIREMENT BENEFITS.

Dear Sir,

1. Reference your representation dated 23 Feb'2006 addressed to cabinet Secretariat, public Grievances, New Delhi-11 with copy to E-in-C's Branch, AHQ New Delhi-11.
2. It is intimated that your PPO has already been forwarded to your Bank under intimation to you vide GE(A/F)Tezpur letter No. 1029/AF/RSD/10/EIR dated 11 Mar'2006.
3. In connection with your grievances regarding grant of 2nd financial up gradation, it is intimated that as per Govt. Order on the subject, that 2nd financial up gradation is permissible only on completion of 24 years of service, subject to passing departmental examination or having Diploma/ Degree in civil

Certified to be true Copy



Advocate

engineering in respect of Sub Overseer. As per records maintained in the department, you have not passed the examinations. However if you have documents in favour of your passing departmental examination/ diploma in civil engineering then, forward the same to this HQ for further consideration of your case.

4. This is for your information.

Yours faithfully,

Sd/-

(S K KAR)

Lt Col

SO I (R)

For Chief Engineer

Copy to:-

1. Engineer - in- Chief's Branch/EIC Army Headquarters, Kashmir House, DHQ PO New Delhi- 110011 : For information with reference to your letter No. B/23414/VIP/EC/EIC (V) dated 30 Jun'2006 please.

PERSONAL ATTENTION OF ZO

HIEF ENGINEER

ANNEXURE

VIII

Tele : 2222-2528

POST IMMEDIATE
Chief Engineer
Q Eastern Command
Fort William, Kolkata-21

131834/47 4907 / Engrs/EID

27 Sep 06

Chief Engineer Kolkata Zone
Chief Engineer Siliguri Zone
Chief Engineer (AF) Shillong Zone
Chief Engineer Shillong Zone
Chief Engineer R&D Delhi
Chief Engineer Fy Hyderabad
Chief Engineer (OFB) Kolkata
ESD Kankinara

VIGILANCE CLEARANCE OF JUNIOR ENGINEERS (CIV) FOR PROMOTION TO
THE GRADE OF ASSISTANT ENGINEER (CIV) IN THE MILITARY ENGINEER
SERVICES OF THE MINISTRY OF DEFENCE AGAINST THE VACANCIES
FOR THE YEARS 2005-06 AND 2006-07

1. The vigilance clearance and integrity certificate in no of the u/m individuals attached as per Appx 'A' of the respective zones is urgently required by this HQ for onward submission to E-in-C's Br AIHQ through return FAX.
2. If any individual has already cleared the departmental examination but remarks in NP (Not Passed) the latest PII Order regarding his clearance or examination to be attached. Other details also to be checked.
3. Ser Nos 48,49,55,77,84,98,99,103,106,110,111,114,115,118,121,124 and 126 the present units of those Ser Nos are to be checked/verified. Accordingly integrity to be forwarded.
4. Please forward your consolidated report by 10 Oct 2006.
5. Accord DPC Priority.

Encls : As above
(06 sheets)

(KK Naskar)
AO - II
AAD Adm
For Chief Engineer.

Copy to :-
E7 Section

You are requested to fwd integrity & vigilance certificate
The affected individual from this office

E1(Con)

Please confirm the vigilance clearance in no of the above
Mentioned affected JE(CIV) to this office

