

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Bahar
26/09/2007

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 90/62
2. Miscellaneous Petition No.
3. Contempt Petition No.
4. Review Application No.

Applicant(s) Subimal Ray VS Union of India & Ors

Advocate for the Applicant(s) M. Chanda G.N. Chakraborty
S. Narayan M. Datta

Advocate for the Respondant(s) Adv. CASE Mr. M. Das

Notes of the Registry	Date	Order of the Tribunal
This application is in form is Rs. 50/- d. 340652673 Dated 29.3.07	17.5.07	Post the matter 21.5.07.
1m		Vice-Chairman
16.5.07 By Registrar Petitioner's Grievance not submitted	21.5.2007	The claim of the Applicant is for grant of second ACP. Mr.M.Chanda, learned counsel for the Applicant submitted that identical matters have already been admitted. Admit the O.A. Six weeks' time is granted to file reply statement.
		Post on 4.7.2007.
		Vice-Chairman

Defect:

NO Extra cost Rs 5/- deposit
to the Registry.

Excess Rs. 5/-
deposited.

15
3.4.07.

Defects removed.

15
16.5.07

SA. 90/2007

Notice & order sent^{4.7.2007}
to D/Section for
issuing to R-1 to 6
by regd. A/D post.
/bb/

~~Cas~~ D/No-526 to 536
A/6/07. Dt = 7-6-07. ^{24.8.07}

No reply filed. Post after four weeks.
Post the case on 7.8.2007.

Vice-Chairman

Counsel for the respondents wanted
time to file written statement. Let it be
done. Post the matter on 27.9.07.

Vice-Chairman

Notice duly served
on R-6.

~~Cas~~
21/6/07.

3.7.07
No ads served.
lm

27.9.2007

Reply has been filed in this case by
Mrs.M.Das, learned Addl. Standing Counsel
for the Central Government after serving a
copy on the learned counsel for the
Applicant; who intends to file rejoinder by
12.10.2007. Prayer is allowed.

Call the matter on 05.11.2007 for
hearing.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

No W/s biled.
my
26.9.07

28.9.07

05.11.2007

Post the matter on 12.12.2007.

/bb/

Member (A)

W/s filed by the
Respondents. pag 1 to 11
Copy not served.

Rejoinder not biled.

my
11.12.07.

O.A. No. 90/07

12.12.2007

On the prayer made by Mr.M.Chanda, learned counsel appearing for the Applicant, this case is adjourned to 15.01.2008 to be taken up along with O.A. 220/2006.

Rejoinder not filed.

M
11.1.08


(Gautam Ray)
Member (A)


(M.R. Mohanty)
Vice-Chairman

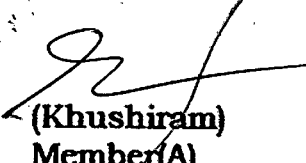
/bb/

15.01.2008

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

Rejoinder not filed.

M
8.2.08


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

pg


11.02.2008

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

Rejoinder not filed.

M
10.3.08


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

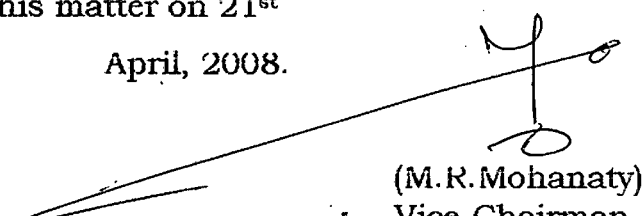
11.03.2008

Call this matter on 21st

April, 2008.

Rejoinder not filed.

M
17.4.08


(M.R. Mohanty)
Vice-Chairman

lm

O.A. 30/07

21.04.2008

Call this matter on 05.06.2008.

(M.R. Mohanty)
Vice-Chairman

lm

Rejoinder not
filed.

05.06.2008

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

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

Rejoinder not
filed.

21.07.2008

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

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

~~O.A. 259/07~~

~~01.04.2008~~

~~Call this matter on 29.04.2008.~~

~~(Khushiram)
Member (A)~~

~~(M.R. Mohanty)
Vice-Chairman~~

~~C.P.18/07(O.A.259/07)~~

~~01.04.2008~~

~~Call this matter on 29.04.2008
along with the O.A.~~

05.08.2008

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

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

(M.R. Mohanty)
Vice-Chairman

nkm

Rejoinder not
filed.

15-9-08.

Additional Rejoinder
filed by the Applicant.
Copy served.

01.09.07. 5-

16.09.2008 On the prayer of learned counsel appearing for both the parties, call this matter on 17.11.2008 for hearing.

lm

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

17.11.2008 Call this matter on

02.12.2008.

(S.N. Shukla)
Member(A)

(M.R. Mohanty)
Vice-Chairman

pg

02.12.2008 Call this matter on 02.02.2009 for hearing.

(S.N. Shukla)
Member (A)

(M.R. Mohanty)
Vice-Chairman

nkm

2.2.09 Bench is not available
list on 18.3.09.

18.03.2009

Call this matter on 28.04.2009.

(M.R. Mohanty)
Vice-Chairman

lm

28.04.2009 Call this matter on 11.06.2009 for hearing.

(M.R. Mohanty)
Vice-Chairman

lm

The case is ready
for hearing.

1.12.08.

The case is ready
for hearing.

2.2.09.

The case is ready
for hearing.

17.3.09

24.4.09
Mps. M. Das Addl.
CGSC, has filed
reply statement on
behalf of the Respondent
to the rejoinder filed
by the Applicant at
flag 'A'. A copy of
the same served upon
the Advocate for
the Applicant.

24/4/09.

The case is ready
for hearing.

26.5.09.

27.05.2009 Mrs. U. Dutta, learned counsel appearing for the Applicant is present. Ms. Rimsim Bashum, Advocate (representing Mrs. M. Das, learned Addl. Standing Counsel appearing for the Respondents) prays for adjournment of hearing of this case.

Call this matter on 22.06.2009.

lm

(N.D. Dayal)
Member(A)

(M.R. Mohanty)
Vice-Chairman

The case is ready for hearing.

10.8.09

22.06.2009 Call this matter on 11.08.2009 for hearing.

(M.R. Mohanty)
Vice-Chairman

lm

The case is ready for hearing.

7.10.09

11.08.2009

Call this matter on 08.10.2009 for hearing.

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

K. Das

Send copies of this order to the Applicant and the Respondents.

08.10.2009

None appears for either of the parties.

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

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

(M.R. Mohanty)
Vice-Chairman

Copy of the order dated 8-10-09 prepared and send to D. Section for issuing of the same to the respondents and applicant.

Vide D.No-

Date -

12.10.09

/bb/

D.A. No. 20/2007

18.11.2009

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

Received on behalf of
Mrs. M. Das, Sr. C.G.S.C.
Mleka
10.12.09

Orders reserved.

10-12-09

Judgment/Final order

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

dated 30/11/2009 sent
to the Despatch Section.
~~sent to the~~ to issuing the
all the respondents by Post.

Vide No -

dated -

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI:

O.A. Nos 220 of 2006 & 90 of 2007

Date of Decision : 30.11.2009

Sri Mohan Lal Goswami & another

.....

Applicant/s

Mr. M. Chanda

.....

Advocates for the
Applicant/s

- Versus -

U.O.I. & Ors.

.....

Respondent/s

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

.....

Advocate for the
Respondents

CORAM :

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

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


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

✓
Yes/No

✓
Yes/No

✓
Yes/No

Judgment delivered by


MEMBER(J) / MEMBER(A)

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

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

DATE OF DECISION: THIS, THE 30TH OF NOVEMBER, 2009

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

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


Applicant for O.A. No. 220 of 2006

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

Applicant for O.A. No. 90 of 2007

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

-Versus-

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

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

Respondents for both O.A.s

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

ORDER
30.11.2009

MUKESH KUMAR GUPTA, MEMBER (J)

Issue raised in these two O.A.s namely 220 of 2006 and 90 of 2007 being identical in nature, the same were heard analogously and disposed of by present common order. The principal relief claimed in these two cases is for grant of ACP benefits under DOP & T OM dated 09th August, 1999. They also challenge validity of conditions prescribed vide Para 6 of Annexure – 1 Appended to DOP & T OM dated 09th August, 1999 as well as clarification No. 53 thereto vide DOP & T OM dated 18th July, 2007. Communication dated 28th September, 2005 (issued by the Respondent No.3) passed in compliance of direction issued by this Tribunal rejecting their representation for grant of aforesaid benefits, is also challenged. Both the applicants seek direction to respondents to grant them pay scale of Rs. 5500-9000/- with all consequential benefits. Admitted facts are that applicants earlier approached this Tribunal vide O.A. No. 241 of 2004 and 242 of 2004 respectively which were also disposed of vide order dated 21st July 2005 and 6th October 2005 respectively requiring the respondents to consider applicants request for grant of financial upgradation within the time limit prescribed therein by



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

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

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



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

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

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

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

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



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

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



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

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

9. Basic questions raised for consideration are two folds :

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

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


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

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

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

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

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



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

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

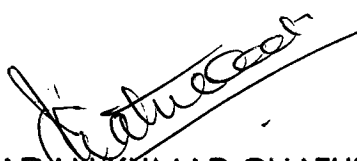



In such circumstances, said judgment is rendered totally distinguishable. Further in CHANDRA PRAKASH MADHARAO DADWA AND OTHERS (SUPRA), the appellants were appointed in 1978 as Data Processing Assistants as direct recruits in Data Processing Division of National Sample Survey Organization (NSSO). The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

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

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

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


(MADAN KUMAR CHATURVEDI)
MEMBER (A)

 
(MUKESH KUMAR GUPTA)
MEMBER (J)

/PB/

3 APR 2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 90 /2007

Sri Subimal Roy

-Vs.-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 27.05.1969- Applicant initially appointed as Sub-Overseer.
- 15.01.1998- Applicant promoted to the post of Superintendent, Building/Roads, Gr. II. The post of Superintendent B/R was subsequently re-designated as Junior Engineer (Civil) and as such the applicant is working as Junior Engineer (Civil) at present.
- 09.08.1999- Govt. of India introduced one welfare Scheme in the name of Assured Career Progression (ACP) Scheme.
Applicant completed 24 years of service on 27.05.93 and as such he is entitled for 2nd upgradation under the Scheme at least w.e.f. 09.08.99 i.e. the date on which the ACP Scheme came into being.
- 01.09.1999- Department of Defence Accounts vide its letter dated 01.09.99 issued clarification regarding fulfillment of normal promotion norms. (Annexure-IV)
- 14.03.2001- Office of Accountant General (A&E), Meghalaya granted second financial upgradation under ACP Scheme w.e.f the date of their completion of 24 years of regular service. (Annexure-V)
- 12.06.2002- Respondents Department proposed to the Govt. for granting an one-time benefit under the ACP Scheme to those Junior Engineers (Civil) who were promoted from the lower post of Superintendent (B/R) Gr. II.
- 16.02.2004- Applicant submitted representation praying for grant of 2nd financial upgradation to him under the ACP Scheme but no response.

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06.10.2005- Applicant approached this Hon'ble Tribunal by filing OA No. 242/04, which was disposed of on 06.10.05 with the direction to the respondents to submit representation and also with the direction to the respondents to consider the same and pass speaking order.

(Annexure- VI)

26.04.2006- Respondents issued the impugned order dated 26.04.06, whereby the claims of the applicant for grant of second financial upgradation has been rejected basically on the plea that the applicant has not cleared the Departmental Procedure Examination which is mandatory for promotion for erstwhile Superintendent B/R Grade-II.

(Annexure-VII)

Hence this application before the Hon'ble Tribunal.

P R A Y E R S

1. That the Hon'ble Tribunal be pleased to declare that the condition No. 6 of the ACP Scheme and clarification No. 53 thereto of the D.O.P. & T. O.M. No. 35034/1/97/Estt (D) Vol. IV dated 18.07.01 is void-ab-initio.
2. That the Hon'ble Tribunal be pleased to set aside and quash the impugned order No. 90237/9214/EIC (Legal-C) dated 26.04.2006 (Annexure- VII).
3. That the Hon'ble Tribunal be pleased to direct the respondents to grant 2nd financial upgradation to the applicant w.e.f. 09.08.1999 in terms of ACP Scheme without insisting for passing of any departmental examination, with all consequential service benefits including arrear pay etc. by re-fixing the pay in the scale of Rs. 5500-9000/-.
4. Costs of the application.
5. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

Title of the case : O. A. No 90 /2007

Shri Subimal Roy : Applicant

-Versus -

Union of India & Others : Respondents.

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Date: 20/03/07

Filed by

Wutta.
Advocate

Subimal Roy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 90 /2007

BETWEEN:

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

...Applicant.

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Defence, South Block,
New Delhi- 110001.
2. The E-in-C's Branch (EIC/EIR)
Army Headquarter, DHQ.
New Delhi- 110011.
3. The Chief Engineer,
HQ, Eastern Command,
Engineers Branch
Fort Willam, Kolkata-21.
4. The Chief Engineer,
Shillong Zone, M.E.S,
Spread Eagle Falls, Shillong- 793011.
5. The Dy. Director (Admn.),
O/o- The Chief Engineer,
HQ, Eastern Command
Fort Willam, Kolkata-21.
6. Department of Personal & Training,
Govt. of India,
Represented by it's Secretary,
North Block, New Delhi- 110 001.

... Respondents.

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DETAILS OF THE APPLICATION

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

This application is made against the impugned order bearing letter No. 90237/9214/EIC (Legal-C) dated 26.04.2006 (Annexure-VII) issued by the Respondent No. 3 whereby representation of the applicant praying for grant of second financial upgradation under the ACP Scheme has been rejected by the respondents. The representation was submitted by the applicant in compliance with the directions passed by this Hon'ble Tribunal in it's Judgment and Order dated 06.10.2005 in O.A. No. 242/2004.

2. Jurisdiction of the Tribunal.

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

3. Limitation

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

4. Facts of the Case:

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That your applicant was initially appointed as Sub-Overseer on 27.05.1969 in the respondent department and was thereafter promoted to the post of Superintendent, Building/Roads (Supdt. B/R) on 15.01.1998. The post of Superintendent B/R was subsequently re-designated as Junior Engineer (Civil) and as such the applicant is working as Junior Engineer (Civil) at present.

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

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

- 4.4 That the applicant having served for long 29 years as Sub-Overseer, was promoted to the post of Supdt. B/R (now re-designated as Junior Engineer (Civil)) in 1998 only and thereafter did not get any further promotion under the regular promotional avenue and as such is stagnated in the same post for long time. The applicant has completed 35 years of regular service and during this period he has got only one promotion as stated above. As per the ACP Scheme an employee is entitled to 1st financial upgradation on completion of 12 years of service and 2nd financial upgradation on completion of 24 years of service. Since the applicant got one promotion in 1998 he is entitled for the 2nd upgradation in terms of the ACP Scheme and he completed 24 years of regular service on 27.05.1993. The ACP Scheme being launched on 09.08.99, the applicant is entitled to the benefit of 2nd upgradation at least w.e.f. 09.08.99 although he had

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completed 24 years of service much earlier i.e. in 1993. Be it stated that the applicant at present working in pay scale of Rs. 5,000-8000/- but as per ACP Scheme the applicant is entitled for financial upgradation to the scale of pay of Rs. 5,500-9000/-.

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

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

- 4.6 That since the applicant was promoted to the grade of Superintendent B/R Grade-II in the year 1998 i.e. after launching of the above stated scheme dated 25.04.96 and since thereafter the ACP Scheme of the Government of India was introduced w.e.f. 09.08.99 i.e. within 1 year of his promotion, so the fulfillment of the criteria of 5 years and 15 years of service for upgradation as envisaged under the above stated scheme dated 25.04.96 before 09.08.99 became an absurdity in case of the applicant and consequently he did not get any benefit under that Scheme dated 25.04.96.
- 4.7 That with the launching of ACP Scheme w.e.f. 09.08.99, the applicant became entitled to 2nd upgradation w.e.f. 09.08.99 in accordance with the scheme and as such he approached the Respondents praying for grant of 2nd financial upgradation to him in terms of ACP Scheme.

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- 4.8 That it is stated that following the introduction of the ACP Scheme, the Respondents department vide it's Army HQ's letter No. B/75011/RR/JE (Civil)/CSCC dated 12.06.2002 proposed that the promotees from the lower post to the post of JE (Civil) are eligible for one time benefit under the ACP Scheme and accordingly the service particulars of the applicant were forwarded to HQ Eastern Command by the Chief Engineer, Shillong zone vide letter No. 81427/ACP/1087/EID dated 06.01.2002 of C.E (AF) Zone for grant of one time benefit under the ACP Scheme to the applicant.
- 4.9 That the applicant submitted representation through proper channel to the Respondent No. 2 on 16.02.2004 praying for grant of 2nd financial upgradation under ACP Scheme but with no response. He submitted representation earlier also.

(Copy of the representation dated 16.02.2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- III).

- 4.10 That the applicant begs to state that for granting financial upgradation under the ACP Scheme, only the following things are required; -
- (a) The official must have completed 12 years of regular service for first upgradation and 24 years of service for 2nd upgradation, if he has not got any regular promotion.
 - (b) If such official has got one regular promotion then he will be eligible for 1st upgradation after completion of 24 years of service, and
 - (c) One Screening Committee constituted for this purpose shall assess the suitability of the candidate for grant of benefit under ACP Scheme.

