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12
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 140/2007

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

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SECTION OFFICER (Judl.)

Kahl
03.10.17

DEPT. OF ENVIRONMENT & FOREST
COMMISSIONER'S OFFICE

ORDER PAPER

1. Original Application No.

140/07

2. Mise Petition No.

3. Contempt Petition No.

4. Review Application No.

Applicant(s) M. P. Singh vs. Union of India & OrsAdvocate for the Applicant(s) M. Chanda, S. NathMs. De. Datta.....Advocate for the Respondent(s) Adv. C. S. C. : Ms. M. Das.

Notes of the Registry Date Order of the Tribunal

application is in form
filed/C. P. for Rs. 50/-
posted vide IPO/ED
24.6.65 3660
dated 11.5.07

6.6.07

The applicant is working in the Ministry of water Resources as Superintendent Engineer and he was promoted on adhoc basis to the post of Director/Superintending Engineer (in the grade of JAG). Vide letter (Annexure II) dated 17.10.99 the applicant's pay was fixed in the scale of pay of Rs. 14,300-18,300/- The applicant was promoted on regular basis as Director/Superintending Engineer in the scale of Rs. 12,000-16,500/- whereas he was already drawing his pay in the higher scale of Rs. 14,300-18300/- w.e.f. 11.10.1999 (Annexure III). His option was called for regarding fixation of his pay in the scale of Rs. 12,000-16,500/- either from the date of their adhoc officiation in the JAG, or from the date of their next increment in the STS.

Am.
Feb 07

petitioner's copy
for service notices
are not received.

05.06.07.

The applicant has submitted representation praying for fixation of his pay and recovery thereof should not be implemented. On 14.03.2007 the Respondent No.4 has issued impugned order rejecting the claim of the applicant stating that as per decision of the Ministry's the pay scale and recovery from the applicant was allowed higher pay scale of Rs. 14,300-18,300/- on completion of 13 years in Group 'A' service without completion of 9 years service in STS. The case of the applicant is that he has been drawing of pay scale of Rs.14,300-18,300/- which has been rejected by the respondents vide impugned order dated 14.3.2007.

Issue involved in this case is that whether the fixation of pay could be with retrospective effect. Now the contention of the applicant is that the applicant has submitted representation on 02.07.2001 (Annexure V) due to reduction of his scale of pay from 14,300-18,300/- to Rs. 12,000-16,500/-which is on record.

I have heard Mr.M.Chanda learned counsel for the applicant and Ms.U.Das learned Addl. C.G.S.C. for the respondents. When the matter came up for hearing the learned counsel for the respondent has submitted that she would like to take instructions and she prayed for two weeks time. The counsel for the applicant has insisted for interim prayer.

Issue notice on the respondents. Counsel for the applicant has submitted that since the applicant has been receiving the pay scale, the status quo order may be passed till the next date. I direct the counsel for the respondents to take the instructions. By way of interim order I

-(3)

A.140/07

3

06.06.07

further direct the Respondents not to recover the alleged excess amount till the next date of hearing.

Post the matter on 20.6.07.

Vice-Chairman

lm

Received
Usha Dev
Addl. Cuse
19/6/07

20.6.07

Counsel for the respondents wanted time to file written statement. Let it be done. Post the matter on 20.6.07.

Vice-Chairman

Steps taken on
18/6/06. Notice being issued.
18/6/06.

DM

20.6.07.

Counsel for the respondents wanted time to file written statement. Let it be done. Post the matter on 20.7.07. Interim order shall continue.

Vice-Chairman

lm

Notice and order
Sent to D/Section
for issuing to
resp. no. 1 to 4
by Regd. A/D
post. D/No- 655 to 658
Date 18/6/07. Dt. 3/7/07.

20.7.2007

Let the case be posted on 22.8.2007. In the meantime Respondents are at liberty to file reply statement.

Post the matter on 22.8.2007. Interim order shall continue till such time.

Vice-Chairman

/bb/

20.7.07

P.L. comly

Received
Usha Dev
Addl. Cuse
26/7/07

4

OA. 140/2007

WBs not filed.

22/8/07

22.8.2007

Post the case on 8.10.2007
granting further six weeks time to the
Respondents to file reply statement.
Interim order will continue till such time.

WBs not filed.

22/8/07

/bb/

Vice-Chairman

08.10.07.

Call this matter on 06.12.2007.

Interim order to continue till the next date.


(Khushiram)
Member(A)


(Mpnoranjan Mohanty)
Vice-Chairman

8.10.07.

Pl. Comply.

lm

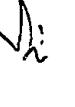
06.12.2007

Despite four adjournments,
Respondents have not filed any written
statement to this Original Application.

Subject to question of law to be
examined at the time of final hearing, this
case is admitted and set for hearing.

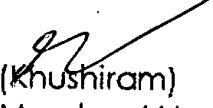
06.12.07.

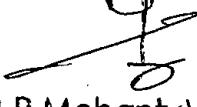
Pl. Comply.



Call this matter on 07.01.2008.

Interim order to continue till disposal
of the Case.

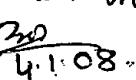

(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

order dt. 6/12/07
issuing to both
the parties.

10/12/07. D/No- 1732,
1733

/bb/

WBs not filed.
Dt = 11/12/07. 

4.1.08.

O.A. 140/2007

07.01.2008

On the prayer of Ms.U.Das, learned Addl.

Standing counsel for the Union of India, this matter is adjourned to be taken up on 07.02.2008 awaiting written statement from the Respondents.

21.1.08
P1. Comply.

Shrivastava

Interim order to continue till the next date.

order dt- 7/1/08
issuing to learned
Advocate's for both
the parties.
/bb/


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Class
9/1/08. Vide D.No- 108
Dtd- 10-1-08.

07.02.2008

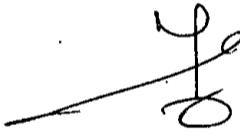
No written statement has been filed in this case as yet by the Respondents.

Call this matter on 14.2.2008 awaiting written statement from the Respondents. Interim order to continue till the next date.

W/S. not bled.

3/2/08


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

Lm

Page Break

21.2.08
Please Comply.

13/2/08

14.02.2008

Rejoinder
No written statement has been filed in this case as yet by the Applicant Respondents. On the prayer of Mrs. U. Dutta, learned counsel appearing for the Applicant, call this matter on 14.03.2008 awaiting rejoinder from the Applicant


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Lm

13-3-08
No rejoinder filed.

b.

14.03.2008

Mrs U. Dutta, learned counsel appearing for the Applicant seeks four weeks time to file rejoinder. Prayer is allowed.

Call this matter for hearing on 25.04.2008. Interim order to continue.

- ① W/S filed.
② Rejoinder not filed

24/4/08.

pg

25.04.2008

Call this matter on 01.05.2008.

(M.R.Mohanty)
Vice-Chairman

/pg/

01.05.2008

Mrs.U.Dutta, learned counsel appearing for the Applicant and Mr. G. Baishya, learned Sr. Standing counsel appearing for the Respondents are present.

Counsel for the Applicant wants to file rejoinder. Let it be filed in ~~2 weeks~~
~~2 weeks~~ Call this matter on 13.5.2008.

Rejoinder filed
on behalf of the
Applicant.

25/5/08

in

12.5.08

(Khushiram)
Member(A)

-7-

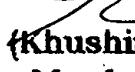
7

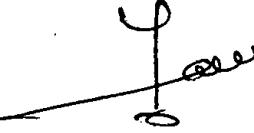
O.A. 140 of 07

13.05.2008 Mr. M. Chanda, learned counsel appearing for the Applicant is present. None for the Respondents.

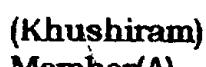
Call this matter on 12.06.2008 for hearing.

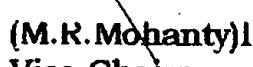
Send copies of this order to the Applicant and the Respondents in the address given in the O.A.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

~~On the prayer of Mrs. M. Das, learned Addl. Standing Counsel appearing for the Respondents (made in presence of Mr. M. Chanda, learned counsel for the Applicant), hearing of this case stands adjourned to be taken up on 6th August, 2008 for hearing.~~


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

12.06.2008 On the prayer of Mrs. M. Das, learned Addl. Standing Counsel appearing for the Respondents (made in presence of Mr. M. Chanda, learned counsel for the Applicant), hearing of this case stands adjourned to be taken up on 6th August, 2008 for hearing.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

O.A.140-07

06.08.2008

Mr.M.Chanda, learned counsel

11.6.8.08.

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

Applicant. Mrs.M.Das, learned Addl. Standing counsel is present on behalf of the Respondents.

Call this matter on 18.09.2008 for hearing.

Copies of order dated 6/8/08 sent to D/Section for issuing to respondents by post.

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


(M.R.Mohanty)
Vice-Chairman

Cust 12/8/08. D/No-3506/3509 /bb/
Dt: 19-8-2008

~~On the basis of Ms. M. Das, learned Addl. Standing Counsel applying for the Respondents (who is in practice of Mr. M. Chanda, learned counsel for the Applicant), desiring of this case stands adjourned to be taken up on 6th August, 2008 for hearing.~~

13.08.08
800.00

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

~~(Khushiram)
Member(A)~~

ml

12.8.08

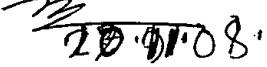
18.09.2008 Mrs U. Dutta, learned Counsel appearing for the Applicant, is present. Mrs M. Das, learned Standing Counsel for the Union of India, is not present. She has filed a letter of absence. In the said circumstances, call this matter on 21.11.2008 for hearing.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

nkm

The case is ready for hearing.


20.8.08

9
O.A.140/07

21.11.2008 Mr. M. Chanda, learned counsel appearing for the Applicant is present. On behalf of Mrs. M. Das, learned Addl. Standing Counsel appearing for the Respondents, a prayer has made for adjournment of the hearing of this case.

In the aforesaid premises, call this matter on 8th January, 2009 for hearing.

*The case is ready
for hearing.*

*22
F.I.O.D.
Im*

*S.N.Shukla
Member(A)*

*M.R.Mohanty
Vice-Chairman*

09.01.2009 Mrs. U. Dutta, learned counsel appearing for the Applicant is present.

Mrs. M. Das, learned Addl. Standing Counsel appearing for the Government of India is also present.

Call this matter on 19th January

2009, for hearing.

*10.1.09
The case is ready
for hearing.*

28/1/09

*19.1.09 Bench is not available.
List on 29.1.09.*

*by
C.O.*

29.01.2009 Mr. M. Chanda, learned counsel appearing for the Applicant and Mrs. M. Das, learned Addl. Standing counsel representing the Respondents are present.

On the prayers of learned counsel for both the parties, call this matter on 10.02.2009 for hearing.

*M.R.Mohanty
Vice-Chairman*

O.A.140/07

10

10.02.2009

Call this matter on 27.03.2009 for hearing.


(M.R. Mohanty)
Vice-Chairman

/bb/

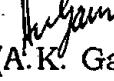
The case is ready
for hearing.

26.3.09.

27.03.2009

On the prayer of Learned Counsel
appearing for the Respondents, case is
adjourned to be taken up on 18.05.2009.


(Khushiram)
Member (A)

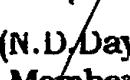

(A.K. Gaur)
Member (J)

/bb/

The case is ready
for hearing.

11.8.09

18.05.2009 Mr. M. Chanda learned counsel
appearing for the Applicant is present. On
the prayer made on behalf of Mrs. M. Das,
learned Addl. Standing Counsel for the
Government of India (who is reported sick),
call this matter on 15.06.2009.


(N.D. Dayal)
Member (A)


(M.R. Mohanty)
Vice-Chairman

lm

15.06.2009 Call this matter on 12.08.2009 for
hearing.


(M.R. Mohanty)
Vice-Chairman

nkm

28.10.09

- ① This OA was not listed
on 17.9.09 an adjourned to 12.08.2009
② This is a ready case for hearing.

Call this matter for hearing on
17.09.2009.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

lm/

The case is ready
for hearing.

5.11.09

O.A. 240/07

17.11.2009

Judgment pronounced in open court.

For the reasons recorded separately the O.A. is dismissed.

Received copy
on 01/12/09
S. Mukherjee

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

Received copy
for M-Art, S2-C45C,
P.K.-Reheat
1.12.09

/pg/

Recd. via memo
No. 12756-12759
03-12-2009

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 140 of 2007

DATE OF DECISION: 17-11-2009.

Sri Mahendra Pratap Singh

.....Applicant/s

Mr M. Chanda

.....Advocates for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

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

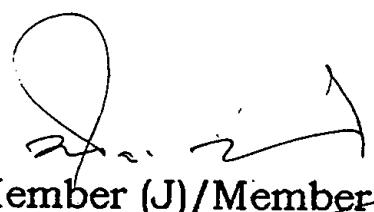
.....Advocate for the
Respondent/s

CORAM

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

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

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


Member (J)/Member(A)

14

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

O.A. Nos. 140 of 2007

DATE OF DECISION : THIS IS THE 17th DAY OF NOVEMBER, 2009.

THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)
THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER (A)

Shri Mahendra Pratap Singh
Superintending Engineer,
S/o Shri Tilak Raj Singh,
Hydrological Observation Circle,
Central Water Commission (CWC)
CWC Complex, Adabari,
P.O. Gauhati University, Guwahati-781014.Applicant

By Advocate Shri M. Chanda.

-Versus-

1. The Union of India
Represented by the Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi-110001.

2. The Chairman,
Central Water Commission,
Govt. of India, Sewa Bhawan,
R.K.Puram, New Delhi-110066.

3. Secretary to the Govt. of India,
Department of Personnel & Training,
North Block, New Delhi – 110001.

4. The Under Secretary,
Government of India,
Central Water Commission,
Sewa Bhawan,
R.K.Puram, New Delhi-110066.Respondents

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

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

Shri Mahendra Pratap Singh, Superintending Engineer, Central Water Commission in this O.A filed under Section 19 of the Administrative Tribunals Act 1985 challenges office order dated 14.3.07 (Annexure-VIII) rejecting his representation as well as directing recovery of excess payment drawn from 11.10.99 till 5.9.2002 in 12 equal monthly installments. He also challenges office order dated 9.1.03 whereby his pay has been fixed in pay scale of Rs.12000-16500/- with effect from 11.10.99 and thereafter in pay scale of Rs.14300-18300/- with effect from 6.9.2002. He further seeks direction to respondents to regularize his service in pay scale of Rs.14300-18300/- with effect from 11.10.99 with all consequential benefits including costs. He further seeks a declaration that respondents, Union of India, is not entitled to make recovery.

2. Admitted facts are that applicant, holding degree in Civil Engineering, was initially appointed as Assistant Director (Group A) with effect from 29.09.1986, and promoted to the next higher grade of Deputy Director/Executive Engineer with effect from 1.10.1993. In terms of Central Water Engineering Group A Service Rules 1995, next promotional avenue available was Director/Superintending Engineer, a Junior Administrative Grade (Ordinary Grade) in pay scale of Rs.3700-5000/- As per said rules, officers in Senior Time Scale with 5 years regular service and possessing a degree in Engineering was eligible for promotion. On acceptance of the recommendation made by 5th Central

Pay Commission, Union of India, Ministry of Finance issued notification dated 30.9.1997 whereby pay scale attached to various post including of Superintending Engineer/Director in Junior Administrative Grade (Ordinary Grade) had been revised to Rs.14300-18300/- . Vide order dated 8.10.1999, he, along with many others was promoted as Director/Superintending Engineer, Junior Administrative Grade (Ordinary Grade) on "ad hoc basis" and provisionally granted pay scale of Rs.14300-18300/- . He was regularized in said post vide order dated 8th June 2001 (Annexure-III).

3. His basic grievance is that vide order dated 6.6.2001 (Annexure-IV) his pay scale had been reduced from Rs.14300-18300/- to Rs.12000-16500/-, which is totally arbitrary and illegal. Mr M.Chanda, learned counsel appearing for the applicant alongwith Mrs U.Dutta vehemently raised the following contentions :-

- (i) On implementation of recommendation made by 5th Central Pay Commission there was only one grade in the cadre known as Director/Superintending Engineer in the Junior Administrative Grade i.e. Rs.14300-18300/- with effect from 1.1.1996. Applicant who had been promoted to said grade on completion of 13 years of regular service in that grade vide order dated 11.10.99 had been allowed to draw said scale of Rs.14300-18300/-, which cannot be reduced retrospectively without affording any opportunity of hearing.
- (ii) Once his pay has been fixed in aforesaid scale, reduction to the said scale based on amended provision of RRs 2004, notified in the Gazette of India dated 4.12.2004, is not justified. RRs of the year 2004 was prospective in nature and could not have been applied to his case. Moreover the new condition of eligibility was inserted by said RRs of 2004, whereby officers holding posts of Executive Engineer or equivalent in the service with minimum 9 years of regular service, if any, rendered in the non functional second grade for the Executive Engineer (Civil or

Mechanical) were made eligible, which condition had been prescribed for the first time as earlier rules of 1995 prescribed only 5 years regular service in the grade besides possessing degree in Engineering. Applicant had not only satisfied 5 years regular service in the grade of Executive Engineer but also possessed degree in Civil Engineering and therefore on the date when he was promoted on ad hoc basis he was fully eligible for regular promotion. There was no justification to term his promotion in the grade of Superintending Engineer as "ad hoc." Vacancies were available, he was eligible and therefore he cannot be made to suffer.

The respondents have reduced his pay scale from Rs.14300-18300/- to Rs.12000-16500/- presumably based on that the amended rules of 2004 were applicable retrospectively, which is misconceived and totally unjust besides being arbitrary. It is well settled law that the statutory rules which hold the field cannot be superseded by an amended administrative orders/instructions. Neither the Ministry of Water Resources communication dated 17.10.97 would have any application nor its order dated 6.6.01 would be relevant in the given facts and circumstances of the case, emphasized learned counsel.

4. Applicant had submitted detail representation to the respondents on 2.7.2001, which remained unconsidered and had been rejected only vide communication dated 14th March 2007 (Annexure-VIII). Since he has not committed any fraud, while fixing his pay in pay scale of Rs.14300-18300/-, no recovery is justified on any count.

5. Placing reliance on P. Savita & Ors. vs. Union of India & Ors. 1985 (Sup) SCC 94 it was contended that two different scales cannot be allowed for the same post particularly when the nature of duties discharged by an officer, holding the same rank, is similar.

Therefore granting two pay scale to the officers holding the grade of Superintending Engineer/Director i.e. 12000-16500/- as well as Rs.14300-18300/- is totally arbitrary, unjust and unreasonable based on unreasonable classification. Reliance was also placed on (2007) 9 SCC 337, Punjab State Warehousing Corporation vs. Manmohan Singh & Ors. to contend that statutory rules made under Article 309 proviso cannot be superseded, amended or varied by an executive instruction. Further reliance was also placed on State of Rajasthan vs. R.Dayal & Ors., (1997) 10 SCC 419 and Y.V.Rangalah & Ors. Vs. J Srinivas rao, (1983) 3 SCC 284 which were followed by Hon'ble Gauhati High Court in its order dated 30.10.2006 in Union of India & Ors. vs. Debendra Ch. Das, Writ Petition (C) No.7883/2002 to the effect that statutory rules which were in existence at the time of availability of vacancies earlier have to be followed and subsequent amendment made in RRs would have no application. Drawing our attention to the averments made in reply filed by the respondents to the effect that DPC held in the year 1999/2001 had taken into consideration vacancies of the year 1995-96 to 2001-2002 it was strongly contended that the recruitment rules which were in existence in the year 1995 alone would have relevant for determining eligibility prescribed. Amendment carried out in said RRs by the Govt. of India, in the year 2004, would have no application at all. It was further contended that reliance placed by respondents on the co-ordinate Hyderabad Bench judgment dated 16.4.2008 in O.A.445/2007 M.K.Srinivas vs. Union of India is not a correct decision as the same is per incuriam having not noticed judgment of Hon'ble Supreme Court,

as noted hereinabove. Thus it was prayed that he is entitled to relief, as prayed for.

6. Filing reply, as well as additional reply, the respondents stated that vide para 50.45, 5th Central Pay Commission recommended following suggestions :-

- (a) The non functional pre-revised scale of Rs.4500-5700/- (revised to Rs.14300-18300/-) applicable to the Superintending Engineers in the Central Public Works Department should be converted into a functional grade and promotions in this scale should be permitted only on completion of 13 years of regular service in Group A.
- (b) The functional pre-revised scale of Rs.3700-5000/- (revised to Rs.12000-16500/-) applicable to the Superintending Engineer as the first grade on their promotion from the post of Executive Engineers should instead be a 'on functional' grade for Executive Engineer in the pre-revised pay scale of Rs.3000-4500/- (revised Rs.10000-15200/-).

The above recommendation required restructuring of the Junior Administrative Grade and Senior Time Scale as well as revision of recruitment rules. The modalities of implementation of above pay scales were provided by DOPT vide O.M dated 6.6.2000 and 20.12.2000, wherein it was stipulated that pay scale of Rs.14300-18300/- for the officers holding the post of Superintending Engineer could be given only to regularly promoted officers having 9 years of regular service in the grade of Executive Engineer and equivalent. In terms of provision contained in preamble to Part B of the first schedule of CCS (Revised Pay) Rules 1997, restructuring and redistribution of posts etc. are pre-requisites for grant of said scale and it would be necessary for the Ministry/Department concerned to not only accept these pre conditions but also to implement them before the recommended pay scales are

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applied. It was therefore implicit that such scale will necessarily have prospective effect and only the normal replacement scales will be applicable to the posts concerned until the pre-requisites are fulfilled. In order to obviate any hardship caused to the officers working in the Junior Administrative Grade of CWE (Gr. A) Service, it was decided to allow the pay scale of Rs.14300-18300/- purely on "provisional basis" to such JAG officers who have completed 13 years of Gr. A service vide Ministry of Water Resources letter dated 17.10.1997 (Annexure-II). The promotion order dated 8.10.99 clearly spelt out such aspect in specific and vide para 2 it was stated that on appointment to the post of Director/Superintending Engineer, the pay will be regulated as per instruction issued by Ministry of Water Resources letter dated 17.10.1997. Vide para 3 it was further prescribed that the appointment of the officers in aforesaid grade is purely ad hoc and of temporary nature and will not confer the any right for regularisation, seniority etc. in the higher grade. Such steps were taken pending amendment of the Central Water Engineering Group A Service Rules 1995. Applicant had accepted said promotion and the condition attached therein without any demur, and at this belated stage he is estopped from challenging the same. It was strongly contended that his pay scale has not been lowered/reduced, as projected. In any case, said scale was granted on "provisional basis". On completion of 9 years of regular service, he has been placed in the pay scale of Rs.14300-18300/- with effect from 6th September 2002. It was further stated that DPC for promotion to Director/Superintending Engineer (JAG) was convened in December

1994/January 1995 for vacancies of 1993-94 and thereafter no DPC could be convened for vacancies which occurred from 1994-95 onwards due to protracted litigation on the issue of seniority in the feeder grade and complication related to implementation of 5th CPC i.e. restructuring of Superintending Engineer and Executive Engineer grade i.e. revision of service rules etc. In view of the above aspect, initially UPSC refused to convene DPC on the ground that existing Recruitment Rules ceased to be operative with effect from 1.1.1996. However, after long persuasion, Commission agreed to convene a DPC for Junior Administrative Grade as per the existing Recruitment Rules with the stipulation that promotion to JAG of the Central Water Engineer (Group A) Service would be made in the normal replacement scale of pay of Rs.12000-16500/- Accordingly DPC was convened in 2001 and necessary order were issued on 6.6.2001. Said order in specific noted three categories, (i) those who are working in JAG on ad hoc basis and had completed 9 years of service in Senior Time Scale (STS). (ii) Officers in grade of STS who have completed 9 years service, but not promoted and (iii) those who have not completed 9 years regular service in STS as on 6.6.2001. Applicant's case fall in the last category and said order in specific provided that he would be allowed the pay scale of Rs.12000-16500/- till he complets the prescribed conditions of 9 years regular service in STS. Para 5 of said order further provided that over payment made shall be recovered subject to the post audit. Mrs M. Das, learned Sr. C.G.S.C strongly canvassed that validity of said order dated 6.6.2001 has not been questioned by

the applicant in present proceedings and therefore said order has to be implemented & enforced with all its rigour.

7. The allegation of discrimination was denied. It was further contended that identical issue raised before the co-ordinate Bench at Hyderabad has upheld the respondents action and there is no justification to take a contrary view into the matter. Our attention was drawn on this aspect to order dated 16.4.2008 in O.A.445/2007, M.K.Srinivas vs. Union of India & Ors. Learned counsel also emphasized that judgments relied upon by the applicant are totally distinguishable and thus not applicable in the given facts and circumstances. We were also taken through the provisions of CCS (Revised) Pay Rules 1997 to convince that normal replacement pay scale of earlier scale of Rs.3700·5000/- had been revised to Rs.12000·16500/- and not Rs.14300·18300/-, as projected by the applicant.

8. We have heard learned counsel for the parties, perused the pleadings and other materials placed on record besides judgments cited by the parties. We have also given our thoughtful and anxious consideration to contentions raised by the rival parties. It was not in dispute that he had been promoted to the grade of Deputy Director/Executive Engineer on 1.10.1993 had not satisfied 5 years regular service in the grade, as provided under the RRs dated 2.11.1995 (Annexure-X) becoming eligible for promotion to the JAG (OG) before 1.10.1998. We may further note that normal replacement pay scale of the grade of Rs.3700·5000/- had been revised to Rs.12000·16500/-. The scale of Rs.14300·18300/- recommendation made by 5th CPC had been



subject to fulfillment of certain conditions prescribed vide para 50.45 of the report. Furthermore, said scale of Rs.14300-18300/- finds mentioned under Part B of first Schedule of CCS (Revised) Pay Rules 1997. The preamble of said Part B in specific prescribed that the said revised pay scale would be available subject to fulfillment of prescribed conditions and also change in Recruitment Rules, restructuring of posts in the higher grade etc. In other words satisfaction of said conditions were requisite and necessary amendment were carried in RRs only in 2004. In other words, benefit of said scale would not be applicable ipso-facto. The grant of said scale is not automatic and one has to satisfy the prescribed condition till then the normal replacement pay scale of earlier pay scale of Rs.3700-5000/- would be applicable. At the cost of repetition we may note that the pay scale of Rs.12000-16500/- is the replacement of earlir scale of Rs.3700-5000/-. If his contention that he was eligible under the rules of 1995 and there has been vacancies in the grade of Superintending Engineer and therefore the said vacancies were liable to be filled in accordance with said rules then he would not be eligible for scale of Rs.14300-18300/- at all. If the Revised Pay Rule 1997 is accepted and implemented in that eventuality he would have to satisfy the requirements laid down therein before becoming eligible for higher pay scale of Rs.14300-18300/-. Till then only normal replacement pay scale would be available. We find further justification in the contention raised by the respondents that the applicant having not challenged the vires of promotion order as well as order dated 6.6.2001 . He at this belated

stage precluded from challenging the same based on principle of estoppel & acquiescence.