Word: BROADBAND NETWORK FOR PROMOTION

Urgent clearance

Certified to be true Copy

[Signature]
Advocate

Sl. No.	Roll No.	Roll No.	Name & Designation	Post	Remarks
72.	672	208501	Shri Kanchik Sarkar, JE(Civ)	GE(I) ngarshi	1998
73.	673	269002	Shri Sandip Sarkar, JE(Civ)	GE Sevok	2000
74.	676	209953	Shri Bijoy Kr Pariyar, JE(Civ)	Genl Lab(Sil)	NP
75.	708	A/125013	Shri Rami Chand	GE(P)Kol	NP
76.	713	232945	Hasmul Huda barua	GE(AF) Tezpur	NP
77.	714	234778	Shri Jogen Ch Rava, JE(Civ)	GE Silchar	2003
78.	715	212641	Shri PO Kunchandi, JE(Civ)		NP
79.	716	232907	Shri DK Banerjee, JE(Civ)	GE Tezpur	NP
80.	717	228389	Shri AK Bose, JE(Civ)	GE(AF) KKD	2002 (Non Diploma)
81.	718	228556	Shri ML Goswami, JE(Civ)	CE Shilong	NP (-do-)
82.	719	228268	Shri AG Verghese, JE(Civ)	GE(C)Kol	NP (-do-)
83.	720	233324	Shri KK Hazarika, JE(Civ)	CWE Tezpur	NP
84.	721	232996	Shri Upen Saitia, JE(Civ)	GE 872 EWS	98
85.	737	234987	Shri Gopal Ch Meshari, JE(Civ)		NP
86.	747	199899	Shri Subhash Pandit, JE(Civ)	GE(FW) Kol	98
87.	799	601146	Shri Nirajan Mandal, JE(Civ)	GE(AF) Jorhat	
88.	939	228303	Shri Subimal Roy, JE(Civ)	CHEC	2002
89.	940	232943	Shri RS Das, JE(Civ)	GE Silchar	NP
90.	941	229030	Shri Kamal Kanti Bhattacharjee, JE(Civ)		Retd 31 Jan 06
91.	942	207129	Shri Pradip Kr Sanyal, JE(Civ)	CE KZ	2003
92.	943	232908	Shri Durgesh Ch Das, JE(Civ)	GE Bkp	NP
93.	1004	604807	Shri G Jyoti Reddy, JE(Civ)	GE Sevok	03 (Non Diploma)
94.	1039	486243	Shri Arunesh Das, JE(Civ)	HQ 137 EWS	NP
95.	1047	A/1454504	Shri SS Shah, JE(Civ)	GE(A/F) Imbua	2001
96.	1051	A/14598	Shri CR Sadang, JE(Civ)		NP
97.	1053	140877	Shri Hayalendu Yari Sarmah, JE(Civ)	GE(A) Kol	NP
98.	1058	72526	Shri Bhutan Kr Pal, JE(Civ)	GE(A) andipat	NP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No.49 of 2007

Shri Ranjit Sankar Das

.....Applicant

- versus -

Union of India and Others

.....Respondents

Written Statement filed by the Respondent Nos.

The humble answering respondents submit their
written statement as follows:

1.(a) That I am IL Major, Garrison Engineer
Air Force, Tezpur, Sibsagar

_____ and Respondents No. 4 in the above case
and as such I am fully acquainted with the facts and
circumstances of the case. I have gone through a copy of
the application served on me and have understood the
contents thereof. Save and except whatever is specifically
admitted in the written statement, the contentions and
statements made in the application may be deemed to have
been denied. I am competent and authorized to file the
statement on behalf of all the respondents.

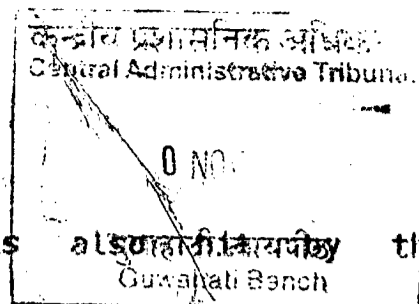
(b) The application is filed unjust and unsustainable
both on facts and in law.

Motin Ud-Din Ahmed
B.Sc., LL.B.
Govt. Standing Counsel
Guwahati Bench (CAT)
Sd/-
Mr. M. Ahmed
29/10/2007

AE E/M
for CAT, Tezpur

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2



(c) That the application is also liable by the principles of waiver estoppel and acquiescence and liable to be dismissed.

(d) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

PARAWISE COMMENTS

1. That with regard to the statements made in paragraphs 1 to 3, 4(a), 4(b), 4(c), 4(d), 4(f), 4(g), 4(h), 4(k), 4(l) and 4(m) of the application, the answering respondents do not admit anything, which is beyond record and the applicant is put to strictest proof thereof.

2. That with regard to the statements made in paragraphs 4(e), of the application, the answering respondents beg to submit that the content of HQ CEEC letter No.131841/ACP/1127/Engrs/E1-D dated 03.10.01, stating that applicant is not eligible for 2nd ACP in the pay scale of 6500-10500 due to non passing of departmental examination. However at that point of time if it is not clarified that diploma/degree in engineering is an essential qualification for 2nd ACP in the pay scale of Rs.6500-10500, that does not make applicant entitled for 2nd ACP at that pay scale.