As regards the assessment by the Screening Committee, it has specifically been spelt out in the Scheme that the Screening Committee will scrutinize the relevant service records, ACR dossiers, disciplinary/

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penalty proceedings, if any, to assess the fitness or otherwise of an employee for grant of financial upgradation by fixing the pay in appropriate higher pay scale. This is clearly evident from para 4.2 of the letter dated 01.09.99 issued by the Department of Defence Accounts under the same Ministry of Defence.

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

- 4.11 That while all other Central Govt. Departments have implemented the ACP Scheme in case of their employees without asking for any Departmental Examination/Skill Test, it is only in the respondent department that an additional requirement of diploma and test have been imposed in utter violation of the provisions of the scheme. It is relevant to mention here that in the Office of the Accountant General (A&E), Meghalaya 6 employees have been granted second financial upgradation under ACP Scheme w.e.f. the date of their completion of 24 years regular service without any Departmental Examination/Test vide order No. 297 dated 14.03.2001.

(Copy of the order dated 14.03.01 is annexed hereto as Annexure- V).

- 4.12 That it is stated that being aggrieved the applicant agitated the action of the respondents and approached this Tribunal by filing O.A. No. 242/2004, praying for a direction upon the respondents to grant 2nd financial upgradation to the applicant w.e.f. 09.08.1999 with arrear monetary benefit in the pay scale of Rs. 5,500-9000/- in terms of ACP Scheme. This Hon'ble Tribunal vide it's Judgment and Order dated 06.10.2005 in O.A. No. 242/2004, directed as follows: -

".....the applicant is directed to make a detail representation setting out his claim for grant of second

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financial upgradation with effect from 9.8.99 based on the Scheme (Annexure-I) before the second respondent within a period of one month from today. If any such representation is made the respondents will consider the same with reference to the ACP Scheme of 9.8.99 (Annexure-I) and in the light of the paragraphs 5 and 6 of the order in O.A. No. 241/2004 extracted herein above and pass an appropriate order within 03 (three) months from the date of receipt of the representation. We make it clear that we have not expressed any views on the merits of the claim made by the applicant."

(Copy of Judgment and Order dated 06.10.05 is annexed hereto as Annexure- VI).

- 4.13 That the applicant submitted his representation on 09.11.2005 to the respondents as directed by the Hon'ble Tribunal. But the respondents issued the impugned order under No. 90237/9214/EIC (Legal-C) dated 26.04.2006, whereby the claims of the applicant for grant of second financial upgradation has been rejected basically on the plea that the applicant has not cleared the Departmental Procedure Examination which is mandatory for promotion for erstwhile Superintendent B/R Grade-II to Grade-I the respondents have made this contention on the basis of clarification No. 53 of D.O.P.&T. O.M. No. 35034/1/97/Estt (D) Vol IV dated 18.07.2001 which says that only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACP Scheme.

(Copy of the impugned order dated 26.04.06 is annexed hereto as Annexure- VII).

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

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

As regards the assessment by the Screening Committee, it has specifically been spelt out in the Scheme that the Screening Committee will scrutinize the relevant service records, ACR dossiers, disciplinary/penalty proceedings, if any, to assess the fitness or otherwise of an employee for grant of financial upgradation by fixing the pay in appropriate higher pay scale. This is clearly evident from para 4.2 of the letter dated 01.09.99 issued by the Department of Defence Accounts under the same Ministry of Defence.

- 4.15 That the applicant most respectfully begs to state that the applicant has fulfilled all the requirements under ACP Scheme as stated in the preceding para hereinabove and as such he is entitled to get the 2nd upgradation w.e.f. 09.08.99 as provided under the Scheme.
- 4.16 That the applicant begs to submit that it has nowhere been provided by the D.O.P.&T. in the ACP Scheme that in order to get the benefit of upgradation under the Scheme, an employee will have to complete 5/15 years of service since his first promotion and before 09.08.99. Moreover, requirement of diploma in Civil Engineering and he will have to pass procedure examination etc. as contended by the Respondents in the their impugned letter dated 10.06.2004. The respondents cannot impose such

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riders which are not required under the ACP Scheme and this aspect has been dealt in thread bare in earlier cases successively and as such denial of 2nd upgradation to the applicant on grounds stated above are arbitrary, illegal, unfair, malafide and contrary to the provisions of the Scheme.

4.17 That the ACP Scheme is a welfare Scheme launched by the Govt. of India and the Respondents by their own stretch of imagination cannot impose such riders which are not warranted/mentioned in the Scheme and such of their acts are not only contrary to the provisions of the Scheme but frustrates the very spirit of the noble welfare scheme professed by the Government. The Hon'ble Supreme Court also in the case of State of Tripura and others Vs. K.K. Roy, reported in 2004 (9) SCC 65, wherein it was held by the Hon'ble Supreme Court that a Scheme like is necessary in a welfare state.

4.18 That by framing the ACP Scheme, the Government has introduced a statutory provision of financial upgradation for the employees who are stagnated due to non availability of regular promotion and as such it has become a condition of service. But the respondents by their simple executive order have superseded the dictates of a statute, which is not permissible under law. The respondents vide their impugned letter dated 26.04.06 (Annexure-VII) have not only superseded the dictates of a statute but have even sealed to entertain further correspondence on this subject. As such it is arbitrary, unjust, unfair, malafide, illegal and contrary to law.

4.19 That all the departments including the office of the C & AG of India have been granting financial upgradations to their employees on completion of qualifying years of service in accordance with the ACP Scheme without any special rider whatsoever.

4.20 That it is stated that question of passing any departmental examination does not at all arise for grant of benefit to the Govt. employees in terms of

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

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

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

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

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ensured for grant of financial up-gradation under the ACP Scheme."

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

- 4.21 That the applicant most respectfully begs to state that in a series of cases the Apex Court has elaborately dealt in the matter. In State of Tripura and Ors. -Vs- K.K. Roy, reported in (2004) 9 SCC 65, the Hon'ble Supreme Court held that "Promotion is a condition of service" and directed the respondents therein to pay the applicant two promotions in the next higher scale on completion of 12 years and 24 years in service, in terms of ACP Scheme.

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

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

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organization within six months from today by appropriate amendments of rules....."

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

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

(Copy of the three judgments aforesaid are annexed hereto as Annexures-VIII, IX, X respectively).

4.22 That the applicant most respectfully begs to state that the respondents in para 5 of their impugned letter dated 26.04.2006 has referred to clarification No. 53 of D.O.P.&T. O.M. No. 35034/1/97/Estt (D) Vol. IV dated 18.07.01 which relates to condition No. 6 of the ACP Scheme. The contentions of the respondents are only rested upon the said clarification No. 53 in respect of condition No. 6 of the ACP Scheme which resulted into denial of the benefit of 2nd financial upgradation under the Scheme to the applicant.

It is relevant to mention here that both the D.O.P.& T. and the respondent department have misconstrued/misinterpreted the provisions of the ACP Scheme and the D.O.P.& T. Clarification No. 53 is not in conformity with the objective and spirit of the ACP Scheme. The riders of "fulfillment of promotional norms vis-à-vis clearing the departmental procedure examination" etc. as pleaded by the respondents in the instant case are not sustainable in the eye of law in as much as that such norms are applicable in case of vacancy - based regular promotions only and not in case of promotion under the ACP Scheme. Promotion under the ACP

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Scheme is distinguished from the vacancy - based regular promotion in the sense that the promotion under the ACP Scheme is only a financial upgradation to the higher scale which does not grant any higher post to the concerned employee nor involves any change of duties and responsibilities as happens in vacancy - based regular promotions and as such the requirements of regular promotional norms or departmental examination is unwarranted and irrelevant, in case of ACP Scheme. The ACP Scheme has nowhere mentioned about any examination or extra qualification as a requirement for granting financial upgradation under the Scheme, but the Scheme has been launched as a welfare Scheme for granting financial upgradation to the stagnating employees only as an alternative to the vacancy - based regular promotions. But unfortunately the D.O.P.& T. and the respondent department have drawn an irrational equation between the two types of promotion aforesaid. It is further to be mentioned that the Hon'ble Supreme Court has repeatedly held in series of cases (some of which are referred to in the preceeding para hereinabove) that at least two promotional opportunities be provided to each employee and declared that promotion is a condition of service. It is in this spirit that the ACP Scheme has been launched by the Govt. of India. But the subsequent imposition of such riders as departmental examination and norms etc. as has been contended in the instant case by the respondents by the respondents, is an utter violation of the principles laid down by the Apex Court and totally frustrates the very spirit of the ACP Scheme and such illegal riders do not have any nexus to the objective of the ACP Scheme, according to which, the only requirements are completion of 12 years and 24 years service. As such the D.O.P.&T. O.M. dated 18.07.2001 containing clarification No. 53 and the impugned letter dated 26.04.2006, clause No. 6 of the conditions of O.M dated 09.08.1999 are liable to be quashed and set aside.

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- 4.23 That the applicant most humbly begs to submit that due to non-consideration for grant of second financial upgradation under the ACP Scheme, the applicant has been suffering heavy financial losses. Finding no other alternative, the applicant is approaching this Hon'ble Tribunal for protection of his rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with and protect the rights and interests of the applicant, directing the respondents to grant second financial upgradation to the applicant under the ACP Scheme w.e.f. 09.08.99.
- 4.24 That it is stated that due to non-fixation of pay scale as provided under the ACP Scheme dated 09.08.1999 and also due to non-fixation of pay in the higher revised scale of pay as per existing hierarchy, the applicant is incurring huge financial loss each and every month and as such cause of action recurring in nature and arises each and every month till the benefit of ACP Scheme is granted to the applicant by re-fixing his pay in the appropriate higher scale.
- 4.25 That this application is made bonafide and for the cause of justice.
5. Grounds for relief(s) with legal provisions.
- 5.1 For that, the Govt. of India framed rules under the ACP Scheme for grant of two financial upgradations in their full tenure of service on completion of 12 years and 24 years of regular service to the Central Government civilian employees who do not get any promotion through their normal avenues due to stagnation.
- 5.2 For that, the applicant has completed his 24 years of regular service way back in 1993 and as such he is entitled to get the benefit of 2nd financial upgradation under the ACP Scheme at least w.e.f. 09.08.99 i.e. the date on which the ACP Scheme came into force. He has completed 35 years of service by now.

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- 5.3 For that, all the departments including the office of the C & AG of India have been granting financial upgradation to their employees' w.e.f. the date of completions of 12 and 24 years of regular service in terms of ACP Scheme.
- 5.4 For that, the applicant did not get any benefit of upgradation under the Departmental Scheme dated 25.04.96 and he is also being denied the same benefit under the ACP Scheme.
- 5.5 For that, the provisions made the ACP Scheme are conditions of service framed by the Rule making Authority and hence constitute an integral part of service rules.
- 5.6 For that the provisions made under the ACP Scheme are conditions of service framed by the rule making authority which cannot be altered or superseded by an executive order of any individual department.
- 5.7 For that the due to non-consideration of grant of 2nd financial upgradation, the applicant has been incurring heavy financial losses.
- 5.8 For that the Respondent department admitted that the promotees from the lower post to the post of J.E (Civil) are eligible for one time benefit under the ACP Scheme.
- 5.9 For that the clause/condition No. 6 of the ACP scheme is contrary to the basic object of the ACP scheme as such the said condition and classification No. 53 being contains to the scheme are liable to be set aside and quashed.
- 5.10 For that the respondents, by way of imposing the riders of passing departmental examination have not only violated the rules laid down by the Apex Court and the directions of this Hon'ble Tribunal in this context, but have also treated the promotion under the ACP Scheme and the

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vacancy - based regular promotion alike which frustrates the very purpose of the ACP Scheme and as such is illegal, unfair and arbitrary.

5.11 For that the applicant submitted representations praying for grant of 2nd financial upgradation to him in terms of ACP Scheme but not considered.

5.12 For that the due to non-consideration of grant of 2nd financial upgradation, the applicant has been incurring heavy financial losses.

6. Details of remedies exhausted:

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

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

The applicant further declares that and except the filing of O.A. No. 242/2004 before this Hon'ble Tribunal, he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

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

8.1 That the Hon'ble Tribunal be pleased to declare that the condition No. 6 of the ACP Scheme (and clarification No. 53 thereto of the D.O.P. & T. O.M. No. 35034/1/97/Estt (D) Vol. IV dated 18.07.01 is void-ab-initio.

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8.2 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order No. 90237/9214/FIC (Legal-C) dated 26.04.2006 (Annexure- VII).

8.3 That the Hon'ble Tribunal be pleased to direct the respondents to grant 2nd financial upgradation to the applicant w.e.f. 09.08.1999 in terms of ACP Scheme without insisting for passing of any departmental examination, with all consequential service benefits including arrear pay etc. by refixing the pay in the scale of Rs. 5500-9000/-.

8.4 Costs of the application.

8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

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

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

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i)	I. P. O. No.	: 346652673
ii)	Date of Issue	: 29.3.07
iii)	Issued from	: G.P.O, Guwahati.
iv)	Payable at	: G.P.O, Guwahati.

12. List of enclosures.

As given in the index.

Sankar Roy

VERIFICATION

I, Shri Subimal Roy, S/o Late Satyabrata Roy, aged about 59 years, working as Junior Engineer (Civil), MES No. 228303, in the office of the Garrison Engineer, Silchar Division, MES, P.O- Arunachal, Dist-Cachar, Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 24th day of March 2007.

Subimal Roy

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

Government of India

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

North Block, New Delhi 110001

August 9, 1999

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

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

2. GROUP 'A' CENTRAL SERVICES

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

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

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

.....2/-

1140-A/87(CIA)-2

12/8/99

Attested
Minister
Advocate

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

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

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

6. SCREENING COMMITTEE


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

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

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

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

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


(K.K. JHA)

Director(Establishment)

To

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

*Attended
Advocate*

....4/-

-22-

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

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

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

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

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

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

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

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

*Attended
with
advocate*

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

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

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

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

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

Sd/-

(K.K. JHA)

Director(Establishment).

*Attested
Public
Advocate*

ANNEXURE-II

STANDARD/Common PAY-SCALES

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

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

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

*Attested
Advocate*

MAIN FEATURES OF THE ASSURED CAREER PROGRESSION SCHEME

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

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

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

Attested
Advocate

(Typed true copy)

ANNEXURE- II

(Extract)

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

New Delhi: dt: 25th April, 1996.

To
The Chief of Army Staff

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

Sir,

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

- (a) There will be two scales of pay for Superintendent (BR/EM)/Surveyor Assistants Grade viz. Rs. 1400-2300 and Rs. 1640-2900. The entry grade will be Rs. 1400-2300. The Superintendents/Surveyor Assistants, on completion of 5 years service in the entry grade will be placed in the scale of Rs. 1640-2900, subject to the rejection of unfit. This higher grade will not be treated as a promotional one but will be non functional and the benefit of FR 22 (I) (a) (i) will not be admissible. While fixing the pay in the higher grade as there will be no change in duties and responsibilities.
- (b) Superintendents (BR/EM)/Surveyor Assistants, who could not be promoted to the post of Assistant Engineers/Junior Surveyor of Works, in the scale of Rs. 2000-3500, due to non-availability of vacancies in the grade of Assistant Engineers/Junior Surveyor of Works, will be allowed the scale of Assistant Engineers/Junior Surveyor of Works i.e. Rs. 2000-3500, on a personal basis, after completion of 15 years of total service as Superintendents (BR/EM)/Surveyor Assistants. This personal promotion will be on fitness basis. As and when regular vacancies in their grade of Assistant

*Attested
Advocate*

Engineer/Junior Surveyor of Works arise such officers who enjoy personal promotion will be adjusted against those vacancies, subject to observance of normal procedure.

(i) In the matter of pay fixation, the Superintendents (BR/EM)/Surveyor Assistants who are allowed the scale of Rs. 2000-3500 on personal basis will get the benefit of FR 22 (I) (a) (i).

(iv) On being granted personal promotion to the grade of Assistant Engineers/Junior Surveyor of Works, the Superintendents/Surveyor Assistants will continue to perform the same duties/functions of Superintendents/Surveyor Assistants.

2. The orders regarding placement in the scale of Rs 1640-2900 after 5 years of service will be effective from 01.01.1986 while those relating to personal promotion after 15 years of service will be effective from 01.01.1991.
3. This issues with the concurrence of Defence (Finance) vide their U.O. No. 826/W-1/96 dt. 26.04.96.

Yours faithfully,

Sd/- Illegible

(M.V. VIJAYAN)

DESK OFFICER.

Copy to: -

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

MES No. 228303,
Subimal Roy, JE (Civil)

(Typed true copy)

ANNEXURE- III

Garrison Engineer (AF)
Elephant Falls Camp
Nonglyer Post
Shillong- 793089

16 Feb 2004.

E-in-C's Branch (EIC/EIR)
Army Headquarters
DHQ, P.O- New Delhi.

(Through proper channel)

NON FIXATION OF ACP

Respected Sir,

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

Sir, I was enrolled in the department as Sub-Overseer in the year 1969 and during 15 January 1998 I was promoted as JE (Civil) on completion of 29 years of regular service.