9. On examination of the matter particularly in the light of co-ordinate Bench judgment in M.K.Srinivas (supra) we are of the considered opinion that issue raised in present O.A were almost similar to the same effect as of present case. On examination of said order dated 16.4.2008 in M.K.Srinivas (supra), we noticed that applicant therein was working as Director/Superintending Engineer in Central Water Commission, had been seeking direction to respondents to fix his pay in scale of Rs.14300-18300/- with effect from 3.3.2002. He was initially appointed as Deputy Director/EE, ultimately promoted as Director/SE on 3.3.2000. He was granted the scale of Rs.14300-18300/- on completion of 9 years of service in STS i.e. 16.9.2002. His claim in specific had been that he was entitled to the scale of Rs.14300-18300/- with effect from the date when he was promoted as Director on 3.3.2000. Para 5 of said order noticed the question which arose for consideration namely :-

- "(i) Whether the applicant is entitled for higher pay scale of Rs.14300-18300/- with effect from 3.3.2000 on which date he has been working as Director on his promotion from Deputy Director.
- (ii) If not, whether the applicant is entitled for the said higher pay scale at least with effect from 25.1.2001 on which date he completed 13 years of regular service in Group A.
- (iii) Whether the impugned orders permitting the said higher pay with effect from 16.9.2002 is sustainable in law.
- (iv) If so, whether the order of recovery of the excess payments in 12 equal installments is required to be modified."

10. On examination of the said aforesaid issue, it was concluded that he was not entitled to scale of Rs.14300-18300/- unless he completes 13 years of regular service in Group A and mere recommendation made by the 5th Central Pay Commission would not entitle him for said scale. It was further held that since he had not completed 9 years of regular service in STS he was not entitled to the said higher scale prior to said date of 15.9.2002. It was further concluded that eligibility conditions prescribed by the Government for higher pay scale of Rs.14300-18300/- was a policy decision of the Government which cannot be interfered by the Tribunal. O.M. dated 6.6.2000 issued by DOPT was also noticed & discussed, and it was observed that para 2 of said O.M. clearly indicated that unless the prerequisites for the grant of pay scale recommended by the Pay Commission for certain posts are fulfilled, the recommended pay scales cannot be applied to those posts and that such pay scales will be prospective, and till then only the normal replacement would be available. Since the final decision has been taken by the Government only later and not in the year 1999 and 2000, the decision to grant higher pay scale on provisional basis did not require any judicial interference. Ultimately holding that said applicant was not entitled to said higher scale, but it was observed that recovery amount shall not exceed 10% of the basic pay every month. On our thoughtful and anxious consideration, we are of the view that there is no good ground, justification and reasons to take any contrary view then the one arrived at by co ordinate Bench at Hyderabad. We may also observe that no

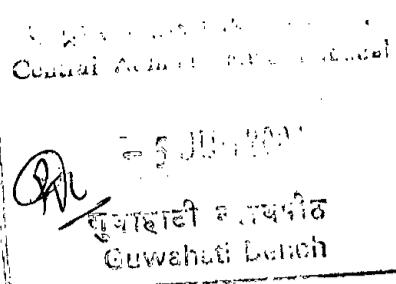
material has been placed on record by the applicant warranting to take a different view in the matter. Mere contention raised by him that said order was passed on totally different contentions and not for contentions raised in present case, is not sufficient to differ with said judgment. Applicant's contention that the executive instructions have amended the statutory rules, in our considered view, is misplaced and misconceived. It has not been established how any administrative instructions have either directly or indirectly amended, superseded the mandate of the statutory RRs. We do not find any justification and substance in the contention raised that the judgment of Hyderabad Bench in M. Srinivas (supra) is per incurium, as projected. We further find no reasons, substance and justification on reliance placed on various judgments, as noted hereinabove. Rather we are of the considered view that said judgments were rendered in totally different facts and circumstances and therefore the same are totally distinguishable.

Taking a cumulative view of the matter and following ratio in M. Srinivas (supra) we hold that there is no merit in the claim laid by applicant.

Accordingly O.A is dismissed. No costs.

Chaturvedi
 (MADAN KUMAR CHATURVEDI)
 ADMINISTRATIVE MEMBER

Mukesh
 (MUKESH KUMAR GUPTA)
 JUDICIAL MEMBER



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUWAHATI BENCH: CUWAHATI

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

O. A. No. 140 /2007

Shri Mahendra Pratap Singh

-Versus -

Union of India & Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

Applicant was initially appointed as Asstt. Director w.e.f. 29.09.1986 in the Training Directorate under Central Water Commission, New Delhi. Eventually he was promoted as Director/Superintending Engineer on regular basis w.e.f. 06.06.2001 and he is still continuing as such.

- 08.10.1999, 11.10.99- Applicant was promoted on ad hoc basis to the post of Director/ Superintendent Engineer (in the grade of JAG).
(Annexure- I Series)
- 21.10.1999- Applicant's pay was fixed in the scale of pay of Rs. 14,300-18,300/- in terms of Ministry of Water Resource letter dated 17.10.99.
(Annexure- II Series)
- 08.06.2001- Applicant was promoted on regular basis as Director/ Superintending Engineer and placed in the scale of Rs. 12,000-16,500/- whereas he was already drawing his pay in the higher scale of Rs. 14,300-18,300/- w.e.f. 11.10.1999. (Annexure- III)
- 08.06.2001- CWC issued one circular forwarding therewith a copy of the Ministry of Water Resource's order dated 06.06.01, asking the officers working in the JAG on ad hoc basis to exercise their option regarding fixing their pay in the scale of Rs. 12,000-16,500/- either from the date of their ad hoc officiation in the JAG or from the date of their next increment in the STS. (Annexure- IV)
- 02.07.2001- Applicant submitted one representation due to reduction of his scale of pay from 14,300-18,300/- to Rs. 12,000-16,500/-.
(Annexure- V)
- 09.01.2003- Respondents fixed the pay and date of increment etc. of the officers promoted to the Junior Administrative Grade (JAG).
(Annexure- VI)
- 14.01.2003- Applicant submitted a representation and prayed that pay fixation and recovery thereof as should not be implemented.
(Annexure- VII)

14.03.2007- Respondent No. 4 issued impugned order rejecting claim of the applicant and he has been intimated Ministry's decision regarding pay scale and recovery from the officers who were allowed higher pay scale of Rs. 14,300-18,300/- on completion of 13 years in Group 'A' Service without completion of 9 years service in STS.

(Annexure- VIII)

30.09.1997- Ministry of Finance, published notification regarding pay scales of Supdt. Engineers as Rs. 14,300-18,300 w.e.f. 01.01.96, which supports that the scales of pay of Rs. 14,300-18,300 granted to the applicant w.e.f. 11.10.99 on his ad hoc promotion to the grade of Superintending Engineer was in order. (Annexure- IX)

As per Recruitment Rule of 1995 applicant was entitled for payment of Rs. 14,300-18,300/- on completion of 13 years of service. (Annexure- X)

18.11.2004 Impugned order dated 14.03.07 was issued on the basis of provision of amended recruitment rule published on 18.11.04 whereas applicant was governed by R/R 1995 when he was promoted on ad hoc basis as Superintending Engineer w.e.f. 17.10.97. As such said impugned order is arbitrary, unfair and the same is liable to be set aside and quashed. (Annexure- XI)

Hence this Original Application.

PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned office order bearing No. A-26011/2/97-Estt. 1 (Vol. III)/59 dated 14.03.2007 (Annexure- VIII).
2. That the Hon'ble Tribunal be pleased to declare the office order dated 09.01.2003 (Annexure- VI) as illegal and void to the extent of fixation of pay in respect of the applicant.
3. That the Hon'ble Tribunal be pleased to direct the respondents to regularise/grant the pay scale of Rs. 14,300-18,300/- in respect of the applicant w.e.f. 11.10.1999 and fixation of his pay thereof, with all consequential benefits, in the cadre of Superintendent Engineer/Director.

4. That the Hon'ble Tribunal be pleased to declare that the respondents Union of India is not entitled to make any recovery.
5. Costs of the application.
6. 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 stay operation of the impugned office order bearing No. A-26011/2/97-Estt. 1 (Vol. III)/59 dated 14.03.2007 (Annexure- VIII) till disposal of the Original Application and also be pleased to direct the respondents not to make any recovery during the pendency of the Original Application.
 2. That the Hon'ble Tribunal be pleased to observe that pendency of this application shall not be a bar for the respondents to consider the relief as prayed for.
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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. 140 /2007

Shri Mahendra Pratap Singh : Applicant

-Versus -

Union of India & Others. : Respondents

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Filed by
Dutta
 Advocate

Date: 05.06.07

Mahendra Pratap Singh

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O. A. No. 140 /2007

BETWEEN:

Shri Mahendra Pratap Singh,
Superintendent Engineer
S/O Shri Tilak Raj Singh.
Hydrological Observation Circle
Central Water Commission (CWC),
CWC Complex, Adabari,
P.O. Gauhati University, Guwahati- 781014.

...Applicant.

-AND-

1. The Union of India,
Represented by the Secretary
Ministry of Water Resource,
Shram Shakti Bhawan,
New Delhi- 110 001.
2. The Chairman,
Central Water Commission,
Govt. of India, Sewa Bhawan,
R.K Puram, New Delhi- 110 066.
3. Secretary to the Govt. of India,
Department of Personnel and Training
North Block, New Delhi- 110001.
4. The Under Secretary,
Government of India,
Central Water Commission,
Sewa Bhawan,
R.K. Puram, New Delhi- 110066.

...Respondents.

DETAILS OF THE APPLICATION

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

Mahendra Pratap Singh

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Filed by the applicant
through M. Dutta, advocate
on 05.06.07

This application is made against the impugned office order issued under No. A-26011/2/97-Est. 1 (Vol. III)/59 dated 14.03.2007 (Annexure- VIII), whereby the representation dated 02.07.2001 submitted by the applicant praying for protection of his pay already drawn by him in the scale of Rs. 14300-18300 and fixation of increment thereof has been rejected and the alleged excess payments pertaining to the period from 11.10.1999 to 05.09.2002 have been sought to be recovered in 12 equal monthly installments from the applicant and for declaration that the applicant is entitled to the scale of pay of Rs. 14300-18300/- in the cadre of Superintendent Engineer/Director.

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 is a graduate in Civil Engineering and he was appointed as Asstt. Director w.e.f. 29.09.1986 in the Training Directorate under Central Water Commission, Ministry of Water Resources, New Delhi. He was then promoted to the grade of Dy. Director/Executive Engineer on 01.10.1993 and further to the post of Director/ Superintending Engineer on ad hoc basis from 11.10.1999. Eventually he

Mahendra Patalp Singh

was promoted as Director/Superintending Engineer on regular basis w.e.f. 06.06.2001 and still continuing as such. The said post of Director/Superintendent Engineer is in the Junior Administrative Grade (JAG) of Central water Engineering (Group A) services.

Copy of ad hoc promotion order dated 08.10.99, 11.10.99 and joining report dated 11.10.1999 are annexed hereto for perusal of Hon'ble Tribunal as Annexure-I Series.

4.3 That consequent upon his ad hoc promotion to the post of Director/Supt. Engineer (in the grade of JAG) and his assumption of charges thereto on 11.10.1990, his pay was provisionally fixed in the scale of Rs. 14300-18300/- with his initial pay fixed at Rs. 14,300/-w.e.f 11.10.1999, vide office order No. A-32013/3/99-Estt.I/dated 21.10.1999, in terms of Ministry of Water Resources letter dated 17.10.1997.

Copy of office order dated 21.10.1999, in terms of Ministry of water Resources letter dated 17.10.1997 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-II Series.

4.4 That subsequently the applicant who had been serving as Director/Superintendent Engineer on ad hoc basis w.e.f. 11.10.1999 as stated above, was appointed along with others in the same post in the Junior Administrative Grade on regular basis and was placed in the scale of Rs. 12,000-16,500/- vide office order No. 32013/2/2000-Estt-I dated 08.06.2001. It is relevant to mention here that the applicant was already working in the cadre of JAG on ad hoc basis prior to his aforesaid promotion on regular basis and the post and grade remained same even after promotion. But surprisingly at the time of promotion on regular basis w.e.f 06.06.2001 the applicant was placed in the lower scale of Rs. 12,000-16,500/-, whereas he was already drawing his pay in the higher



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scale of Rs. 14,300-18,300/- in the same grade w.e.f. 11.10.1999, fixed earlier as stated in para 4.3 hereinabove.

Copy of promotion order on regular basis dated 08.06.01 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-III.

- 4.5 That thereafter, the Central water Commission issued one circular No. A-26011/2/97-Estt. I (Vol. III) dated 08.06.2001 forwarding therewith a copy of the Ministry of Water Resources order dated 06.06.2001 whereby the officers working in the JAG on ad hoc basis were asked to exercise their option regarding fixing their pay in the scale of Rs. 12,000-16,500/- either from the date of their ad hoc officiation in the JAG or from the date of their next increment in the STS.

A copy of circular dated 08.06.01 along with order dated 06.06.01 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- IV.

- 4.6 That being aggrieved due to reduction of his scale of pay from 14,300-18,300/- to Rs. 12,000-16,500/- in his promoted post, the applicant submitted a representation on 02.07.2001. In his representation, the applicant stated that he has been already officiating in the JAG on ad hoc basis since 11.10.1999 and drawing the scale of pay of Rs. 14,300-18,300/- and prayed that his promotion to the JAG be regularised w.e.f 11.10.1999 only and not from 06.06.2001 and his pay etc. be fixed in the scale of Rs. 14,300-18,300/- as being drawn by him. As such he did not exercise any option as invited and informed that the question of his option in the lower scale of Rs. 12,000-16,500/- does not arise.

Copy of representation dated 02.07.2001 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-V.

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- 4.7 That eventually the respondents vide their office order No. A 26011/2/97-Estt. I (Vol. II) dated 09.01.2003, fixed the pay and date of increment etc. of the officers promoted to the Junior Administrative Grade (JAG). Accordingly the pay of the applicant was fixed in the scale of Rs. 12000-16,500/- w.e.f 11.10.1999 and thereafter fixed in the scale of Rs. 14300-18300/- w.e.f 06.09.2002, since he had completed 9 years of service in the STS on 06.09.2002 (joined as Dy. Director in the STS on 01.10.1993).

Copy of office order dated 09.01.2003 is enclosed hereto for perusal of Hon'ble Tribunal as Annexure-VI.

- 4.8 That pursuant to the office order dated 09.01.2003 aforesaid, the applicant submitted a representation on 14.01.2003 and prayed that the pay-fixation and recovery thereof etc. as contained in the office order dated 09.01.2003 in his respect should not be implemented till final decision of the competent authority on his representation dated 02.07.2001 is conveyed to him since the said representation was still pending before the competent authority.

Copy of representation dated 14.01.03 is annexed hereto for perusal of Hon'ble Tribunal as Annexure - VII.

- 4.9 That thereafter, the respondent No. 4 issued the impugned office order No. A-26011/2/97-Estt. I (Vol. III)/59 dated 14.03.2007, whereby the claim of the applicant and his representation dated 02.07.2001 have been rejected and the applicant has been informed interalia the decisions of the Ministry as follows; -

- " (i) Only officers in the grade of DD/EE promoted to the Junior Administrative Grade who had completed 9 years of regular service in senior time scale including service, if any, rendered in the JAG on regular/ad hoc basis may be

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allowed the benefit of higher scale of Rs. 14,300-18,300/- w.e.f 01.01.1996 or from the date of appointment to the grade on completion of 9 years service in STS whichever is later.

- (ii) Recovery to be made from the officers who were allowed higher pay scale of Rs. 14,300-18,300/- on completion of 13 years Group 'A' service, without completion of 9 years service in STS as allowed vide MOWR's letter No. 19/68/97-Estt. I dated 17.10.1997 in 12 monthly installments".

Copy of impugned office order dated 14.03.2007 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- VIII.

- 4.10 That the applicant begs to state that prior to the implementation of the recommendations of the 5th Central Pay Commission, there was only one grade in the senior time scale (STS) and two grades in the Junior Administrative Grade (JAG) which were as follows; -

Rs. 3000-4500 = STS (Executive Engineer/Dy. Director)

Rs. 3700-5000 = JAG (ordinary Grade) (S.E)

Rs. 4500-5700 = JAG (Selection Grade) (S.E)

But after the implementation of the recommendations of the 5th CPC w.e.f 01.01.1996, two grades have been created in the senior time scale and there has been only one grade in the Junior Administrative Grade which are as follows; -

Rs. 10,000-15,200 = STS (Ordinary Grade) - Executive Engineer/ Dy. Director.

Rs. 12,000-16,500 = STS (Selection Grade) - Executive Engineer

Rs. 14,300- 18,300 = JAG - Director/Superintending Engineer.

Accordingly, all the officers working in the JAC as on 01.01.1996 in the respondent department have been given the scale of Rs. 14,300-

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18,300/- and arrears have also been paid to them. On the same rationale the officers promoted to JAG in 1999 on ad hoc basis also including the applicant were placed in the scale of Rs. 14,300-18,300/- and their pay were fixed accordingly.

- 4.11 That pursuant to the recommendations of the 5th central pay commission, and its acceptance by the Govt. of India, The Ministry of Finance, Govt. of India vide its notification dated 30.09.1997 published in the Gazette of India notified the pay scales of Group 'A' Engineering services as under:-

<u>Posts</u>	<u>Pre-revised scale</u>	<u>Corresponding revised scale</u>
(a) <u>Supdt. Engineer</u>	3700-125-4700-150- 5000	14300-400-18300
(b) <u>Exe. Engineer</u>	3000-100-3500-125- 4500	10,000-325-15,200 and 12,000-375-16500 (Non functional JAG)

It is clearly evident from the abovementioned notification that the revised scale of Superintending Engineer w.e.f 01.01.1996 is Rs. 14,300-18,300 which unambiguously supports that the scale of Rs. 14,300-18,300 granted to the applicant w.e.f 11.10.1999 on his ad hoc promotion to the grade of Superintending Engineer (in the cadre of JAG) was in order and in accordance with the rules framed by the Government.

Extract copy of the notification dated 30.09.1997 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- IX.

- 4.12 That the applicant most respectfully begs to state that at the relevant time when the applicant was promoted on the ad hoc basis to the post of Superintending Engineer (in the grade of JAG) on 11.10.1999, the recruitment rules, 1995 of the respondent department was in force and the

Mahendra Pratap Singh

applicant was governed by the said Recruitment Rules only. In the said Recruitment Rules, the criteria of eligibility for promotion:

"Officers in the senior time scale with 5 years regular service in the grade and possessing a degree in Engineering (civil or mechanical) or equivalent from a recognized University/Institute".

It was further provided that for appointment to the Duty post of Junior Administrative Grade (selection Grade) in the scale of Rs. 4500-5700/- pre-revised), the eligibility criteria would be as follows:-

"Officers in the junior administrative Grade (ordinary Grade) who have entered in the 14th year of Group 'A' service on the 1st July of the year, calculated from the year following the year of examination/selection on the basis of which the officer was recruited/appointed to the Group 'A' post".

In view of the aforesaid criteria laid down in the Recruitment Rules, 1995, the officers who were promoted to the posts in JAG in 1999, including the applicant, were paid the scale of Rs. 14300-18300/- (revised) on completion of 13 years of service in Group 'A' service. The said scale was implemented in respect of Superintendent Engineer/Directors of Central Water Engineering (Group 'A') services vide letter dated 17.10.1997 (Annexure- II Series hereto above). It is relevant to mention here that the applicant possesses a degree in Civil Engineering and completed 13 years service in Group 'A' post on 29.09.1999 prior to his promotion on 11.10.1999 to the post of Director/Superintending Engineer, on the basis of which he was paid the scale of Rs. 14300-18300/-.

Copy of Recruitment Rules, 1995 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- X.

Mahendra Pratap Singh

- 4.13 That the applicant most humbly and respectfully begs to submit that the criteria of 9 years service in senior time scale for granting scale of Rs. 14,300-18,300/- to the applicant as contended in the impugned office order dated 14.03.2007 (Annexure-VIII hereto above) is presumably on the basis of the provision of amended Recruitment Rules published on 18.11.2004. It is pertinent to mention here that the applicant having been promoted to the JAG way back on 11.10.1999 was governed by the Recruitment Rules, 1995 only which was in force at that relevant time and accordingly he was paid the scale of Rs. 14,300-18,300/- vide letter dated 17.10.1997 (Annexure-II series hereto above) although it was mentioned in the said letter that any deduction, if required, will be made after final decision is taken in the matter of pay fixation. As per the settled position of law, the applicant having been governed by the Recruitment Rules, 1995 at the time of his promotion, cannot be subsequently treated under the Recruitment Rules amended in 2004 and the amended Recruitment Rules, 2004 is not applicable in his case. As such the contention of 9 years service in STS as pre-requisite is arbitrary, unfair and opposed to the settled position of law.

Copy of Recruitment Rules 2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- XI.

- 4.14 That following the recommendations of the 5th pay Commission, the Govt. of India adopted only one scale of pay in respect of the post of Superintending Engineer which is Rs. 14,300-18,300/- as evident from Annexure- IX. Accordingly the said scale was given to the applicant w.e.f. 11.10.1999 after examining all the provisions of law in force at the relevant time and his pay was fixed under FR 22 (1) (a). As such lowering his scale subsequently from Rs. 14,300-18,300/- to Rs. 12,000-16,500/- by imposing a new rider/criteria of 9 years service in STS following executive order, rather in violation of Statutory pay Rules 1997 is malafide, arbitrary,

Mahendra Pratap Singh

unfair, opposed to settled position of law and violative of the principles of natural justice.

- 4.15 That the scale of Rs. 14,300-18,300/- was paid to the applicant on his fulfillment of eligibility criteria provided under Recruitment Rules, 1995 in force at the relevant time which is a statutory provision. But the respondents have lowered the scale of the applicant to Rs. 12,000-16,500/- on the basis of an executive order issued by the Ministry by imposing a pseudo-criterion of 9 years of service in STS as pre-requisite, which is against the statutory provision. It is the settled position of law that a statutory provision cannot be superseded by an executive order, and hence placing of the applicant in a lower scale of Rs. 12,000-16,500/- in the instant case is not sustainable in the eye of law and opposed to the procedures established by law.
- 4.16 That the applicant most respectfully begs to submit that it is evident from the above stated facts that there has been only one scale of pay i.e Rs. 14,300-18,300/- for the post of Director/Suprintending Engineer w.e.f 01.01.1996, but the authorities of respondents department have created two separate pay scales for the said post viz; - Rs. 12,000-16,500 (for those who have completed 9 years service in STS) arbitrarily by an unreasonable classification. It is relevant to mention here that all the officers working in the post of Director/Suprintending Engineer have been discharging the same duties and responsibilities irrespective of whether they have completed 9 years service in STS or not and as such there cannot be two separate scales for the same post involving similar works, which is discriminatory and violative of the provisions of article 14 and 16 of the Constitution of India.

In P. Savita and Ors. -Vs- U.O.I, the Hon'ble Apex Court has held that classification of persons holding identical posts and discharging identical duties into two groups and discrimination in their pay scales is

Mahendra Pratap Singh

violative of Article 14 and further held that those getting the lower scale also entitled to the higher scale.

The applicant is similarly situated and as such the ratio of the judgment stated above are applicable in the instant case of the applicant.

- 4.17 That the respondents paid the scale of Rs. 14,300-18,300/- to those officers (including the applicant) who had completed 13 years in Group 'A' service and promoted to the post of Director/Supdt. Engineer. Subsequently they have imposed another criteria of completion of 9 years of service in STS for granting the said scale to the officers promoted to the post of Director/Supdt. Engineer. It is noted that even that specification of 9 years service has also been changed subsequently in order to extend the benefit of the scale of Rs. 14,300-18,300/- to some selected persons, who were promoted even on ad hoc basis in the JAG cadre by modifying the effective date from 06.06.2001 to 01.01.1996 etc. in a discriminatory manner. It indicates that the respondents have been changing the rules as or when desired by them in order to fit to their convenience and to extend benefit on choose-and-pick methods thus showing utter disregard to the statutory provisions and rule of law and the doctrine of equity clause.
- 4.18 That the applicant most respectfully begs to state that due to illegal and unfair reduction of scale of the applicant from 14,300-18,300/- to Rs. 12,000-16,500/-, the applicant has been subjected to great financial loss. As such finding no other alternative the applicant is approaching this Hon'ble Tribunal for protection of his legitimate rights and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interests of the applicant by quashing the impugned orders whereby the applicant by quashing the impugned orders whereby the applicant has been placed in the lower scale of Rs. 12,000-16,500/- and directing the respondents to regularize the pay of the applicant in the scale of Rs. 14,300-18,300/- w.e.f 11.10.1999 i.e the date on which he was promoted on

Mahendra Pratap Singh

ad hoc basis to the post of Director/Supdt. Engineer, with all consequential benefits.

4.19 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 applicant after completed 13 years regular service in the Group 'A' posts was promoted on ad hoc basis to the post of Director/Superintending Engineer (in the Junior Administrative Grade) w.e.f 11.10.1999 and he was entitled to get the scale of Rs. 14,300-18,300/-.

5.2 For that, as per recommendation of the 5th Central pay Commission and notification of the Govt. of India, there has been only one pay scale viz; 14,300-18,300/- for the post of Director/Superintending Engineer w.e.f 01.01.1996 and as such the said scale was paid to the applicant w.e.f 11.10.1999 on his promotion to the post of Director/Supdt. Engineer, which he was legitimately entitled to.

5.3 For that, the applicant was granted the scale of Rs. 14,300-18,300/- in accordance with the provisions of Recruitment Rules, 1995 and all other rules which were in force at the relevant time when the applicant was promoted to the post of Director/Supdt. Engineer on 11.10.1999 and his pay was accordingly fixed under F.R 22 (1) (a), which cannot be reduced subsequently.

5.4 For that, reduction of pay of the applicant from Rs. 14,300-18,300/- to Rs. 12,000-16,500/- w.e.f 11.10.1999 under amended provisions of new Recruitment Rules, 2004 is illegal, malafide, arbitrary and unfair since the new Recruitment Rules, 2004 is neither applicable in case of the applicant nor has retrospective effect. The applicant's case is governed by the Recruitment Rules, 1995 only which was in force at the relevant time when the applicant was promoted.