3. That with regard to the statements made in paragraphs 4(i) of the application, the answering respondents beg to submit that the competent authority has rightfully not allowed 2nd ACP to applicant

They
are R/A
for CEE CAC, Tezpur

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SECRET
Tribunal

due to lacking in essential qualification for the promotional post. Applicant should be aware of the recruitment rule of his cadre for his career prospect.

4. That with regard to the statements made in paragraphs 4(f) of the application, the answering respondents beg to submit that the applicant's submission is not correct and misleading. GOI, MOD letter dated 23.01.2002 has clearly specified the ACP scheme for JE's with qualification of degree/diploma in Engineering. In para 7 of said letter, it is further clarified that other terms and condition of ACP scheme shall be followed as laid down in DOP&T OM dated 09.08.09 and clarification circulated vide OM No.35034/1/97-Estt(D)/Vol.IV dated 10.02.00 and OM of even No. dated 18.07.01 shall be kept in view. GOI, DOP&T's above instruction says that a Govt. servant is entitled for a particular ACP, if he is eligible for a promotion to the rank. In present case the applicant is not eligible for promotion to the rank of AF in the pay scale of Rs.6500-10500 due to non possession of essential qualification.

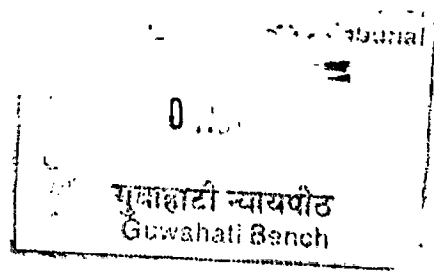
Why
DE E/P
for GE (AC) Transfer

5. That with regard to the statements made in paragraph 4(n) of the application, the answering respondents beg to submit that the order dated 13.09.2006 by respondent No.3 is reasoned and speaking, no further clarification is required to substantiate the defence of department.

6. That with regard to the statements made in paragraphs 4(o) of the application, the answering respondents beg to submit that whatever mentioned in letter dated 07.07.2006 by respondent No.3, it is set rule that for entitlement of ACP in the pay scale of Rs.6500-10500, passing of departmental examination and having

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4



degree/diploma in engineering is essential requirement for entitlement of ACP.

7. That with regard to the statements made in paragraph 4(p) of the application, the answering respondents beg to submit that irrespective of any communication by respondent department to applicant, a person can be allowed ACP if he fulfilled all criterion set by GOI, DOP&T on the subject matter. Any lower subordinate authority cannot dilute the provision to extend the benefit of ACP.

8. That with regard to the statements made in paragraph 5(i) of the application, the answering respondents beg to submit that a partial correct communication not supported by relevant GOI rule position, cannot be taken as authority for grant of any ACP/Promotion.

9. That with regard to the statements made in paragraph 5(ii) of the application, the answering respondents beg to submit that the letter dated 24.12.2004 has not been issued by misreading of the letter dated 23.01.2002. Applicant's ACP is governed by the GOI, MOD letter dated 23.01.2002 in addition to GOI, DOP&T OM on the subject matter.

10. That with regard to the statements made in paragraphs 5(iii) of the application, the answering respondents beg to submit that ACP is a particular pay scale can only be granted to a person if he is eligible for promotion to the respective rank. In present case applicant is not eligible for promotion to the rank of AE in pay scale of Rs.6500-10500 due to lacking in essential qualification.