This is to inform you that ACP was approved in Aug 99 and initiation has not yet been done in my case even after lapse of 4 years.

As per Army HQ E-in-C's Branch letter No. B/75001/PF/JE (Civ) CSCC, March 2002, every promotee are eligible for one time benefit of ACP who was promoted from lower post. Hence I am entitled for 2nd upgradation. Special sanction from Govt. is required. My service particular have already been forwarded to your HQ vide CE (AF) Shillong Zone's letter No. 81427/ACP/1087/E1D dt 06 Jan 2002.

It is for your information that CAT Bangalore has also been directed for this benefit.

Therefore, requested your good self to look into the matter especially for my legitimate benefit.

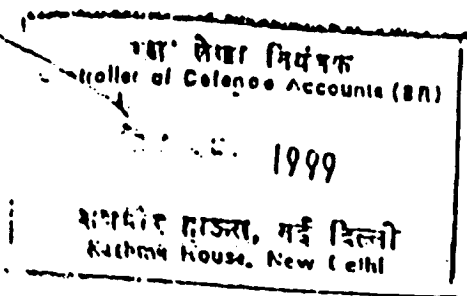
I shall remain grateful to you for this act of kindness.

Thanking you Sir,

Yours faithfully

(Subimal Roy)
JE (Civil)

*Attested
Advocate*

BY SPEED POST / *Conf.*

Most Immediate
No. AN/X/11051/ACP
Office of the CGDA,
West Block-V, R.K. Puram,
New Delhi - 61
Dated :- 1st September '99

The CDA (B & R)
New Delhi

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

The Vth C.P.C. in its report made certain recommendations relating to assured career progression (ACP) scheme for Central Govt. Civilian Employees in all Ministries/Departments. The said scheme has now been accepted by the Govt. with certain modification vide the Govt. of India, Min. of Personnel, Public Grievances and Pension (Deptt. of Personnel & Trg.) O.M. No. 35024/1/97-Estt-(D) dated 9th August 99 (Copy enclosed).

Salient features of the ACP scheme-

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

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

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

*Attested
Signature
Advocate*

regular service respectively. The first financial up-gradation under the scheme shall be allowed after 12 years of regular service and second up-gradation after 12 years of regular service from the date of first financial up-gradation subject to the fulfillment of prescribed conditions. The ACP scheme does not cover Group 'A' i.e. IDAS officers in the Deptt in terms of para 2.1 of DOPT's OM dated 9-3-99.

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

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

- (vi) Fulfillment of normal promotion norms for promotions from one grade to the other, as per extant orders i.e. analysis of ACRs for last 3 years in respect of Group 'C' & 'D' employees and ACRs for last five years in respect of Group 'B' employees, their integrity, seniority cum fitness in case of Group 'D' employees disciplinary/penalty proceedings as per the provisions of CCS(CCA) Rules 1965 etc to assess their fitness or otherwise, as observed by a DPC, shall be ensured for grant of financial up-gradation under the ACP scheme.
- (viii) The financial up-gradation under the said scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of post without creating any new post for the purpose is laid down in para 7 of Annexure I and Annexure II to OM dated 9-8-1999.
- (ix) The financial up-gradation under the scheme shall be purely personal to the employee for the stated purposes and restrictions of ACP scheme for financial and other benefits shall have no relevance to his seniority position, he/she will continue to hold the old designation and that the same will not amount to actual/functional promotion of the employee. There shall be no additional financial up-gradation for the senior employee on the ground that junior employee in the grade has got higher pay scale under the ACP scheme (Para 6.1 & 3 of Annexure-I to OM dated 9-8-99 refer)
- (x) Reservation orders/roster shall not apply to the ACP scheme in terms of para 12.1 of Annexure-I of DOP's OM dt 9/8/99.
- (xi) Under the ACP Scheme, the pay of an employee, on up-gradation, shall be fixed under the provisions of FR-22(1) a (1) subject to minimum financial benefit of Rs. 100/- as per DOP OM No. 1/6197/Pay- dt 5/7/1999 as referred to in para 9 of Annexure-I to OM dated 9-8-99. The financial benefit allowed

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

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

Application of the ACP Scheme in DAD.

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

Group 'B'
Jr. Indl Officer

In case of direct recruitment.

Group 'C'
Senior Auditors

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

Librarian/Information Assistant (if any)

In case of direct recruitment

*Amrta
Advocate*

Accountant

Steno

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Dastry

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Peon of Steno Operator

Peon of directly recruited Dastry

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

Screening Committee

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

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

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

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

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

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

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

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

The controllers are aware, a in situ promotion scheme was introduced by the Government of India Ministry of Finance, Department of Expenditure OM No. '0(1)/E-IU/86 dated 13-0-91 as circulated under our letter No. AN/KII/12409/G3 C&D dated 15th Aug '2. Various employees falling in Gp 'C' & 'D' in our Department have been given in situ promotion. As this promotion will have to be taken into account for the purpose of implementation of the ACP Scheme, the screening committee must ensure that any such in situ promotion has been granted, the same has been taken in to account by them.

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

Please acknowledge receipt.

Dy CGDA (AN)

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

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

So far as the cases of ROs and the group 'D' employees are concerned, as identified in para 3

Dy CCDA (AN)

Attested
Advocate

CGDA (AN),
In-charge AN-IV.
AN-II Section
AN-XII Section.

(Typed true copy)

ANNEXURE- V

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

Estt-I (M) Order No. 297

Dated 14-3-2001

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

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

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

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

*Attested
M.A. Advocate*

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

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

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

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

(v) Fulfilment of normal promotion norms (bench mark, departmental examination, seniority-cum-fitness in the case of group 'D' employees etc) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with the retention of old designations, financial upgradations as personal to the incumbent for the stated purpose and restriction of the ACP Scheme for financial and certain other benefits (house building advance, allotment of govt. accommodation, advance etc) only without conferring any privileges, related to higher status (e.g. invitation to ceremonial functions deputation to higher posts, etc.) shall be ensured for grant of benefits under ACP Scheme.

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



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

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

(ix) Grant of higher pay scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular grade. However, as and when he accepts the regular promotion thereafter he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose.

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

Sd/-

Sr. Deputy Accountant General (Admn)

Cont.....

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

Dated 14-3-2001

Copy forwarded for information and necessary action to:-

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

Sd/-

Establishment Officer.

*Attested
With
Advocate*

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 242 of 2004

Date of Order : This the 6th day of October 2005.

The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.
The Hon'ble Mr. M.K. Misra, Administrative Member.

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

... Applicant.

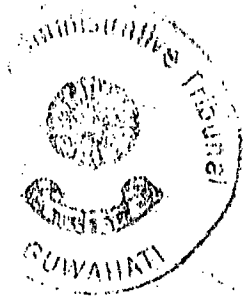
By Advocates Mr. M. Chanda, Mr. G.N. Chakrabarty, Mr. S. Nath.

- Versus -

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Defence,
New Delhi - 110 001.
 2. The E-in-C's Branch (EIC/EIR),
Army Headquarter, DHQ,
New Delhi.
 3. The Chief Engineer,
HQ, Eastern Command,
Engineers Branch,
Fort William,
Kolkata - 21.
 4. The Chief Engineer,
Shillong Zone, M.E.S.,
Spread Eagle Falls,
Shillong - 793 011.
 5. The Dy. Director (Admn.),
O/o - The Chief Engineer,
HQ, Eastern Command,
Fort William,
Kolkata - 21.
 6. Department of Personal & Training,
Govt. of India,
Represented by its Secretary,
North Block, New Delhi - 110 001.
- ... Respondents

By Advocates Mr. A.K. Chaudhuri, Addl. C.G.S.C.

*Attested
by
Advocate*



ORDER (ORAL)SIVARAIAN. I. (V.C.)

The applicant was initially appointed as Overseer. He was promoted to the post of Superintendent, Building/Roads, Grade 11 on 15.01.1998. Later the post of Superintendent was re-designated as Junior Engineer (Civil). The grievance of the applicant is that though he had completed 24 years of service on 27.05.1993, he was not given benefit of ACP Scheme. The applicant made representation on 16.02.2004 (Annexure - III) before the 2nd respondent for grant of 2nd financial upgradation under the ACP Scheme. His grievance is that the 2nd respondent has not taken any decision on the said representation.

2. The Respondents have filed their written statement, wherein they have taken the stand that since the applicant has been promoted to the post of Junior Engineer and since he did not have the requisite Diploma, he cannot be granted 2nd financial upgradation until the period of 12 years from the date of promotion to the post of Junior Engineer expired.

3. We have also heard Mr. M. Chanda, learned counsel for the applicant and Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. A Division Bench of this Tribunal had occasion to consider a similar situation in a case of another employee of the same department in its order dated 21.01.2005 in O.A. No. 241/2004 and made the following observations :-

"5. As we have noted the case of the applicant for grant of second financial upgradation is based on the memorandum

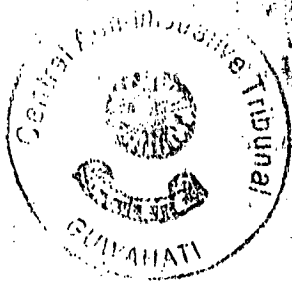


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dated 9.8.99 (Annexure - II) but the second respondent has not considered the effect of the 1999 ACP scheme while issuing the impugned communication dated 10.8.04 (Annexure - IX). It is true that the applicant did not satisfy the conditions stipulated in the earlier scheme or in the communication Annexure - IX. As already noted the claim of the applicant for grant of second ACP on 9.8.99 is based on Annexure - II Memorandum. In regard to the contention of the respondents the applicant is not entitled to the benefit in view of the fact but he did not pass the MES procedure examination and did not possess a diploma in civil engineering. Counsel for the applicant has relied on the decision of the Supreme Court and the decisions of different Benches of the Tribunal including one given by this Tribunal. Having considered the rival submissions, we are of the view that this application can be disposed of with directions.

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

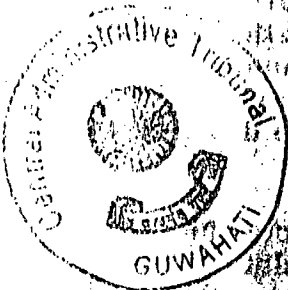
Accordingly the applicant is directed to make a detail representation setting out his claim for grant of second financial upgradation with effect from 9.8.99 based on the scheme (Annexure - II) before the second respondent within a period of one month from today. If any such representation is made the respondents will consider the same with reference to the ACP Scheme of 9.9.99 (Annexure - II) and in the light of the decisions relied on by the applicant and referred to in this order and pass an appropriate order within four months from the date of receipt of



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the representation. We make it clear that we have not expressed any views on the merits of the claim made by the applicant."

4. In view of the above, we are of the view that this O.A. also can be disposed with similar direction. Accordingly, the applicant is directed to make a detail representation setting out his claim for grant of second financial upgradation with effect from 09.08.1999 based on the scheme (Annexure - I) before the second respondent within a period of one month from today. If any such representation is made, the respondents will consider the same with reference to the ACP Scheme of 09.08.1999 (Annexure - I) and in the light of paragraphs 5 and 6 of the order in O.A. No. 241/2004 extracted hereinabove and pass an appropriate order within three months from the date of receipt of the representation. We make it clear that we have not expressed any views on the merits of the claim made by the applicant.



5. Though Mr. M. Chanda, learned counsel for the applicant relied on various decisions of Courts since the matter is relegated to the authorities, it is open to the applicant to present all these decisions by making reference in the representation to be filed as directed above.

The O.A. is disposed of as above.

Date of Application : 8.1.2007
Date on which copy is ready : 8.1.2007
Date on which copy is delivered : 8.1.2007
Certified to be true copy

64/ VICE CHAIRMAN
64/ MEMBER (A)

N. S. Sanyal
8.1.2007
Section Officer (Judicial)
C. A. T. Guwahati Bench
Guwahati-5.

*Arrested
Mita
Advocate*

8/1/2007

90237/9214/EIC (Legal-C)

26 Apr 2006

**IMPLEMENTATION OF HON'BLE CAT GUWAHATI BENCH
ORDER DATED 6TH OCT 2005 IN OA NO. 242/2004 FILED BY SHRI
SUBIMAL ROY**

SPEAKING ORDER

1. Reference OA No. 242/2004 filed by shri Subimal Roy at CAT Guwahati Bench. The applicant sought following relief's in the OA :-

(a) That the Hon'ble Tribunal be pleased to direct the respondents to grant 2nd financial up-gradation to the applicant wef 09.08.1999 with arrear monetary benefit in the pay scale of Rs. 5500-9000/- in terms of ACP Scheme.

2. The Hon'ble Tribunal decided the case vide order dated 06 Oct 2005 with the following directions:-

"The applicant is directed to make a detail representation setting out his claim for grant of 2nd financial up-gradation with effect from 09.08.1999 based on the scheme (Annexure-I) before the second respondent within a period of one months from today. If any such representation is made the respondents will consider the same with reference to the ACP Scheme of 09.08.1999 (Annexure-I) and in the light of paragraphs 5 and 6 of the order in OA No. 241/2004 extracted herein above and pass an appropriate order within 03 (Three) months from the date of receipt of the representation. We make it clear that we have not expressed any views on the merits of the claim made by the applicant."

3. As per above judgement, you were directed to submit your representation within one month from 6th Oct 2005, i.e. by 5th Nov 2005, whereas, you have submitted the representation only on 9th Nov 2005, i.e. after 04 days granted by the Court. However, in compliance of Tribunal's direction, the representation has been considered, as a special case and decided in succeeding paragraphs.

4. The grant of financial 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/EIC(Legal)/1993/D(Works) dt. 25 Apr 1996. The ACP Scheme has been introduced vide DOP & T OM No. 35034/1/97-Estt(D) dt. 09 Aug 1999 making the financial up-gradation after completion of 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

Contd.....2

*Attested
Muthu
Advocate*


scheme of granting financial up-gradation introduced on 25 Apr 96 has been ceased to be operative wef 09.8.99. Further, as per Appendix 'A' to letter No. 85610/ACP/47/SUPDTS/CSCC/236/D(Wks) dt. 23 Jan 2002 the Supdts who have been placed in the pay scale of Rs. 5500-9000 after completion of five years of regular service as per the old scheme shall be brought back to the scale of Rs. 5000-8000. Fall in pay shall be protected by granting personal pay in the scale of Rs. 5000-8000, to be adjusted against future increments.

5. As per clarification No. 53 of DOP&T OM No. 35034/1/97/Estt(D) Vol IV dated 18.7.2001, only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACP Scheme. Therefore, various stipulations and conditions specified in the recruitment rules for promotion to the next higher grade, including educational/additional educational qualifications, if any prescribed, would need to be met even for consideration under ACP Scheme. As per the instructions, passing Departmental Procedure Examination is pre-requisite for grant of scale of Rs. 1640-2900 (Rs. 5500-9000 revised).

6. You are quoting reference of DOP&T OM dated 09.8.1999 and asking for the pay scale of Rs. 5500-9000 which is ceased to be operative. It is also pertinent to mention here that eligibility for appointment to Supdts (now JEs) is Degree/Diploma in Civil Engineering and passing departmental examination is mandatory.

7. In view of above facts and since the scale of Rs. 5500-9000 is ceased to be in operation and also having not cleared the Department Procedure Examination, which is a mandatory requirement for promotion for erstwhile Supdt B/R Gde II to Gde I as per recruitment rules, the relief's sought by the applicant for second financial up-gradation in the scale of Rs. 5500-9000 is neither applicable nor permissible and hence rejected.

8. By issue of this Speaking Order, the Hon'ble CAT Guwahat Bench Judgement dated 6th Oct 2005 in OA No. 242/2004 has been fully complied with and your representation dated 9th Nov 2005 is disposed off accordingly.


(Sant Ram)
SE
Director(Legal)
For E-in-C

Shri Subimal Roy,
Junior Engineer (Civil)
Garrison Engineer (MES)
Silchar Division,
PO : Arunachal,
Distt; Cachar,
ASSAM

(Through CE Eastern Command)

*Attested
by
Advocate*

STATE OF TRIPURA v. K.K. ROY

(2004) 9 Supreme Court Cases 65

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

a STATE OF TRIPURA AND OTHERS .. Appellants:
 Versus
 K.K. ROY .. Respondent.