Mahendra Pratap Singh

- 5.5 For that, the introduction of two separate scales for the post of Director/Supdt. Engineer viz; 12,000-16,500/- for those who had not completed 9 years service in the STS were the creation of the Respondent department itself under and unreasonable classification which was not in accordance with the recommendations of the Pay Commission or the notification of the Govt. of India and hence arbitrary, illegal, unfair and opposed to the existing provisions of law.
- 5.6 For that, the scale of Rs. 14,300-18,300/- was paid to the applicant as per statutory provisions but the reduction of his scale to Rs. 12,000-16,500/- was done by an executive order issued subsequently. It is the settled position of law that a statutory provision cannot be superseded by an executive order and as such the action of the respondents placing the applicant in the lower scale of Rs. 12,000-16,500/- w.e.f. 11.10.99 is not sustainable and is bad in law.
- 5.7 For that, all the officers working as Director/Superintending Engineer have been discharging the same duties and responsibilities irrespective of whether they have completed 9 years service in the STS or not and as such there cannot be two separate scales for the same post involving similar duties and responsibilities which is discriminatory, violative of the provisions of Article 14 and 16 of the Constitution of India and opposed to the settled position of law.
- 5.8 For that, the scale of Rs. 14,300-18,300/- was paid to the applicant as per the statutory provisions under recruitment rule 1995 i.e. on completion of 13 years service in the Group 'A' service and after examining the all round eligibility of the applicant. Subsequently the respondents introduced the eligibility criteria of completion of 9 years of service in STS grade for higher payment of Rs. 14,300-18,300 w.e.f. 06.06.2001 in the STS and even this criteria is said to have been relaxed in case of some selected persons so as to extend the benefit of the scale of Rs. 14,300-18,300/- to them who

Mahendra Pratap Singh

have rendered service in JAG on ad hoc basis on choose and pick method. As such the respondents have been changing the eligibility criteria as or when desired by them in order to fit to their convenience in utter disregard to the rule of law.

- 5.9 For that, all the officers working in Junior Administrative Grade (i.e. Director/Superintending Engineer) on 01.01.1996 have been paid the scale of Rs. 14,300-18,300/- with arrears paid to them and accordingly the officers promoted to JAG in 1999 in ad hoc basis including the applicant were also given the scale of Rs. 14,300-18,300/- w.e.f. 11.10.1999 and as such reduction of the same to a lower scale after few years is malafide, arbitrary, unfair and opposed to the procedures established by law.
- 5.10 For that, the applicant submitted representations time and again praying for regularization/fixation of his pay in the scale of Rs. 14,300-18,300/- as paid to him w.e.f. 11.10.1999 but the respondents ignored all his prayers, which is against the principles of natural justice.
- 5.11 For that, in any event the respondents are not entitled to make any recovery on the ground of alleged excess payment in pay and allowance, since the applicant has not committed any fraud in provisional allotment of scale of pay of Rs. 14,300-18,300/-
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.

Mahendra Pratap Singh

The applicant further declares that 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 set aside and quash the impugned office order bearing No. A-26011/2/97-Estt. 1 (Vol. III)/59 dated 14.03.2007 (Annexure- VIII).
- 8.2 That the Hon'ble Tribunal be pleased to declare the office order dated 09.01.2003 (Annexure- VI) as illegal and void to the extent of fixation of pay in respect of the applicant.
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to regularise/grant the pay scale of Rs. 14,300-18,300/- in respect of the applicant w.e.f. 11.10.1999 and fixation of his pay thereof, with all consequential benefits, in the cadre of Superintendent Engineer/Director.
- 8.4 That the Hon'ble Tribunal be pleased to declare that the respondents Union of India is not entitled to make any recovery.
- 8.5 Costs of the application.

Mahendra Pratap Singh

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 stay operation of the impugned office order bearing No. A-26011/2/97-Estt. 1 (Vol. III)/59 dated 14.03.2007 (Annexure- VIII) till disposal of the Original Application and also be pleased to direct the respondents not to make any recovery during the pendency of the Original Application.

9.2 That the Hon'ble Tribunal be pleased to observe that pendency of this application shall not be a bar for the respondents to consider the relief as prayed for.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I.P.O. No.	:	346 653660
ii) Date of Issue	:	11.5.07
iii) Issued from	:	G. P. O., Guwahati
iv) Payable at	:	G. P. O., Guwahati

12. List of enclosures.

As given in the index.

Mahendra Pratap Singh

VERIFICATION

I, Shri Mahendra Pratap Singh, S/O Shri Tilak Raj Singh, aged about 44 years, working as Superintendent Engineer in the Hydrological Observation Circle, Central Water Commission (CWC), CWC Complex, Adabari, Guwahati- 14, applicant in the instant original application, 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 3rd day of June 2007.

Mahendra Pratap Singh

ANNEXURE

No. 6/3/93-Estt. I
 Government of India
 Ministry of Water Resources

New Delhi, the 6th October, 1993

ORDER

The President is pleased to appoint the following Senior Time Scale officers of the Central Water Engineers (Group A) Service to the posts of Director/Superintendent Engineer (Junior Administrative Grade-Ordinary Grade) of the said service in an officiating capacity on ad-hoc basis, from the date of their taking over charge of the post for a period of one year or until further orders, whichever is earlier:

S.No. Name of the officer
 S/Shri

-
1. S.K.G. Pandit
 2. N.K. Bhandari
 3. S.K. Srivastava
 4. P.K. Saha
 5. D.P. Singh
 6. K.O. Chokshi
 7. Mangat Ram
 8. R.K. Jain
 9. R.D.S. Yadav
 10. J.C. Iyer
 11. Vinod Kumar Talwar
 12. C.P.S. Siniswar
 13. I.K. Chugh
 14. K.V. Bhatt
 15. Chottrey Lal
 16. Khushvinder Vohra
 17. S.R. Jagwani
 18. K.P.S. Senger
 19. R.L. Kawale
 20. L.P. Singh
 - ✓21. M.P. Singh
 - ✓22. B.K. Chakraborty
 23. S.M. Kansal

*✓
 Drafted
 Handed
 S.M.*

- ✓2. On appointment to the posts of Director/Superintendent Engineer, their pay will be regulated as per instructions by this Ministry vide letter No. 19/68/97-Estt. I dated addressed to the Central Water Commission.

Cont...

- 19 -

- 2' -

3. The appointment of the above officers to the Grade of Director/Superintending Engineer (Junior Administrative Grade Ordinary grade) of the Central Water Engineering (Group-A) Service is purely ad-hoc, temporary, internal arrangement and will not confer on them any right to claim regular promotion or seniority, etc. in the higher grade.

4. The above appointments are subject to the final orders of the Division Bench of High Court of Delhi on the appeals filed against the judgement of the said High Court on the writ petition Nos. 1208/80 and 1757/79.

5. The above appointments are also subject to the final orders in OA No. 146/96 in case of Shri Pradeep Kumar vs. Union of India.

Alm/02302

(A.K. BARUA)

Under Secretary to the Govt. of India

Tel : 3716928

Office order file.

Copy to:--

1. Chairman, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi.
2. The Secretary, Central Water Commission, Sewa Bhawan, New Delhi with the request that charge assumption report in respect of the above officers may please be sent to this Ministry at an early date.
3. Secretary, Sardar Sarovar Construction Advisory Committee, 4th Floor, 'A' Block, Narmada Bhavan, Indira Avenue, Vadodara - 390001.
4. Concerned Officers (through Secretary, Central Water Commission/Secretary, SSCAC).
5. Under Secretary (Admin.), Ministry of Water Resources.
6. Pay & Accounts Officer, Ministry of Water Resources.
7. Pay & Account Officer, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi.

Alm/02302

(A.K. BARUA)

Under Secretary to the Govt. of India

Tel: 3716928

No. A.32013/3/99-Estt.I
Government of India
Ministry of Water Resources
Central Water Commission

11th

New Delhi, the 11 October, 1999.

OFFICE ORDER

As per Ministry of Water Resources Order No. 6/2/89-Estt.I dt. 6.10.99, the President is pleased to appoint the following Senior Time Scale officers of the Central Water Engineering (Group A) Service to the posts of Director/ Superintendent Engineer (Junior Administrative Grade- Ordinary Clerk) of the same service in an officiating capacity on ad-hoc basis, from the date of their taking over charge of the post for a period of one year or until further orders, whichever is earlier.

Sl.No.	Name of Officer S/Ship
1.	S.K. Pandit
2.	M.K. Bhandari
3.	S.K. Srivastava
4.	P.K. Saha
5.	D.P. Singh
6.	K.D. Chokshi
7.	Mangai Ram
8.	R.K. Jain
9.	R.D.S. Yadav
10.	J.C. Iyer
11.	Vined Kumar Talwar
12.	C.P.S. Sinsikar
13.	I.K. Chugh
14.	K.V. Bhatt
15.	Chottee Lal
16.	Khushvinder Vohra
17.	S.R. Jagwani
18.	K.P.S. Sehenger
19.	K.L. Kawale
20.	L.P. Singh
21.	M.P. Singh

*Attested
Vinita
Kaur*

22. B.K. Chakraborty
 23. S.M. Kansal

2. On appointment to the posts of Director/ Superintending Engineer and their pay will be regulated as per instructions issued by the Ministry vide letter No 19-98/97-Estt.I dated 17.10.97

3. The appointment of the above officers to the Grade of Director/ Superintending Engineer (Junior Administrative Grade- Ordinary Grade) of the Central Water Engineering (Group A) service is purely ad-hoc, temporary, internal arrangement and will not confer on them any right to claim regular promotion or seniority etc. in the higher grade

4. The above appointments are subject to the final orders of the Division Bench of High Court of Delhi on the appeals filed against the judgement of the said High Court on the writ petition Nos. 1208/80 and 1757/79.

5. The above appointments are also subject to the final orders in OA No 146/96 in case of Sh. Pradeep Kumar Vs. Union of India.

6. Consequent upon their promotion to the grade of JAG on ad-hoc basis the following postings/ transfers are hereby ordered with immediate effect in public interest:

S.No.	Name	Where working	Where Posted	Remarks
1.	S/Shri 2.	3.	4.	5.
1.	S.K.G. Pandit	D&R	D&R Wing	
2.	N.K. Bhandari	SSCAC, Vadodara	Dir, SSCAC	
3.	S.K. Srivastava	O/o CE, Bhubaneswar	SE O Bhubaneswar	
4.	P.K. Seha	WP&P	Mon. Bhubaneswar	
5.	D.P. Singh	BID, Bhutan	SE O Siliguri	
6.	K.D. Chokshi	SSCAC, Vadodara	SE, HOC, Vadodara vice Shri N.K. Mather	

1.	Mangat Ram	MOWR	SE, Meghna Circle, Silchar
2.	R.K. Jain	WP&P	D&R Wing
3.	R.D.S. Yadav	MOPD.HI, Varanasi	WP&P Wing
4.	J.C. Iyer	D&R	D&R Wing
5.	Viraj Kumar Talwar	D&R	D&R Wing
6.	C.P.S. Sisodia	RM	RM Wing
7.	I.K. Chugh	D&R	D&R Wing
8.	K.V. Bhatt	WP&P	WP&P Wing
9.	Chotey Lal	HGD, Dehradun	SE ♀ Yamuna Basin, Delhi
10.	Kushwinder Vohra	WP&P	WP&P Wing
11.	S.R. Jagwani	WP&P	WP&P Wing
12.	K.P.S. Sengar	PRM	D&R Wing
13.	R.L. Kawale	D&R	D&R Wing
14.	L.P. Singh	GFCC, Patna	WP&P Wing
15.	M.P. Singh	RM Wing	RM Wing
16.	B.K. Chakraborty	MOWR	ER Wing MOWR vice T.M. Venugopalan
17.	S.M. Kansal	D&R	SE, HOC, Maithon

In addition to the above, the following postings/transfers are ordered with immediate effect
in public interest :-

Name S/Shri	Where working	Where posted	Remarks
1. M.E. Haque	D&R Wing	Director (TC) HRM Unit Wef 29.10.99 (AN)	Vice Shri P Padmanabhan
2. T.M. Venugopalan	Sr. Jt. Commissioner ER Wing, MOWR	Director (M), O/o. CE (C&SR) Coimbatore	
3. N.K. Mathur	SE, HOC, Vadodara	SE (C), Vadodara	
4. P.S. Mandal	SE (C) Yamuna Basin, Delhi	RM Wing	
5. K.S. Bhatia	WP&P Wing	D&R Wing	

This issues with the approval of Chairman, CWC.

P.L.U.
(R.C. Tully)
Section Officer

Copy to:

1. Secretary, Ministry of Water Resources, SS Bhavan, New Delhi (Attn: Sh. A K. Banerji, US)
with reference to their Order No. 6/3/99-Estt.I dt. 8.10.99
PPS to Chairman, CWC/PPS to Chairman, CEA.

2. All Members, CWC.

3. Chairman, GFCC, Patna

4. Jt. Secretary(A), Ministry of Water Resources, SS Bhavan, New Delhi.
All Chief Engineers, CWC.

5. All Commissioners, Ministry of Water Resources, SS Bhavan, New Delhi.

6. Secretary, CWC/Dir.(Admin)/Estt/Trg/TC/PCP/Coordn Wings, CWC

7. S.E., 5th Circle, CWC, Gangtok

8. PAO/AO, CWC.

9. All Under Secretaries, CWC

10. Section Officers A/cs-III-IV/CM&V/E.II/E.VIII Section, CWC

11. Persons concerned. It is requested that the charge relinquishment and charge assumption
report in triplicate, may please be sent to this Section.

*Attested
Murti
ADW*

No. 611(A)/99/RUC/.../2/1
Government of India
Central Water Commission
River Management Control Directorate

Form No. 802 (B) Seven (7) pages
R. K. Puram, New Delhi 110 081

Ref. No. 611(A)/99/RUC/.../2/1

OFFICE ORDER

Government of India, their promoter, from Deputy Directors to Director, River Management Office (Circular No. 132-13/99-Estt I) dated 11th October 1999, the following Deputy Directors have assumed the charge of Directors in River Management Wing:

Sl. No.	Name of Officers	Date of assumption of charge (S.D.)
1.	Shri C P Singh, Director	11.10.1999 F.N.
2.	Shri C P Singh, Director	11.10.1999 F.N.

The above officers have been reported to the following Directors as shown against the names with immediate effect:

1.	Shri C P Singh, Director	F.C.A
2.	Shri C P Singh, Director	F.M.II

This is subject to the approval of Member (P&D)

*Attested
Abulka
now*

R. K. Puram
Director

Copy to -

1. PPS to Chairman, CWC
2. PS to Member (P&D)
3. Chair Endorsement / P&D/HRM
4. Director, CCA
5. Director, F.I.I. / MWFCA
6. Key and Non-Key Officer, CWC
7. Shri M. C. Singh, Director / Shri C P Singh, Director
8. Secy. to Director, Estt. VII/VIII/CM&V
9. Inspector of Works

AG.A-32013/3/99-Estt.I/
Government of India
Central Water Commission

New Delhi, dated the 21st October, 1999.

OFFICE ORDER

Consequent upon their promotion, on ad-hoc basis, to the Junior Administrative Grade/Ordinary Grade) of Central Water Engineering(Group A) Service vide Ministry of Water Resources Order No. G/3/99-Estt.I dated 8.10.99 and their assuming charge of the post of Director/Superintending Engineer, and on their completing 13 years of service in Group A, the pay of the following officers is provisionally fixed in the scale of Rs. 14300-400-18300 in terms of FR 22(b)(a)(i) and Ministry of Water Resources letter No.19/68/97-C-13 17.10.97 as under:-

Sl. No.	Name of the officer	Date of completion of 13 years service in Group A	Date of assumption of charge on promotion to Group A	Pay drawn in the SIS	Pay fixed in the scale of Rs.14300-400-18300	Date of next increment
	S/Shri					
1.	S.K.G.Pandit	21.03.99	11.10.99	13250/-	14300/- 11.10.99	1.10.2000
2.	R.K.Jain	02.06.99	11.10.99	12275/-	14200/- 11.10.99	1.10.2000
3.	C.Tyer	22.08.99	11.10.99	11950/-	14000/- 11.10.99	1.10.2000
4.	<i>Appointed Director ad-hoc</i> S.B.S.Singh	29.10.99	11.10.99	11950/-	14300/- 29.10.99	1.10.2000
5.	C.B.S.Singh	06.05.99	11.10.99	11950/-	14300/- 11.10.99	1.10.2000
6.	L.K.Chugh	31.03.99	11.10.99	11950/-	14300/- 11.10.99	1.10.2000
7.	K.V.Bhatt	30.07.99	11.10.99	12925/-	14200/- 11.10.99	1.10.2000

Contd..2..

- 2 -

1. A. Jagwant	09.08.95	11.10.99	12925/- 225/- (EPF) 11.10.99	14300/- +275 (PA)	1.10.2000
2. Dr. J.S. Sengar	30.11.93	11.10.99	13250/-	14300/- 11.10.99	1.10.2000
3. Mr. K. Kewale	26.08.97	11.10.99	12600/-	14300/- 11.10.99	1.10.2000
4. Mr. P. Singh	29.09.90	11.10.99	11300/-	14300/- 11.10.99	1.10.2000

The above fixation of pay has been provisionally made and is subject to adjustment in
view of final audit discussions.

J.S.SASTRY
(J.S.S.SASTRY)
UNDER SECRETARY

Copy to:

MoF, DCF, DCF, Delhi.

Ministry of Finance, A-III, CWC (2 copies)

Ministry of Water Resources (Attn: Shri A.K. Baruah, Under Secretary), Shram Shakti

Min. Environment, Delhi.

Officers concerned.

Personal Service Books.

Shri R.K. Joshi, DDC, E.I.

17.10.87
New Delhi

Shri M.L.Goyal

Secretary

Central Water Commission

Bawa Bhawan, R K Puram

New Delhi

Subject: Implementation of revised pay scale of Rs. 14300-400-18300 in respect of Superintending Engineers/Directors of Central Water Engineering (Group A) Service - regarding.

P. 18/C

I am directed to refer to your I.D.No.A-26011/2/97-Fatt.1/1052 dt..9.10.97, on the subject mentioned above, and to estimate that the pay of JAG level Officers of CWE (Group A) Service, who have completed 13 years service in Group 'A' as per present rules may be fixed provisionally in the revised scale of Rs. 14300-18300.

As for STS level Officers of Central Water Engineering (Group A) Service, their pay may be fixed in the revised normal replacement scale as prescribed in Part 'A' of the First Schedule of the Central Services (Revised Pay) Rules, 1997 notified vide QSR No. 569(E) dt 30.9.97 till a decision is taken about the modalities of the implementation of Non-Functional Classification Grade.

The pays fixed as per above mentioned principle in respect of both JAG and STS officers are provisional. Any deduction in the pay if required will be made in one instalment from the future payments after final decision is taken in the matter of pay fixation.

Yours faithfully,

A.K.BARUA
(A.K.BARUA)
UNDER SECRETARY
TO THE GOVT OF INDIA

Attested
Public
18/10/97
18/10

A-520/3/2/2000-Estt
 Government of India
 Ministry of Water Resources
 Central Water Commission

Dated the 8th June, 2001

OFFICE ORDER

As per Ministry of Water Resources Order No. 3 - 95-E-I dated 20.2.2001, the President is pleased to appoint, on promotion, the following Senior Grade Scale Officer of the Central Water Commissioning (Group 'A') Service to the Junior Administrative cadre of the same Service, on the basis in the scale of pay of Rs. 12,000/- per month, the present replacement scale, subject to paragraph 2 below until further orders.

Sl.No.	Name of the Officer
1	S. Shri
2	Deep Chand Sharma
3	A. Mukundan
4	A.K. Varma
5	N. S. Agarwal
6	A. K. Agarwal
7	S. K. G. Pandit
8	Kashin德拉 Yadav
9	A. K. Agarwal-i
10	Kanash Nath
11	A. K. Bhandari
12	S. N. Chandrasekhara
13	P. Padmanabhan
14	V. K. Chawla
15	B. G. Kausik
16	V. N. Wakpaniar
17	Chanshyam Jha
18	Narendra Kumar. II
19	Ram Saran
20	Syed Masood Husain
21	P. Ramachandra Rao
22	L. Aramvalarathnamathan
23	Y. K. Sharma
24	H. K. Sahu
25	S. D. Gupta
26	S. K. Srivastava
27	C. L. Wadhawan
28	Bhagat Singh
29	B. K. Khuller
30	P. K. Saha
31	D. P. Singh
32	Radhey Shyam Rain
33	W. M. Tembhurney
34	S. R. Konide
35	B. K. Mazumdar
36	N. M. Saha
	M. D. Radhakrishna

*Attested
D. K. Datta
A. D. W.*

37	C.S. Rao
38	H R Bhagat
39	Snehal
40	Jhamman Singh
41	Vinay Kumar
42	S T Hasnain
43	M R Verma
44	N K Mathur
45	S.N. Kataria
46	K S Jacob
47	Pradeep Kumar
48	A K Sinha
49	B S Varshney
50	S K. Saini
51	S P S Chauhan
52	Lalit Kumar
53	S K Khanna
54	S P Singh
55	Sanjeev Kumar Aggarwal
56	R K Gupta
57	R K Suryavanshi
58	Krishan Kumar Gupta
59	P B Patel
60	P K. Alagh
61	S S Ganguli
62	A K Khurana
63	V K Handa
64	K D Chokshi
65	M S Bang
66	Mangat Ram
67	A S P Sinha
68	N C Chakraborty
69	Rajinder Kumar Jain
70	M S. Dhillon
71	C N. Subramanian
72	S K Halder
73	S N Choudhary
74	P S Mandal
75	V P Sliv
76	R D S Yadav
77	Raman Kumar Sinha
78	Rakesh Kumar Gupta
79	J Chandrashekhar Iyer
80	A Parameshwaran
81	Vinod Kumar Talwar
82	C P Srinivasar
83	I K Chugh
84	Gopal Thakur
85	K V Bhatt

80.	Chhotey Lal
81.	
82.	Kushbinder Vohra
83.	S R Jagwani
84.	K P Sengar
85.	J P Singh
86.	MP Singh
87.	<u>B K Chakraberty</u>
88.	S M Kansal
89.	P.M. Scott
90.	A.K. Mohanta
91.	M K Srinivas
92.	P. Devasahayam
93.	Mukesh Kumar
94.	R K Pachauri
95.	L V Ratnam
96.	Rakesh Kumar Singh
97.	K K Singh
98.	Navin Kumar
99.	R R Sharma
100.	Shiv Nandan Kumar
101.	A K Kharya
102.	S K Sabal
103.	V K Nagpure
104.	B N Ram
105.	Manohar Kushwaha
106.	H S Singh
107.	Sifant Boxi
108.	Suresh Chandra
109.	K K Dey
110.	S.M. Shujauddin
111.	R P Gang

2. The above orders for promotion will be with immediate effect in respect of officers who are officiating on adhoc basis and in respect of other officers of Sl. No. 8, 12, 18, 38, 62, 76, 78, 80, 84, 93, 94, 98 and 100 to 116 from the date of assumption of charge of the higher post.

3. The above Promotions are subject to the outcome of following Court Cases.

- (i) LPA No. 57/84 in CWP No. 1757/79 in the matter of Sh. S N. Sethi and Ors Vs Union of India & Ors, LPA No. 59/84 in CWP/80 in the matter of Sh. S M. Hussain & Ors Vs. UOI & Ors and LPA No. 49/84 in CWP No. 1208/80 in the matter of Sh. P. V. Rao Vs. M. S. Hussain & Ors which are pending before the High Court of Delhi

- (ii) OA No. 140/96 in the matter of Sh. Pradeep Kumar & Ors Vs Union of India pending before the Central Administrative Tribunal, Lucknow Bench.
- (iii) A No. 373/97 in the matter of Sh. V.K. Nagpure Vs Union of India & Ors pending before the Central Administrative Tribunal, Ahmedabad Bench
- (iv) OA No. 410/2000 in the matter of Shri LP Singh and Shri M P Singh Vs Union of India and Ors pending before the CAT in Patna Bench
- (v) OA No. 2228/2000 in the matter of Shri Munni Ram Vs Union of India & Ors pending before the CAT (Principal Bench), New Delhi.

4. The Officers who are officiating in JAG on adhoc basis will continue in the same posts on their regular promotion as above except the changes as follows

5. The following officers presently working in the STS on their regular promotion to JAG are posted as Director/SE as indicated against their names. Their promotion will be effective from the date of assumption of charge of the higher post.

Sl No	Name (S/Slip)	From	Posting
1	A.K. Agarwal-I	Deputation with WAPCOS	Director, WP & P Wing
2	P Padmanabhan	Deputation with Tungabhadra Board	Director, CWC HQs
3.	Ram Saran	PA(N) Dte	Director, WP&P Wing
4	K K Gupia	Deputation with THEP	Director, CWC Hqs
5	A.K. Bhurappa	Deputation with NWDA	St. HOC, Dehradun
6	R D S Yadav	MGD III, Varanasi	Director, RM Wing
7	Rakesh Kumar Gupta	ICD(NW&S)Dte	Director, D&R Wing
8	A. Parameshwar	Deputation with NWDA	Director, CWC Hqs.
9.	Gorakhi Thakur	FM I Dte	Director, RM Wing
10.	S.M. Kansal	Instt. Dte	SE(Co-ord), Lucknow
11	P.M. Scott	BID, Bhutan	SE, HOC, Maithon
12	Mukesh Kumar	Deputation with RITES	Director, D&R Wing
13.	L.V. Ratnam	Mon (E) Dte	Director, WP&P Wing
14.	Rakesh Kumar Singh	Topi Div., Sural	Director, D&R Wing
15.	K K Singh	Hyd (C)Dte	Director, D&R Wing
16.	Naveen Kumar	N&B Co-ord. Cell	SE(Co- ord)Bhutaneshwar
17.	P. R. Sharma	NPH Dte	SE(C), Chandigarh
18.	Shiv Nandan Kumar	JPO-P, Nepal	Director, D&R Wing
19.	A K Kharya	Pancheshwar Div., Tenkapur	SE, HOC, Guwahati
20	S K Sibal	NDD Dte	Director, D&R Wing

Contd...2

22	V K.Nappu	Wainganga Div., Nagpur	Director, Monitoring, Nagpur
23	B.N. Ram	FE & SE Dte	Director, D&R Wing
24	Manohar Kharakiani	CMDD(N&W) Dte	Director, D&R wing
25	H S Singh	MGD V, Patna	Director, M&A, Asansol
26	Sankant Boxi	WPC	Director, WP&P Wing
27	Suresh Chandra	MoWR	Director, RM Wing
28	K K Dey	HCD(NW&S)Dte	Director, D&R wing
29	S M Shujauddin	UT Dte	Director, P.M Wing
30	R P Garg	Meghna Div., Silchar	Director, D&R wing

6. The following consequential transfers in the grade of Director/SE are ordered with immediate effect

S.No	Name (S/Shrl)	From	To
1	V.K.Tulwari	HOC, Dehradun	Director, M&A, Bhubaneshwar
2	S K Srivastava W N Wakpanjar	SE(C),Bhubaneshwar Director(Men),Nagpur	SE, HOC, Bhubaneshwar Director, D&R wing

Consequently this Commission's Office Order No A-1901174(18)/99-Estt I dated 16.1.2000 and No.22012/1/2001-Estt.I dated 19.3.2001 are modified as under

S.No	Name (S/Shrl)	From	To	Remarks
1	D K. Mehta	D&R Wing	SE(C),Lucknow	Cancelled
2	C.S.Malhotra	HOC, Guwahati	SE(C), Shillong	Modified
3	TP Singh	D&R Wing	SE(C), Shillong	Cancelled
4	B S. Varshney	WP&P Wing	SE(C), Chandigarh	Cancelled
5	U K. Ghosh	WP&P Wing	Director, M&A, Bhubaneshwar	Cancelled

(J S S SASTRY)
UNDER SECRETARY
Tel No. 610 4761

Copy 10

1. PPS to Chairman, CWC/PPS to Chairman, CEA
2. PS to Member, D&R/PS to Member, RM/PS to Member, WP&P, CWC/Chairman, CFC/C, Patna

3. All Chief Engineers, CWC/ Secretary, SSCAC, Vadodara/ Secretary, CEA alongwith
spare copies for circulation to officers working in their organisations.