Blue
AE E/M
for AE CMT, Tezpur

49

Guwahati Bench

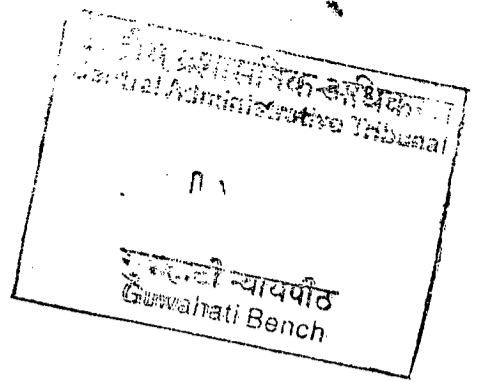
11. That with regard to the statements made in paragraphs 5(iv) of the application, the answering respondents beg to submit that ACP is governed by GOI, DOP&T guidelines and applicant is not eligible for the higher post and hence not entitled for ACP in the grade. Educational qualification is an essential criterion for holding higher appointment/responsibilities. ACP is to be granted to those Government servants who are otherwise eligible to hold higher responsibilities.

12. That with regard to the statements made in paragraph 5(v), the answering respondents beg to submit that the applicant is supposed to be aware of his promotional prospect as per recruitment rule and he cannot claim an undue advantage based on a miscommunication by any department authority.

13. That with regard to the statements made in paragraph 5(vi) of the application, the answering respondents beg to submit that the Departmental communication dated 16.01.2001, 07.07.2006 and 27.09.2006 is not supported by any rule position and cannot be claimed as authority for promotion/upgradation. However Department letter dated 13.09.2006 is reasoned and speaking and supported by all relevant rule position and issued in response to order of Hon'ble Tribunal dated 28.06.2006 on O.A.No.1602/2006.

14. That with regard to the statements made in paragraph 5(vii) of the application, the answering respondents beg to submit that the claim of the applicant is not supported by any Government of India rule position and not maintainable.

Handwritten notes on the right margin: "DE EIM for GE C.A.S. Trefur"

AFFIDAVIT

I, Shri S. K. Mishra son of
L. Mishra aged about 47 years at present
 working as Major, Gunns & Engin, Ar Force
 who is taking steps in the present application and duly
 authorized and competent to sign this affidavit do hereby
 solemnly affirm and state that the statements made in
 paragraphs 2, 6, 13 are true to my knowledge and
 belief, those made in paragraphs
 being matters of record are true to my information derived
 there from and rest are my humble submission before the
 Hon'ble Tribunal. I have not suppressed any material fact
 before the Hon'ble Tribunal.

Udh
 26/2/08
 for GE C.A.T. for

And I sign this verification on this the 26th
 day of February 2008 at Guwahati.

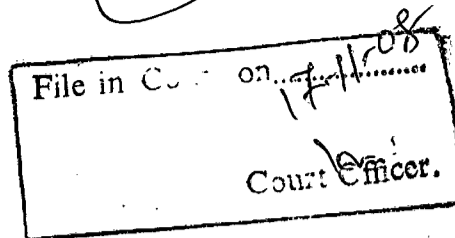
Identified by me:-

M. U. Ahmed

Advocate

Deponent

Solemnly affirmed and declared
 by the deponent before me, who
 is identified by Motin Ud-Din
 Ahmed Advocate at Guwahati on
 this 26th day of
 February 2008.



In the Central Administrative Tribunal
Guwahati Bench: Guwahati

Filed by the applicant
through:
Sri Ranjit Sankar Das
17.11.08
Ranjit Sankar Das

Original Application No. 49/07

In the matter of :

Sri Ranjit Sankar Das

Applicant

- VERSUS -

Union of India & others

Respondents

-AND-

In the matter of:

Rejoinder of the applicant to the
written statement filed by the
respondents.

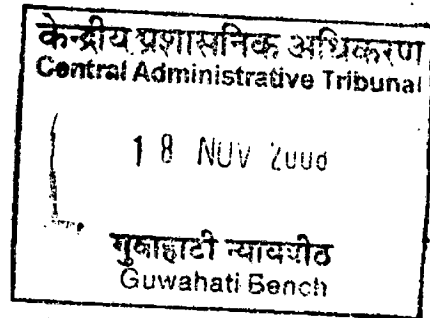
(REJOINDER OF THE APPLICANT TO THE WRITTEN STATEMENT
FILED BY THE RESPONDENTS)

1. That as regards the statement made in paragraph no. 1(a) of the written statement the applicant has no comment to offer.
2. That the statement made in paragraph no.1 (b), 1(c) and 1(d) are not correct hence denied by the deponent.