Civil Appeal No. 6253 of 1998[†], decided on December 12, 2003

- b** A. Service Law — Promotion — Right to promotion — Held, promotion being a condition of service, avenues have to be provided therefor
 B. Service Law — Promotion — Right to promotion — No avenue for promotion — Relief — Scheme of Assured Career Promotion not framed — Yet, taking into consideration the fact that the employee was appointed to a single-cadre post with no promotional avenues and keeping in view his educational qualifications, held, he was entitled to two higher grades, one upon expiry of twelve years from the date of joining service and the other on expiry of twenty-four years thereof — Failure on the part of the State to frame such a scheme when such schemes had been framed by other States on recommendations of the Pay Commission, deprecated
- c** Council of Scientific and Industrial Research v. K.G.S. Bhatt, (1989) 4 SCC 635 : 1990 SCC (L&S) 45 : (1989) 11 ATC 880; O.Z. Hussain (Dr) v. Union of India, 1990 Supp SCC 688 : 1991 SCC (L&S) 649 : (1991) 16 ATC 521, considered and relied on
- d** C. Service Law — Promotion — No avenue for promotion — Applicability of the principle of estoppel — Held, State cannot escape from its constitutional obligations and take a stand that the employee accepted the offer of appointment, knowing well that there was no avenue for promotion — In such cases, principle of estoppel, inapplicable — Constitution of India, Arts. 16 & 14 and 12
- e** D. Constitution of India — Art. 226 — Interference in service matters — Held, mandamus cannot be issued directing the State to grant pay scale equivalent to Grades I and II of the State Judicial Service — Service Law — Promotion — Right to promotion — Absence of avenue for promotion — Direction by the High Court to provide "graded scale" for promotion — Propriety of
- f** The respondent employee, who held a Master's degree and a degree in Law, was appointed as Law Officer-cum-Draftsman in the Directorate of Cooperation, Government of Tripura in 1982, which was a single-cadre post with no promotional avenues. His several representations for upgrading the said post or in the alternative for providing two promotional avenues were not considered by the appellant State and hence he filed a writ petition seeking a specific direction to the appellant to provide at least two promotional avenues. The said contention was accepted by the High Court and by the impugned judgment the appellant State was directed to provide "the graded scale" with pay scale equivalent to Grade I and Grade II officer of the Tripura Judicial Service. Hence the present appeal by the appellant State.
- g**
- h**

[†] From the Judgment and Order dated 7-4-1997 of the Assam High Court at Gauhati in WA No. 10 of 1997

Attended
 by
 Advocate

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

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

P-M/Z/29429/SL

Advocates who appeared in this case :

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

Chronological list of cases cited

- | | |
|---|-------|
| 1. 1990 Supp SCC 638 : 1991 SCC (L&S) 649 : (1991) 16 ATC 521, O.Z. | 67d-c |
| <i>Hussain (Dr) v. Union of India</i> | |
| 2. (1989) 4 SCC 635 : 1990 SCC (L&S) 45 : (1989) 11 ATC 880, Council of | 67a |
| <i>Scientific and Industrial Research v. K.G.S. Bhatt</i> | |

The Judgment of the Court was delivered by

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

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

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

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

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

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

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

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

d 5. The matter came up for consideration again in *O.Z. Hussain (Dr) v. Union of India*² wherein this Court in ho uncertain terms laid down the law stating: (SCC pp. 691-92, para 7) "

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

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

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

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

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

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

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

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

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

(2004) 9 Supreme Court Cases 68

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

BASIC SHIKSHA PARISHAD AND ANOTHER

Appellants;

Versus

SUGNA DEVI (SMT) AND OTHERS

Respondents.

Civil Appeal No. 3957 of 1998[†], decided on December 12, 2003.

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

* Ed.: Para 8 corrected vide Corrigendum No. E.M/Ed.B.J./4/2004 dated 15-1-2004

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

Attested
Auth
Advocate

RAGHUNATH PD. SINGH V. SECRETARY, HOME (POLICE) DEPTT.

519

1988 (Supp) Supreme Court Cases 519

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

RAGHUNATH PRASAD SINGH

Appellant :

Versus

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

Respondents.

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

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

Appeal dismissed

R-M/8765/SLA

Advocates who appeared in this case :

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

ORDER

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

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

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

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

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

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

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

*Corrected
with
Advocate*

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

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

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

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

Sir,

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

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

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

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

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

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

1988 (Supp) Supreme Court Cases 521

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

STATE OF TAMIL NADU AND OTHERS .. Appellants ;

Versus

K. V. SESHADIRI AND OTHERS .. Respondents.

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

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

Appeal disposed of

R-M/8870/SLA

ORDER

1. Special leave granted.

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

*of Delhi v. Purshotam Dass Jhunjunwala*¹ proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere.

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

1990 (Supp) Supreme Court Cases 688

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

DR MS. O.Z. HUSSAIN

.. Petitioner;

Versus

UNION OF INDIA

.. Respondent.

Writ Petition (Civil) No. 1018 of 1989¹, decided on November 15, 1989

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

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

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

¹ (1983) 1 SCC 9; 1983 SCC (Cr) 123; (1983) 1 SCR 895

² Under Article 32 of the Constitution of India.

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

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

Writ petition allowed

H-M/9682/SLA

Advocates who appeared in this case :

Ranjit Kumar, Advocate, for the Petitioner;

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

ORDER

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

Submitted with Advocate

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

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

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

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

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

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

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

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

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

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

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

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

9. There shall be no directions for costs.

1990 (Supp) Supreme Court Cases 692

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

ANAMICA MISHRA AND OTHERS

Appellants;

Versus

U.P. PUBLIC SERVICE COMMISSION, ALLAHABAD
AND OTHERS

Respondents.

Civil Appeals Nos. 4582-4585 of 1989[†], decided on November 9, 1989

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

(Paras 4 & 5)

Appeals allowed

H-M/9674/SLA

[†] From the Judgment and Order dated July 29, 1988 of the Allahabad High Court in C.M.W.P. Nos. 11933 & 16493 of 1987, 15731 of 1987 and 12373 of 1987

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File in Court on 27/9/07
Court Officer.

Filed by: -
The Respondents
Through -
Manoj Kumar Das
Addl. C.G.S.C
CAT
27/9/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
20 SEP 2007
गुवाहाटी न्यायपीठ
Guwahati Bench

In the matter of:

O.A. no.90/07

Sri Subimal Roy

...Applicant

-Vs-

Union of India and ors

...Respondents

-AND-

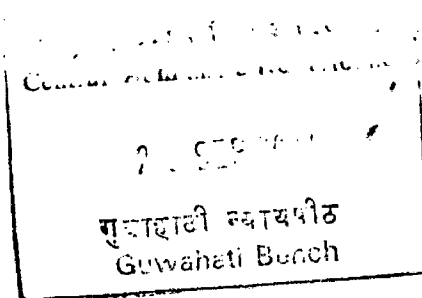
In the matter of:

Written statement on behalf of
all the respondents.

(WRITTEN STATEMENT ON BEHALF OF ALL THE RESPONDENTS)

I, Sri Prabhakar Mittal son of SRI...D...N...Mittal presently working as Executive Engineer (SG) Garrison Engineer, Silchar Division, Military Engineering Service do hereby state as follows :-

1. That I am the Executive Engineer (SG) Garrison Engineer, Silchar Division, Military Engineering Service. The copies of the aforesaid application have been served upon all the respondents. I have gone through the same being the Executive Engineer; I have understood the contents thereof. I have been authorized to file this written statement on behalf of all the respondents.
2. That I do not admit any of the averments except which are specifically admitted hereinafter and the same are deemed as denied.
3. That the applicant Sri Subimal Roy is presently working as Junior Engineer (Civil) in the office of the humble answering respondent. He was initially appointed as 'Sub-Overseer' in the department on 27.05.1969 and thereafter he was promoted as Superintendent B/R Grade-II which later on re-designated as Junior-Engineer (Civil) on 15.01.1998.



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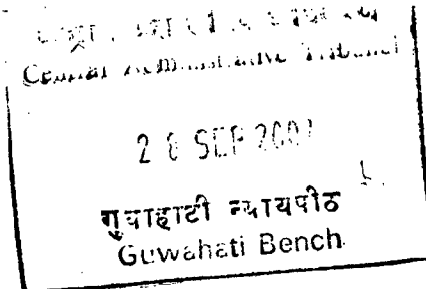
4. That in pursuance to the recommendation of the 5th Central Pay Commission the Govt. of India issued an office Memo dated 09.08.99 whereby introduced two financial upgradation under the Assured Career Progression (ACP) scheme of the Central Government Civilian Employees on completion of 12 and 24 years of services as a 'Safety net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues.

5. The grant of financial up gradation to Central Government Employees on completion of 12 and 24 years of service infact is subject to fulfillment of normal promotional norms i.e. benchmark, passing of Departmental Examination, seniority cum fitness as mentioned in clause 6 of "conditions for grant of benefits under the ACP scheme"

6. As per provision of recruitment rule for the appointment of Junior Engineer the Diploma in Engineer is requisite qualification. However the government of India, Ministry of Finance, Department of Expenditure vides their order no.12/24/2001/C dated 14.08.01 has approved scale of Rs.5000-Rs.8000/- with effect from 01.06.96 to Non-Diploma Holders who have been promoted as Junior Engineer as one time major. The Revision Scale for these categories has not yet been announced.

7. The applicant does not have any technical qualification and whereas the eligibility for appointment to Junior Engineer is degree/diploma in engineering and passing the departmental examination is mandatory.

8. In reference of the Department Of Personnel and Training vide Office Memorandum dated 18.07.01 under no.35034/1/97/Estt (D) a clarification no.53 was made and as per clarification those employees who fulfilled all promotional norms are eligible to be considered for benefit under ACP scheme.



9. The financial upgradation under ACP scheme can hold the eligibility criteria of normal promotional norms as per the recruitment rules are fulfilled. But in the instant case the appointment does not fulfill the eligibility criteria.

10. The appointment of the applicant is made to higher pay scale on absorption basis and as per clarification under point no.6 of Department of Personnel and Training under Office Memorandum no.35034/1/97/Estt (D) dated 10.02.2000 such appointment shall be treated as direct recruitment and past service/ promotion shall not be counted for benefit under ACP scheme. The ~~applicant~~ did not fulfilled the conditions incorporated in the Office Memorandum dated 09.08.99 and as such the ~~applicant~~ is not entitled to get the benefit of 2nd ACP under the scheme.

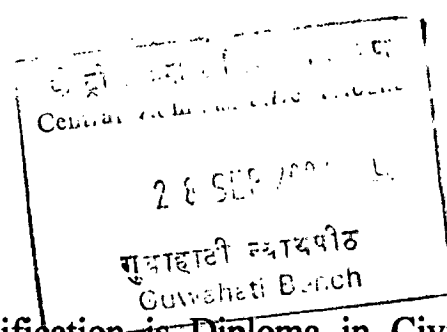
11. Reply to the facts of the case:

11.1. That with regards to the statements made in paragraphs 4.1 and 4.2 of the application the humble answering respondent has nothing to make comment on it as they are being matters of records of the case.

11.2. That with regards to the statement made in paragraph 4.3 of the application the humble answering respondent has nothing to make comment on it as these are the policy matter of the Government. The Office Memorandum dated 09.08.99 is related to the Assured Career Progression Scheme for the financial upgradation of the Central Government Employees. However the ACP scheme has some conditions for grant of benefits.

11.3. That with regards to the statements made in paragraph 4.4 of the application the humble answering respondent begs to state that the applicant joined as 'Sub-Overseer' and his educational qualification was matriculate. He was promoted to Superintendent B/R-II as per recruitment rule of SRO-229 of 10.11.1983. For the next promotion to B/R-I in the pay



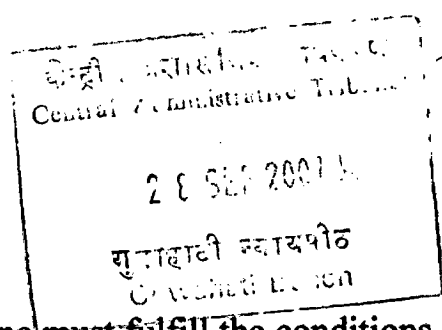


scale of Rs.5500-9000/-, the requisite qualification is ~~Diploma in Civil Engineering~~ and passing the procedure examination of Superintendent B/R-I. The said SRO-229 of 10.11.93 has been superceded by SRO-78 of 30.04.2001. As per SRO-78 the post of Superintendent B/R-II and B/R-I are merged into one post and re-designated as Junior-Engineer (Civil) in the pay scale of Rs.5000-8000/-. As per the said SRO for further promotion of Assistant Engineer (Civil) in the pay scale of Rs.6500-Rs.10,500/-, the requisite qualification is 'Diploma in Civil Engineering'. At present there is no promotional hierarchy of Junior Engineer (Civil) in the pay scale of Rs.5500-9000/-

11.4. That with regards to the statements made in paragraphs 4.5 and 4.6 of the application the humble answering respondent begs to state that the grant of financial up gradation was introduced vide Government of India, Ministry of Defence, letter no.PC90237/4603/EIC (Legal) 1993/D (works) dated 25.04.96 to erstwhile Superintendent B/R, E/M, SA- Grade-II/I now designated as Junior Engineer after completion of 5/15 years of service in the pay scale of Rs.5000-8000/- and Rs.5500-9000/- respectively. Thereafter the Government of India, Ministry of Personnel, Public Grievance and Pension issued an O.M. dated 09.08.99 under no.35034/1/97-Estt(D) making the financial upgradation after completion of 12/24 years instead of 5/15 years. Hence the earlier scheme of granting financial upgradation introduced on 25.04.96 has been cased from operating with effect from 09.08.99.

Whatever may be for entitlement of benefit under ACP scheme one must fulfill the requisite promotional norms. In the instant case the applicant did not fulfill the requisite qualification i.e. the Diploma in Civil Engineering. Further he even has not passed the departmental examination. Hence the applicant is not in any way entitled for higher upgradation as per the scheme of 25.04.96 or 09.08.99.

11.5. That with regards to the statements made in paragraph 4.7 of the application the humble answering respondent begs to state that the




benefit under the ACP scheme dated 09.08.99 one must fulfill the conditions incorporated in the said scheme i.e. Office Memorandum dated 09.08.99. Only those employees who fulfill all promotional norms for financial upgradation for e.g. benchmark, departmental examination, and seniority cum fitness are eligible to be considered for benefit under ACP scheme. Further it was clarified by the Government by clarification no.53 in reference to Department of Personnel and Training no.35034/1/97/Estt (D) IV dated 18.07.01, as per clarification only those employees who fulfill all promotional norms are eligible for being entitled to get the benefit under ACP scheme.

11.6. That with regards to the statements made in paragraph 4.8 of the application the humble answering respondent begs to state that consequent to the judgment of Central Administrative Tribunal, Bangalore in reference to the Junior Engineer recruited at lower post i.e. Sub-Overseer, Charge Mechanic , Charge Electricians who had completed 5 years of regular service as on 01.01.86 or after but before 09.08.99, case for 1 time special permission was desired to be taken up with government by Army Headquarter vide letter no.B/75011/RR/JE(Civil) CSCC dated 12.06.02. So far the applicant is concerned he was promoted to Superintendent B/R Grade II in 1998 and as such his case was not covered under one time benefit under the ACP scheme.

11.7. That the humble answering respondents deny the statements made in paragraph 4.9 of the application .It is stated that the applicant is not eligible or qualified for being entitled to get under the judgment of Central Administrative Tribunal, Bangalore or ACP scheme and in reference to his representation dated 16.02.04 the same was communicated vide letter no.13/84/ACP/JE/148/Engineers/EID dated 24.07.04.

11.8. That with regards to the statements made in paragraph 4.10 of the application the humble answering respondent has nothing to make



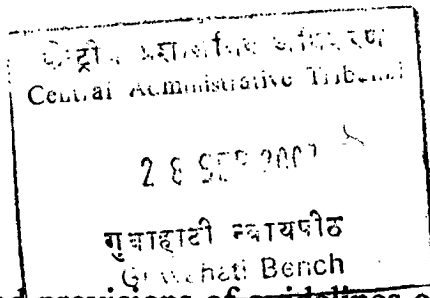
benefit under the ACP scheme dated 09.08.99 one must fulfill the conditions incorporated in the said scheme i.e. (Office Memorandum dated 09.08.99). Only those employees who fulfill all promotional norms for financial upgradation for e.g. benchmark, departmental examination and seniority cum fitness are eligible to be considered for benefit under ACP scheme. Further it was clarified by the Government by clarification no. 1 in reference to Department of Personnel and Training no. 35034/V97/211 (D) IV dated 16.07.01, as per clarification only those employees who fulfill all promotional norms are eligible for being entitled to get the benefit under ACP scheme.

11.6. That with regards to the statements made in paragraph 4.8 of the application the humble answering respondent begs to state that according to the judgment of Central Administrative Tribunal, Bangalore in reference to the Junior Engineer recruited at lower post i.e. Sub-Overseer (Charge Mechanic, Charge Electricians who had completed 5 years of regular service as on 01.01.86 or after but before 09.08.99, case for 1 time special promotion was decided to be taken up with Government by Army Headquarters vide letter no. B-7501/MR/3E((iv)) CSCC dated 15.06.02. So far the applicant is concerned he was promoted to Subordinate B-3 Grade. If in 1998 and as such his case was not covered under one time benefit under the ACP scheme.

11.7. That the humble answering respondents deny the statements made in paragraph 4.9 of the application. It is stated that the applicant is not eligible or qualified for being entitled to get under the judgment of Central Administrative Tribunal, Bangalore on ACP scheme and in reference to his representation dated 16.02.04 the same was communicated vide letter no. 1384/VCT/148/Engineers/III dated 24.07.04.

11.8. That with regards to the statements made in paragraph 4.10 of the application the humble answering respondent has nothing to make

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comment on it as these are the requirements and provisions of guidelines of ACP scheme.