4. Ministry of Water Resources (Attn: Sh. NK Gupta, US, Admin) Shram Shakthi
Bhawan, New Delhi alongwith spare copies for circulation to the Officers working in the
Ministry.

5. Secretary, CWC/Directors, Admin/Estt/PCP/TD/Trg/TC/D&R Coord/RM
Coord/WP&P Coord

6. Ministry of Water Resources (Attn: Sh. Hardayal Singh, IJS) Shram Shakthi Bhawan
PAQ/AQ/All Under secretaries/DD, PCP & Security officers/DD(OLY/DD(WPC), CWC

7. Estt.IV/A/o-III/IV/CR/R&I, CWC

8. Officers concerned - The officers mentioned at para 5 shall first relinquish charge in
the STS grade and then assume charge in the JAG grade and submit the charge reports,
in triplicate, through proper channel

9. Personal file of the officers.

10. Sh. R K. Tejpal, LDC, E-I Section, CWC/Spare 5 copies.

*Accepted
Copy 10*

No. A-25011/2/97-Estt.I (Vol. III)

Government of India
Ministry of Water Resources
Central Water Commission

Room No. 305, Sewa Bhawan,
R.K. Puram, New Delhi-66.

Dated the 6 June 2001

Subject:- Placement of JAG Officers of Central Water Engineering (Group 'A') Service in the higher pay scale of Rs. 14,300-18300- effective date regarding.

1. The undersigned is directed to forward a copy of Ministry of Water Resources Order No. 19/68/97-Estt.I dated 6.6.2001 on the subject mentioned above.
2. In terms of para 3 (i) of the above order, the 80 officers working in the JAG on ad-hoc basis as on 6.6.2001 and who have been placed in the higher replacement scale of Rs. 14300-18300 w.e.f. 6.6.2001, shall exercise their option regarding fixing their pay in the normal replacement scale of Rs. 12000-16500 either from the date of their ad hoc officiation in the JAG or from the date of their next increment in the STS. Their pay in the scale of Rs. 12000-16500 would be fixed in terms of FR 22 (I) (a) (i) as per their option. However, the benefit will not be extended a second time while fixing their pay in the higher scale of Rs 14300-18300.
3. The officers mentioned in para 3 (iii) and at S.No. 4,5,9 and 11 to 27 of para 3 (iii) of the above order shall exercise their option for fixing their pay in the scale of Rs. 14300-18300 or Rs. 12000-16500, as the case may be, either from the date they take over formally in JAG or from the date of their next increment in the STS. Their pay would be fixed in terms of FR 22 (I) (a) (i) as per their option.
4. The officers mentioned at S.No. 1 to 3, 6 to 8 and 10 in para 3 (iii) of the above order shall exercise their option for fixing pay in the scale of Rs. 12000-16500 either from the date of their adhoc officiation or from the date of next increment in the grade of STS. Their pay would be fixed in terms of FR 22 (I) (a) (1) as per their option.

*Attested
R.D. Bhatia
SAC*

VI. STRUCTURE

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-2-

5. The option shall be exercised within a period of one month from the effective date of promotion. The option once exercised shall be final.

Encl: As above

(J.S.S. SASTRY)
UNDER SECRETARY (E-T)

To

1. All Officers included in the Ministry of Water Resources order under reference and working in CWC as well as on ex-cadre posts.

2. PAO, CWC.

3. Section Officer A/Cs-III, CWC

Copy with spare copies to:

(J.S.S. SASTRY)
UNDER SECRETARY (E-I)

No. 19/68/97-Estt. I
Government of India
Ministry of Water Resources

Shram Shakti Bhawan, Rafi Marg
New Delhi, dated 6th June 2001

ORDER

Subject:- Placement of JAG officers of Central Water Engineering (Group 'A') Service in the higher pay scale of Rs.14300-18300 - effective date regarding.

1. Consequent to the recommendations of the 5th Central Pay Commission and the promulgation of Ministry of Finance (Department of Expenditure) Notification No.GSR.569(E), dated 30th September, 1997, it was tentatively decided vide this Ministry's letter of even number dated 17.10.1997 that the pay of JAG level officers of Central Water Engineering (Group 'A') Service who have completed 13 years of regular service in Group 'A', as per extant rules, may be provisionally fixed in the revised scale of pay of Rs.14300-18300. It was further stipulated that the pay fixed would be provisional and any deduction in the pay if required, will be made in one instalment from the future payment after the final decision is taken in the matter of pay fixation. Subsequently, vide this Ministry's letter of even number dated 12.11.1998, it was clarified that the JAG officers as and when they complete 13 years Group 'A' service may also be given the higher pay scale of Rs. 14300-18300/- on provisional basis on the same terms and conditions as contained in this Ministry's letter dated 17.10.1997.

2. DoPT vide their O.Ms. No.22/1/2000-CRD, dated 6.6.2000 and 20.12.2000 have not only stipulated the modalities for implementing the recommendations of the 5th Central Pay Commission concerning scale of pay in the organised Group 'A' Engineering Services, including the Central Water Engineering Group 'A' Service but have also vested the administrative Ministries with the powers to place the regularly promoted JAG officers in the higher scale of Rs.14300-18300 on completion of nine years of regular service in the grade as Executive Engineer or equivalent. In view of this final decision the tentative orders issued vide this Ministry's letters dated 17.10.1997 and 12.11.1998 on provisional basis, have become infructuous. Subsequent orders of ad hoc promotion issued by the Ministry so far as they relate to pay fixation in the revised pay scale of Rs. 14,300 - 18,300 on the same analogy stand corrected accordingly.

Attested
Dutta
A.W.

3. On the recommendations of the UPSC, approved by the competent authority, order for regular promotion to the JAG of Central Water Engineering (Group 'A') Service in the normal replacement scale of Rs.12000-16500, in accordance with the notified recruitment rules, have separately been issued vide this Ministry's order No.3/3/95-E.I, dated 6.6.2001. In the light of the above instructions, the issue concerning placement of the promoted officers in the higher pay scale of Rs.14300-18300 has also been considered and it has been decided that the effective date of placement of JAG officers promoted on regular basis in the higher pay-scale of Rs.14300-18300 will be as under:-

i) OFFICERS WORKING IN THE J.A.G. ON AD-HOC BASIS AS ON 6.6.2001 AND WHO HAVE COMPLETED NINE YEARS REGULAR SERVICE IN S.T.S. - HIGHER PAY SCALE OF RS.14300-18300 TO BE EFFECTIVE FROM 6.6.2001.

The following officers who were working in the JAG on ad-hoc basis and have been promoted on regular basis in the normal replacement scale of Rs.12000-16500 vide this Ministry's Order No.3/3/95-E.I, dated 6.6.2001 and who have completed nine years of regular service in the S.T.S are placed in the higher replacement scale of Rs.14300-18300 with effect from 6.6.2001 until further orders:

Sl.No	Name of the officer S/Shri
1.	Roop Chand Sharma
2.	A Mahendran
3.	H K Varma
4.	M S Agarwal
5.	C K Agarwal
6.	S K G Pandit
7.	Kashindra Yadav
8.	Kailash Nath
9.	N K Bhandari
10.	S N Chandrasekhara
11.	V K Chawla
12.	B G Kaushik
13.	V N Wakpanjar
14.	Ghanshyam Jha
15.	Narendra Kumar II
16.	Syed Masood Husain
17.	P Ramachandra Rao
18.	L Aramvalarthanathan
19.	Y K Sharma
20.	H K Sahu
21.	S D Gupta

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3
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22.	S K Srivastava
23.	C L Wadhawan
24.	Bhagat Singh
25.	B K Khuller
26.	P K Saha
27.	D P Singh
28.	Radhey Shyam Ram
29.	W M Tembhurney
30.	S R Karinde
31.	B K Mazumdar
32.	N M Saha
33.	M D Radhakrishna
34.	C S Rao
35.	H R Bhagat
36.	Srichand
37.	Jhamman Singh
38.	Vinay Kumar
39.	S T Hasnain
40.	M R Veima
41.	N K Mathur
42.	S N Kataria
43.	K S Jacob
44.	Pradeep Kumar
45.	A K Sinha
46.	B S Varshney
47.	S K Sahu
48.	S P S Chauhan
49.	Lalit Kumar
50.	S K Khanna
51.	S P Singh
52.	Sanjeev Kumar Aggarwal
53.	R K Gupta
54.	R K Suryavanshi
55.	P B Patel
56.	P K Alagh
57.	S S Ganguli
58.	Y K Handa
59.	K D Chokshi
60.	M S Baig
61.	Mangat Ram
62.	A S P Sinha
63.	N C Chakraborty
64.	Rajinder Kumar Jain
65.	M S Dhillon
66.	C N Subramanian

67.	S K Halder
68.	S N Choudhary
69.	P S Mandal
70.	V P Shiv
71.	Ranjan Kumar Sinha
72.	J. Chandrashekhar Iyer
73.	Vinod Kumar Talwar
74.	C P Sinsinwar
75.	I K Chugh
76.	K V Bhatt
77.	Chhotey Lai
78.	Khushwinder Vohra
79.	S R Jagwani
80.	K P S Senger

OFFICERS WORKING IN THE GRADE OF S.T.S. AS ON 6.6.2001 AND HAVE COMPLETED NINE YEARS REGULAR SERVICE IN THAT GRADE HIGHER PAY SCALE OF RS.14300-18300 TO BE EFFECTIVE FROM THE DATE THEY TAKE OVER FORMALLY IN J.A.G.

The following officers promoted to the JAG on regular basis in the normal replacement scale of Rs.12000-16500 vide this Ministry's Order No.3/3/95-E.I. dated 6.6.2001 and who have completed nine years of regular service in the STS as on 6.6.2001, are placed in the higher replacement scale of Rs.14300-18300 with effect from the date they assume charge in the JAG, until further orders.

Sl.No	Name of the officer S/Shri
1.	A.K. Agarwal - I
2.	P. Padmanabhan
3.	Ram Saran
4.	Krishan Kumar Gupta
5.	A.K. Khurana
6.	R.D.S. Yadav
7.	Rakesh Kumar Gupta
8.	A. Parameshwar
9.	Gorakh Thakur

OFFICERS WORKING IN JAG ON AD HOC BASIS OR IN THE GRADE OF S.T.S. AS ON 6.6.2001 AND WHO HAVE NOT COMPLETED NINE YEARS REGULAR SERVICE IN S.T.S. AS ON 6.6.2001 - WILL CONTINUE TO WORK IN THE SCALE OF RS.12000-16500 UNTIL FURTHER ORDERS.

The following officers promoted to the JAG on regular basis in the normal replacement scale of Rs.12000-16500 vide this Ministry's Order No.3/3/95-E.I. dated 6.6.2001 and who have not completed nine years regular service in S.T.S. as on 6.6.2001, will continue to work in the scale of Rs.12000-16500 until further orders.

E.I. dated 6.6.2001 but have not completed nine years regular service as on 6.6.2001 in the SIS, will continue in the scale of Rs.12000-16500 until further orders.

Sl.No	Name of the officer
	S/Shri
1.	J P Singh
2.	M P Singh
3.	S K Chakraborty
4.	S A Kansal
5.	P M Scott
6.	A K Mohinta
7.	A K Srinivas
8.	R Devcsahayam
9.	Mukesh Kumar
10.	R K Pachauri
11.	L V Ritham
12.	Rajesh Kumar Singh
13.	K K Singh
14.	Navin Kumar
15.	P P Sharma
16.	Shiv Nandan Kumar
17.	A K Kharya
18.	S K Sibal
19.	V K Nagpure
20.	B H Soni
21.	Manohar Kushlani
22.	H S Singh
23.	Sukant Boxi
24.	Suresh Chandra
25.	K K Dey
26.	S M Shuauddin
27.	R P Garg

4. The pay of the above officers earlier fixed in terms of the provisional letters orders issued by the Ministry on 17.10.1997 and 12.11.1998, may be corrected/re-fixed in the light of the above orders and over-payment if any may be recovered, subject to post-audit.

Hardayal Singh
(HARDAYAL SINGH)

UNDER SECRETARY TO THE GOVT. OF INDIA

TEL. NO. 371-6928

Copy to:

1. P.S. to Minister(WR).
2. P.S. to MOS(WR).
3. PPS to Secretary/PS to Additional Secretary(WR).
4. Chairman, Central Water Commission, Sewa Bhavan, New Delhi.
5. PS to JS(A)/PS to JS&FA)/Com.(PR)/PS to Com.(PP)/PS to Com.(ER)/PS to Com(CAD)/PS to Com(WM), MOWR.
6. Officers concerned.
7. Secretary, Central Water Commission.
8. Controller of Accounts, Ministry of Water Resources.
9. Pay and Accounts Officer, Central Water Commission, R.K. Puram, New Delhi.

21-2-71
(HARDAYAL SINGH)

UNDER SECRETARY TO THE GOVT. OF INDIA

To

The Chairman,
Central Water Commission,
Sewa Bhawan, R.K. Puram
New Delhi-110066

Subject : Placement of JAG officers of Central Water Engineering (Group 'A') Service
in the higher pay scale of Rs. 14300-18300 - effective date reg.

Reference : CWC letter No. A-26011/2/97-Estt. I (Vol. III) dt. 8.6.2001 forwarding copy
of MOWR Order No. 19/68/97-Estt.I dated 6.6.2001.

Sir,

I have been promoted to the Junior Administrative Grade of Central Water Engineering (Group 'A') Service on regular basis vide Ministry of Water Resources Order No. 3/3/95-E. I dated 6th June 2001, conveyed vide Central Water Commission Office order No. A-32013/2/2000-Estt.I dated 8th June 2001. Subsequently, vide Order under reference, I have been placed in the pay scale of Rs. 12000-16500. I am asked to exercise the option for fixing pay in the scale of Rs. 12000-16500 vide letter under reference.

With reference to above, it is to state that:

1. I was promoted from the post of Deputy Director to Director on adhoc basis vide CWC office order no. A-32013/3/99-Estt.I dated 11.10.99, which was further continued from time to time.
2. Consequently my pay was fixed in the scale of Rs. 14300-18300 vide CWC office order No. A-32013/3/99-Estt.I dated 21st October 1999 and as such I have been drawing my pay regularly in that scale.
3. It was inaction on the part of the Govt. that the regular DPC's were not convened in spite of the fact that clear vacancies were available. I submit sir, that rule/law is well settled that the department should take advance action for convening the regular DPC meetings and the panels be well prepared accordingly.
4. Therefore, in the first instance, my grievance is that the CWC office order No. A-32013/2/2000-Estt.I dt. 8.6.2001, giving me promotion to the post of Director w.e.f. 6-6-2001 instead of the date of my adhoc promotion is totally against rules and law. In this matter it is to further submit that in case of adhoc appointment as per rules, except for holding of DPC regularizing me subsequently in continuation of adhoc service without break, the seniority and pay shall have to be counted from the date of initial appointment as

*Attended
Bills
Ack*

SG

Director/S.E. Some of the latest judgements to support the contentions are given below:

- (i) Rudra Kumar Sen and others v/s Union of India and others, 2000 (2) SCSLJ 168/2000 (3) ATJ 392 - Five judges Bench.
 - (ii) Ajit Kumar Rath v/s State of Orissa, 2000 (1) SCSLJ 1.
 - (iii) T.Vijayan & others v/s Divisional Railway Manager, 2000(2) SCSEJ 17.
 - (iv) Suraj Prakash Gupta v/s State of J&K, 2000 (2) ATJ 563.
 - (v) N.K.Anand & others v/s Union of India & others, (OA No.149 of 1987 decided on 24-9-1990 of Hon'ble CAT, New Delhi)
5. I am appointed as Director w.e.f. 6.6.2001 vide CWC office order No. A-32013/2/2000-Estt.I dt. 8.6.2001. However, in the context of above rules and law, I request that the said Order may kindly be modified, regularizing my service in JAG (as Director) from the date of my holding the post of Director on adhoc basis continuously in the pay scale of Rs.14300-18300.
6. I am surprised to receive further office order/letter dt. 8.6.2001, under reference, in which the terms given are not in conformity with rules and law as such these need a fresh consideration. Further, I would like to elucidate the position as follows:
- a) In the matter of fixing my pay in the scale of Rs. 12000-16500/- instead of 14300-18300/-, it is humbly to submit that I have been drawing my pay in the scale of Rs.14300-18300 from the date of my adhoc promotion in good faith as per the orders, excepting for the departmental delay in holding DPC from the date vacancies were available. In the circumstances, I have been drawing my pay as per rules and law and any recovery shall be arbitrary. It is further to submit that any administrative Order having adverse consequences cannot be implemented from retrospective date.
 - b) I humbly submit that I have been drawing pay in the scale of Rs. 14300-18300/- throughout the adhoc period and earned increments as per the rules. As the rules/law also admits, my pay shall have to be fixed on the basis of the pay last drawn taking the subsequent period of drawl of next increment in the regular promotion.
 - c) I need not to further explain that on an appointment in adhoc capacity, the entitlement for pay is the same as that of the regular incumbent as per the

principle of natural justice; and there is No discrimination between adhoc and regular employee (i.e. for the same work and same post) as far as the pay and allowances are concerned. Therefore the scale of Rs. 12000-16500 stipulated in this case is totally erroneous.

d) In view of the explanation given above, the office order dt. 6.6.2001 of MOWR forwarded vide CWC office order dt. 8.6.2001 (under reference) needs to be modified.

7. In view of the facts and circumstances given above, I request that:-

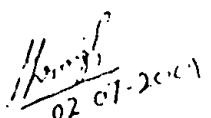
i) I should be regularized in JAG (as Director) from the date of my holding the post of Director on adhoc basis in continuation, in the pay scale of Rs.14300-18300 ; and as such the question of option for pay fixation, at present, does not arise.

ii) My pay and date of increment should be protected taking into account the last pay drawn in the pay scale of Rs. 14300-18300.

In view of the above, it is requested that my present pay arrangements may be continued till a final decision is taken by the competent authority in this respect and conveyed to me.

Sir, that for the reason given above, the rules and laws are very clear and I request to kindly take necessary corrective measures to issue the modified Orders, failing which I will have to take recourse of law for redressal of my grievances.

Yours faithfully,


(M.P.SINGH)
DIRECTOR
ECA Dte., CWC
SEWA BHAWAN
R.K.PURAM, NEW DELHI

Advance copy forwarded for kind information to:
The Secretary, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.

No. A.26011/2/97-Estt.I(Vol.II)
Government of India
Ministry of Water Resources
Central Water Commission

New Delhi, the 9th January, 2003

OFFICE ORDER

Consequent upon promotion, on ad-hoc basis, to the Junior Administrative Grade of Central Water Engineering (Gr.A) Service, the pay of following officers was provisionally fixed in the pay scale of Rs. 14300-400-18300 with the stipulation that any deduction, required, will be made in one instalment from the future payments after final decision is taken in the matter of pay fixation.

S.No. Name of the Officer

S/Shri

- 1 M.P. Singh
- 2 B.K. Chakraborty
- 3 A.K. Mohinta
- 4 M.K. Srinivas
- 5 R. Devasahayam
- 6 R.K. Pachauri

Subsequently, the above officers were promoted on regular basis to the Junior Administrative Grade of CWE(Gr.A) Service in the pay scale of Rs. 12000-375-6500 w.e.f. 6/6/2001 vide Ministry of Water Resources order No. 3/3/95-E.I dated 6/6/2001

Attested
[Signature]

2

34

and they have not exercised option for fixing the pay. Ministry of Water Resources vide Order No. 19/68/97-Estt.I dated 6/6/2001 have directed that the above officers will continue in the scale of Rs. 12000-16500 until further orders

In pursuance of Ministry of Water Resources order No. 19/68/97-Estt.I dated 27/11/2002 placing, inter-alia, the above officers who have completed 9 years of regular service since appointment in Senior Time Scale of the service, in the scale of pay of Rs. 14300-18300 w.e.f. the date mentioned against their names, their pay is initially fixed in the pay scale of Rs. 12000-375-16500 under FR 22 (I) (a)(1) and thereafter refixed in the pay scale of Rs. 14300-400-1800 under FR 22 (I) (a)(2) as under:

S.No.	Name	Date of ad-hoc appointment to JAG	Pay on that date in the S.T.S scale of Rs. 10000-1530 (Rs.)	Pay fixed in JAG scale of Rs. 12000-375-16500 (Rs.)	Date of increment and pay thereon	next and placement in the scale of Rs. 14300-400-18300	Effective date of Pay fixed (Rs.)	Date of next increment
1.	S/Shri M.P. Singh	11/10/1998	11300/-	12000/- 11.10.99	1/10/2000 12375/ 1/10/2001	6/9/2002	14300/-	1/9/2003
2.	B.K. Chakraborty	29/10/1998(N)	13250/-	13875/- 30.10.99	12750/ 1/10/2000 14250/ 1/10/2001	6/9/2002	14700/-	1/9/2003
3.	A.K. Mohinta	9/2/2000	13250/-	13875/- 9.2.2000	14625/ 1/2/2001 14250/ 1/2/2002	6/9/2002	14700/-	1/9/2003
4.	M.K. Srinivas	3/3/2000	11625/-	12000/ 3.3.2000	14625/ 1/3/2001 12375/ 1/3/2002	16/9/2002	14300/-	1/9/2003
5.	R. Devasahayam	14/2/2000	13250/-	13875/- 14.2.2000	12750/ 1/2/2001 14250/ 1/2/2002 14625/-	6/9/2002	14700/-	1/9/2003

R.K.Pachauri	1/5/2000	11625/	12000/ 15.2000	1/5/2001 12375/ 1/5/2002 12750/	6/9/2002	14300/	1/9/2003
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In the light of above pay fixation, any deduction, if required to be made on account of excess payment, shall be made in one instalment as per the stipulation mentioned in the first paragraph of this Office Order.

The above fixation of pay is subject to adjustment in the light of audit observations.

This office order supercedes Commission's earlier office order of even number dt.12.12.02.

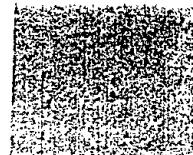
on 9.1.03
(J.S.S. Sastri)
Under Secretary (E.I)

Copy to:

1. The Controller of Accounts (Internal Audit Branch), Ministry of Water Resources Shastri Bhavan, New Delhi.
2. PAO, CWC/ PAO, CWPRS, Pune.
3. Shri M.P.Singh, Director, FCA, CWC, New Delhi.
4. Shri B.K.Chakraborty, Director (Mon), CWC, Kolkata- 3 copies (2 for DDO).
5. Shri A.K. Mohinta, Director (M&A), CWC, Agra.- 3 copies (2 for DDO).
6. Shri M.K. Srinivas, Director NWA, Pune- 3 copies (2 for DDO).
7. Shri R. Devasahayam, SE (Coord), CWC, Coimbatore – 3 copies (2 for DDO).
8. Shri R.K.Pachauri, SE (Coord), CWC, Bhopal- 3 copies (2 for DDO).
9. Section Officer, A/cs-III, CWC- 2 copies.

*Attended
Bhushan
Adw*

-47-



ANNEXURE-VII

88

Dated 14.01.2003

To.

The Chairman,
Central Water Commission,
Sewa Bhawan, R.K. Puram,
New Delhi-110066.

Subject:- Fixation of Pay in the scale of Rs.12000-16500 and Rs.14300-18300

Reference:- (i) OM No. A-26011/2/97-Estt.I (Vol.II) dated 9.1.2003.
(ii) CWC letter No. A-26011/2/97-Estt.I (Vol.III) dated 8.6.2001
forwarding copy of MOWR Order No. 19/68/97-Estt.-I dated
6.6.2001.
(iii) My Representation dated 2.7.2001.

Sir,

My pay fixation has recently been done in the pay scale of Rs.12000-16500 and
Rs.14300-18300 vide Office Order mentioned at reference (i) above which states that
any deduction if required to be made on account of excess payment is to be made in one
installment. In this regard it is to state that my representation dated 2.7.2001 (in
reference to the letter mentioned at reference (ii) above) regarding protection of my pay
and date of increment, taking into account last pay drawn in the pay scale of Rs.14300-
18300 already submitted to you is still pending for final decision by the Competent
Authority. It was requested therein that the present pay arrangement may be continued
till the final decision is taken by the Competent Authority and conveyed to me.

The new pay fixation vide Office Order mentioned at reference (i) has been done
without the final decision on my representation mentioned above.

In view of the above it is requested that the provisions of the Office Order No.
A-26011/2/97-Estt.I (Vol.II) dated 9.1.2003 regarding my pay fixation/dection of
excess payment may not be implemented till the final decision is taken by the Competent
Authority on my representation dated 2.7.2001 and conveyed to me.

Yours faithfully,

M. L. Singh
Director

Copy to:-

1. Under Secretary (E-I), CWC, Sewa Bhawan, R.K. Puram, New Delhi.
2. Section Officer, Accts.III, CWC, Sewa Bhawan, R.K. Puram, New Delhi.

*Amrit
R
(MCW)*

No. A-26011/2/97-Estt.I (Vol.III)

Government of India
Ministry of Water Resources
Central Water Commission

New Delhi, dt. 11.2.07

Office Order

Consequent upon his promotion to the grade of Director vide MOWR Order No. 6/2/89-Estt.I dated 8.10.99, the pay of Shri M.P. Singh was provisionally fixed in the pay scale of Rs. 14,300-18300 w.e.f. 11.10.1999 vide CWC office order No. A 32013/3/99-Estt. I dated 21.10.1999 in pursuance of MOWR's Order No. 19/68/97-Estt.I dated 17.10.97. MOWR order dated 17.10.1997 inter-alia provided that the pay of JAG level officers of CWE (Gr.A) Service who had completed 13 years of regular service in Group A may be provisionally fixed in the revised scale of Rs. 14300-400-18300.

Subsequently, it was inter-alia decided by MOWR's vide para 3 (iii) of their order No. 19/68/97-Estt.I dated 6.6.2001 that the officers promoted to the JAG on regular basis in the normal replacement scale of Rs. 12000-16500 vide MOWR order No. 3/3/95-Estt.I dated 6.6.2001 but have not completed nine years regular service as on 6.6.2001 in the STS will continue in the scale of Rs. 12000-16500 until further orders. The name of Shri M.P. Singh appeared at S.No. 2 of the above para of MOWR orders dated 6.6.2001. Against the above order, Shri M.P. Singh submitted a representation dated 2.7.01 which was forwarded to MOWR.