Received
17/11/08

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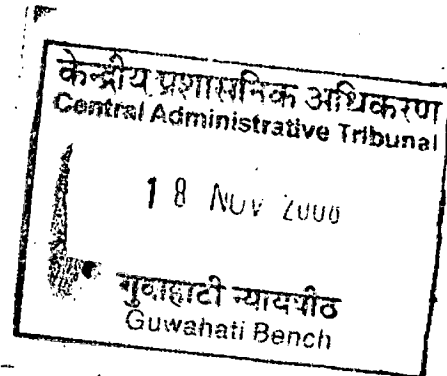


3. That as regards the statement made in paragraph no. 1 of parawise comment the deponent has no comments to offer.
4. That the statement made in paragraph no. 2, 3 and 4 of the parawise comment are not correct and denied by the deponent. The deponent states that it is not correct that for availing benefits of 2nd Assured career progression the applicant is required to possess Degree/ Diploma in Civil Engineering. The assertion made by the respondents in this regard is made without any guidelines, Act and Rules of the Government to this effect that such Degree/ Diploma is essential for availing 2nd Assured career progression to the applicant. The applicant having passed the departmental examination was entitled to get the 2nd Assured career progression which is also reflected in numbers of communication issued by the authorities but the benefit has been wrongfully denied to the applicant. The deponent states that after passing the departmental examination he was being eligible to be promoted to the next higher rank of Assistant Engineer and for this reason his case was considered by the authorities for promotion to the post of Assistant Engineer.
5. That the statement made in paragraph no. 5 of the parawise comment are not correct and denied by the deponent. The order dated 13.9.2006 is not maintainable in law , while turning down the claim of the applicant for 2nd Assured career progression, the order has failed to lay any logic in support of rejection of the petition of the applicant and is vague.
6. That the statement made in paragraph no. 6 and 7 of the parawise comment are denied by the applicant. The

Ranjit Sankar Das

(53)

3

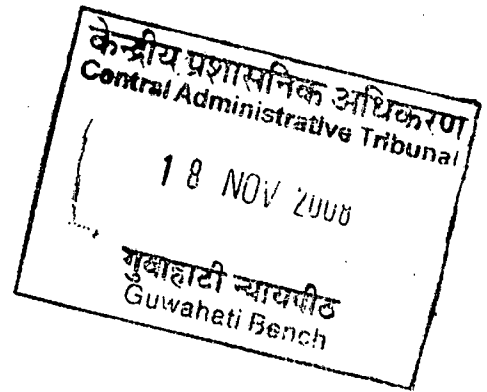


deponent states that mere passing of the departmental examination makes a departmental candidate eligible for being promoted to the post of Assistant Engineer. The applicant states that for being recruited to the post of Assistant Engineer a qualification of Degree in Civil Engineering is required for an outsider. There is no rule or guideline laying the requirement that departmental candidate must have both an engineering qualification and he has to pass the departmental examination and sounds illogical also. It is also pertinent to mention herein that without any technical qualification, promotion was given to the post of Junior Engineer to departmental candidates on satisfaction of certain criteria, e.g. tenure of service.

7. That as regards statement made in paragraph no. 8,9,10,11,12,13 and 14 the applicant states that the statement made in the said paragraphs are not legally tenable and the deponent reiterates the contentions of the ground taken in the application and will press the same at the time of argument.

Ranjit Sankar Das

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

I, Shri Ranjit Sankar Das , son of Late Sailaja Sankar Das, aged about 61 years , retired central Govt. servant, resident of Tezpur in the district of Sonitpur , Assam , do hereby verify that the statements made in paragraphs Nos. 1, 2, 3, 4, 5, 6 and 7 are true to my personal Knowledge ; those made in paragraph nos -----are matters of record and the statements made in paragraph nos. -----are believed to be true on legal advice and I have not suppressed no material fact.

And I sign this verification on this 22nd day of September /2008, at Guwahati .