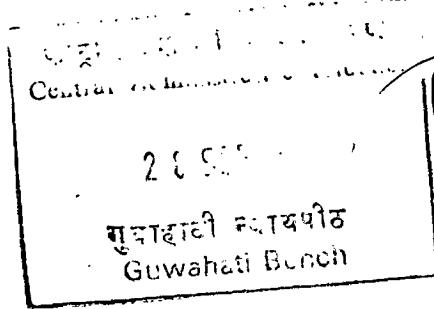
11.9. That with regards to the statements made in paragraph 4.11 of the application the humble answering respondent begs to state that the Office Memorandum in respect of the subject matter of Assured Career Progression scheme for the Central Government Civilian Employees issued incorporating some conditions for grant of the benefits under the scheme and as per the condition the norms for promotions are to be fulfilled for granting financial upgradation. In the instant case for further promotion to the higher grade requisite qualification is Diploma in Civil Engineering and pass the Departmental Examination. But here the applicant did not possess the Diploma in Civil Engineering nor passed in the Departmental Examination. Hence it is crystal clear that the applicant failed to satisfy the conditions incorporated in the scheme and as such he is not entitled to get the benefit as per the scheme.

11.10. That with regards to the statements made in paragraph 4.12 of the application the humble answering respondent has nothing to make comment on it as they are being the matters of records of the case.

11.11. That with regards to the statements made in paragraph 4.13 of the application the humble answering respondent begs to state that the department complied with the Hon'ble Tribunal's order dated 06.10.2005 and accordingly passed a speaking order dated 26.04.06 by assigning the reason as to why his case was not considered for financial upgradation.

11.12. That with regards to the statements made in paragraph 4.14 of the application the humble answering respondent has nothing to make comment on it as they being are the requirements of the ACP scheme. He however does not agree with the statements which are contrary to the records.

A handwritten signature in black ink, located at the bottom right of the page.



11.13. That the humble answering respondent denies the correctness of the statements made in paragraph 4.15 of the application. He further categorically stated that the applicant is not eligible and qualified for being entitled to get the benefit under the ACP scheme as he did not fulfill the criteria of the recruitment rules as well as the conditions incorporated in the ACP scheme.

11.14. That with regards to the statements made in paragraphs 4.16 to 4.21 of the application the humble answering respondent begs to state that the government time to time introduced the Office Memorandum relating to Assured Career Progression scheme to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Thus, thereby, it is meant that the financial upgradation takes the place of promotion. So, far the promotion in department is concerned than definitely one must have to fulfill the promotional norms and which is specifically cited in the ACP scheme. If one is not eligible for being promoted to the higher post then definitely he is also not eligible for being entitled to get the financial upgradation. The applicant in the present application tried to establish his case by ignoring all promotional norms which is infact is a mandatory provision to get the benefit under the ACP scheme.

11.15. That with regards to the statements made in paragraphs 4.22 of the application the humble answering respondent begs to state that in the present application the applicant tried to differentiate the meaning of the promotion only to get any how the relief as prayed for by the misinterpreting the aim and object of the ACP scheme. It is stated that Central Government Civilian Employee who infact fulfilled the requirements as well as conditions incorporated in the scheme are eligible to get the benefit under the ACP scheme. The main aims and objective of the ACP scheme is to grant benefit to the eligible Central Government Employee who are infact

qualified and eligible for being promoted to the higher post but due to lack of adequate promotional avenues they are not getting the deserved promotion. The scheme formulated the conditions and one of the conditions is the fulfillment of the normal promotional norms. One who does not have the requisite norms as per ACP scheme is not entitled to get the benefit of financial upgradation.

It is further stated that in the present case the promotion for higher grade the passing of Diploma Engineering is mandatory. Further passing of the Departmental Examination is also necessary. However in the instant case the applicant does neither have the requisite qualification nor passed the departmental examination.

11.16. That with regards to the submissions made in paragraphs 4.23 and 4.24 of the application the humble answering respondent begs to submit that to get the financial upgradation one must has to fulfill the promotional norms. The present applicant infact is not qualified and eligible for being promoted to the higher post. Consequently he is not eligible to get the 2nd financial upgradation.

12. Reply to the grounds of the case:

12.1. In response to the ground 5.1 the humble answering respondent has nothing to make comments as the averments made therein relates to the requirements of the ACP scheme.

12.2. In response to the grounds 5.2 of the application the humble answering respondent begs to submit that the applicant promoted from Sub-Overseer to Junior Engineer (Civil) on 15.01.98 without having any technical qualification and as his appointment is made to higher pay scale on absorption basis. And as per point 6 of the Department of Personnel and Training O.M. no. 35034/1/97-Estt (D) vol. IV dated 10.02.2000; such appointment shall not be count for benefit under ACP. Hence granting of 2nd ACP from 22nd May 1993 is not applicable to the applicant.



qualified and eligible for being promoted to the higher post but due to lack of adequate promotional avenues they are not getting the deserved promotion. The scheme formulated the conditions and one of the conditions is the fulfillment of the normal promotional norms. One who does not have the requisite norms as per ACP scheme is not entitled to get the benefit of financial upgradation.

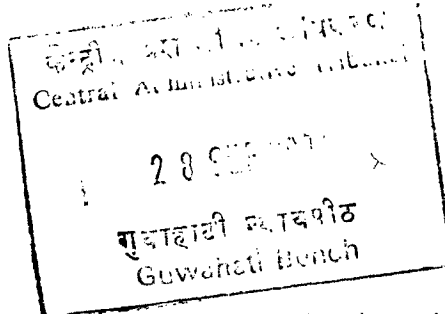
It is further stated that in the present case the promotion for higher grade the passing of Diploma Engineering is mandatory. Further passing of the Departmental Examination is also necessary. However in the instant case the applicant does not have the requisite qualification nor passed the departmental examination.

11.16. That with regards to the submissions made in paragraphs 4.23 and 4.24 of the application the humble answering respondent begs to submit that to get the financial upgradation one must has to fulfill the promotional norms. The present applicant in fact is not qualified and eligible for being promoted to the higher post. Consequently, he is not eligible to get the 3rd financial upgradation.

12. Reply to the grounds of the case

12.1. In response to the ground 2.1 the humble answering respondent has nothing to make comments as the averments made therein relates to the requirements of the ACP scheme.

12.2. In response to the grounds 2.2 of the application the humble answering respondent begs to submit that the applicant promoted from Sub-Overseer to Junior Engineer (Civil) on 12.01.98 without having any technical qualification and as his appointment is made to higher pay scale on absorption basis. And as per point 6 of the Department of Personnel and Training O.M. no. 32034/97-Estt (D) vol. IV dated 10.02.2000 such appointment shall not be count for benefit under ACP. Hence granting of 3rd ACP from 23rd May 1993 is not applicable to the applicant.



12.2. In response to the grounds 5.3 and 5.4 of the application the humble answering respondent begs to submit that the conditions laid down in annexure 1 of the Office Memorandum dated 09.08.99 is simultaneously and concurrently applicable to all individuals. The ACP scheme provides to financial upgradation on completion of 12/24 years of regular service respectively. However the grant of financial upgradation under the ACP scheme shall be subject to the conditions mentioned in Annexure 1 of the O.M. dated 09.08.99.


Hence one has to fulfill or satisfy the conditions incorporated in the said scheme.

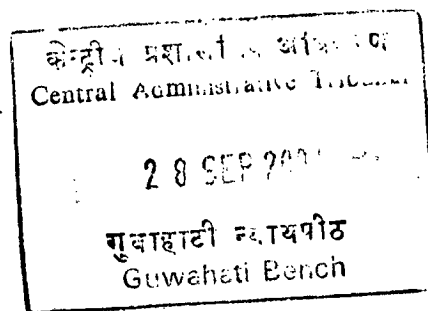
12.3. In response to the grounds 5.5 of the application the humble answering respondent has nothing to make comment on it.

12.4. In response to the grounds 5.6, 5.7 and 5.8 of the application the humble answering respondent begs to submit that the promotion is a condition of service but such promotion can be granted only when all promotional norms as per recruitment rules are fulfilled.

12.5. In response to the grounds 5.9 of the application the humble answering respondent begs to submit that the Office Memorandums are the guidelines/ circulars issued by the Government time to time and these are administrative orders. It is very interesting to know that the applicant on one hand sought for financial upgradation under the scheme of ACP and on the other hand sought for setting aside the conditions incorporated in the ACP scheme which infact is the part and parcel of the Office Memorandum of the ACP scheme.

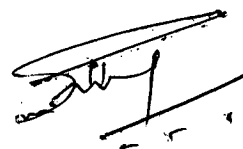
12.6. In response to the grounds 5.10 of the application the humble answering respondent begs to submit that so far the case of the applicant is concerned the passing of the departmental examinations is a criterion for being promoted to a higher post.

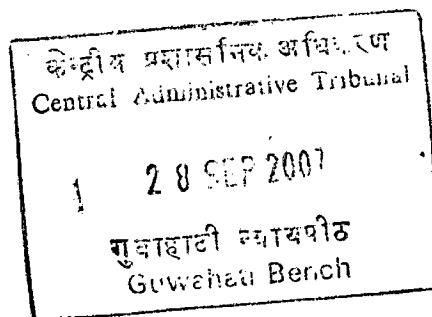




12.7. In response to the grounds 5.11 and 5.12 of the application the humble answering respondent begs to submit that as he did not fulfill the promotional norms having no requisite qualifications his case was not considered.

12.8. The answering respondent begs to submit that the instant writ petition has no merit at all and is liable to be dismissed.





VERIFICATION.

I, Sri Prabhakar Mittal, son of *Shri...D...N...Mittal*.....
presently working as Executive Engineer (SG) Garrison Engineer, Silchar
Division, Military Engineering Service do hereby verify that the statements
made in paragraphs *2, 4, 5, 7, 9, 11, 12, 13, 14, 15* are true to my knowledge ;
those made in paragraphs *3, 6, 8, 10, 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100* are being matters of
records of the case derived therefrom which I believe to be true and the rest
are my humble submission before this Hon'ble Tribunal.

I have not suppressed any materials thereof.

And I sign this verification on *27th* day of *Sept* 2007.


DEPONENT.

(PRABHAKAR MITTAL, IDSE)
Executive Engineer (SG)
Garrison Engineer, Silchar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Additional Rejoinder in O. A. No. 90 /2007

Shri Subimal Roy

-Versus -

Union of India & Others

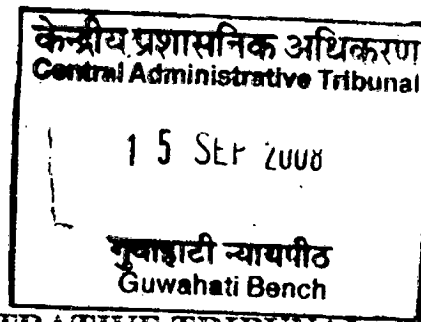
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04.	B	Copy of the judgment passed by the Hon'ble Andhra Pradesh High Court on 05.06.2007 in WP No. 24603 of 2007.	9-10

Date: 15.09.08

Filed by
M Dutta
Advocate

69 1



Filed by the applicant
through U. Dutta, advocate
on 15.09.08

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

In the matter of: -

O.A. No. 90/2007

Shri Subimal Roy.

.... Applicant.

-Versus-

Union of India and Others.

.... Respondents.

-And-

In the matter of: -

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

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

1. That in paragraph 11.4 of the written statement, it has been stated by the respondents Union of India that the applicant was a matriculate and recruited as Sub-overseer and promoted as J.E (Civil) in the pay scale of Rs. 5000-8000/-, which is a highest scale can be tenable by a matriculate candidate.

It is pertinent to mention here that in the written statement in O.A No. 241/2004 (Shri M.L. Goswami -Vs- U.O.I & Ors.) of the similarly situated applicant, it has been stated in para 1 (C) and (d) of the written statement by the same respondents as follows:-

“(C) As per earlier Recruitment Rules of Supdt B/R Gde-II (Re-designated as JE (civil) published in SRO-299 dated 10 Nov 1983 as amended vide SRO-161 dated 12 may 1988 (Annexure R-III). 10% vacancy of Supdt B/R Gde-II was filled up by promotion from

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केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal
15 SEP
गुवाहाटी न्यायपीठ Guwahati Bench

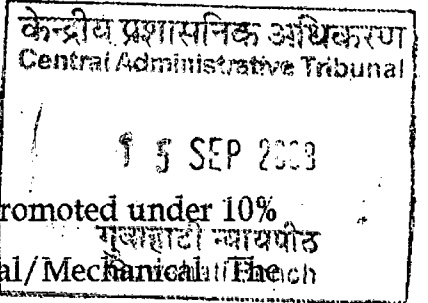
direct entry Matriculate Sub-Overseers ~~having 15 years regular~~ service in the grade. MES/228556 Shri Mohan Lal Goswami, J.E (CIVIL) was appointed as Sub-overseer on 13 Mar 1968 and promoted to Supdt B/R Gde-II (Re-designated as JE (civil) vide this HQ letter No. 131841/4/473/Engrs/E1D dated 24 Sep 1994 (Annexure-I of OA) as per above Rules, which is counted as first financial up gradation to the applicant. It is also intimated that there is no provision for promotion from Sub-overseer to JE (Civ) in the revised recruitment Rules of JE (Civil) published vide SRO-78 dated 30 Apr 2001 (Annexure-R-IV).

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

It is quite clear from the above categorical statement of Union of India that as per amended recruitment rule of 1983 dated 12.05.1988, 10% of vacancy of Superintendent B/R Grade-II was filled up by promotion from direct entry matriculate Sub-overseer having 15 years of regular service in the grade, accordingly applicant who was matriculate and appointed as Sub-overseer on 13.03.1968 was promoted to the post of B/R, Grade-II vide letter dtd. 24.09.1994 after a lapse of about 27 years and this was the first promotion granted to the applicant. It is relevant to mention here that the

Seebimal Roy

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

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

Saeedul Roy

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केन्द्रीय प्रशासनिक न्यायाधीश Central Administrative Tribunal 15 SEP 2008 गुवाहाटी न्यायपीठ Guwahati Bench
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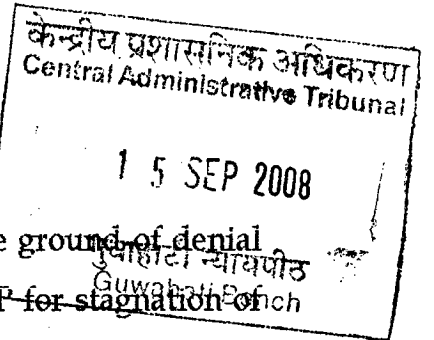
Engineer and as such the aforesaid qualification are also the pre-condition for granting ACP benefits to the employees of MES working in the cadre of JE, Civil.

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

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

Debi Prasad Roy

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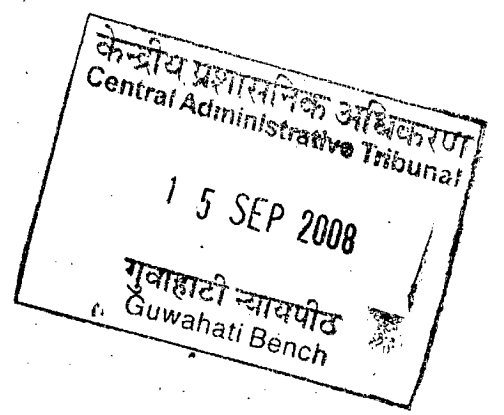
non possession of diploma in civil engineering cannot be ground of denial of 2nd ACP. The very object of granting of benefit of ACP for stagnation of the employees in a particular cadre. In this connection the applicant relies upon the decision of the Hon'ble Apex Court in the case of Raghunath Prasad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

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

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

Seebimal Roy

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VERIFICATION

I, Shri Subimal Roy, S/o Late Satyabrata Roy, aged about 60 years, Junior Engineer (Civil), (retired), Garrison Engineer, Silchar Division, MES, P.O - Arunachal, Dist- Cachar, Assam, do hereby verify that the statements made in Paragraph 1 to 4 of the additional rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on the 13th day of September 2008.

Subimal Roy

1988 (Supp) Supreme Court Cases 518

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

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

Petitioners

Versus

REGIONAL PROVIDENT FUND COMMISSIONER
AND OTHERS

Respondents

Writ Petitions Nos. 8000-01 of 1982 with Writ Petitions

Nos. 6976 of 1982, 2834, 5852, 5333-55, etc.

of 1983 and 12791-94, 12642-54 and 1603

of 1984, decided on January 29, 1988

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

Writ petitions dismissed

R-M/8872/SL

ORDER

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

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

Accepted
Aduta
Adv

1988 (Supp) Supreme Court Cases 519

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

RAGHUNATH PRASAD SINGH

Appellant

Versus

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

Respondents

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

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

Appeal dismissed

R-M/8765/SLA

Advocates who appeared in this case :

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

ORDER

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

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

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

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

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

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

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

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

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

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

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

Sir,

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

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

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

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

to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply with this direction, it should, within two months thereafter, give a fresh opportunity to personnel in the police wireless organisation to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organisation. 1

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

1988 (Supp) Supreme Court Cases 521

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

STATE OF TAMIL NADU AND OTHERS Appellants ;

Versus

K. V. SESHADIRI AND OTHERS Respondents.

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

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

Appeal disposed of

R-M/8870/SLA

ORDER

1. Special leave granted.

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

ANDHRA PRADESH HIGH COURT

Before : L. Narasimha Reddy, J.

WP No. 24603 of 2007

Decided on 5.6.2007

S. Chittaranjan Das and others

Versus

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

Petitioners

Respondents

For the Petitioners : Ms. N. Usha Kiran for Mr. W.B. Srinivas, Advocates.