MOWR vide their order No. 19/68/97-Estt.I dated 27.11.2002 placed Shri M.P. Singh, Director in the higher scale of Rs. 14300-18300 with effect from 6.9.2002 and accordingly his pay was fixed vide CWC office order No. A-26011/2/97-Estt.I (Vol.II) dated 12.10.2002. In the said order, it was ordered that the excess pay drawn shall be recovered in one instalment. Against the said order also, Shri M.P. Singh submitted a representation dated 14.1.03 inter-alia praying for protection of pay and date of his increment taking into account last pay drawn in the pay scale of Rs. 14300-18300 and excess payment be not recovered till the final decision is taken by the MOWR. The said representation of Shri M.P. Singh was also forwarded to MOWR.

Now MOWR, in consultation with DOPT and Ministry of Finance, vide their letter No. 19/33/2001-Estt.I dated 6.2.2006 have inter-alia decided as under :-

*Attended
Bhutta
ASW*

i) Only officers in the grade of DD/EE promoted to the Junior Administrative Grade who had completed 9 years of regular service in STS including service, if any, rendered in the JAG on regular/adhoc basis may be allowed the benefit of higher pay scale of Rs. 14300-18300 wef 1.1.96 or from the date of appointment to the grade on completion of 9 years of service in STS whichever is later.

ii) Recovery to be made from the officers who were allowed higher pay scale of Rs. 14300-18300 on completion of 13 years Group A service without completion of 9 years service in STS as allowed vide MOWR's letter No.19/68/97-Estt.I dated 17.10.97 in 12 monthly instalments.

iii) Since promotion is only on prospective basis counting of adhoc service towards regular service cannot be accepted.

As Shri M.P. Singh had completed 9 years of service in STS and JAG on 6.9.2002, he is entitled for the higher pay scale of Rs. 14300-18300 from the said date and the excess payments drawn by him on account of fixation of his pay in the higher scale of Rs. 14300-18300 from 11.10.1999 till the granting of the higher scale is recoverable from him in 12 instalments.

Shri M.P. Singh, Director is accordingly informed and is requested to pay the excess pay and allowances drawn by him during the period from 11.10.99 to 5.9.2002 in 12 equal monthly instalments.

Gulshan Lal
Under Secretary

Copy to :-

1. PAO, CWC
2. Chief Engineer (B&BB) , CWC, Shillong
3. DDO, HOC, CWC, Guwahati. It is requested that the excess payments made to Shri. M.P. Singh, SE, HOC CWC, Guwahati may be recovered from his salary in 12 monthly instalments under intimation to this office. A copy each of the pay fixation order No. A-32013/3/99-Estt.I dated 21.10.99 and No. A-26011/2/97-Estt.I (Vol.I) dated 12.10.2002 are enclosed for ready reference.
4. Shri M.P. Singh, SE, HOC, CWC, Guwahati

120/- 16582

MINISTRY OF FINANCE

(Department of Expenditure)

NOTIFICATION

New Delhi, the 30th September, 1997

G.S.R. 369 (E).— In exercise of the powers conferred by the proviso to article 309, and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, namely :—

Short title and commencement.— (1) These rules may be called the Central Civil Services (Revised Pay) Rules, 1997.

(2) They shall be deemed to have come into force on the 1st day of January, 1998.

Applicability of these rules.— (1) These rules shall apply to all persons serving in the Indian Audit and Accounts Department.

(2) These rules shall also apply to all persons serving in the Indian Audit and Accounts Department whose pay is subject to the Civil Estimator as aforesaid.

(3) These rules shall not apply to—

(a) persons appointed to the central civil services and posts in groups 'A', 'B', 'C' and 'D' under the administrative control of the Administrator of the Union territory of Chandigarh;

(b) persons locally recruited for service in diplomatic, Consular or other Indian establishments in foreign countries;

(c) persons not in whole-time employment;

(d) persons paid out of contingencies;

(e) persons paid otherwise than on a monthly basis, including those paid only on a piecemeal basis;

(f) persons employed on contract except where the contract provides otherwise;

(g) persons re-employed in Government service after retirement;

(h) any other class or category of person whom the President may, by order, specifically exclude from the operation of all or any of the provisions contained in these rules.

3. *Definitions.*— In these rules, unless the context otherwise requires—

(1) "basic pay" means pay drawn in the prescribed scale of pay,

Attested
M. P. S.
A. K. D.

Senior Scale	1400-40-1600-50-2300- 60-2600	5000-150-8000	55.259
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Selection Scale	1640-60-2600-75-2900	5500-175-9000	55.259
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(b) Trained Graduate Teacher/
Head Master, Primary School

Entry Scale	1400-40-1600-50-2300- 60-2600	5500-175-9000	55.259
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Senior Scale	1640-60-2600-75-2900	6500-200-10500	55.259
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Selection Scale	2000-60-2300-75-3200- 100-3500	7500-250-12000	55.259
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(c) Post Graduate Teacher/
Head Master, Middle School

Entry Scale	1640-60-2600-75-2900	6500-200-10500	55.259
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Senior Scale	2000-60-2300-75-3200- 100-3500	7500-250-12000	55.259
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Selection Scale	2200-75-2800-100-4000	8000-275-13500	55.259
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(d) Vice Principal/Head
Master, Secondary
School

Entry Scale	2000-60-2300-75-3200- 100-3500	7500-250-12000	55.259
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VIII. SUBORDINATE ENGINEERING SERVICES

(a) Suptd. Engineer	8700-125-4700-150- 5000	14300-400-10300	50.45
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(b) Engineers	3000-100-3500-125-4500	10000-325-15200 2000-375-10500 (including JAG)	50.45
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IX. SUBORDINATE ENGINEERING CADRES

Subordinate Engineers	1400-40-1800-50-2300	5000-150-8000	50.23 & 50.24
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	1600-50-2300-60-2600	5500-175-9000	50.23 & 50.24
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	1640-60-2600-75-2900	5500-175-9000	50.23 & 50.24
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	2000-60-2300-75-3200	6500-200-10500	50.23 & 50.24
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	2000-60-2300-75-3200- 100-3500	6500-200-10500	50.23 & 50.24
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	2375-75-3200-100-3500	7450-225-11500	50.23 & 50.24
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	2375-75-3200-100-3500- 125-3750	7500-250-12000	50.23 & 50.24
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(TO BE PUBLISHED IN PART II, SECTION 3, SUB SECTION (1) OF THE
GAZETTE OF INDIA)

Government of India
Ministry of Water Resources

New Delhi, the 2nd November, 1995.

NOTIFICATION

G.S.R. 486¹⁸⁻¹¹⁻⁹⁵ In exercise of the powers conferred by the proviso to article 309 of the Constitution and in supersession of the Central Water Engineering (Group 'A') Service rule, 1982, except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules regulating the method of recruitment to the Engineering Service in the Ministry of Water Resources, namely:—

1. Short title and commencement.—

- (1) These rules may be called Ministry of Water Resources, the Central Water Engineering Group 'A' Service rules, 1995.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—In these rules, unless the context otherwise requires, —

- (a) "Commission" means Union Public Service Commission;
- (b) "Controlling Authority" means the Government of India in the Ministry of Water Resources;
- (c) "Departmental Promotion Committee" means a committee constituted under these rules to consider the promotion and confirmation in any grade as specified in Schedule IV;
- (d) "duty post" means any post, whether permanent or temporary included in Schedule I;
- (e) "examination" means the combined competitive examination conducted by the Commission for recruitment to Engineering Services;
- (f) "Government" means the Government of India;
- (g) "grade" means a grade of the Service;
- (h) "regular service" in relation to any grade means the period or periods of service in that grade rendered

Contd...

*Water & Power
Ministry
Adm*

after selection according to the procedure prescribed in the Schedule III, for regular appointment to that grade and includes any period or periods--

- (i) taken into account for purposes for seniority in the case of those appointed as per rule 5;
- (ii) during which an officer would have held a duty post in that grade but for being on leave or otherwise not being available for holding such posts;

- (i) "Schedule" means a schedule appended to these rules;
- (j) "Scheduled Castes" and "Scheduled Tribes" shall have the same meaning as assigned to them in clauses (24) and (25) respectively of article 366 of the Constitution;
- (k) "Service" means the Central Water Engineering Group 'A' Service constituted under rule 3.

3. Constitution of the Service--

- (1) The Service shall consist of the posts mentioned in Schedule I and the appointments to the Service shall be made under rule 5 and 6.

4. Grades, authorised strength and its review,--

- (1) The duty posts included in the various grades of the Service their numbers and scales of pay on the date of commencement of these rules shall be as specified in Schedule I. The duty posts included in a particular grade as mentioned in this schedule would be interchangeable with one another.
- (2) After the commencement of these rules, the authorised permanent strength of the duty posts in various grades shall be such as may, from time to time, be determined by Government.
- (3) Government may make temporary additions or delitions to the strength of the duty posts in various grades as deemed necessary from time to time.
- (4) Government may, in consultation with the Commission, include in the service any post other than those included in the Schedule I or exclude from the Service a post included in the said Schedule.
- (5) Government may, in consultation with the Commission, appoint an officer whose post is included in the

contd...

Service under sub-rule (4) of this rule to the appropriate grade in a temporary capacity or in a substantive capacity, as may be deemed fit and fix his seniority in the grade after taking into account continuous regular service in the analogous grade.

5. Initial Constitution of the Service.--

- (1) All the existing officers holding Group 'A' duty posts on regular basis in the Central Water Engineering (Group 'A') Service on the date of the commencement of these rules shall be members of the Service in the respective grade.
- (2) The regular continuous service of officers referred to in Sub-rule (1) prior to their appointment to the Service shall count for the purpose of probation period, qualifying service for promotion, confirmation and pension in the Service.
- (3) To the extent, the Controlling Authority is not able to fill the authorised regular strength of various grades in the Service in accordance with the provisions of this rule, the same shall be filled in accordance with the provisions of rule 6.

6. Future maintenance of Service.--

- (1) The vacancies in any of the grades referred to in Schedule-I shall be filled in the manner hereinafter provided in this rule, and the persons so appointed shall be the members of the Service in the respective grades from the date of such appointment.
- (2) 60 per cent of the vacancies in the Junior Time Scale of the Service shall be filled by direct recruitment on the results of Combined Competitive Examination conducted by the Commission for the recruitment to the Engineering Services on the basis of educational qualifications and age limit as specified in Schedule II. The remaining 40 per cent of the vacancies shall be filled by promotion from amongst the officers in the lower grade with minimum qualifying service as specified in Schedule III.
- (3) All the vacancies in the Senior Time Scale and above shall be filled in accordance with the method of recruitment, field of selection and minimum qualifying service as specified in Schedule III.
- (4) The selection of the officers for promotion shall be made by 'Selection on merit' except in the following cases namely:
 - (a) Promotion of officers from the posts in the Junior

Contd...

Time Scale to the posts in the Senior Time Scale of the Service shall be in the order of seniority subject to the rejection of the unfit; and

- (b) Grant of Selection Grade (Non-Functional) in the Junior Administrative Grade of the Service shall be in order of seniority based on their suitability taking into account their overall performance, experience and other related matters in accordance with the guidelines issued by the Government from time to time.
- (5) Recruitment by promotion to every post of the Service shall be made on the recommendations of the Departmental Promotion Committee as specified in Schedule-IV.
- (6) If any officer appointed to the post in the Service is considered for the purpose of promotion to the higher post, all persons senior to him in the grade shall also be considered notwithstanding that they do not fulfil the prescribed qualifying service, if the shortfall is not more than one year and provided they have successfully completed their probation period, if prescribed.
7. Filling of duty posts by deputation.— Notwithstanding anything contained in rule 6 where the Government is of the opinion that it is necessary or expedient to do so, it may for reasons to be recorded in writing and in consultation with the Commission, fill a duty post in any of the grades by transfer on deputation for a period not exceeding 3 years, which may in special circumstances be extended upto 5 years, as the Government may think fit. The qualifications, experience and the eligibility service for appointment under this rule shall be decided by the Government in consultation with the Commission on each occasion.
8. Seniority.—
- (1) The relative seniority of officers of the Service appointed to a grade at the time of initial constitution of the Service under rule 5 shall be as obtaining on the date of commencement of these rules.
- Provided that if the seniority of any such member had not been specifically determined on the said date, the same shall be determined on the basis of rules governing the fixation of seniority as was applicable to the members of the Service prior to the commencement of these rules.
- (2) The seniority of officers recruited to the Service

contd...

other than those appointed under rule 5 shall be determined in accordance with the general instructions issued by the Government in this regard from time to time.

(3) In cases not covered under sub rule (1) and (2), seniority shall be determined by the Government in consultation with the Commission.

9. Probation. --

(1) Every officer recruited to the post of Junior Time Scale of the Service shall be on probation for a period of two years.

Provided that the Controlling Authority may extend the period of probation in accordance with the instructions issued by Government from time to time in this behalf.

Provided further that any decision for extension of probation period shall be taken immediately after the expiry of initial period of probation and ordinarily within eight weeks and communicated in writing to the concerned officer together with reasons for so doing within the said period.

(2) On completion of period of probation or any extension thereof, officers, if considered fit for permanent appointment, shall be confirmed in the Service.

(3) If, during the period of probation, or any extension thereof, as the case may be, the controlling authority is of the opinion that an officer is not fit for permanent appointment, the controlling authority may discharge the officer or revert the officer to the post held by him prior to his appointment in the service, as the case may be.

(4) During the period of probation or any extension thereof, an officer may be required by Controlling Authority to undergo such courses of training and instructions or to pass such examination and tests (including examination in Hindi) as Controlling Authority may deem fit, as a condition to satisfactory completion of probation.

(5) As regards other matters relating to probation, not covered by these rules, the members of the Service will be governed by the order, instructions issued by the Government in this regard from time to time.

10. Liability for service in any part of India and other conditions of Service. --

(1) Officers appointed to the Service shall be liable to serve anywhere in India or outside.

contd...

(2) Any officer appointed to the Service, if so required, shall be liable to serve in any Defence Service or post connected with the defence of India, for a period of not less than four years, including the period spent on training 'if any'.

Provided that such officers:—

(a) shall not be required to serve as aforesaid after expiry of ten years from the date of his appointment to the Service;

(b) shall not ordinarily be required to serve as aforesaid if he has attained the age of forty years.

(3) The conditions of service of the members of the Service in respect of matters for which no specific provision has been made in these rules, shall be the same as are applicable, from time to time, to Group 'A' officers of the Central Civil Services.

11. Disqualifications.—No person.—

(a) who has 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 the service:

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

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

13. Savings.—Nothing in these rules shall affect reservations relaxation of age limit and other concessions required to be provided for persons belonging to the Scheduled Castes, the Scheduled Tribes, Ex-Servicemen and other special categories of persons in accordance with the orders issued by the Government from time to time in this regard.

contd...

4. Interpretation.—If any question relating to the interpretation of these rules arises, it shall be decided by the Government in consultation with the Commission.

(No. 36/95 (File No. 30/12/83-Estt.I))

Subj: 18/1

(L.K. JOSHI)

Joint Secretary to the Government of India

Tele: 3710343

To

The Manager

Government of India Press,

Mayapuri, New Delhi (with Hindi version)

Copy forwarded with Hindi Version to:

1. The Chairman, Central Water Commission, New Delhi (25 copies)
2. The Department of Personnel and Training, North Block, New Delhi.
3. The Secretary, UPSC, Shahjahan Road, New Delhi with reference to their letter No.F.3/5(6)/94-SW(B) dt. 17th August, 1995.
4. The Chief Librarian, Parliament House Library, New Delhi.
5. The Lok Sabha Secretariat (Committee Branch), New Delhi.
6. The Rajya Sabha Secretariat (Committee Branch), New Delhi.
7. The Ministry of Law, Justice and Company Affairs (Legislative Deptt.), Shastri Bhawan, New Delhi with reference to their UO No.2225/95 dated 10.10.1995.
8. The Ministry of Law (Official Language Cell), Bhagwan Dass Road, New Delhi with reference to their UO No. 435/95-Translation-1 dated 17.10.1995.
9. Notification file.
10. US(A)/US(GL-FBP)/US(ER)/US(PP)/US(PR)

A. K. Barua

UNDER SECRETARY TO THE GOVT. OF INDIA

*After the
Bills
are
done*

Schedule I

(See sub-rule (1) of rule 4)

Name of duty posts, their number and scale of pay included in the various grades of the Service.

Sl.	Name of the No. post/Grade	Name of the duty posts included in the grade	No. of duty posts	Scale of Pay
(1)	(2)	(3)	(4)	(5)
1	Chairman	Chairman, Central Water Commission	1	
				Rs. 8000/- (fixed)
		Total	1	
2	Member	Member, Central Water Commission	3	
				Rs. 7300/-
		Chairman, Ganga Flood Control Commission	1	7600/-
		Total	4	
3	Senior Administrative Grade	Commissioner, Ministry of Water Resources	5	Rs. 5900/- 6700/-
		Chief Engineer, Central Water Commission	31	
		Member, Ganga Flood Control Commission	2	
		Secretary, Sardar Sarovar Construction Advisory Committee	1	
		General Manager, Farrakka Barrage Project	1	
		Chief Engineer, Central Electricity Authority	2	
		Total	42	

After the
Mark
down

60

20

(1) (2) (3) (4) (5)

4. Junior Administrative Grade (Selection Grade) Rs. 4500/-
 (a) Note: 5700/-

Officers of the Service granted Non-Functional Selection Grade on their posting against Cadre posts in the Ministry of Water Resources would be designated as Senior Joint Commissioner

(b) Junior Joint Commissioner, Ministry of Water Resources 17 Rs. 3700/-
 (a) Director/ Superintending Engineer, Central Water Commission 142 5000/-
 Director, Ganga Flood Control Commission 5000/-
 Deputy Secretary, 1 Sardar Sarovar Construction Advisory Committee 5
 Director/ Superintending Engineer, Central Electricity Authority 5
 Total 169 *

(1) (2) (3) (4) (5)

* including Selection Grade post which would be equal to 15% of senior duty post, namely all duty post at the level of Senior Time Scale and above, subject to the conditions that there will be no increase in the over all strength of Junior Administrative Grade

5	Senior Time Scale	Deputy Commissioner, 7 Ministry of Water Resources	228	Rs.3000/- 4500/-
		Deputy Director/ Executive Engineer, Central Water Commission	8	
		Deputy Director/ Executive Engineer, Ganga Flood Control Commission	3	
		Assistant Secretary, 3 Sardar Sarovar Construction Advisory Committee	14	
		Deputy Director/ Executive Engineer, Central Electricity Authority	260	
		Total		

62
62

(1)	(2)	(3)	(4)	(5)
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6. Junior Time Assistant Commissioner, 2 Rs. 2200-4000/-
Scale Ministry of Water
Resources

Assistant Director/ 254*
Assistant Executive
Engineer, Central
Water Commission

(* This includes 22
posts in deputation
reserve, 22 posts in
leave reserve and 6
posts in training
reserve)

Assistant Director/ 8
Assistant Executive
Engineer, Ganga Flood
Control Commission

Assistant Director/ 25
Assistant Executive
Engineer, Central
Electricity Authority

Total 289

Officer
Banks
etc

Schedule II

(See sub-rule (2) of rule 6)

* Minimum educational qualifications and age limits for direct recruitment to posts in Group 'A' Junior scale of the Central Water Engineering (Group 'A') Service, on the results of the combined Competitive Examination to be conducted by the Union Public Service Commission.

(A) A Candidate shall possess--

(1) A degree in Civil or Mechanical Engineering from:

(i) a University incorporated by an act of the Central or State Legislature in India;

OR

(ii) an educational Institution established by an Act of Parliament or declared to be deemed University under Section 3 of the University Grants Commission Act, 1956;

OR

(2) Such other qualifications as have been recognised by Government for the purpose of admission to the examination;

(3)

OR

(3) A degree/diploma in Engineering from such foreign Universities/Colleges/Institutions and under such conditions as may be recognised by Government for the purpose from time to time.

Note 1: In exceptional cases, the Commission may treat a candidate, not possessing any of the above qualifications, as educationally qualified provided that the Commission is satisfied that he has passed examinations conducted by other Institutions, the standard of which in the opinion of the Commission, justified his admission to the examination.

Note 2: (i) A Candidate who is otherwise qualified by virtue of his having taken a Degree from a foreign University which is not recognised by Government, may also apply to the Commission and may be admitted to the examination at the discretion of the Commission;

(ii) A candidate shall have attained the age of 20 years but shall not have attained the age of 28 years on the 1st day of August of the year in which the examination is held.

SCHEDULE LII

(See sub-rule (2), (3) of rule 6)

Method of recruitment, the field of promotion, the minimum qualifying service in the next lower grade in the field of selection, educational qualifications for transfer on deputation for appointment to duty post included in the Central Water Engineering (Group 'A') Service.

Sl. No.	Name of the post	Method of Recruitment	Field of Selection and minimum qualifying service for promotion	Field of Selection for transfer on deputation
1	2	3	4	5

- 1 Chairman, Central Water Commission (Rs.8000/-fixed) By promotion fail- ing which by trans- fer on de- putation.
- Promotion:-
- I. Officers in the Higher Adminis- trative Grade (Rs.7300-7600/-) with 2 years regular service in the grade.
- Transfer on de- putation(*) :-
- II. Officers under the Central Government/State Governments/Union Territories.
- (a) (i) holding anal- gous posts on regular basis; or
- (ii) with 2 years regular service in the posts in the scale of Rs.7300-7600/- or equivalent; And
- (b) Possessing Degree in Civil Enginee- ring or Mechanical Engineering from

Contd...

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D. B. S.
A. W.

1	2	3	4	5
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a recognised University or equivalent and 20 years experience in the field of irrigation and water utilisation and/or in the design, construction, operation and maintenance of irrigation projects and / or flood control and flood Management works.

2. The period of deputation including the period of deputation in another Ex-cadre post held immediately preceding this appointment in the same or some other organisation/Department of the Central Government shall not exceed 5 years.

2 Member, Central Water Commission. By promotion. Chairman, Ganga Flood Control Commission. Rs.7300-100-7600.

Officers in the Senior Administrative Grade of the Central Water Engineering (Group 'A') Service with 3 years regular service in the grade.

3 Duty posts in Senior Administrative Grade (Rs.5900-200-6700). By Promotion.

Officers in the Junior Administrative Grade with 8 years regular service in the grade (including service if any, in the

Contd...

1 2 3 4 5

Selection Grade) or 17 years regular service in Group 'A' posts in the Service out of which atleast 4 years regular service should be in the Junior Administrative Grade and having field experience or experience of investigation for 2 years in a post in the Junior Administrative Grade and/or Senior Time Scale of the Service.

4 Duty Posts in Junior Administrative Grade (Selection Grade) (Rs.4500-150-5700)

By appointment on the basis of seniority based on suitability taking into account overall performance, experience and any other related matters.

Officers in the Junior Administrative Grade (Ordinary Grade) who have entered in the 14th year of the Group 'A' Service on the first July of the year, calculated from the year following the year of the examination/selection on the basis of which the officer was recruited/appointed to the Group 'A' post.

5 Duty Posts in Junior Administrative Grade (Ordinary Grade) (Rs.3700-125-4700-150-5000/-)

By Promotion

Officers in the Senior Time Scale with 5 years regular service in the grade and possessing a Degree in Engineering (Civil or Mechanical) or equivalent from a recognised University/Institute.

6 Duty Posts in Senior Time Scale (Rs.3000-100-3500-125-4500)

By Promotion

Officers in the Junior Time Scale with 4 years regular service in the grade and having passed the prescribed Departmental test(s).

contd...

1	2	3	4	5
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- 7 Posts in Junior 40% by promotion,
Time Scale 60% by direct
(Rs. 2200-75- recruitment, as
2800-EB-100- per provisions
4000/-) of Sub-rule (2)
of Rule 6
- From Extra
Assistant
Directors
(Engineering)/
Assistant
Engineers
with 3 years
regular
service in
the grade

MINISTRY OF WATER RESOURCES

New Delhi, the 18th November, 2004

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ANNEXURE-XI

G.S.R. 410.—In exercise of the powers conferred by the proviso to article 309 of the Constitution and in supersession of Ministry of Water Resources, the Central Water Engineering Group 'A' Service Rules, 1995, except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules regulating the method of recruitment to the Engineering Service in the Ministry of Water Resources, namely :—

1. **Short title and commencement.**—(1) These rules may be called the Ministry of Water Resources, the Central Water Engineering (Group 'A') Service Rules, 2004.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. **Definitions.**—In these rules, unless the context otherwise requires,—
 - (a) "Commission" means Union Public Service Commission;
 - (b) "Controlling Authority" means the Central Government in the Ministry of Water Resources;
 - (c) "Departmental Promotion Committee" means a committee constituted under these rules to consider the promotion and confirmation in any grade as specified in Schedule-IV;
 - (d) "duty post" means any post, whether permanent or temporary included in Schedule-I;
 - (e) "examination" means by the combined competitive examination conducted by the Commission for recruitment to Engineering Services;
 - (f) "grade" means a grade of the Service;
 - (g) "regular service" in relation to any grade means the period or periods of service in that grade rendered after selection according to the procedure prescribed in Schedule-II, for regular appointment to that grade and includes any period or periods—
 - (i) taken into account for purposes for seniority in the case of those appointed as per rule 5;
 - (ii) during which an officer would have held a duty post in that grade but for being on leave or otherwise not being available for holding such posts;
 - (h) "Schedule" means a Schedule appended to these rules;
 - (i) "Scheduled Caste" and "Scheduled Tribes" shall have the same meaning as assigned to them in clauses (24) and (25) respectively of the article 366 of the Constitution;
 - (j) "Service" means the Central Water Engineering (Group 'A') Service constituted under rule 3.
3. **Constitution of the Service.**—The Service shall consist of the posts mentioned in Schedule-I and the appointments to the Service shall be made under rule 5 and 6.
4. **Grades, authorized strength and its review.**—(1) (a) The duty posts included in the various grades of the Service, their numbers and scales of pay on the date of commencement of these rules shall be as specified in Schedule-I.
- (b) The duty posts included in a particular grade as mentioned in this Schedule would be interchangeable with one another.
- (2) After the commencement of these rules, the authorised permanent strength of the duty posts in various grades shall be such as may, from time to time, be determined by the Central Government.
- (3) The Central Government may make temporary additions or deletions to the strength of the duty posts in various grades as deemed necessary from time to time.
- (4) The Central Government may, in consultation with the Commission, include in the service any post other than those included in the Schedule-I or exclude from the Service a post included in the said Schedule.
- (5) The Central Government may, in consultation with the Commission, appoint an officer whose post is included in the Service under sub-rule (4) to the appropriate grade in a temporary capacity or in a substantive capacity, as may be deemed fit and fix his seniority in the grade after taking into account continuous regular service in the analogous grade.

Attested
Bullock
ADN

5. **Initial Constitution of the Service.**—(1) All the existing officers holding Group 'A' duty posts on regular basis in the Central Water Engineering (Group 'A') Service on the date of commencement of these rules shall be members of the Service in the respective grade.