Ranjit Sankar Das

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

IN THE MATTER OF :

Original Application. No. 49/2007

Ranjit Shankar Das

.....Applicant

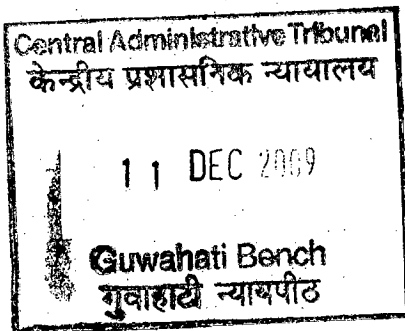
-Versus-

Union of India & Ors

.....Respondents

AND

IN THE MATTER OF :



Reply to the rejoinder submitted by the Respondents. The humble answering respondents submit their reply to the rejoinder as follows.

1. That with regard to the statement made in para 1, 2 & 3 rejoinder the answering respondents do not admit anything which is contrary to the law as well as Govt. of India's scheme for the purpose. In the instant case, the benefit of ACA have not been denied due to the lack of any promotional avenue but only to the lack & required Qualification.

2. That with regard to the statement made in para 4, 5, & 6 rejoinder the answering respondents beg to state that in those para are not correct and hence denied. The applicant MES-232943 Sh RS Das JE (Civ) was appointed as sub overseer and subsequently promoted as JE (Civ) which is counted as 1st upgradation to him.

As per 001 MOD letter No. 85610/ACP/47/Supdt/CSCC/236/

Under take to serve 12 copy a op.

9/12/09

filed by

Adm

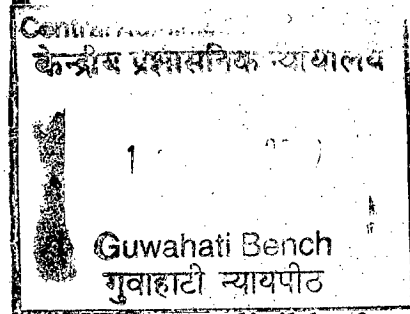
B. Arunima Prasad

AB E/M

AOB E/M (AF) Tezpur

Shankar P. K. Sharma

9/12/09



(Works) dated 23.01.2002 only Diploma holder JEs are eligible for 2nd upgradation. Since the applicant is not a Diploma holder he is not eligible for 2nd financial upgradation under ACP Scheme. The assertion made by the applicant is baseless, frivolous and without any rationale. Applicant has failed to produce any authority/Govt letter/policy/Guideline to show as to under which Govt. provision he is eligible of 2nd financial upgradation.

3. That with regard with the statement made in para 7 of the rejoinder the answering respondents. That the statement in this para is incorrect and denied. The answering respondent humbly submits that department letter dated 13.09.06 is a reasoned and speaking and supported by all relevant rule position and issued in response to Hon'ble Tribunal order dated 28.06.06 in OA. 1602/06. however it is brought to Hon'ble Court's notice that he claim of the applicant is not supported by any Govt. of India rule position and not maintainable.

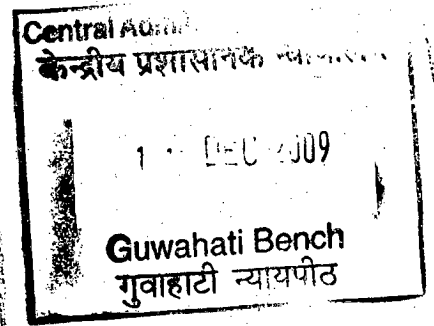
4. That the application is devoid of any merit and deserved to be dismissed.

5. That this reply to the rejoinder has been made bonafide and for the ends of justice and equity.

It is therefore humbly prayed before this Hon'ble Tribunal that the present application filed by the applicant may be dismissed with cost.

B Ananta Prasad
 AE E/M
 AGE E/M (AF) Tezpur

VERIFICATION



I, Bulusu Anantha Prasad, S/o Lat BAS Prakashan, aged about 51 years, Resident of Q/5, m. 13/2, C.E. (AF) Sector, W. m. 15, Sanilpur, Solani Bari, Tezpur, Assam, working as A.E. E/M; duly authorised and competent officer of the answering respondents to sign this verification, do hereby solemnly affirm and verify that the statements made in para. 1 & 2 are true to my knowledge, belief and information and those made in Para. 3 being matters being record are true to my knowledge as per the legal advice and I have not suppressed any material facts.

And I sign this verification on this 12 day of December, 2009 at Guwahati.

DEPONENT

B Anantha Prasad
AE E/M
AOB E/M (AF) Tezpur