For the Respondent No.1 : Mr. M. Subrahmanyam, Advocate.

Constitution of India, Articles 16 and 226—Promotion—Seniority—

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

Cases referred :

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

JUDGMENT

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

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

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

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

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

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

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

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

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

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

*Admitted
Putha
Adv*

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

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

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

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

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

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

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

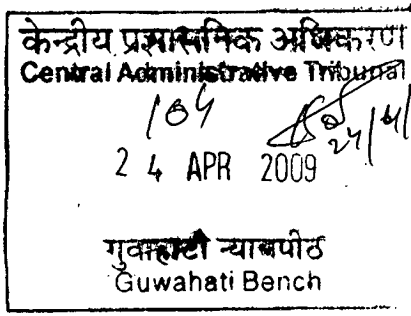
16. In Jagdish Kumar and others v. State of H.P. and others, 2005 (1) DT (SC) 1123, similar question fell for consideration before the Supreme Court. It was observed as under:

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

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

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

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



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

GUWAHATI BENCH

O.A.no.90/07

Sri Subimol Roy
...Applicants.

-Vs-

Union of India and ors
...Respondents.

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4.	B	Copy of the O.M. dated 18-07-01 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training)	17 - 33

Received
24/04/09
Mita

Filed by:

Mrs. Manjula Das,
Central Govt.Counsel, UOI
CAT, Guwahati bench,

24 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

80

Filed by:-
The Respondents
Through:-
Mr. Subimol Roy
Counsel
Central Govt. CAT
U.O.I., CAT
24.4.09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.no.90/07

Sri Subimol Roy
...Applicants.

-Vs-

Union of India and ors
...Respondents.

-AND-

IN THE MATTER OF:

Reply statement on behalf of the
respondents to the rejoinder filed by
the applicant.

(REPLY STATEMENT ON BEHALF OF THE RESPONDENTS)

I, Sri Prabhakar Mittal, S/o Sri D.N. Mittal, aged about...43...years presently working as the Garrison Engineer, Silchar Division, Military Engineer Service do hereby solemnly affirm and say as follows:

1. That I am the Garrison Engineer, Silchar Division, Military Engineer Service. The copies of the rejoinder have been served upon the counsel representing the respondents. I have gone through the same and have understood the contents thereof.

2. That I do not admit any of the averments except which are specially admitted hereinafter and the same are deemed as denied.

3. That with regard to the statements made in paragraph 1 of the rejoinder the humble answering respondent begs to reply that the applicant Sri Subimol Roy was initially appointed as Sub-Overseer in the department on 27-05-1969 and thereafter was promoted as Superintendent (B/R) Grade II on 15-01-1998. The post of Superintendent (B/R) was subsequently redesignated as Junior


(Prabhakar Mittal)

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

24 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Engineer (Civil). As per Military Engineer Service Superintendent (B/R) Grade I & II Recruitment Rules, 1983 the requisite qualification and experience for promotion to the post of Superintendent (B/R) Grade I from Grade II is as follows-

"Promotion:

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

Or

- (b) Superintendents Buildings/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 Superintendent (Buildings / 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."

Thereafter the said Recruitment Rules, 1983 was partially superseded in the exercise of powers conferred by the proviso to Article 309 of the Constitution in 1988, then 2001 and thereafter the said Rules was partially superseded and is called the Military Engineer Services, Junior Engineer (Civil) and Junior Engineer (Electrical and Mechanical) Recruitment (Amendment) Rules, 2008. The said Recruitment Rules provides method of recruitment and qualification as follows-

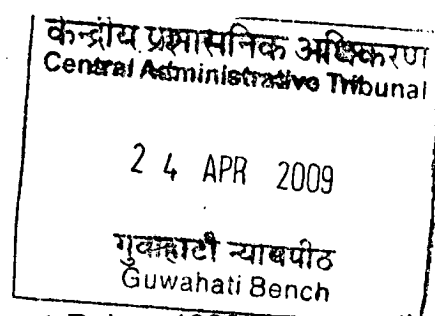
"Junior Engineer (Civil) by promotion:

- (a) Matriculation or equivalent.
- (b) Three years Diploma in Civil Engineering from a recognized Institute or University or Board or Degree in Civil Engineering from a recognized University or Institution or Board or equivalent.


(Prabhakar Mittal)

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It is stated that as per Recruitment Rules, 1983 for promotion to the post of Superintendent (B/R) Grade II it was provided in Column 12 that who are Engineer Graduates in Civil Engineering or equivalent and have minimum of 3 years' of regular service or Superintendent (B/R) who holds a recognized Diploma in Civil Engineering with a minimum of 5 years' of regular service in the grade and had passed Procedure Examination procedure Examination for Superintendent (B/R) is qualified for being promoted to the post of Superintendent. The existing Rules 2008 also provides the requisite qualification for appointment to the post of Junior Engineer. As per this Rules the minimum qualification is as follows-

"Matriculation or equivalent + 3 years Diploma in Civil Engineering from a recognized Institute or University or Board or Degree in Civil Engineering from a recognized University or Institution or Board or equivalent."

Abstract copy of the Recruitment Rules, 2008 is annexed herewith and marked as Annexure-A.

4. That with regard to the statements made in paragraphs 2 and 3 of the rejoinder the humble answering respondent begs to reply that O.M. dated 09.08.99 introduced the Scheme for granting financial upgradation to Group B, C, and D employees after completion of 12 and 24 years of service. The condition for granting benefits under ACP Scheme has been provided and as per Clause 6 fulfillment of normal promotional norms is required for granting the financial upgradation.

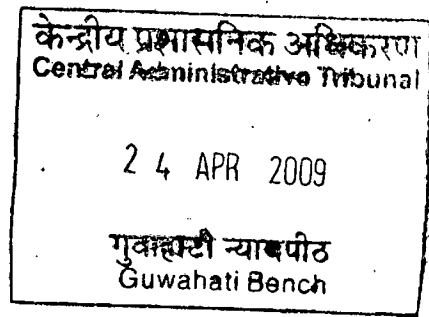
It is further stated that O.M. dated 18-07-01 issued by the Ministry of personnel, Public Grievances and Pensions (Department of Personnel & Training) clarified some various "points of doubt". The clarification no. 53 says that,

"only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACPs. Therefore various stipulations and conditions specified in the recruitment rules for promotion to next higher grade, including higher/additional educational qualification, if prescribed would need to be met even for consideration under ACPs.

(Handwritten Signature)
(Handwritten Name: M. H. H.)

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Copy of the O.M. dated 18-07-01 is annexed herewith and marked as Annexure-B.

5. That with regard to the statements made in paragraph 4 of the rejoinder the humble answering respondent begs to submit that the post of Superintendent (B/R) Grade I & II was merged and redesignated as Junior Engineer (Civil) in Military Engineer Services. It is not that the applicant was promoted to the post of Superintendent (B/R) Grade I. The applicant is not even eligible for promotion to higher post from the redesignated post and he is not entitled to get the benefit under ACP.

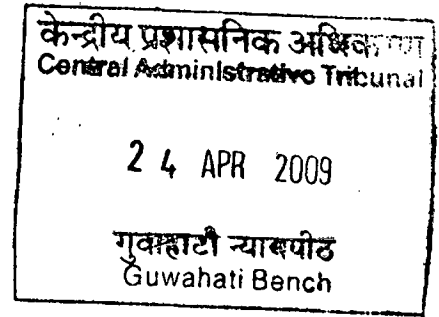
6. That the humble answering respondent begs to submit that the Annexure A and B to the rejoinder which referred the case infact has no relevancy in the instant case of the applicant.

7. Thus the humble answering respondent begs to state that the original application has no merit at all and is liable to be dismissed.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a small flourish.

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VERIFICATION

I, Sri Prabhakar Mittal, S/o Sri D.N. Mittal, aged about 43 years presently working as the Garrison Engineer, Silchar Division, Military Engineer Service do hereby solemnly verify and state that the statements made in paragraphs 1, 2 are true to my knowledge and belief, those made in paragraphs 3, 4 and 5 being matters of records of the case, are true to my information derived therefrom which I believe to be true and the rests are my humble submission before the Hon'ble Tribunal.

And I sign this verification on the 24th day of April 2009 at Guwahati

DEPONENT

(Prabhakar Mittal)

24 APR 2009

गुवाहाटी न्यायापीठ
Guwahati Bench

ANNEXURE - A

85

(TO BE PUBLISHED IN THE GAZETTE OF INDIA, PART II, SECTION 4)
GOVERNMENT OF INDIA
MINISTRY OF DEFENCE

Notification

New Delhi, the

2008

SRO 41. In the exercise of the powers conferred by the provision to article 309 of the Constitution, and in partial supersession of the Military Engineer Services, Junior Engineer (Civil) and Junior Engineer (Electrical and Mechanical) Recruitment Rules 2001, except as respect things done or omitted to be done before such supersession, the President hereby makes the following rules regulating the method the Recruitment to the post of Junior Engineer (Civil) and Junior Engineer (Electrical and Mechanical) in the Military Engineer Service, namely:-

1. **Short title and commencement:** - (1) These rules may be called the Military Engineer Services, Junior Engineer (Civil) and Junior Engineer (Electrical and Mechanical), Recruitment (Amendment) Rules, 2008.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. **Number of Posts, Classification and Scales of Pay:** - The number of said posts, their classification and the scales of pay attached thereto shall be as specified in Column 2 to 4 of the Schedule attached to these rules.
3. **Method of Recruitment, age limit and other qualification etc.:** - The method of recruitment, age limit, qualification and other matters relating to the said posts shall be as specified in Columns 5 to 14 of the Schedule aforesaid.
4. **Disqualification:** - No person, -
(a) Who have entered into or contracted a marriage with a person having a spouse living, or
(b) Who, having a spouse living, has entered into or contracted a marriage with any person,
Shall be eligible for appointment to any said posts.

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of the rule.

Certified to be true
24/4/09

5. **Power of relax:** - Where the Central Government is of opinion that it is necessary or expedient so to do, it may by order, and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class of persons.

6. **Savings:** - Nothing in these rules shall affect reservations, relaxations and other concessions required to be provided for Scheduled Castes, Scheduled Tribes, the other Backward Classes, Ex-servicemen and other special categories of persons, in accordance with the orders issued by the Central Government from time to time in this regard.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
24 APR 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

1/11

12/11

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

24 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

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1
Schedule

Name of post	Number of post	Classification	Scale of pay (Rs)	Whether selection cum-seniority or selection by merit	Age limit for direct recruits	Whether benefit of added years of services admissible under Rule, 30 of Central Civil Services (Pension) Rules, 1972
1 Junior Engineer (Civil)	2 3343* (for year 2008) * Subject to variation dependent on work load	3 General Central Service, Group 'C' Non-Gazetted, Non-Industrial-Non-Ministerial	4 Rs.5000-150-8000 (Entry Grade)	5 Not applicable	6 * 18-27 years *Note: 1.Upper age limit will be Relaxable up to the age of 35 years for departmental candidates. Note2.The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu & Kashmir State, Lahaul and Spiti District and Pangri Sub-Division of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands or Lakshdweep). Note.3. In respect of the posts, appointment to which are made through Employment Exchanges or Advertisements in "Employment News" or other advertising media, the crucial date for determining the age limit will, in each case, be the last date up to which the Employment Exchanges are asked to submit the names or last date of receipt of application given in the "Employment News" or other advertising media.	7 Not applicable

8	9	10	11	12	13	14
Educational and other qualifications required for direct recruits	Whether age and educational qualification prescribed for direct recruits will apply in case of promotees	Period of probation, if any	Method of recruitment whether by direct recruitment or by promotion or by deputation or absorption and percentage of posts to be filled by various method	In case of recruitment by promotion or deputation or absorption, grade from which promotion or absorption to be made	If a Departmental Promotion Committee exists, what is its Composition	Circumstances in which Union Public Service Commission is to be consulted in making recruitment
<p>(a) Matriculation or equivalent.</p> <p>(b) Three years Diploma in Civil Engineering from a recognized Institute or University or Board or Degree in Civil Engineering from a recognized University or Institution or Board or equivalent.</p>	Not applicable	Two years	<p>(i) 80% by direct recruitment.</p> <p>(ii) 20% by promotion from amongst employees falling which by direct recruitment.</p> <p>Note: 10% of the posts filled by way of direct recruitment will be filled by deputation or re-employment (for Ex-Servicemen) in accordance with Ex-servicemen(Re-employment in Central Civil Services and posts) Rules 1979 notified under Government of India, Ministry of Home Affairs GSR No. 1530 dated 29 Dec. 1979 and as amended and possessing qualification as specified in Column 8 falling which by direct recruitment.</p>	<p>Highly Skilled holding qualifications as indicated in column 8 with eight years regular service in Highly Skilled grade falling which Sixteen years regular combined service in the grade of Highly Skilled and Skilled falling both Skilled holding qualifications as indicated in Column 8 with sixteen years regular service in the grade falling both by direct recruitment.</p> <p>Note: 1. The service rendered as Master Craftsman will be deemed to be included for eligibility criteria.</p> <p>Note: 2. Master Craftsman will be enblock senior to Highly Skilled and Skilled.</p> <p><u>Deputation or re-employment (For ex-servicemen):</u></p> <p>The Armed Forces personnel including combatants from Corps of engineers due to retire or who are to be transferred to reserve within a period of one year and have the requisite qualifications and experience as prescribed under column 8 shall also be considered. Such persons would be given deputation up to the date on which they are due for release from the Armed Forces. Thereafter they may be re-employed as civilian employees in the entry grade of Rs. 5000-6000.</p>	<p>Group 'C' Departmental Promotion Committee consisting of:-</p> <p>1) Chief Engineer or his nominee with not less than the rank of Superintending Engineer or equivalent Chairman</p> <p>2) Executive Engineer or equivalent Member</p> <p>3) Group 'A' Civilian Gazetted Officer or a Commissioned Officer not connected with the Department Member</p>	Not applicable

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no of post	Number of post	Classificati on	Scale of pay (Rs)	Whether selection cum-seniority or selection by merit	Age limit for direct recruits	Whether benefit of added years of services admissible under Rule, 30 of Central Civil Services (Pension Rules, 1972
1	2	3	4	5	6	7
2. Junior Engineer (Electrical and Mechanical)	2161* (for year 2008) *Subject to variation dependent on work load	General Central Service, Group 'C' Non-Gazetted, Non-Industrial-Non Ministerial	Rs.5000-150-8000 (Entry Grade)	Not applicable	* 18-27 years *Note: 1. Upper age limit will be relaxable up to the age of 35 years for departmental candidates. Note.2. The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu & Kashmir State, Lahaul and Spiti District and Pangl Sub-Division of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands or Lakswdeep). Note: 3. In respect of the posts, appointment to which are made through Employment Exchanges/Advertisements in "Employment News" or other advertising media, the crucial date for determining the age limit will, in each case, be the last date up to which the Employment Exchanges are asked to submit the names or last date of receipt of application given in the "Employment News" or other advertising media.	Not applicable

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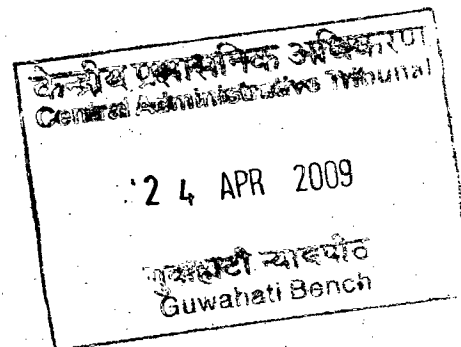
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Qualifications required for direct recruits	Whether age and educational qualification prescribed for direct recruits will apply in case of promotees	Period of probation, if any	Method of recruitment whether by direct recruitment or by promotion or by deputation or absorption and percentage of posts to be filled by various methods	In case of recruitment by promotion or deputation or absorption, grade from which promotion or absorption to be made	If a Departmental Promotion Committee exists, what is the Composition	Circumstances in which Union Public Service Commission is to be consulted in making recruitment
8	9	10	11	12	13	14
(a) Matriculation or equivalent (b) Three years Diploma in Electrical or Mechanical or Automobile Engineering from recognized Institute or University or Board or Degree in Electrical or Mechanical or Automobile Engineering from recognized Institute or University or Board or equivalent	Not applicable	Two years	(i) 80% by direct recruitment. (ii) 20% by promotion from amongst Departmental employees falling which by direct recruitment. Note: 10% of the posts to be filled by way of direct recruitment will be filled by deputation or re-employment (for Ex-Servicemen) in accordance with Ex-servicemen (Re-employment in Central Civil Services and posts) Rules 1979 notified under Government of India, Ministry of Home Affairs GSR No. 1530 dated 29 Dec 1979 and as amended and possessing qualification as specified in Column 8 falling which by direct recruitment.	Highly Skilled holding qualifications as indicated in column 8 with eight years regular service in Highly Skilled grade falling which sixteen years regular combined service in the grade of Highly Skilled and Skilled failing both Skilled holding qualifications as indicated in Column 8 with sixteen years regular service in the grade falling both by direct recruitment. Note 1. The service rendered as Master Craftsman will be deemed to be included for eligibility criteria. Note 2. Master Craftsman will be enblock senior to Highly Skilled and Skilled. <u>Deputation or re-employment (for Ex-Servicemen):</u> The Armed Forces personnel including combatants from Corps of Engineer due to retire or who are to be transferred to reserve within a period of one year and have the requisite qualifications and experience as prescribed under column 8 shall also be considered. Such persons would be given	Group 'C' Departmental Promotion Committee Consisting of:- 1) Chief Engineer or his nominee with not less than the rank of Superintending Engineer or equivalent Chairman 2) Executive Engineer or equivalent Member 3) Group 'A' Civilian Gazetted Officer or a Commissioned Officer not connected with the Department Member	Not applicable

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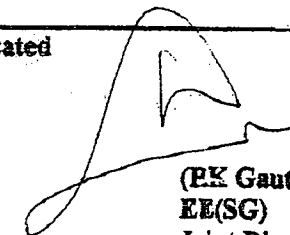
9	10	11	12	13	14
			deputation up to the date on which they are due for release from the Armed Forces. Thereafter they may be re-employed as civilian employees in entry grade of Rs. 5000-8000.		