(2) The regular continuous service of officers referred to in sub-rule (1) prior to their appointment to the Service shall count for the purpose of probation period, qualifying service for promotion, confirmation and pension in the Service.

(3) To the extent, the Controlling Authority is not able to fill the authorised regular strength of various grades in the Service in accordance with the provisions of this rule, the same shall be filled in accordance with the provisions of rule 6.

6. **Future maintenance of Service.**—(1) The posts in any of the grades referred to in Schedule-I shall be filled in the manner hereinafter provided in this rule, and the persons so appointed shall be the members of the Service in the respective grades from the date of such appointment.

(2) 50 per cent of the posts in the Junior Time Scale of the Service shall be filled by direct recruitment on the results of the Combined Competitive Examination conducted by the Commission for the recruitment to the Engineering Services on the basis of educational qualifications and age limit as specified in Schedule-II, and the remaining 50 per cent of the posts shall be filled by promotion amongst officers in the lower grade with minimum qualifying service as specified in Schedule-III.

(3) All the posts in the Senior Time Scale and above shall be filled in accordance with the method of recruitment, field of selection and minimum qualifying service as specified in Schedule-III.

(4) The promotion of officers shall be made by 'Selection' except in the following case, namely :—

Grant of Non-Functional Second Grade to the Deputy Directors/Executive Engineers and equivalent in the Senior Time Scale of the Service shall be in the order of seniority based on their suitability taking into account their overall performance, experience and other related matters in accordance with the guidelines issued by the Central Government from time to time.

(5) Recruitment by promotion to every post of the Service shall be made on the recommendations of the Departmental Promotion Committee as specified in Schedule-IV.

(6) Where juniors who have completed their qualifying or the eligibility service are being considered for promotion, their seniors shall also be considered provided they are not short of the requisite qualifying or the eligibility service by more than half of such qualifying or the eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or the eligibility service.

7. **Filling of duty posts by deputation.**—(1) Notwithstanding anything contained in Rule 6 where the Central Government is of the opinion that it is necessary or expedient so to do, it may for reasons to be recorded in writing and in consultation with the Commission, fill the duty post in any of the grades by deputation for a period not exceeding three years, which may in special circumstances be extended up to five years, as the Central Government may think fit.

(2) The qualifications, experience and the eligibility service for appointment under this Rules shall be decided by the Central Government in consultation with the Commission in each occasion.

8. **Seniority.**—(1) The relative seniority of officers of the Service appointed to a grade at the time of initial constitution of the Service under rule 5 shall be as obtaining on the date of commencement of these rules.

Provided that if the seniority of any such member had not been specifically determined on the said date, the same shall be determined on the basis of rules governing the fixation of seniority as was applicable to the members of the Service prior to the commencement of these rules.

(2) The seniority of officers recruited to the Service other than appointed under rule 5 shall be determined in accordance with the general instructions issued by the Central Government in this regard from time to time.

(3) In cases, not covered under sub-rule (1) and (2), seniority shall be determined by the Central Government in consultation with the Commission.

9. **Probation.**—(1) Every officer recruited to the post of Junior Time Scale of the Service shall be on probation for a period of two years :

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Provided that the Controlling Authority may extend the period of probation in accordance with the instructions issued by the Central Government from time to time in this behalf:

Provided further that any decision for extension of probation period shall be taken immediately after the expiry of initial period of probation and ordinarily within eight weeks and communicated in writing to the concerned officer together with reasons for doing so within the said period.

- (2) On completion of period of probation or any extension thereof, officers, if considered fit for permanent appointment, shall be confirmed in the Service.
- (3) If, during the period of probation, or any extension thereof, as the case may be, the controlling authority is of the opinion that an officer is not fit for permanent appointment, the controlling authority may discharge the officer or revert the officer to the post held by him prior to his appointment in the Service, as the case may be.
- (4) During the period of probation or any extension thereof, an officer may be required by Controlling Authority to undergo such courses of training and instructions or to pass such examinations and tests (including examination in Hindi) as Controlling Authority may deem fit, as a condition to satisfactory completion of probation.
- (5) As regards other matters relating to probation, not covered by these rules, the members of the Service will be governed by the order, instructions issued by the Central Government in this regard from time to time.

10. Liability for service in any part of India and other conditions of Service.—

- (1) Officers appointed to the Service shall be liable to serve anywhere in India or outside.
- (2) Any officer appointed to the Service, if so required, shall be liable to serve in any Defence Service or post connected with the defence of India, for a period of not less than four years, including the period spent on training, if any:

Provided that such officers—

- (a) shall not be required to serve as aforesaid after expiry of ten years from the date of his appointment to the Service;
- (b) shall not ordinarily be required to serve as aforesaid if he has attained the age of forty years.
- (3) The conditions of service of the members of the Service in respect of matters for which no specific provision has been made in these rules, shall be the same as are applicable, from time to time, to Group 'A' officers of the Central Civil Services.

11. Disqualifications.—No person.—

- (a) who has 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 the service:

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

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

13. Saving.—Nothing in these rules shall affect reservations, relaxation of age-limits and other concessions required to be provided for persons belonging to the Scheduled Castes and Scheduled Tribes other backward classes, ex-servicemen and special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

14. Interpretation.—If any question, relating to the interpretation of these rules arises, it shall be decided by the Central Government in consultation with the Commission

SCHEDULE-I

[See sub-rule (1) of rule 4]

Name of duty posts, their number and scale of pay included in the various grades of the Service

Sl. No.	Name of the post/Grade	Name of the duty posts included in the grade	No. of duty posts	Scale of Pay					
1	2	3	4	5					
1.	Chairman	1. Chairman, Central Water Commission Total	1	Rs. 26,000 (Fixed)					
2.	Higher Administrative Grade	1. Member, Central Water Commission 2. Chairman, Ganga Flood Control Commission Total	3 *	Rs. 21,400-525-24,500					
3.	Senior Administrative Grade	1. Commissioner, Ministry of Water Resources 2. Chief Engineer, Central Water Commission 3. Member, Ganga Flood Control Commission 4. Secretary, Sardar Sarovar Construction Advisory Committee 5. General Manager, Farakka Barrage Project 6. Chief Engineer, Central Electricity Authority Total	5 *	Rs. 18,400-500-22,400					
4.	Junior Administrative Grade	1. Joint Commissioner, Ministry of Water Resources 2. Director/Supervising Engineer, Central Water Commission 3. Director, Ganga Flood Control Commission 4. Deputy Secretary, Sardar Sarovar Construction Advisory Committee 5. Director/Supervising Engineer, Central Electricity Authority Total	17 *	Rs. 14,300-400-18,300					
5.	(a) Non-functional second grade Note : Officers holding posts of Executive Engineer or equivalent in the service who are granted Non- Functional second grade will continue to be designated here in as before. (b) Senior Time Scale	1. Deputy Commissioner, Ministry of Water Resources	164	** Rs. 12,000-375-16,500 Rs. 10,000-325-15,200					



1	2	3	4	5
		2. Deputy Director/Executive Engineer, Central Water Commission	223*	
		3. Deputy Director/Executive Engineer, Ganga Flood Control Commission	8*	
		4. Assistant Secretary, Sardar Sarovar Construction Advisory Committee	3*	
		5. Deputy Director/Executive Engineer, Central Electricity Authority	9*	
			Total 250*	
6. Junior Time Scale		1. Assistant Commissioner, Ministry of Water Resources	2*	Rs. 8,000-275-13,500
		2. Assistant Director/Assistant Executive Engineer, Central Water Commission	245*	
		3. Assistant Director/Assistant Executive Engineer, Ganga Flood Central Commission	8*	
		4. Assistant Director/Assistant Executive Engineer, Central Electricity Authority	8*	
			Total 263*	

* (2004) Subject to variation dependent on work-load.

** The number of posts in 'Non-Functional Second Grade' in the pay-scale of Rs. 12,000-325-16,500 shall be restricted to 30% of the senior duty posts (i.e. posts in the pay-scales of Rs. 14,000-325-18,200 and above). There will be no increase in the overall strength of the cadre and the number of posts to be operated in the 'Non-Functional Second Grade' will not exceed the number of posts available in the Senior Time Scale.

† This includes 22 posts in deputation reserve, 22 posts in leave reserve and 6 posts in training reserve.

SCHEDULE—II

[See sub-rule (2) of rule 6]

Minimum educational qualifications and age limit for direct recruitment to the posts in Group 'A' Junior Time Scale of the Central Water Engineering (Group 'A') Service, on the results of the Combined Competitive Examination to be conducted by the Union Public Service Commission—

A. A candidate shall possess—

(1) A degree in Civil or Mechanical Engineering from—

(i) an University incorporated by an act of the Central or State Legislature in India,
or

(ii) an educational institution established by an Act of Parliament or declared to be deemed University under section 3 of the University Grants Commission Act, 1956;

or

(2) Such other qualifications as have been recognised by the Central Government for the purpose of admission to the examination;

or

(3) A degree/diploma in Engineering from such foreign Universities/Colleges/Institutions and under such conditions as may be recognised by the Central Government for the purpose from time to time.

B. A candidate shall have attained the age of 20 years but shall not have attained the age of 30 years on the first day of August of the year in which the examination is held.

SCHEDULE—III

(See sub-rule (2) and (3) of rule 6)

Method of recruitment, the field of promotion, the minimum qualifying service in the next lower grade in the field of selection, educational qualifications for deputation for appointment to duty post included in the Central Water Engineering (Group 'A') Service.

Sl. No.	Name of the post	Method of Recruitment	Field of Selection and minimum qualifying service for promotion	Field of Selection for deputation
1	2	3	4	5
1.	Chairman Central Water Commission	By promotion failing which by deputation	<p>1. Promotion : Officers in the Higher Administrative Grade (Rs. 224(XI)-525-245(X)) of the service with two years regular service in the grade.</p> <p>2. Deputation (*) : Officers under the Central Government/State Governments/Union territories—</p> <p>(a) (i) holding analogous posts on regular basis in the parent cadre/department, or</p> <p>(ii) with two years service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs 224(XI)-525-24500 or equivalent in the parent cadre/department; and</p> <p>(b) Possessing degree in Civil Engineering or Mechanical Engineering from a recognised University or equivalent and twenty years ex- perience in the field of irrigation and water utili- sation or in design, construction, operation and maintenance of irrigation projects or flood control and flood management works.</p> <p>3. The period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Government shall not exceed five years. For appointment on deputation, the officer must not be more than 56 years of age on the closing date of receipt of application in the Ministry of Water Resources</p>	*As per column No. 4
2.	Duty posts in Higher Adminis- trative Grade	By promotion	Officers in the Senior Administrative Grade of the service with three years regular service in the grade.	Not applicable
3.	Duty posts in Senior Adminis- trative Grade	By promotion	Officers in the Junior Administrative Grade with three years regular service in the Grade and having field experience or experience of investigation for two years in a post in the Junior Administrative Grade and/or Senior Time Scale of the Service.	Not applicable
4.	Duty posts in Junior Adminis- trative Grade	By promotion	Officers holding posts of Executive Engi- neers equivalent in the Service with a minimum of nine years of regular service in the grade including regular	Not applicable

Attested
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A.D.

1	2	3	4	5
			service if any, rendered in the non-functional second grade for the Executive Engineer or equivalent in the pay scale of Rs. 12000-375-16500; and possessing a degree in Engineering (Civil or Mechanical) or equivalent from a recognised University/Institute.	
			Note : Officers appointed prior to 18-11-1995 in the Senior Time Scale of the Service and not possessing a degree in engineering will be considered for promotion to the Junior Administrative Grade provided they are otherwise eligible	
5.	Duty posts in	By appointment	Officers holding posts of Executive Engineer or equivalent in the Senior Time Scale of the Service with a minimum of five years of regular service in the pay scale of Rs. 10000-325-15200.	Not applicable
(a)	Non-functional second grade	in the order of seniority based on suitability taking into account the overall performance, experience and other related matters.		
5.	Duty posts in	By promotion	Officers in the Junior Time Scale with four years regular service in the grade and having passed the prescribed departmental test and have successfully cleared the probation period.	Not applicable
(b)	Senior Time Scale			
6.	Posts in Junior Time Scale	50% by promotion, and 50% by direct recruitment, as per provisions of sub-rule (2) of Rule 6.	Promotion : From Extra Assistant Directors (Engineering)/ Assistant Engineers with five years regular service in the grade	Not applicable

SCHEDULE—IV

(See sub-rule (5) of rule 6)

Composition of Group 'A' Departmental Promotion Committee for considering cases of Promotion and confirmation of Group 'A' posts included in the Central Water Engineering (Group 'A') Service

Sl.	Name of the post No.	Group 'A' Departmental Promotion Committee (For Promotion)	Group 'A' Departmental Promotion Committee for considering confirmation
1	2	3	4
1	Chairman	1. Chairman/Member, Union Public Service Commission 2. Secretary, Ministry of Water Resources 3. Director General (Works), Central Public Works Department	—Chairman —Member —Member
2.	Higher Administrative Grade	1. Chairman/Member, Union Public Service Commission 2. Secretary, Ministry of Water Resources 3. Chairman, Central Water Commission	—Chairman —Member —Member

1	2	3	4
3.	Senior Administrative Grade	1. Chairman/Member, Union Public Service Commission 2. Secretary/Additional Secretary, Ministry of Water Resources 3. Chairman/Member, Central Water Commission	—Chairman —Member —Member
4.	Junior Administrative Grade	1. Chairman/Member, Union Public Service Commission 2. Additional Secretary/Joint Secretary, Ministry of Water Resources 3. Member/Chief Engineer, Central Water Commission	—Chairman —Member —Member
5.	Non-Functional (a) Second Grade	1. Member, Central Water Commission 2. Joint Secretary, Ministry of Water Resources 3. Chief Engineer, Central Water Commission	—Chairman —Member —Member
6.	Senior Time Scale	1. Member, Central Water Commission 2. Joint Secretary, Ministry of Water Resources 3. Chief Engineer, Central Water Commission	—Chairman —Member —Member
6.	Junior Time Scale	1. Chairman/Member, Union Public Service Commission 2. Chief Engineer, Central Water Commission 3. Director/Deputy Secretary, Ministry of Water Resources	—Chairman —Member —Member 1. Member Central Water Commission—Chairman 2. Joint Secretary, Ministry of Water Resources —Member 3. Chief Engineer, Central Water Commission —Member

[No. 29/2/04 File No. 35/3/98-Estt. I (Vol. II)]

J. S. BURJIA, Jt. Secy

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Title of the case : OA No 140 of 2007

BETWEEN
SHRI M. P. SINGHApplicant.
AND

UNION OF INDIA & ORSRESPONDENTS

WRITTEN STATEMENT SUBMITTED BY THE RESPONDENTS

I N D E X

Sl No.	Particulars	Page No.
1.	Written statement	1-23
2.	Verification	23
3.	Annexure-R1	24 to 27
4.	Annexure-R2	28 to 30

Filed by : *Usha Das*
Miss Usha Das
Addl CGSC

Date : 07/02/08

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH GUWAHATI

OA NO. 140/2007

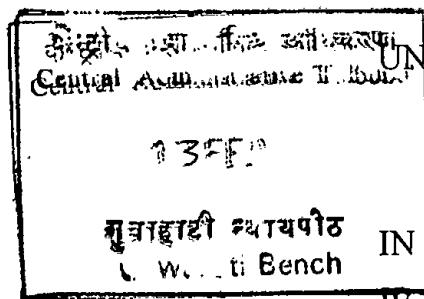
SHRI M. P. SINGH

.....APPLICANT

-VERSUS-

UNION OF INDIA & OTHERS

.....RESPONDENTS



IN THE MATTER OF

Written statement submitted by the
respondents

I, Shri Shiv Dutta Sharma Son of Shri Rameswar Dayal Sharma presently working as Executive Engineer, Central Water Commission, Middle Brahmaputra Division, CWC Complex, Guwahati-14 do hereby solemnly affirm and state as under: -

- 1) That I am the Executive Engineer, Central Water Commission, Middle Brahmaputra Division, CWC Complex, Guwahati-14, representing the said OA on behalf of the respondents. The copies of the aforesaid application have been served upon the respondents. I have received copy of the OA, have gone through the same in my official capacity I am conversant with the facts and circumstances of the case thereof. I have been authorized to file this Written Statement on behalf of all the respondents. Save and except, the statements, which are specifically admitted herein below, rests may be treated as total denial. The statements, which are not borne on records, are also denied and the applicant is put to the strictest proof thereof.

Shiv Dutta M
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14.

*Received
on 07/02/08
Shiv Dutta*

Filed by
Respondents through
the
Middle
Bench
Date
07/02/08

2) That before traversing various paragraphs of the OA, the respondents would like to place the brief facts of the case

(A) The 5th CPC had recommended that posts in Junior Administrative Grade of the Organized Engineering Services will be operated in a single scale i.e. 14,300-18,300 and the posts in Senior Time Scale will be operated in two pay scales viz. the ordinary grade in the pay scale of Rs. 10,000-15,000 which is equal to the normal replacement scale of the Senior Time Scale and Non functional Second Grade in the pay scales of Rs. 12,000-16,500 which is identical to normal replacement scale of erstwhile ordinary grade of Junior Administrative Grade. The implementation of the above recommendations of the pay scales required restructuring of the Junior Administrative Grade and Senior Time Scale as well as revision of the Recruitment Rules. The modalities for implementation of recommendations of the 5th Central Pay Commission on the above pay scale were provided in Respondent No.3 O.M. dated 06.06.2000 and 20.12.2000 (annexed and marked as **Annexure- R-I and II**). The respondent No. 3, O.M. dated 20.12.2000 stipulated that pay scale of Rs. 14,300-18,300 for the officers holding the post of Superintending Engineer could be given only to regularly promoted officers having 9 years of regular service in the grade of Executive Engineer and equivalent.

(B) In terms of the provisions contained in the Preamble to Part B of the first Schedule of CCS (RP) Rules, 1997, in cases where cadre restructuring, re-distribution of posts, etc. are

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pre-requisites for the grant of pay scales recommended by the 5th CPC, it would be necessary for the Ministry /department concerned to not only accept these pre-conditions but also to implement them before the recommended pay scales are applied. It is therefore implicit that such scale will necessarily have prospective effect and only the normal replacement scales will be applicable to the posts concerned until the pre-requisites are fulfilled. However on receipt of 5th CPC recommendations in 1997 and keeping in view the position explained in para (D) below and in order to obviate any hardship being caused to officers working in the Junior Administrative Grade of CWE (Gr. A) Service, it was decided to allow the pay scale of Rs. 14,300-18,300 purely on provisional basis to such JAG officers who have completed 13 years Gr. A Service as per extent rules vides letter-dated 17.10.1997. It was further subject to the condition that any deduction in the pay, if required, would be made in one installment in the future payments after final decision is taken in the matter of pay fixation.

(C) That as brought out in previous Para, the respondent No. 3 vide their O.M. dated 20.12.2000 has spelt out the criteria for allowing the scale of Rs. 14,300-18,300 whereby for placement in the scale of Rs. 14,300-18,300 JAG officer should have put 9 years of regular service in the Sr. Time Scale. Further officers who met the above criteria as on 1.1.1996 and in respect of other incumbents who fulfill the said qualifying service on a later date, they should be appointed to the scale of Rs. 14,300-18,300 only from the

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date on which they complete the prescribed qualifying service. Their placement in the scale would be further subject to the condition that they had been promoted functionally to the JAG posts against vacancies and after observing the prescribed procedure.

(D) That the last DPC for promotion to Dir./ Superintending Engineer grade (JAG) was convened in December, 1994/January 1995 for the vacancies of 1993-94 and thereafter no DPC could be convened for the vacancies occurred from 1994-95 onwards due to protracted litigation on the issue of seniority in the feeder grade and complication related to implementation of 5th CPC i.e. restructuring of Superintending Engineer and Executive Engineer grade i.e. revision of service rules etc. However keeping in view the functional requirement of the posts in the cadre, ad-hoc promotions were made from time to time with the approval of the Competent authority.

(E) That in view of the position stated above, pending amendment of Central Water Engineering (Group 'A') Service Rules, 1995; Union Public Service Commission was approached for convening the DPC for promotion to Junior Administrative Grade of the service. The UPSC initially refused to convene the DPC on the ground that existing Recruitment Rules ceased to be operative w.e.f. 1.1.1996. However after long persuasion, **Union Public Service Commission agreed to convene a DPC for Junior Administrative Grade as per the existing Recruitment Rules with the stipulation that promotion to the Junior**

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Administrator

Administrative Grade of the Central Water Engineer

(Group 'A') Service will be made in the normal replacement scale of pay of Rs. 12,000-16,500 They further advised that Administrative Ministries have also been vested with the power to place the officers so promoted in the higher replacement scale of Rs. 14,300-18,300 on completion of 9 years service as Executive Engineer and equivalent. However officers who have not completed 9 years of regular service in the grade of Executive Engineer and equivalent on promotion to the grade of Superintending Engineer and equivalent will continue to remain in the pay scale of Rs. 12,000-16,500 and will be placed in the higher pay scale of Rs. 14,300-18,300 only on completion of 9 years of service as Executive Engineer and equivalent.

i. That accordingly a DPC was convened in April 2001 for 120 existing and anticipating vacancies of 1994-95 to 2001-2002. Thereafter, two orders dated

6.6.2001 relating to promotion/placement were issued.

The first order promoted the officers to the grade of Junior Administrative Grade in the pay scale of Rs. 12,000-16,500 and the second order placed some of the promoted officers, who have rendered 9 years of regular service since their promotion to the Senior Time Scale, in the higher pay scale of Rs. 14,300-18,300 w.e.f. 6.6.2001 i.e. the date of regular promotion. (About 34 officers promoted to Junior Administrative Grade vide order dated 6.6.2001 who had not completed 9 years of service in the grade of

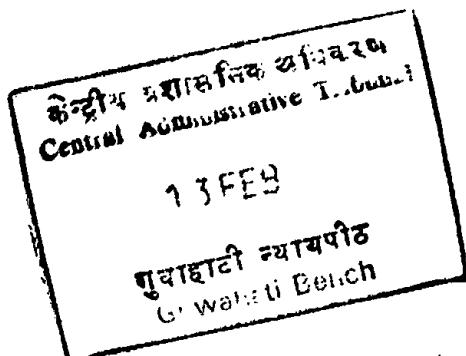
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M. B. Division, CWC
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Executive Engineer and equivalent (Senior Time Scale) by that time were initially placed in the pay scale of Rs. 12,000-16,500. Subsequently after they completed 9 years of service since their promotion to the Senior Time scale grade, they were also placed in the scale of Rs. 14,300-18,300.

(F) That against the Ministry's placement Order dated 6.6.2001, a large number of representations were received from the officers officiating in the grade of Dir/Superintending Engineer on ad-hoc basis, prior to their regular promotion in JAG for protection of their pay and counting of their ad-hoc service in Junior Administrative Grade. The matter was taken up with other nodal Departments viz. Respondent No. 3, Ministry of Finance and Union Public Service Commission to settle the issue raised by the Central Water Engineering (Grade 'A') Service officers and after long deliberations, the issues were settled and conveyed the Central Water Commission vide Ministry's letter dated 6.2.2006. The placement of Junior Administrative Grade officers in the scale of Rs. 14,300-18,300 would be guided by the conditions spelt out in the above letter. The conditions spelt out in Ministry's letter dated 6.2.2006 are applicable to the cadre as a whole and there cannot be any special dispensation for individual officers. For the sake of convenience, these conditions inter-alia as under:-

1. Only officers in the grade of DD/EE promoted to the Junior Administrative Grade who had completed 9 years of regular service in STS including service, if any, rendered in the JAG



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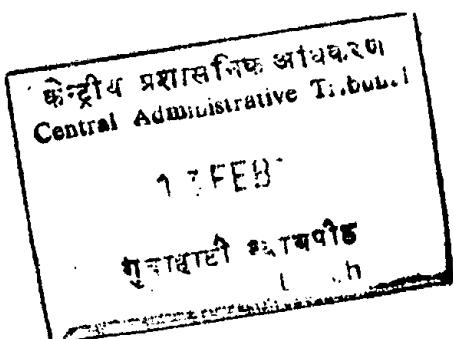
on regular/ad-hoc basis may be allowed the benefit of higher pay scale of Rs. 14,300-18,300 w.e.f. 1.1.1996 or from the date of appointment to the grade on completion of 9 years of service in STS which ever is later.

2. Recovery to be made form the officers who were allowed higher pay scale of Rs. 14,300-18,300 on completion of 13 years service Group A Service without completion of 9 years service in STS as allowed vide MOWR's letter No. 18/9/68/97-Estt.I dated 17.10.1997 in 12 monthly installments.
3. Since promotion is only on prospective basis counting of adhoc service towards regular service cannot be accepted.

→ (G) That the applicant was appointed in the Senior Time Scale vide order dated 7.9.1993 and he completed 9 years regular service in the said grade on 6.9.2002. He was allowed the scale of Rs.14, 300-18,300 on provisional basis with effect from 11.10.1999. In the office order dated 21.10.1999 (Annexure-II enclosed with the O.A.) granting the scale of Rs. 14,300-18,300 it was clearly mentioned that the said fixation was on provisional basis.

PARAWISE REPLY TO THE ORIGINAL APPLICATION

- 3) That with regard to the statement made in paragraph 1 of the OA, the respondents do not make any comment.
- 4) That with regard to the statement made in paragraphs 2 and 3 of the OA, the respondents beg to submit that the applicant is posted as

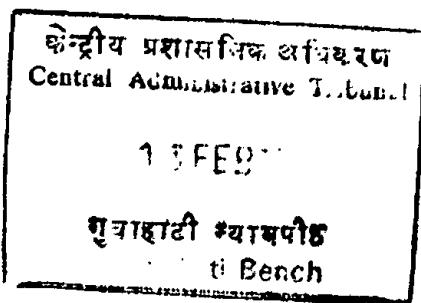


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Director at the Central Water Commission (Hqr), New Delhi and therefore, the Principal Bench of the Hon'ble Tribunal, has the jurisdiction to try and decide the application filed by the applicant before this Hon'ble Tribunal.