File No. PC-4.B/75011/JE(Civil)&JE(E&M)/Amendt/CSCC/ 296 /D(Apptts)/08





(C.J. Jose)
Under Secretary to the Government of India

Authenticated


(P.K. Gautam)
EE(SG)
Joint Director(Pers)/CSCC

Publish


(C.J. Jose)
Under Secretary to the Government of India

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New Delhi, the 24.4.2009

Notification

S.R.O. 153 In exercise of the power conferred by the proviso to article 309 of Constitution and in supersession of the Military Engineer Services, Surveyor Assistants Recruitment Rules, 1983, except in respects things done or omitted to be done before supersession, the President hereby makes the following rules regulating the method of recruitment to the post of Junior Engineer (Quantity Surveying and Contracts) in Military Engineer Services, namely:-

1. Short title and commencement.-(1) These rules may be called the Military Engineer Services, Junior Engineer (Quantity Surveying and Contracts) Group 'C' Recruitment Rules, 2002.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Number of post, classification and scales of pay.— The number of the said post, classification and the scale of the pay attached thereto shall be as specified in column 1 of the Schedule annexed to these rules.

3. Method of recruitment, age limit, other qualifications, etc.— The method of recruitment, age limit, qualifications and other matters relating to the said post shall be as specified in columns 2 to 4 of the said Schedule.

4. Disqualification.— No person

(b) who has not yet attained or contracted a marriage with a person having living issue.

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(b) who having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to any of the said posts.

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and other party to the marriage and that there are other grounds for so doing, exempt any person from operation of this rule.

5. Power to relax:- Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing, relax of the provisions of these rules with respect to any class or category of persons.

6. Saving:- Nothing in these rules shall affect reservations, relaxation of age and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes, Ex-Servicemen and other special categories of persons in accordance with the orders issued by the Central Government from time to time in regard.

"THE SCHEDULE"
(Attached)

V. Chandra

FN No. 8 605/PW/SA/16/11/SCC/7/3/20/5A

(VA CHAVDA)

Under Secretary to the Govt of India

Authorised

M. L. Chandra

(JEM/MA/10/TRA)

FC

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Printed

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SCHEDULE

Name of post	Number of post	Classification	Scale of pay	Whether selection cum seniority or selection by merit or non selection post	Age limit for direct recruits	Whether benefit of added year of service admissible under rule 30 of the Central Civil Services (Pension) Rules, 1972
1	2	3	4	5	6	7
Junior Engineer (Quantity Surveying and Contracts)	1672* 2802	General Central Service, Group 'C' Non-Gazetted, Non-Ministerial	Rs. 5000-150-8000	Not applicable	*18-25 years	No
	Subject to variation dependent on workload					

*(Relaxable for Government servant in accordance with instructions or orders issued from time to time in this regard).

Note 1.- The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of J&K State, Lahaul and Spiti District and Pangri Sub-Division of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands or Lakshadweep.)

Note 2.- In respect of the posts, appointment to which are made through Employment Exchanges, the crucial date for determining the age limit shall, in such cases, be the last date up to which the Employment Exchanges are asked to submit the names.

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8	9	10	11	12	13	14
Qualifications for direct recruitment	Whether age and educational qualification prescribed for direct recruitment apply in the case of promotion	Period of probation, if any	Method of recruitment, whether by direct recruitment or by promotion or by deputation/absorption and percentage of each method	In case of recruitment by promotion/deputation/absorption, grade from which promotion/deputation/absorption will be	If Departmental Promotion Committee exists, what is its composition?	Circumstances in which Public Service Commission may be consulted in making recruitment
Matriculation or equivalent from a recognised school/college/Board (A) Three years Diploma in Civil Engineering from a recognised Institute/University Board or Degree; or passed Inter-mediate in Arts and Science (Division-II) of Institute of Engineers (India).	Not Applicable.	Two years	(i) 80% by direct recruitment. (ii) 20% by direct recruitment from amongst Departmental employees with five years' regular service and possession of the minimum educational qualifications as prescribed in column 8, failing which by direct recruitment. (iii) 10% by deputation/re-employment (for Ex-Servicemen) in accordance with the Ex-servicemen (Re-employment in Central Civil Services and Posts/Rules, 1979) notified under the Government of India, Ministry of Home Affairs GSR No. 1550, dated the 29 December 1979, as amended, and possessing qualification as prescribed for direct recruits in column 8, failing which by direct recruitment.	<u>Deputation/re-employment (for Ex-Servicemen):</u> The Armed Forces personnel including combatants from Corps of Engineers due to retire or who are to be transferred to reserve within a period of one year and have the requisite qualifications and experience as prescribed under column 8 shall also be considered. Such persons would be given deputation up to the date on which they are due for release from the Armed Forces. Thereafter they may be re-employed as civilian employees in the entry grade of Rs. 5000-8000.	Group 'C' Departmental Promotion Committee (for considering confirmation consisting of: 1. Chief Engineer or his nominee not below the rank of 'Superintending' Engineer or equivalent - Chairman 2. Executive Engineer or equivalent - Member 3. Group 'A' Civilian Gazetted Officer or a Commissioned Officer not connected with the Department - Member	Not applicable

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ANNEXURE - B

Government of India
Min of Personnel, Public Grievances
and Pensions (Deptt of Personnel & Trg)

New Delhi-110001
July 18, 2001

OFFICE MEMORANDUM

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

The undersigned is directed to invite reference to the Deptt of Personnel and Training Office Memorandum of even number dt 19/11/1999 regarding the Assured Career Progression Scheme (ACPS) and subsequent office memorandum dt February 10, 2000 clarifying various points of doubt received from various quarters.

2. Some more situations in which a doubt persists in various organisations in regard to applicability/implementation of ACPS Scheme have been brought to the notice of this Department. These have been duly examined and appropriate advice has been conveyed in individual cases. However, as it is observed that similar queries are being received from various other Ministries/Departments, it has been considered appropriate to issue a second set of clarificatory orders containing point-wise clarification to the various points of doubt.

3. Cases where the ACPS Scheme has already been implemented and be reviewed/rectified, if the same are not found to be in accordance with the Scheme/clarifications.

4. All Ministries/Departments may give wide circulation of clarificatory instructions for general guidance and action in the matter.

5. Hindi version would follow.

SC/-x x x
(R K Guel)

Deputy Secretary to the Govt of India

To : All Ministries/Departments of the Govt of India.
Copy to :

1 to 9. Concerned Secys/deptts head of office and firms.

Certified to be true
24/4/09

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OFFICE - ...
T.D. 10.07.2. 1)

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Clarification

33. An employee was promoted from G.O. to G.O. in the hierarchy in between G.O. and G.O. subsequent to such promotion, will be entitled to any more financial upgradation under the ACP (Scheme) (A.C.S) considering that he is already placed in the third level of the hierarchy.

The reply is in the affirmative. The employee who is promoted from G.O. to G.O. in the hierarchy subsequent to such promotion, will be entitled to any more financial upgradation under the ACP (Scheme) (A.C.S) considering that he is already placed in the third level of the hierarchy.

34. An employee has superannuated after 30.06.10. He was promoted from G.O. to G.O. in the hierarchy which ACPs was introduced. He has completed the required eligibility for grant of service as an ACP for grant of financial upgradation but he has not been screened by the screening committee for grant of ACPs. Will he be entitled for financial upgradation under ACPs?

In this regard, it is to be noted that the ACP (Scheme) (A.C.S) was introduced on 01.07.10. The employee who has completed the required eligibility for grant of service as an ACP for grant of financial upgradation but he has not been screened by the screening committee for grant of ACPs, will be entitled for financial upgradation under ACPs.

D. No. Point of Doubt

Clarification

34. CONTD...

If, however, the assessment also includes passing of a trade test/skill test/written exam (as prescribed for regular promotion) under ACPs & the employees had not qualified in such tests already, then it may not be possible to consider the retired persons, as assessment based on such tests is not possible after the date of superannuation.

35. Whether placement/appointment in higher scales of pay based on the recommendations of the Pay Commissions or committees set up to rationalise the cadres is to be reckoned as promotion/financial upgradation and offset against the two financial upgradations applicable under the ACP Scheme ?

Where all the posts are placed in the higher scale of pay, such as with or without a change in the designation, without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not to be treated as promotion/upgradation, where such rationalisation/restructuring involves creation of a number of new hierarchical grades in the rationalised set up & some of the incumbents in the pre-rationalised set up are placed in the hierarchy of the restructured set up in the grade higher than the normal corresponding level taking into consideration their length of service in existing pre-structured/pre-rationalised grade, then this will be taken as promotion/upgradation.

If the rationalised/restructured grades require possession of a specified nature of qualification and experience, not specified for the existing posts in pre-rationalised set up, and existing incumbents in pre-rationalised scale/pre-structured grades, who are in possession of the required qualifications/experience are placed directly in the rationalised upgraded post, such placement will also not be viewed as promotion/upgradation.

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S.No Points of doubt Clarification

35. CONTD.....

However, if existing incumbents in the pre-rationalised grade who do not possess the said qualification/experience are considered for placement in the corresponding rationalised grade after completion of specified length of service in the existing grade, then such a placement will be taken as promotion/upgradation.

Where placement in a higher grade involves assumption of higher responsibilities and duties, then such upgradation will be viewed as promotion/upgradation.

Where placement in a higher grade involves assumption of higher responsibilities and duties.

Where only a part of the posts are placed in a higher scale, those retained in the existing grade by involving creation of similar grade in the hierarchy requiring framing of separate recruitment rules for upgraded posts, those of existing incumbents to the grade of upgradation involved, as the upgraded post will also be treated as promotion/upgradation and must be offset against entitlement under the ACPs.

For any doubts in this regard matter should be referred to the Department of Personnel & Training (D.P. Section) giving all relevant details.

In reply to points of doubt No. 6 in D.P.T.O.M. dt 10.02.2000, it has been stated that where a person is appointed on direct recruitment/transfer basis from another posts in the same grade, the past regular service as well as past promotions, in the earlier post, will be counted for computing regular service for the purpose of ACPs in the new hierarchy. The reasons being that so long as a person is in the same scale during the period in question, it is immaterial whether he has been holding different posts in the same scale. Even if the appointment is made to a post in the higher grade, then such person will be treated as such.

Redistribution of posts when it involves

36. An employee was initially appointed on deputation in the grade higher than the grade of the post held on regular basis and was subsequently absorbed against the ex-cadre post. Will such initial period of deputation in the higher grade prior to date of absorption be counted towards regular service for the purposes of ACPs?

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SnNo Points of doubt -5- Clarification

36. CONTD.....

transfer or initially on deputation followed by absorption, will be treated as direct recruitment and past service/promotion (which was in a different scale) will not be counted.

In the case where a person is appointed to an ex-cadre post in a higher scale initially on deputation followed by absorption, then the service rendered in the earlier post, which was in a lower scale can not be counted. There is no objection to the period spent initially on deputation in the ex-cadre post prior to absorption being counted towards regular service for the purpose of grant of financial upgradation under ACPs as it is in the same scale of pay and same post.

37. Whether it is necessary to have SC/ST members in the Screening Committee set up for grant of ACPs?

As clarified vide condition of ACP Scheme (vide DOP&T Circular No. Nil dt 9.8.99) reservation in roster shall not apply to the scheme. Consequently, it is not necessary to have an officer from SC/ST community on the Screening Committee constituted for the suitability of the employee for upgradations under ACPs.

38. A person has refused a vacancy based promotion offered to him prior to his becoming eligible for financial upgradation under ACPs, on personal grounds. Will he be eligible for financial upgradation under ACPs?

✓ Deprived of

The ACP scheme has been introduced to provide relief to employees, despite being in a long period of regular promotion, of vacancies in the grade. Cases of holders of isolated posts have also been covered under ACPs, as they do not have any promotional prospects. However, where a promotion is offered before the employee becomes eligible for grant of benefit under ACPs but he refuses to accept such promotion, then he cannot be said to be stagnating and he is opted to remain in the existing grade on his own volition. As such, there is no case for grant of ACPs in such cases. The employee can be considered for regular promotion.

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S.No Points of doubt

38. Contd...

Clarification

In the second case also, since in terms of condition No. 14 of the ACPS, on grant of ACPS, the employee shall be deemed to have been given his regular promotion on occurrence of vacancy. The officer will have to give in writing his acceptance of the regular promotion when offered again after the department before he can be considered for grant of second financial upgradation under ACPS.

39. An employee is appointed to a lower grade as a result of unilateral transfer on personal request in terms of FR 15(2). Will the period of service rendered in the higher post count for the purposes of ACPS?

Condition No. 14 of the ACPS (DOPAT C-1 dt 9.8.99) inter alia states that in case of transfer involving unilateral transfer on request, regular service rendered in previous organisation shall be counted along with regular service in new organisation for the purpose of getting financial upgradation under the scheme. This condition covers cases where a unilateral transfer is to a lower post. However, financial upgradation under the ACPS shall be allowed in the hierarchy of the new post.

Points of doubt

38. Contd...

40. An employee drawing pay in the scale of Rs800-1150 (Pre-revised) was declared surplus and was re-deployed as Peon in a Ministry through the Surplus Cell in the scale of Rs750-840 (Pre-revised). However, he was allowed to draw pay in the scale Rs 800-1150 as personal to him even after redeployment in the lower grade. What shall be his entitlements under ACPS? Will the period of service rendered in the higher post count for the purposes of ACPS?

As the employee has remained in the scale of Rs800-1150 all along & has not availed any promotion, he is entitled to two financial upgradation in the scale higher than Rs800-1150 (Pre-revised) irrespective of the post actually held after redeployment. Since in the Ministry a Gp 'D' employee is eligible for promotion to the grade of LDC provided he is a matriculate and as a post in the scale of Rs825-1200 (S-4) is not in the normal hierarchy in the Ministry, such an employee can be considered for two financial upgradation in the grades of LDC and Gp 'D' provided he is a matriculate. Otherwise he will get only one financial upgradation in the revised scale of Rs825-1200 (Rs825-1400 revised). Cases of other persons re-deployed to lower posts through the Surplus Cell may be regulated accordingly.

Points of doubt

S.No	Points of doubt	Clarification
41.	A cadre consists of 4 Gdes 'A', 'B', 'C' and 'D' (in ascending order). Upon restructuring of the hierarchy existing as on a date subsequent to 9.8.99, Grade 'B' is abolished. Employees recruited in Grade 'A', under ACPs, are eligible for financial upgradation on or after 9.8.99 but before the date of effect of restructuring, get first/second financial upgradation in Grade 'B' and Grade 'C' respectively but those who become eligible for financial upgradation after the restructuring has been effected are entitled to first financial upgradation in the Grade 'D'. This is anomalous. The cases of earlier set of employees should be reviewed and they may be allowed financial upgradation as applicable to the latter category of employees.	The benefits of ACP Scheme is to be allowed as per the hierarchy existing as on the date of the employee becoming eligible for financial upgradation. Cadres/hierarchical structures are never static and are always subject to review based on recommendations of pay commissions/Expert committee on other wise and it is not possible to review the entitlements under ACPs is only already earned everytime a cadre is reviewed. A temporary solution to provide relief to stagnating employees and in lasting solution for stagnation lies in review of cadre structures, as regular promotions will be earned in such restructured grades. All the employees will benefit from such restructuring.

42. An employee in Grade 'A' is eligible for promotion simultaneously to Grades 'B', 'C' and 'D' (in ascending order) with varying requirements of length of service in the present grade. In other words, he has multiple channels of promotion. What shall be his eligibility under the ACP?

Provisions in the existing Recruitment Rules in various organisations providing for multiple channels for promotion are not consistent with the guidelines on framing of the Recruitment Rules. All such Rules should be reviewed immediately so as to provide only a single channel of promotion. However, till such a review is undertaken the first financial upgradation in such cases shall be allowed with reference to lowest promotional Grade which is Grade 'B'. If he does not earn any promotion in his second financial upgradation will be as per the hierarchy of Grade 'B'. However, if he has already earned one regular promotion, then his second financial upgradation shall be as per the hierarchy of the Grade to which he has been promoted.