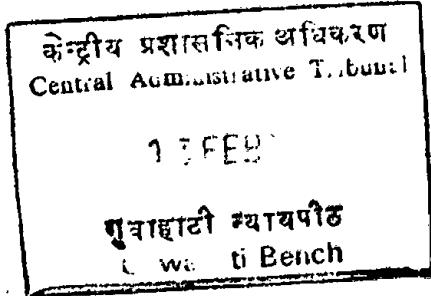
- 5) That with regard to the statement made in paragraphs 4.1, 4.2 and 4.3 of the OA, are matters of record, hence need no comments from the respondents.
- 6) That with regard to the statement made in paragraph 4.4 of the OA, the respondents beg to submit that so far it relates to the promotion of the applicant to the post of Director/SE on regular basis in the scale of Rs. 12,000-16,500 is a matter of record. However, it is submitted that the pay fixation of the applicant in the scale of Rs. 14,300-18,300 on his promotion to the grade of Director/SE on ad-hoc basis was on provisional basis subject to the condition that any deduction in the pay, if required, would be made in one installment in the future payments after final decision is taken in the matter of pay fixation. It may be mentioned that the **provisional pay fixation in the scale of Rs.14, 300-18,300 was accepted by the applicant at the time of joining the post as he did not raise any objection/question to the fixation of pay on provisional basis.** Therefore, the applicant has no right to agitate the said issue at this stage. Further, the pay fixation ordered by the respondents- whether it was provisional or otherwise- was uniform to all the similarly circumstanced officers and the applicant was not picked up singly for the said purpose. The final fixation of pay as ordered vide the order challenged by the applicant in this application was the outcome of the decisions taken by the respondents in consultation with various authorities concerned with the matter. It



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is submitted that although the post remained same but not the grade. As already mentioned in the brief facts of the case and as per the final decision taken in the matter, the officers who were promoted to the grade of Director/Superintending Engineer prior to their completing the requisite nine years service were to be placed in the scale of Rs. 12,000-16,500 and on completion of their requisite service of 9 years in the said grade(s), are to be placed in the scale of Rs. 14,300-18,300. It is submitted that same criteria has been followed in the case of the applicant and after his completing requisite 9 years, he has been placed in the scale of Rs. 14,300-18,300. The promotion of the applicant on regular basis as Director/SE in the scale of Rs. 12,000-16,500 was ordered on the basis of the decisions taken by the respondents in consultation with the concerned authorities. It is not correct that the applicant was promoted on regular basis as Director/SE in the lower scale as the scale of Rs. 14,300-18,300 was granted only on provisional basis, which the applicant accepted and joined the post of Director/SE on ad-hoc basis. While accepting the promotion, the applicant is deemed to have accepted all the conditions attached with it.

- 7) That with regard to the statements made in paragraph 4.5 of the OA, are matters of record hence need no comments from the respondents.
- 8) That with regard to the statement made in paragraph 4.6 of the OA, the respondents beg to deny that exercising option for pay fixation had anything to do with the representation submitted by the applicant. It is submitted that all the issues raised by the applicant in his above representation have been finally addressed and he has

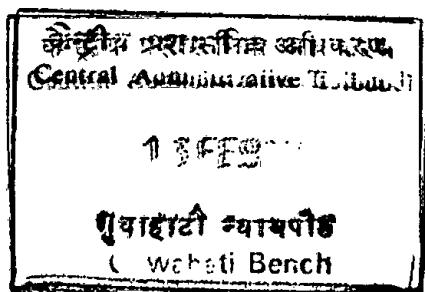


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been informed of the decisions through the order now challenged by the applicant.

- 9) That with regard to the statement made in paragraph 4.7 of the OA, are matters of record hence need no comments from the respondents.
- 10) That with regard to the statement made in paragraph 4.8 of the OA, the respondents beg to submit that all the issues raised by the applicant in his representation have been finally addressed and he has been informed of the decisions through the order now challenged by the applicant.
- 11) That with regard to the statement made in paragraphs 4.9 of the OA, are matters of record hence need no comments from the respondents.
- 12) That with regard to the statement made in paragraph 4.10 of the OA, the respondents beg to submit that so far it relates to pre-revised scale for JAG and STS of CWE (Grade 'A') Service, is a matter of record. However, with regard to the scale of pay of Rs. 14,300-18,300 for JAG level officers, it is submitted that the said scale is meant for those officers who got promotion after completing the requisite service as mentioned in the preceding paras. It is submitted that granting of the scale of Rs. 14,300-18,300 was not automatic. Those officers who were promoted as Director prior to their completing the requisite service in STS were initially placed in the scale of Rs. 12,000-16,500 and subsequently placed in the scale of Rs. 14,300-18,300 on their completing the requisite 9 years service, as has happened in the case of the

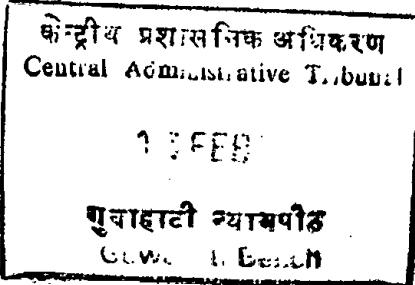
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applicant and other similarly circumstanced officers. However, as per the amended Recruitment Rules for CWE (Gr. A) Service, the eligibility criteria for promotion to the grade of Director/SE is 9 years service in the grade of DD/EE. Therefore, after the revision of the Recruitment Rules, no officer in the grade of DD/EE can be promoted to the post of Director/SE without having put in 9 years service as DD/EE. Consequently, on promotion to the grade of Director/SE as per the revised Recruitment Rules, they are straightway placed in the scale of Rs. 14,300-18,300. It is not correct to state that all the officers working in JAG as on 1.1.1996 in the respondent department have been given the scale of Rs. 14,300-18,300 and arrears have been paid. It is submitted that initial granting of the above scale to Director/SE was on **provisional basis** and finally they were placed in the scale of Rs. 14,300-18,300 w.e.f. the date they had completed the requisite 9 years service. As per the provisional pay fixation orders, such officers who were not eligible for the said scale w.e.f. 1.1.1996 (and became eligible subsequently were to refund the excess payments, if any drawn by them). In view of the above position, the applicant cannot draw parallel with those who were promoted on ad-hoc basis to the grade of JAG in 1999.

- 13) That with regard to the statement made in paragraph 4.11 of the OA, the respondents beg to submit that the implementation of the recommendations of the pay scales, as mentioned by the applicant in this para of the application, required restructuring of the Junior Administrative Grade and Senior Time Scale as well as revision of the Recruitment Rules. The modalities for implementation of recommendations of the 5th CPC on the above pay scale were provided in DoPT's O.M. dated 6.6.2000 and



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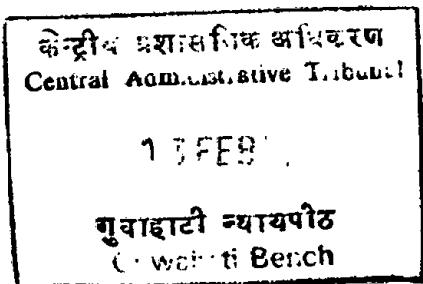
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20.12.2000. The DoPT's OM dated 20.12.2000 stipulated that pay scale of Rs. 14,300-18,300 for the officers holding the post of Superintending Engineer could be given only to regularly promoted officers having 9 years of regular service in the grade of Executive Engineer and equivalent. In terms of the provisions contained in the Preamble to Part 'B' of the first Schedule of CCS (RP) Rules, 1997, in cases where cadre restructuring, redistribution of posts, etc. are pre-requisites for the grant of pay scales recommended by the 5th CPC, it would be necessary for the Ministry/department concerned to not only accept these pre-conditions but also to implement them before the recommended pay scales are applied. It is therefore implicit that such scale will necessarily have prospective effect and only the normal replacement scales will be applicable to the posts concerned until the pre-requisite are fulfilled. However on receipt of 5th CPC recommendations in 1997, the pay scale of Rs. 14,300-18,300 was allowed on provisional basis subject to the condition that any deduction in the pay, if required, would be made in one installment in the future payments after final decision is taken in the matter of pay fixation. Therefore, the contention of the applicant that the above recommendation of the Pay Commission supports that the scale of Rs. 14,300-18,300 be granted to the applicant w.e.f. 11.10.1999 is contrary to the facts mentioned above, as the same is not admissible to the applicant.

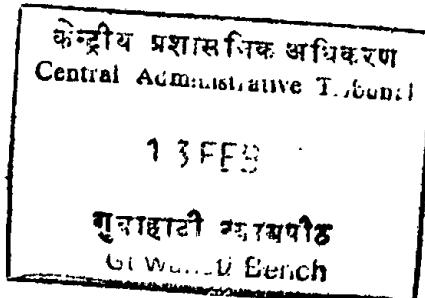
- 14) That with regard to the statements made in paragraph 4.12 of the OA, the respondents beg to submit that at the time of promotion of the applicant to the post of Director/SE on ad-hoc basis, the Recruitment Rules of CWE (Gr. A) Service were under revision. The last DPC for promotion to Director/Superintending Engineer

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was convened in December 1994/January 1995 for the vacancies of 1993-94 and thereafter no DPC could be convened for the vacancies occurred from 1994-95 onwards due to protracted litigation on the issue of seniority in the feeder grade and complication related to implementation of 5th CPC i.e. restructuring of Superintending Engineer and Executive Engineer grades i.e. revision of service rules etc. However keeping in view the functional requirement of the posts in the cadre ad-hoc promotions were made from time to time with the approval of the competent authority. It is further submitted that the criteria of 13 years service for placement in the scale of Rs. 14,300-18,300 was revised by the Respondent No.3 and it was decided that those who have put in nine years regular service as DD/EE including service rendered in JAG on ad-hoc/regular basis will be eligible for the said scale either from 1.1.1996 or from the date they complete the said service, which ever is later. The implementation of the said scale vide respondents letter dated 17.10.1997 was only on provisional basis pending final decision in the matter. In view of the above, the applicant has no right to claim the said scale of Rs. 14,300-18,300 from 11.10.1999 when he was promoted as Director/SE on ad-hoc basis. The qualifications mentioned by the applicant in this Para of the application are required for promotion to the grade of Director/SE irrespective of the pay scale. Therefore, this does not give any added advantage to the applicant for claiming the scale of Rs. 14,300-18,300 from the date of his ad-hoc promotion.

- 15) That with regard to the statement made in paragraph 4.13 of the OA, the respondents deny the contentions made therein and further submit that the criteria of 9 years regular service in STS for granting scale of Rs. 14,300-18,300 was presumably derived from



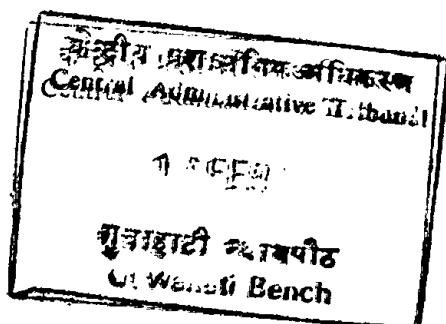
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the provisions of amended Recruitment Rules published on 18.11.04. It is submitted that the decision to grant the scale of Rs. 14,300-18,300 to JAG officers with 9 years regular service in STS was taken in 2001 i.e. prior to the notification of the above Recruitment Rules. The Recruitment Rules published in 2004 provide eligibility criteria for promotion to the grade of JAG as 9 years regular service in STS. It is submitted that the promotion of the applicant on ad-hoc/regular basis was made on the basis of the Recruitment Rules prevalent at that time. It is denied that the applicant is being treated under the Recruitment Rules amended in 2004.

16) That with regard to the statement made in paragraph 4.14 of the OA, the respondents submit that the scale of Rs. 14,300-18,300 was given to the applicant w.e.f. 11.10.99 on provisional basis, as already admitted by him in the previous paras of his application. The position with regard to the recommendation of the 5th Pay Commission recommending one scale of Rs. 14,300-18,300 to the JAG officers and the condition attached therewith has already been explained in the preceding paras. It is denied that the scale of the applicant was lowered from Rs. 14,300-18,300 to Rs. 12,000-16,500. It is denied that the criteria of 9 years regular service in STS is arbitrary and malafide. It is submitted that the said criteria was adopted uniformly for all the similarly circumstanced officers. The applicant has no right to plead otherwise as he has accepted the promotion to JAG on ad-hoc basis w.e.f. 11.10.1999 in which the scale of Rs. 14,300-18,300 was given provisionally. If the applicant was not interested in the said promotion, which provided the scale of Rs. 14,300-18,300 on provisional basis, he could have as well objected to the same and could have refused the promotion. Since

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the applicant accepted the promotion and accepted the conditions attached with the said order, he is estopped from agitating the said issue before this Hon'ble Tribunal.

17) That with regard to the statement made in paragraph 4.15 of the OA, the respondents submit that it is denied that the scale of Rs. 14,300-18,300 was paid to the applicant on his fulfilling the eligibility criteria provided under the Recruitment Rules of 1995. It is submitted that no such criteria has been laid down in the said Recruitment Rules. The said scale was given to the applicant initially on provisional basis, which fact has been admitted by the applicant. The placement of the applicant in the scale of Rs. 12,000-16,500 on his regular promotion w.e.f. 6.6.01 was in accordance with the decision take by DoPT vide their O.M. dated 6.6.01. These instructions inter-alia provide a minimum of 9 years regular service in STS for placement in the scale of Rs. 14,300-18,300. Since the applicant had not completed the requisite nine year service in STS including the service rendered in JAG on 6.6.01 he was not entitled to be placed in the scale of Rs. 14,300-18,300 and was rightly placed in the scale of Rs. 12,000-16,500. The applicant was subsequently placed in the scale of Rs. 14,300-18,300 from the date he completed his 9 years service in STS and JAG. The above condition of 9 years service in STS for placement in the said scale was uniformly applicable to all the officers promoted as JAG of CWE (Grade 'A') Service. It is denied that any statutory provisions have been violated in this regard.

18) That with regard to the statement made in paragraph 4.16 of the OA, the respondents while reiterating and reaffirming the statements made above beg to submit that the scale of Rs. 14,300-

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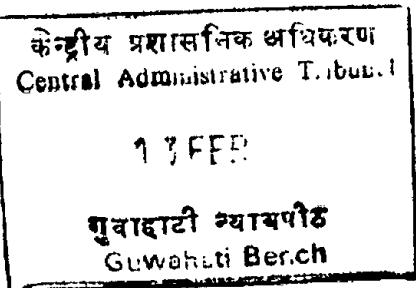
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18,300 was to be given only after restructuring of the cadre and redistribution of posts which was pre-requisite. For implementing the pay scales recommended by the 5th CPC it was necessary for the Ministries/Deptts to not only accept these pre-conditions but also to implement them before recommended pay scales are applied. However, to obviate any hardship being caused to the officers working as JAG in CWE (Gr. A) Service it was decided by the respondents to grant the scale of Rs. 14,300-18,300 on provisional basis to such officers who had completed 13 years Gr. A Service and it was clearly mentioned in the said orders that any deduction if required will be made after final decision is taken in the matter of pay fixation. This amply clarifies the position with regard to the granting of the scale of Rs. 14,300-18,300 w.e.f. 1.1.1996 as allowed by the respondents in 1997. It is denied that the authority have created two separate pay scales for the post of JAG arbitrarily. The decision to grant the scale of Rs. 14,300-18,300 to those officers who have completed 9 years service in STS is reasonable, justified and well thought of which has been implemented uniformly to all the officers working as JAG in CWE (Gr.A) Service besides other officers working in the same grade in other engineering departments of Govt. of India. The judgment quoted by the applicant in this Para of the application is not applicable in the present case as there is no discrimination with the applicant. It is submitted that all similarly circumstanced officers working as JAG with or without 9 years regular service in STS have been treated equally and there is no differentiation from person to person. It is denied that the ratio of the above judgment is applicable in the present case.



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- 19) That with regard to the statement made in paragraph 4.17 of the OA, the respondents most respectfully submit that the criteria of 13 years Group 'A' Service in the Scale of RS. 14,300-18,300 was initially decided and same was modified as it was causing hardship to a number of officers working in the grade of JAG and subsequently it was decided to fix the criteria of 9 years regular service in STS for granting the above scale of Rs. 14,300-18,300. It is denied that the 9 years service criteria which was later on amended was specified to give advantage to selected persons. It is submitted that the above criteria was laid down with a view to give advantage to a maximum number of officers. It is denied that the said criteria have been changed as per the convenience of the respondents.
- 20) That with regard to the statement made in paragraph 4.18 of the OA, the respondent beg to submit that it is denied that the applicant has been put to any loss. It is submitted that the acceptance of the post of Director in the provisional scale of RS. 14,300-18,300 w.e.f. 11.10.99 by the applicant estopped him from agitating the above issue. It is denied that any of the rights of the applicant is violated in this case. It is denied that the applicant is entitled to any of the relief and order as sought by him under this Para of the application.
- 21) That with regard to the statement made in paragraph 4.19 of the OA, the respondents deny the contentions made therein and further beg to submit that the application has not been made for any bonafide purpose but the same has been made to delay the process of recovery form the applicant and to complicate the issue which has already been settled after considerable deliberations.

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22) That with regard to the grounds stated in paragraphs 5.1 to 5.11 of the OA, the respondents beg to submit that the averments made by the applicant is totally wrong and hence denied. In view of the submissions made above it is submitted that none of the grounds taken by the applicant is legally sustainable and same are not tenable in the eyes of law hence the Hon'ble Tribunal may be pleased to dismiss the Original Application with costs. The specific reply to each of the grounds adduced by the applicant is given herein below:

23) In reply to the grounds taken in Para 5.1 of the application it is submitted that are mostly matters of fact. However, it is submitted that the scale of Rs.14300-18300 granted to the JAG level officers was on provisional basis pending finalization of the matter. The respondents crave leave of this Hon'ble Tribunal to read the contents of Para 4.12 of the reply as part of reply to this Para of the O.A.

24) In reply to the grounds taken in Para 5.2 of the application, it is submitted that the 5th CPC had recommended that posts in Junior Administrative Grade of the Organized Engineering Services will be operated in a single scale i.e. 14,300-18,300 and the posts in Senior Time Scale will be operated in two pay scales viz. the ordinary grade in the pay scale of Rs.10,000-15,000 which is equal to the normal replacement scale of the Senior Time scale and Non functional Second grade in the pay scale of Rs.12,000-16,500 which is identical to normal replacement scale of erstwhile ordinary grade of Junior Administrative Grade. The implementation of the above recommendations of the pay scales

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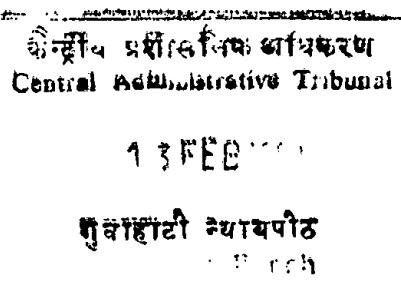
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** Bench

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required restructuring of the Junior Administrative Grade and Senior Time Scale as well as revision of the Recruitment Rules. The modalities for implementation of recommendations of the 5th CPC on the above pay scale were provided in Respondent No.3 O.M. dated 6.6.2000 and 20.12.2000 (enclosed and marked Annexures R-I & II). The Respondent No.3 O.M. dated 20.12.2000 stipulated that pay scale of Rs.14, 300-18,300 for the officers holding the post of Superintending Engineer could be given only to regularly promoted officers having 9 years of regular service in the grade of Executive Engineer and equivalent.

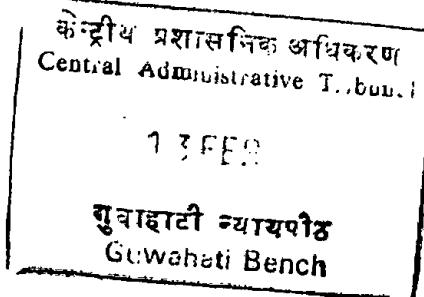
- 25) In reply to the grounds taken in Para 5.3 of the application, it is submitted that granting of scale of Rs.14, 300-18,300 has nothing to do with the Recruitment Rules notified in 1995. As already mentioned above, the said scale was granted only on provisional basis pending finalization of the case. As a matter of fact, the above scale came into being w.e.f. 1.1.1996 i.e. after the notification of the above Recruitment Rules. Therefore, the contention of the applicant that he is governed by the above Recruitment Rules with regard to the above scale is misplaced.
- 26) In reply to the grounds taken in Para 5.4 of the application, it is denied that there is any reduction in the scale of pay from Rs.14, 300-18,300 to Rs.12, 000-16,500. It is denied that the alleged reduction is due to the amended provisions of Recruitment Rules 2004. It is submitted that granting of scale of Rs.14, 300-18,300 is guided by the DOPT guidelines as contained in their O.M. dated 6.6.2000 and 20.12.2000. The position in this regard has already been explained in the preceding paras. It is submitted that the said criterial was adopted uniformly for all the similarly circumstanced



Mr. Shrikant
Superintending Engineer
Section, CWC
Nuwahati-14.

officers. The applicant has no right to plead otherwise as he has accepted the promotion to JAG on ad-hoc basis w.e.f. 11.10.99 in which the scale of Rs.14,300-18,300 was given provisionally. If the applicant was not interested in the said promotion which provided the scale of Rs.14, 300-18,300 on provisional basis he could have as well objected to the same and could have refused the promotion. Since the applicant accepted the promotion and accepted the conditions attached with the said order, he is estopped from agitating the said issue before this Hon'ble Tribunal.

- 27) In reply to the grounds taken in Para 5.5. of the application, it is denied that two separate scales for the post of Director/SE were introduced by the respondents. It is submitted that the replacement scale for the post of SE/Director in CWE (Gr.A) Service is Rs.12, 000-16,500 and not Rs.14, 300-18,300. The said scale of Rs.14, 300-18,300 was to be given to those officers promoted as Director/SE after rendering 9 years service in STS. As already mentioned above, this position remained valid only till the Recruitment Rules for CWE (Gr.A) Service were notified in 2004, which stipulate 9 years regular service in STS for promotion to JAG. Therefore, after the notification of the above Recruitment Rules, no STS officer can be promoted to JAG without nine years regular service in the grade, hence no officer so promoted to JAG can be placed in the scale lower than the scale of Rs.14, 300-18,300.
- 28) In reply to the grounds taken in Para 5.6 of the application, it is denied that any statutory provisions have been violated. The respondents carve leave of this Hon'ble Tribunal to read the



Ex-Officio
M. F. 10/2009, Gauhati
Assam. Guwahati-14.

With thanks

contents of Para 4.15 of the above reply, which is not being reproduced for the sake of brevity.

- 29) In reply to the grounds taken in Para 5.7 of the application, the respondents crave leave of this to Hon'ble Tribunal to read the contents of Para 4.16 of the above reply which is not being reproduced for the sake of brevity. It is submitted that there is no violation of Article 14 and 16 of the Constitution of India.

30) In reply to the grounds taken in Para 5.8 of the application, it is submitted that the scale of Rs.14, 300-18,300 was granted on provisional basis subject to the finalization of the case. It is denied that the criteria of 9 years service in STS has been relaxed in some selected cases. It is submitted that the said criteria has been formulated keeping in view the interest of the maximum number of officers working in cadre.

31) In reply to the grounds taken in Para 5.9 of the application, it is submitted that the scale of Rs.14, 300-18,300 was granted on provisional basis with clear stipulation that excess payment, if any will be refunded by the officer concerned. It is denied that the scale of Rs.14, 300-18,300 was reduced in the case of the applicant. It is submitted that since the applicant accepted the provisional pay scale of the above post, he is deemed to have accepted all the conditions attached with it including refund of excess money. Therefore, the applicant has no grounds to agitate at this stage. The action taken is not arbitrary, unfair or malafide.

32) In reply to the ground taken in Para 5.10 of the application, it is submitted that the representation of the applicant has been duly

बेंट्री ४ प्रशासनिक अधिकरण
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considered and replied vide order being challenged by the applicant in the present O.A. There has no violation of principles of natural justice.

- 33) In reply to the ground taken in Para 5.11 of the application, it is submitted that the representation of thee applicant is estopped from taking the plea that the respondents are not entitled to make any recovery from him. It is submitted that since the pay fixation was done on provisional basis with the condition that excess money will be refunded, the applicant has no locus standi to raise the above issue as while accepting the promotion as JAG with provisional pay fixation he is deemed to have accepted all the conditions attached with it including refund of excess payment. It is submitted that the applicant is dithering from his own position.
- 34) That the statement made in paragraphs 6 and 7 of the OA are formal hence need no comments from the respondents.
- 35) That with regard to the statement made in paragraph 8 to 9 of the OA, the respondents beg to submit that in view of the submission made above and the factual position of the case the relief sought by the applicant is devoid of merit as there is no violation of rules and procedures. It is further submitted that no injustice has been caused to the applicant and the applicant is not entitled for any interim relief/relief, as prayed for. Hence, it is prayed that the instant Original Application may be dismissed with cost.
- 36) That paras 10 to 12 of the O.A. are formal hence no reply.

केन्द्रीय प्रशासनिक अधिकरण
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गुवाहाटी न्यायपीठ
A. B. Bench

Prasanta Kumar

Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14.

37) The in view of the above facts and circumstances of the case and the submissions made by the respondents it is prayed that the Hon'ble Tribunal may be pleased to dismiss the OA with cost.

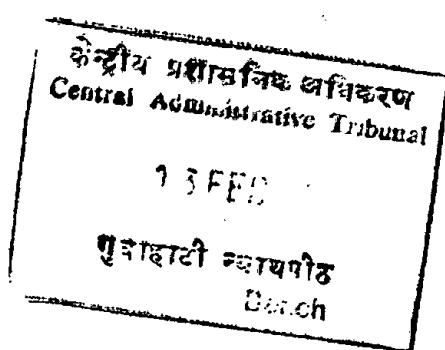
VERIFICATION

I, SHIV DUTTA SHARMA, aged about 41 years at present working as Executive Engg., being duly authorized and competent to sign this verification for all respondents, do hereby solemnly affirm and state that the statement made in paragraphs 1 to 33 are true to my knowledge and belief, those made in paragraph 34 to 36 being matter of records, are true my information derived from official records and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification this 1st Feb the day of 2007 at.

I am Shiva M
DEPONENT

By Shiva M
M. D. Director, CWC
Adabari, Guwahati-14.



No. 22/1/2000-CRD

M. K. Srinivao
Director
G. FCC, Patna

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

New Delhi 110001

Date: June 6, 2000

OFFICE MEMORANDUM

Subject: Recommendations of the Fifth Central Pay Commission on the scales of pay of posts of Superintending Engineers and Executive Engineers and equivalent in the Organized Group 'A' Engineering Services.

In paragraph 50-45 of their Report, the Fifth Central Pay Commission (FCPC) had recommended the following:-

(i) the 'non-functional' pre-revised pay-scale of Rs.4500-5700 (revised: Rs.14300-18300) applicable to the Superintending Engineers in the Central Public Works Department (CPWD) should be converted into a 'functional' grade and promotions in this scale should be permitted only on completion of thirteen years of regular service in Group 'A';

(ii) the 'functional' pre-revised pay-scale of Rs.3700-5000 (revised: Rs.12000-16500) applicable to the Superintending Engineers as the first grade on their promotion from the posts of Executive Engineers should instead be a 'non-functional' grade for Executive Engineers in the pre-revised pay-scale of Rs.3000-4500 (revised: Rs.10000-15200).

The FCPC had also clarified that, though their recommendations in regard to the pay scales of these two posts were being made in the context of the CPWD engineers, the dispensation will be available to all engineering cadres in the Government. The revised pay scales of Superintending Engineers and Executive Engineers were also notified by the Department of Expenditure at S.Nos. VIII (a) and (b) of Part 'B' of the First Schedule to the Central Civil Services (Revised Pay) Rules, 1997, promulgated in that Department's Notification No: GSR.569(E) dated September 30, 1997.