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S.No	Point of doubt	Clarification
43.	Whether service rendered in an autonomous body/statutory body/state Government prior to appointment in central Government as a direct recruit prior to appointment in the Central Government will be counted while computing regular service for the purpose of grant of financial upgradation under the ACP Scheme ?	ACP Scheme is applicable to Central Government Civilian employees and for the purpose of financial upgradation under the ACP scheme, only the regular service rendered after regular appointment in the Central Government civilian post is to be counted. There is no service rendered in an autonomous body/statutory body/state Govt. is not to be counted for this purpose. Correspondingly, promotions earned in these posts prior to appointment in the Central Government are also to be ignored. The clarification in reply to point of doubt No. 6 in DOPAT O.M dt 10.2.2000 providing for counting of past service in another organisation in the same grade is only in relation to past service in civilian post held in the Central Government.

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44.	On the basis of recommendation of the Fifth Central Pay Commission, a uniform pay structure has been introduced for Stenographers in the non Secretariat organisations whereby the posts have been distributed in the ratio of 40:40:20 in the grades of Stenographer Grade-III (Rs4000-6000), Stenographer Grade-II (Rs5000-8000) and Stenographers Grade-I (Rs5500-9000). However, in a particular non Secretariat organisation, there is only an isolated post of Stenographers in the scale of Rs4000-6000. Will he be entitled to financial upgradation in the scale of Rs4500-7000 and Rs 5000-8000 as per Annexure II to O.M dt 9.8.99 or can he be allowed financial upgradations in the grade of Stenographer Grade-II and Stenographer Grade-I ?	In reply to point of doubt No. 1 of the Fifth Central Pay Commission, it has been stated that the scale of pay for ACPs for isolated posts shall be same as that applicable for similar posts in the same Ministry/Department/Cadre except where the pay Commission has recommended specific pay scales for similar posts under ACPs. Such cases may be specifically examined by the respective Ministry/Department in consultation with the Dept. of personnel & Training. In the case of remaining isolated posts, the pay scales contained in Annexure II of O.M dt Aug 09.99 shall apply. This hierarchy in Annexure-II of O.M dt Aug 9.99 applies where pay commission has not made any specific recommendation regarding scales to be allowed under the ACPs and where it is not possible to identify similar posts in same organisation.
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No point of doubt

clarifications

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45. In certain organisations, an employee after his selection on direct recruitment basis or even on promotion is required to undergo an induction training before he is given a functional post. Whether such induction training shall count towards the eligibility service for ACPs?

In case of Stenographers in non-Secretariat Organisations, which is a common category post, the pay commission has recommended a uniform grade structure for which has been accepted by the Govt. Since the isolated post of Stenographer in scale of Rs4000-6000 in a subordinate office is comparable to corresponding posts of Stenographer Gde-III in other non-Secretariat organisations under the same Ministry/the uniform pay (grade) structure for Stenographer may be adopted for the purpose of allowing financial upgradations to the said isolated post. In the instant case of an isolated post of Stenographer (Rs.4000-6000) in a non-Sect organisation, first and the second financial upgradation may be allowed in the scales of Rs5000-8000 (Steno Gde-II) and Rs5500-9000 (Stenographer Gde-I) respectively, provided he is other-wise eligible. A similar approach can be adopted in respect of all other isolated posts belonging to common category for which Pay Commission has similarly recommended uniform grade structure which has been accepted and notified in Part 'B' of the Ministry of Finance notification dt September 30, 97, agreed to by the Government subsequently. If such an isolated post is in a Central Ministry/Department, then the structure as recommended and accepted for similar category posts in the Central Department may be adopted. If the isolated post is in a non-secretariat organisation, then the hierarchy as recommended for similar posts in the non-Secretariat organisations may be followed.

If under the relevant Recruitment Service Rules, the induction training counts towards eligibility for regular promotion, the same will also be counted towards the 12 years/24 years regularity period/regular service required for financial upgradations under ACP Scheme.

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46. A person is working in the immediate promotional grade, on adhoc basis. Is he eligible for financial upgradation under the ACP Scheme? Will his pay be fixed?

An adhoc promotion is made only in an exigency if work which the post can not be kept vacant and such appointment is to be discontinued as soon as a regular incumbent is appointed. In terms of existing guidelines, continuation of such arrangement beyond one year is also subject to concurrence of PORD. Thus, an employee can be reverted to the original regular post at any moment. Therefore, case of an employee holding the higher promotional grade/any other post on adhoc basis, for grant of financial upgradation under ACPs, can not be ignored. If he is being recommended for grant of financial upgradation in the higher grade, his pay may be revised with reference to the pay drawn in the post held on regular basis at FR 22 (I)(a) (i) subject to the benefit of FR 10 and other provisions of the ACPs. If pay fixation under ACPs, the pay gets fixed at a stage higher than the pay already drawn on adhoc basis, he may be allowed such higher pay.

47. An employee was allowed promotion in a higher grade in terms of the Ministry of Finance O.M. No 10(1)/ETII/88 dt Sep 13, 1991. However, on introduction of ACPs, the benefit of the said O.M. is to be withdrawn so as to allow the benefits under the ACPs in terms of the stipulation that no simultaneous promotion/insignia promotion scheme can run concurrently with the ACPs. Will the benefit of higher grade drawn prior to 9.8.99 will also be withdrawn?

No. It will only be a switch over from the existing scheme of the ACP Scheme as on 9.8.99. While determining his entitlements under ACPs on or after 9.8.1999, pay benefits already drawn up to 9.8.99 in the higher grade allowed under the Scheme up to September 13, 1991 are not to be recovered.

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S.No Point of doubt

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48. Whether sealed cover procedure as laid down vide DOP&T O.M Number 22011/4/91-Estt(A) dt 14.9.1992 is to be followed in cases relating to ACP also ?

Yes. Condition no.11 of the ACP Scheme issued vide DOP&T O.M dt 9.8.1999 clearly states that in the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Therefore when the employee is exonerated the recommendations of Screening Committee placed in the sealed cover will be opened and its recommendations acted upon. If he has been recommended for grant of financial upgradation, the benefits of the same will be allowed from 9.8.99 or from the date of completion of 12/24 years regular service, whichever is later. If however, the employee is not exonerated and a normal penalty is imposed, sealed cover will not be opened and the case of employee will be considered only in the next meeting of the Screening Committee. If such Screening Committee having regard to all facts, recommends grant of financial upgradation, then such upgradation shall be allowed only on expiry of the period of penalty and not during the currency of the penalty. If penalty imposed is Censure or recovery of loss to the Govt, then such upgradation shall be allowed from the date of meeting of the Screening Committee which met to consider his case subsequent to expiry of penalty. The next financial upgradation shall be allowed only on completion of 12 years regular service from the date from which the first upgradation under the ACP is allowed and not necessarily on completion of 24 years of service.

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49. Whether any period(s) of break-in-service under FR 17A declared during the career of an employee will have any adverse effect on his getting financial upgradation under the ACP Scheme ?

Break in service under FR 17A incurs only 3 specific disabilities as specified in the relevant FR. It does not affect the normal regular promotions. Consequently, it will have no effect on financial upgradation under the ACP Scheme.

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50. Whether temporary service in respect of a person who was declared surplus and redeployed through the Surplus Cell will be counted with the subsequent regular service in the new organisation for purpose of the ACP Scheme. What will be the position in respect of those temporary employees who at the time of retrenchment did not possess the required service to be taken on the rolls of Surplus Cell and were terminated but were offered fresh appointment in a new organisation through the efforts of the parent Ministry/Department.

If the redeployment through the Surplus Cell is on the same/lower scale, such temporary service (and not an ACP service) rendered prior to retrenchment may count towards regular service for purpose of ACPs in the new organisation. If the redeployment is in a higher grade, regular service will count only from the date of appointment in the new organisation. However, this will not cover cases of those temporary employees who had put in less than the required length of service for being taken on the strength of the Surplus Cell and whose temporary service was terminated but were given preference in fresh appointment in the Government in terms of DOP & O.M. dt 27.3.76/29.5.76 read with DP&T O.M. dt 22.1.85. In their case, the past temporary service before retrenchment shall not count towards regularity period for grant of ACP.

51. Whether work charged staff is eligible to be covered under the ACPs?

If, on the matter of service conditions, work charged staff is comparable with the staff in regular establishment, there is no objection in extending the ACP Scheme to the work charged staff.

52. Following the recommendations of the Pay Commission, feeder promotional posts have been placed in the same scale. Consequently, hierarchy of a post comprises Grades 'A', 'B' and 'C'. The entry level and the first promotional grade are in the same scale. What shall be his entitlements under ACPs.

Normally, it is incorrect to have a feeder grade and a promotional grade in the same scale of pay. In such cases, appropriate course of action is to merge the two grades. If a feeder and promotional posts are merged in a single grade, then in such a case, no financial upgradation will be in the next hierarchical grade of the merged levels and if promotion has been allowed in the past in grades which were

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merged, it will have to be considered as already clarified in reply to point of doubt No.1 of O.M. dt 1.10.2000. However, if for certain reasons, it is inescapable to retain both feeder and promotional grades as two distinct levels in the hierarchy through in the same scale of pay, thereby making a provision for allowing promotion to a higher post in the same grade, it is inevitable that benefits of financial upgradation under ACPs have also to be allowed in the same scale. This is for the reasons that under the ACPs, financial upgradation has to be allowed as per the existing hierarchy. Financial upgradation can not be allowed in the scale higher than the next promotion grade. However, as specified in condition No.9 of the A.C. Scheme (vide O.M. dt 10.12.2000), pay in such cases shall be fixed under the provision of FR 22 (1) subject to a minimum benefit of Rs.100.

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33. If for promotion on regular basis, an employee has to possess a higher/additional qualification, will it be necessary to insist on possession of these qualifications even while considering grant of financial upgradation under the ACPs?

In terms of condition No.6 of Annexure-1 to D.O. dt 0.10.99, only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACPs. Therefore various stipulations and conditions specified in the recruitment rules for promotion to next higher grade, including higher/additional educational qualification, if prescribed would need to be met even for consideration under ACPs.

54. Whether EOL without medical certificate will count for computing regular service under ACPs.

Unless the counting of such leave or any other kind of leave is specifically excluded under recruitment rules governing promotions for being counted towards regular service for promotion (e.g. in some cases of promotions under Flexible Complementing Scheme), all kinds of leave including EOL without medical grounds normally counted towards regular service for promotion will be similarly counted while computing regular service for purpose of grant of financial upgradation.

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55. A cadre has been restructured with proper sanction but the recruitment rules for the restructured grades are still to be framed. Whether the individuals be granted financial upgradation in the existing hierarchical order or in the revised hierarchical order introduced subsequently.

Financial upgradation under ACP scheme is to be allowed under the hierarchy existing on 09.8.99 or at the time one becomes eligible, whichever is later. Since a new hierarchy has come into being, financial upgradations are allowed only in the restructured hierarchy. If model recruitment Rules exist for such restructured grades, then Screening Committee may review cases on the basis of such model Rules. Otherwise ACPs may be allowed after financialisation of Recruitment Rules but the benefit may be allowed from the date of

55. The Fifth Central Pay Commission has identified a number of common categories of posts spread across various Ministries/Departments as well as in Offices Outside the Secretariat as discussed in chapters and has made recommendations for adoption of uniform grade/cadre / 55 of its report and also in other chapters. Structure subject to functional needs of an individual organisation. In a large organisation all the hierarchical levels as per uniform cadre/grade structure may be created while in a smaller office, a few levels of the uniform hierarchical structure may not be introduced keeping in view the functional needs of the organisation. Consequently, while in a larger organisation/cadre, promotions are allowed in consecutive hierarchical grades, in a smaller cadre, promotions involve substantial jumps through in such cases, the requirement of period of regular service in the feeder grade as specified in the Recruitment Rules may be longer. Since, under the ACPs, the requirement of longer regular service in the feeder grade for promotion to such higher levels is not reckoned

Financial upgradations under ACPs are to be allowed in the existing hierarchy. In reply to point of doubt No.2, it has already been clarified that existing hierarchy in relation to a cadre would mean the restructured grade recommended by the Fifth Central Pay Commission. Further, as an example, in reply to point of doubt No.19, it has been stated that in order to secure upward mobility of library staff under the ACP, it has been decided to adopt the pay structure as notified by the Ministry of Finance vide O. No. 24 Jul 90 subject to the terms and conditions specified by them. Therefore, the ACPs already envisage that in respect of common category posts, if the Government has accepted a uniform cadre, then existing hierarchy in relation to such common categories shall be the standard hierarchy as approved by the Government and not the hierarchy in a particular office which for functional considerations may not have all the grades. If such financial

Points of doubt

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56. Contd.,...

While considering financial upgradations, it results in a situation where persons belonging to common category and recruited at same time in same entry grades are entitled to financial upgradations in vastly different grades under ACPs. It is not anomalous?

financial upgradations are allowed keeping purely such local hierarchy in view, it will result in vast disparities in entitlements under ACPs for identical category of posts, which cannot be justified. It has the potential of generating huge disquiet and unrest, which will not be in public interest.

If, however, the Fifth Central Pay Commission has recommended a specific pay structure/ACP grades for a particular category in an org. which may seemingly belong to a common category, then the mobility under ACPs in respect of such specific posts in that org., if the same has been approved by the Government, and not the standard grade/hierarchical structure recommended for the common category,

/ shall be through the grade structure/ACP grades recommended for that organisation,

57. Whether an employee who has not been recommended for grant of financial upgradation under the ACPs by a screening committee can be considered by the next screening committee to be held in the other half of the year or one held only on expiry of one year?

In Para 6 of DOPAT O.M. of 10.12.2000 has been provided that the Screening Committee shall meet twice in a financial year, preferably in the first week of January and July for advance processing of the cases maturing in the respective half of the financial year concerned. Normally, a case once considered, should be reviewed only in the Screening Committee to be held after one year. However, if an additional ACR report has become available in respect of such an employee before cases are processed, placing the other cases before the Screening Committee to be held in the second half, or if there is any other development which makes a material change in the assessment from the point obtaining when the case was considered earlier by the Screening Committee, there is no objection to the case of such employee being considered in the subsequent Screening Committee to be held in the other half of the year, as regards date of effect for grant of ACP.

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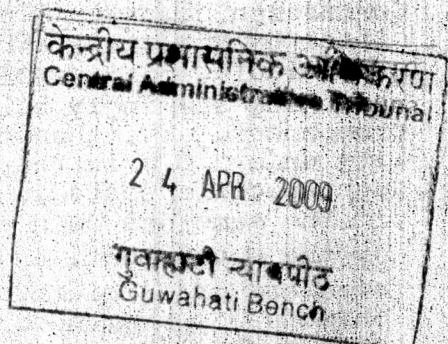
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in such cases, it is clarified that ACPS is available from 1999 or from the date of completion of 12/24 years of regular service only in those cases where the employee is eligible for grant of promotion at the opportunity. It, however, could be suitable only by a subsequent screening Committee. The benefit of ACPS will be given to him only from the date of meeting of the Screening Committee in which he is recommended for grant of ACPS. If the first financial upgradation is not in this manner, the second financial upgradation shall be allowed only after completion of 12 years of regular service from the date of first financial upgradation. Subject to all the above conditions, the prescribed conditions, in this regard, condition 10.4 of the Scheme is relevant.

58. (i) An inspector in a CPO in the pay scale of Rs.6500-10500 is entitled to benefits like Ration Allowance, Washing Allowance, Leave encashment for working on holidays, bonus etc. Some of these benefits are not admissible to incumbents of posts in the grade of Assistant Commandant (Rs.8000-13,500). Will the Inspector continue to get these benefits upon grant of financial upgradation in the grade of Asstt Comdt.

(ii) Officers in the higher promotional grade are entitled to facilities like telephone at residence, reimbursement of cost of newspaper/magazines, which are not admissible to feeder grade post holder. Which such facilities are available when feeder grade holder is allowed financial upgradation under ACPS in the grade of higher promotional post.

ACPS only after financial upgradation and cannot be compared with regular promotion through normal promotion norms are insisted for grant of this financial upgradation. Even after grant of financial upgradation which is allowed as personal to the employee, he continues to hold the original post on regular basis with same designation, classification, duties and responsibilities etc. In other words, except being allowed to draw pay in the higher grade the employee continues to be regular incumbent of post to which he has been appointed on regular basis as per Recruitment Rules.

Therefore, if there are perks and benefits, which are applicable to an employee as a result of his holding a regular post, the same will continue to be available to him not withstanding the fact that he may be placed in a higher grade on personal basis under ACPS. On the same principle,

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in the second case, except the entitlements like higher pay, HBA etc. which are linked to scale rather than status of the higher post, no privileged right to status of the higher post will be applicable in the event of financial upgradation in the grade of the higher post. This has been clarified in Condition No. 1 of the ACP Scheme introduced by O.M dt 9.8.1999 also.

59. Where the strength of Staff Car Drivers is not sufficient to introduce the Staff Car Driver Scheme notified by DOP&T or where the organisation consciously decides to opt for the ACPs, how is the ACP to be regulated in case of such Staff Car Drivers.

As in the case of Steno-graphers discussed in point of doubt No. 58 above, Staff Car Drivers in such organisations may be allowed financial upgradations in the case of completion of 12/24 years of regular service subject to passing of the tests as specified in the scheme. However, where the Staff Car Driver Scheme is applicable, the ACP is not applicable.