Implementation of the FCPC recommendations will necessitate the restructuring of Group 'A' cadres in the Central Engineering Service, the Central Electrical and Mechanical Engineering Service and other organized Group 'A' Engineering Services, recruitment in which is made through the Combined Engineering Services Examination. The related recruitment/service rules will also need to be appropriately amended. In terms

deleted 22.12.2000
O. P. C. L.

Electrical Engineer
M. B. Division, CWC
Adabari, Guwahati-14

of the provisions contained in the preamble to Part 'B' of the First Schedule to the Civil Services (Revised Pay) Rules 1997, in cases where cadre restructuring, distribution of posts, etc. are pre-requisites for the grant of pay-scales recommended by FCPC for certain posts, it will be necessary for the Ministry/Department concerned to only accept these pre-conditions but also to implement them before the recommended scales are applied to these posts. It is, therefore, implicit that such scales will have only prospective effect and only the normal replacement scales will be applicable to the posts concerned until the pre-requisites are fulfilled.

3. Issues of relevance to the implementation of the FCPC recommendations and operationalisation, the criteria to be adopted for the distribution of posts in the scale pay recommended by the FCPC, etc have been under Government's consideration for some time now. After careful consideration of all relevant aspects, the President is pleased to decide as follows:-

- (a) The 'functional' grade of Rs.14300-18300 shall be applicable to the posts of Superintending Engineers and equivalent that are variously designed and included in the organized Group 'A' Engineering Services, recruited to which is made through the Combined Engineering Services Examination. Placement of personnel in this 'functional' grade will, however, be subject to actual availability of vacancies in the grade. This shall be permitted on completion of at least thirteen years of regular service in Group 'A', the prescribed regular service of four years in the scale of pay of Rs.12000-16500, which will henceforth be the 'non-functional' second grade Executive Engineers and equivalent.
- (b) It is likely that functional promotions to posts of Superintending Engineers and equivalent may be possible in some of the organized Group Engineering Services before completion of thirteen years of regular service in Group 'A' as stipulated by the FCPC because of the cadre structure of individual services. Members of Services so promoted will continue to remain only in the scale of pay of Rs.12000-16500 till they become eligible for the scale of Rs.14300-18300 in terms of (a) above. They will, however, be entitled to the benefit of pay fixation under FR 22(I)(a)(i) on promotion. This benefit will not be available again on their placement in the scale of Rs.14300-18300.
- (c) The 'non-functional' grade of Rs.12000-16500 now to be introduced for Executive Engineers and equivalent will be admissible on completion of:
- (i) minimum regular service of nine years in Group 'A' (four years in the pay-scale of Rs.8000-13500 and five years in the pay-scale of Rs.10000-15200) in respect of those officers who are directly recruited or promoted to the pay-scale of Rs.8000-13500; and
 - (ii) minimum regular service of five years in the pay-scale of Rs.10000-15200 in respect of those officers who are directly promoted from Group 'B' to posts in this pay-scale.

Det. M
M. D. Division, CVC
Adabari, Guwahati-14.

(d) The number of posts of Executive Engineers and equivalent to be operated in the 'non-functional' pay scale of Rs.12000-16500 shall be restricted to 30% of the Senior Duty posts (i.e. posts in the pay-scale of Rs.10000-15200 and above) in the respective cadres, ensuring at the same time that (i) there is no increase in the overall strength of the cadre; and (ii) the number of posts to be operated in the 'non-functional' grade (Rs.12000-16500) does not exceed the number of posts available in the pay-scale of Rs.10000-15200.

(c) Placement of officers in the 'functional' grade of Rs.14300-18300 shall be done through the process of 'Selection by Merit' subject to actual availability of vacancies in the grade. On the other hand, placement of officers in the 'non-functional' pay scale of Rs.12000-16500 shall be done subject to suitability in terms of guidelines contained in the Department of Personnel and Training O.M.No.28038/1/88-Est(D) dated October 9, 1989 (copy enclosed). These should be scrupulously adhered to.

3 (E) The composition of the Department Promotion Committees (including specialisation of the Union Public Service Commission) for appointment of officers to the posts of Superintending Engineers and equivalent in the 'functional' grade of Rs.14300-18300 shall be the same as already prescribed in the relevant Service/ Recruitment Rules for appointments to the erstwhile 'functional' grade in the pay-scale of Rs.12000-16500 (pre-revised: Rs.3700-5000). Similarly, the composition of the Departmental Promotion Committees for appointment of officers to the posts of Executive Engineers and equivalent in the 'non-functional' pay-scale of Rs.12000-16500 shall be the same as already prescribed in the relevant Service/Recruitment Rules for appointments to the erstwhile 'non-functional' grade in the pay-scale of Rs.14300-18300 (pre-revised: Rs.4500-5700).

4. Only a higher eligibility criterion of thirteen years of regular Group 'A' service has now been prescribed for appointment to the posts of Superintending Engineer and equivalent in the 'functional' scale of pay of Rs.14300-18300. Placement in the higher scale of pay does not, however, involve assumption of higher responsibilities in the case of regular incumbents of the post in the pay-scale of Rs.12000-16500 (pre-revised: Rs.3700-5000). Appointments to this scale of pay will consequently be governed by the instructions contained in paragraph 2.2 of this Department's O.M.No.22011/10/84-Est(D) dated February 4, 1992. In other words, in the case of regular incumbents of these posts (Superintending Engineer), who had completed the prescribed qualifying service of thirteen years on or before January 1, 1996, they may be placed in the scale of Rs.14300-18300 from that date. In the case of other regular incumbents of these posts, who fulfill the qualifying service on a later date, they should be appointed to the scale of Rs.14300-18300 only from the date on which they complete thirteen years of regular service in Group 'A'. Their placement in the scale will be further subject to the condition that they had been promoted functionally to the posts of Superintending Engineer and equivalent against vacancies and after observing the prescribed selection procedures.

5. In view, however, of the fact that the implementation of the FCPC recommendation in respect of the posts of Executive Engineers and equivalent would involve the restructuring of the cadre by re-distributing the existing posts in the functional and 'non-functional' scales of Rs.10000-15200 and Rs.12000-16500 respectively in the ratio of 70:30, the 'non-functional' pay-scale of Rs.12000-16500 will be applicable only prospectively based on the recommendations of the Departmental Promotion Committees to be constituted for the purpose. Till such time as the existing regular incumbents of the posts of Executive Engineer and equivalent are appointed to the 'non-functional' pay-scale of Rs.12000-16500 after due observance of the prescribed procedure, they shall be entitled only to the functional scale of Rs.10000-15200. It should also be ensured that they had been promoted functionally to the posts of Executive Engineer and equivalent against vacancies and after observing the prescribed selection procedures and that they have completed the prescribed qualifying service of nine years before they are placed in the 'non-functional' scale.

6. Cadres' controlling authorities in various Ministries and Departments should, in pursuance of the above decisions, take immediate steps to restructure the cadres, redistribute posts in the applicable revised scales of pay and to amend appropriately the relevant Service/Recruitment Rules. This exercise should be completed within a period of two months. In order to facilitate expeditious action in this regard, powers are hereby delegated to the Ministries/Departments concerned to make the necessary amendments in the relevant Service/Recruitment Rules in conformity with the above decisions, without reference to the Recruitment Rules Division in the Department of Personnel and Training. The amendments may, however, be notified in consultation with the Union Public Service Commission and the Legislative Department.

Abd
(K.K. JHA)
DIRECTOR(Establishment)

All Ministries/Departments of the Government of India

Copy to:

1. The Union Public Service Commission, New Delhi
2. The Comptroller and Auditor General of India, New Delhi
3. The Department of Expenditure (Implementation Cell), New Delhi
4. The Legislative Department, Shastri Bhavan, New Delhi with reference to paragraph 6 above.
5. Establishment(RR), DoP&T
6. Establishment(D), DoP&T (200 copies)
7. Cadre Review Division, DoP&T (500 copies)

No.22/1/2000-CRD
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

केन्द्रीय प्रशासनीय सेवा विभाग
Central Administration Services T. Bureau

17-FEB

गুৱাহাটী বিধায়কী
Guwahati Bench

New Delhi 110001

December 20, 2000

OFFICE MEMORANDUM

Subject:-Revised scales of pay for Executive Engineer/Superintending Engineer and equivalent in the organized Group 'A' Engineering Services - clarifications/modifications regarding.

The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum (O.M.) No.22/1/2000-CRD dated June 6, 2000 on the aforesaid subject which prescribes detailed norms for grant of the revised pay-scales of Rs.12,000-16,500 (non-functional) and Rs.14,300-18,300 (functional) to the Executive Engineer and Superintending Engineer (and equivalent in both the grades) respectively in the organized Group 'A' Engineering Services. Subsequent to the issue of the aforesaid instructions, various references/representations have been received in this Department pleading for reconsideration of certain conditions as stipulated in the instructions under reference. The issues/points raised in the aforementioned references/representations have been carefully examined in consultation with the Department of Expenditure and it has been decided to issue the following clarifications/modifications in regard to various provisions (paragraphs quoted below) of the aforementioned DoP&T O.M. dated June 6, 2000:

(i) The first sentence of Paragraph 2, in its modified form, will now read as follows:-

✓ Implementation of the FCPC recommendations will necessitate the restructuring of Group 'A' cadres in the Central Engineering Service, the Central Electrical and Mechanical Engineering Service and other organized Group 'A' Engineering Services.

The conditions stipulated in Paragraph 3 will be prospective in nature, and will, as such, be effective from the date of notification of the revised Service/Recruitment Rules. Sub-paragraph 3(a), 3(b) and

For auth. ref
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

Only a higher eligibility criterion as at sub-para 3(a) above has now been prescribed for appointment to the posts of Superintending Engineer and equivalent in the 'functional' scale of pay of Rs.14300-18300. Placement in the said higher scale of pay does not, however, involve assumption of higher responsibilities in the case of regular incumbents of the post in the erstwhile 'functional' grade in the pay-scale of Rs.12000-15500 (pre-revised: Rs.3700-5000). Appointments to this scale of pay (Rs.14300-18300) will consequently be governed by the instructions contained in paragraph 2.2 of DnP&T C.M. No. 23011/SC/94-Estt(D) dated February 4, 1992. In other words, in the case of regular incumbents of these posts (Superintending Engineer and equivalent), who had completed the prescribed qualifying service as at sub-para 3(a) above on or before January 1, 1996, they may be placed in the scale of Rs.14300-18300 from that date (January 1, 1996). In the case of other regular incumbents of these posts, who fulfill the said qualifying service on a later date, they should be appointed to the scale of Rs.14300-18300 only from the date on which they complete the prescribed qualifying service as at sub-para 3(a) above. Their placement in the scale will be further subject to the condition that they had been promoted functionally to the posts of Superintending Engineers and equivalent against vacancies and after observing the prescribed selection procedures.

(iv) Paragraph 5 in its modified form will now read as follows:-

In view, however, of the fact that the implementation of the FCPC recommendation in respect of the posts of Executive Engineer and equivalent would involve restructuring of the cadre by re-distributing the existing posts in the 'functional' and 'non-functional' scales of Rs.10000-15200 and Rs.12000-15500 respectively, the 'non-functional' pay-scale of Rs.13000-15500 will be applicable only prospectively based on the recommendations of the Departmental Promotion Committees to be constituted for the purpose. Till such time as the existing regular incumbents of the posts of Executive Engineer and equivalent are appointed to the 'non-functional' pay-scale of Rs.12000-16500 after due observance of the prescribed procedure, they shall be entitled only to the functional scale of Rs.10000-15200. It should also be ensured that they had been promoted functionally to the posts of Executive Engineer and equivalent (in the pay-scale of Rs.10000-15200) against vacancies and after observing the prescribed selection procedures and that they have completed the prescribed qualifying service (in the pay-scale of Rs.10000-15200) as at sub-para 3(r) above before they are placed in the 'non-functional' scale of Rs.13000-15500.

केन्द्रीय प्रशासनिक अधिकारण
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Executive Engineer
M. D. Division, CWC
Adabari, Guwahati-14

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2. There shall be no change in other conditions, prescribed in the Office Memorandum of even number dated June 6, 2000.

3. The revised eligibility conditions prescribed above is meant to provide 'guidance' for amending Service/Recruitment Rules (as already instructed/authorized vide paragraph 6.0 of the Office Memorandum dated June 6, 2000) for grant of promotion to the grades of the Executive Engineer/Superintending Engineer and equivalent in the organized Group 'A' Engineering Services.

4. The Cadre Controlling Authorities are counselled to attend to the problem of stagnation in the cadres under their control by better cadre management through the prescribed mechanism of cadre review which is required to be undertaken with regular periodicity.

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(K.K. JHA)
DIRECTOR(Establishment)

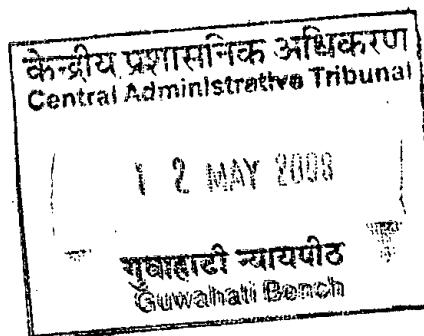
All Ministries/Departments of the Government of India

(Copy to:

1. The Union Public Service Commission, New Delhi with reference to its letter No.F.5/23(1)/2000-RR dated October 25, 2000.
2. The Comptroller and Auditor General of India, New Delhi.
3. The Department of Expenditure (Implementation Cell), New Delhi (50 copies).
4. The Legislative Department, Sansad Bhawan, New Delhi.
5. Establishment(RR) Section, DoP&T.
6. Establishment(D) Section, DoP&T (100 copies)
7. Cadre Review Division, DoP&T (200 copies)

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Ministry of
Procurement and
Advisory Services
Adarsh, Guwahati-12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI



In the matter of:-

O.A. No. 140 of 2007

Shri Mahendra Pratap Singh
..... Applicant.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of:-

Rejoinder submitted by the applicant in
reply to the written statement filed by
the Respondents.

The humble applicant above named most humbly and respectfully state as
under:-

1. That in reply to the statements made in paragraph 2 (A), (B), (C), (D), (E), (F) and (G) of the written statement, the applicant begs to state that the respondents have referred to and relied on Govt. of India's O.M dated 06.06.2000 and O.M dated 20.12.2000 which they have annexed as Annexure- R-I and Annexure- R-II respectively with their written statement. In the said O.M dated 06.06.2000, under para 3 (a) it has been clearly provided that the scale of Rs. 14300-18300/- would be given to those Superintending Engineers or equivalent who have completed at least thirteen years of regular service in Group 'A'. It has further been clarified in para 4 of the said O.M dated 06.06.2000 as under-

"4. In other words, in the case of regular incumbents of these posts (Superintending Engineer), who had completed the prescribed qualifying service of thirteen years on or before January 1, 1996, they may be placed in the scale

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Filed by the applicant
through Mr. Datta, advocate
on 12.05.08

Mahendra Pratap Singh.

of Rs. 14300-18300/- from that date. In the case of other regular incumbents of these posts, who fulfill the qualifying service on a later date, they should be appointed to the scale of Rs. 14300-18300/- only from the date on which they complete thirteen years of regular service in Group 'A'."

12 MAY 2003

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Guwahati Bench

In the subsequent O.M dated 20.12.2000 as referred to by the respondents, it has further been reiterated that the scale of Rs. 14300-18300/- be granted to those Superintending Engineers and equivalent who have completed thirteen years of regular service in Group 'A'.

It is relevant to mention here that the applicant completed 13 years service in Group 'A' post on 29.09.1999 and he was promoted to the post of Director/Superintending Engineer w.e.f. 11.10.1999 i.e. after he had completed thirteen years service in Group 'A' post. As such his pay in the promoted post was fixed in the scale of pay of Rs. 14300-18300/- which confirms to the provisions of O.M dated 06.06.2000 and dated 20.12.2000 referred to by the respondents. This is also in conformity with the prescribed qualifying service as provided for the post of JAG in the recruitment rules, 1995 which was holding the field when the applicant was promoted to the JAG (i.e. Supdt. Engineer/Director). As such, there was no irregularity in fixing the pay of the applicant in the scale of pay of Rs. 14300-18300/- w.e.f. 11.10.1999 and therefore placing the applicant in the lower scale of pay of Rs. 12,000-16,500/- subsequently w.e.f. 08.06.2001 is arbitrary, unfair, malafide, illegal and violative of the principles of natural justice.

The rider of 9 years regular service in the grade of Executive Engineer and equivalent as contended by the respondents is their own creation which has not been provided under the extant rules. Further, the contention of the respondents as stated in para 2 (B) of the Written statement that the higher scale of Rs. 14300-18300/- was paid on provisional basis to the officers working in the JAG in order to obviate their hardship, with the condition that deduction of pay, if required, would be made in future is unsustainable. The normal rule is to pay the lower scale on provisional basis and any increase by way of higher scale, if

Makendra Pantik Singh

granted later on, to be paid as arrear in future. As such the action of the respondents otherwise as stated by them is their after thought and not in accordance with the procedures established by law.

Further, the letter dated 06.02.2006 and the conditions mentioned therein as stated in para 2 (F) of the written statement are not applicable in case of the applicant who was granted the scale of pay of Rs. 14300-18300 in 1999 itself in accordance with the rules in force at that relevant time as stated hereinabove.

2. That the applicant denies the statements made in para 4 of the written statement and submit that the applicant received the impugned order when he was serving at Guwahati and the cause of action arose in Guwahati. As such the Guwahati Bench of the Hon'ble Tribunal has the jurisdiction to try and decide the application.
3. That the applicant categorically denies the statements made in para 6, 8, 10, 12, 15, 16, 17, 18, 19, 23, 25, 26, 27, 31, 32, and 33 of the written statement and begs to state that the applicant was promoted on ad hoc basis to the post of Director/Supdt. Engineer (in the grade of JAC) on 11.10.1999. At that relevant time, the recruitment rules 1995 of the respondent department was in force and the applicant was governed by the provisions of the said Recruitment Rules only. The Recruitment Rules, 1995 have clearly spelt out the eligibility criteria for promotion to the Duty posts in Junior Administrative Grade (Ordinary Grade) (Rs. 3700-5000/-) which provides as follows:-

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 MAY 2008

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Guwahati Bench

"Officers in the Senior Time Scale with 5 years regular service in the grade and possessing a degree in Engineering (Civil or Mechanical) or equivalent from a recognized University/Institute."

It was further provided that for appointment to the Duty post of Junior Administrative Grade (Selection Grade) in the scale of Rs. 4500-5700/- (pre-revised) the eligibility criteria would be as follows:-

Ranendra Patal Singh

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Central Administrative Tribunal

"Officers in the Junior Administrative Grade (Ordinary Grade) who have entered in the 14th year of Group 'A' service on the 1st July of

the year, calculated from the year following the year of examination/selection on the basis of which the officer was recruited/appointed to the Group 'A' post."

12 MAY 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

The applicant fulfilled the above quoted criteria in terms of Recruitment Rules, 1995 which was in force at the time of his ad hoc promotion to the JAC. As such, the officers who were promoted to the posts in JAC in 1999, including the applicant were paid the scale of Rs. 14300-18300/- (revised) on completion of 13 years service in Group 'A' service.

Further, pursuant to the recommendations of the 5th Central Pay Commission and its acceptance by the Govt. of India, the Ministry of Finance, Govt. of India vide it's notification dated 30.09.1997 (Annexure-IX to this O.A) published in the Gazette of India, notified the pay scales of Group 'A' Engineering Services as under :-

<u>Posts</u>	<u>Pre-revised Scale</u>	<u>Corresponding revised scale</u>
a) Supdt. Engineer	Rs. 3700-125-4700-150-5000/-	Rs. 14300-400-18300/-
b) Executive Engineer	Rs. 3000-100-3500 100-4500/-	Rs.10,000-325-15200/- and 12,000-375-16500/-

It is clearly evident from the above mentioned notification that the revised scale of Supdt. Engineer w.e.f. 01.01.1996 is Rs. 14300-18300/- and as such the applicant who was promoted thereafter on 11.10.1999 is entitled to the scale of Rs. 14300-18300/- in all fitness of the things. The change of Recruitment Rules/eligibility criteria whatsoever thereafter, if any, is not applicable in case of the applicant.

The respondents have admitted in para 26 of the written statement that reduction of pay scale in respect of the applicant is not due to the amended provisions of Recruitment Rules, 2004 which confirms that the recruitment rules, 2004 has not been applied in the instant case rightly. In the said para 26, the respondents have further stated that the granting of

Mahendra Patal Singh

Ad

scale of Rs. 14300-18300/- is guided by the DOPT guidelines contained in their O.M dated 06.06.2000 and 20.12.2000. The applicant humbly submits that the guidelines issued by the DOPT are executive instructions whereas the provisions laid down in Recruitment Rules are statutory provisions framed under Article 309 of the Constitution of India. An executive order cannot sit over or supersede a statutory provision and as such the statutory provisions contained in recruitment rules, 1995 under which the applicant was promoted would prevail upon the executive instructions of DOPT or other authorities.

This apart, the DOPT's O.M dated 06.06.2000 and dated 20.12.2000 as referred to and annexed to by the respondents have also not mentioned about the criteria of nine years service in case of Superintending Engineers. In the O.M dated 06.06.2000, under para 3 (a) it has been provided that 'functional' grade of Rs. 14300-18300/- would be granted to the Supdt. Engineers who have completed 13 years of regular service in Group 'A'. The same provision has been reiterated in the O.M dated 20.12.2000 which provides that those Supdt. Engineers and equivalent who have completed the "prescribed qualifying service as at sub-para 3 (a)" on or before 01.01.1996 may be placed in the scale of Rs. 14300-18300/-.

From the above facts it is abundantly clear that the amended Recruitment Rules 2004 is not applicable in case of the applicant who is governed by the Recruitment Rules, 1995. As such, the scale of Rs. 14300-18300/- granted to the applicant in 1999 in terms of the provisions of Recruitment Rules 1995 was in order and any reduction of his scale thereafter is not in conformity with any rules whatsoever and the rider of nine years service as contented by the respondents is their own innovation which does not meet the sanction of law.

Further, in case of granting provisional scale to an officer, the normal rule is to place him in the lower scale provisionally and any increase thereafter by way of enhancement of scale is payable as arrear. But in the instant case the respondents did otherwise and sought to enforce subsequent reduction in scale inflicting a recovery from the applicant which is inconsistent with the procedure established by law. The

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Central Administrative Tribunal

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Guwahati Bench

Mahendra Patal Singh

17.03.2008

ग्राहकी व्यवस्था
statement that this was done to obviate hardship of the applicant is their after thought and not sustainable. The question of acceptance or objection of the provisional pay fixation in the scale of Rs. 14300-18300/- by the applicant as raised by the respondents is irrelevant since the said scale was granted to him in accordance with the rules in force at that relevant time and possibility of any reduction thereafter was never in contemplation. The respondents have categorically stated in para 15 of the written statement that the promotion of the applicant on ad hoc/regular basis was made on the basis of Recruitment Rules 2004 and further stated that the rider of 9 years regular service in STS was decided in 2001. As such, the reduction of pay scale in respect of the applicant who was promoted much earlier in 1999 is inconsistent with the respondents own contentions.

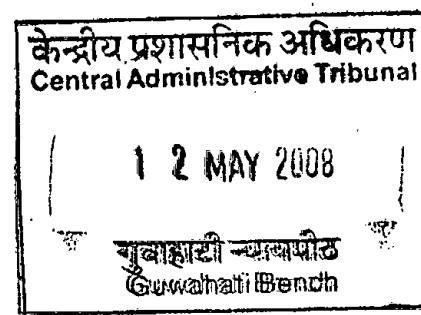
From the above stated facts it is abundantly clear that the scale of pay of Rs. 14300-18300/- granted to the applicant at the time of his promotion in 1999 was in accordance with law and subsequent reduction of his scale of pay and his placement in the lower scale of Rs. 12000-16500/- in 2001 is arbitrary, malafide, unfair, illegal, violative of the principles of natural justice and the relevant recruitment rules and opposed to all provisions of service jurisprudence.

4. That the applicant categorically denies the statements made in para 13, 14 and 24 of the written statement and further begs to submit that the restructuring of time scale/modalities for implementation of the recommendations of 5th CPC, proposed revision of the Recruitment Rules in process and change of eligibility criteria of 13 years of service for placement in the scale of 14,300-18,300/- by the respondent No. 3 pending revision of recruitment rules etc. as stated by the respondents are irrelevant and unsustainable for the reasons stated in the preceding para.
5. That the applicant emphatically denies the statements made in para 20, 21 and 22 of the written statement and begs to submit that the illegal reduction of pay scale and fixation thereof in respect of the applicant has caused serious financial loss to the applicant and all the reliefs sought for

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Mahendra Patalp Singh

and grounds relied on in this application are in accordance with law. The application has been filed bonafide and the applicant is entitled to the reliefs sought for and the application deserves to be allowed with costs.

6. That the applicant denies the statements made in para 28, 29, 30, 35 and 37 of the written statement and begs to submit that the respondents acting arbitrarily have clearly violated the statutory provisions of Recruitment Rules, 1995 and the provisions of Article 14 and 16 of the Constitution of India. The scale of Rs. 14300-18300/- granted to the applicant in 1999 was in accordance with the provisions of Recruitment Rules 1995 and the recommendations of the 5th CPC and it's acceptance by the Govt. of India and notification thereof. As such the applicant is legitimately entitled to get the said scale w.c.f. 21.10.1999 in accordance with the rules holding the field at the relevant time which cannot be subject to reduction thereafter in any case. As such the application is full of merit and deserves to be allowed with costs.
7. That in the facts and circumstances, the applicant humbly prays that he is entitled to the reliefs prayed for and the Original Application deserves to be allowed with costs.



Mahendra Patal Singh

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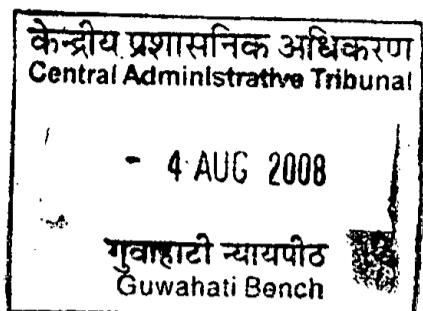
VERIFICATION

I, Shri Mahendra Pratap Singh, S/O Shri Tilak Raj Singh, aged about 45 years, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 7 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 11th day of May 2008.

Mahendra Pratap Singh

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH



In O.A no. 140/07
Sri M.P.Singh

...Applicant.

-Vs-

Union of India & ors.

...Respondents.

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Received
Bhutta
4/08/08

Filed by:

Manjinder Singh
S. P. A. / Counsel
Date: 4/8/08

-1-

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

146
File No: -
The Respondents
Mamunur Rasheed
Sri. Panel Counsel
Smt. M. J. Biswas
41/07/08

In the matter of:

O. A. NO. 140/07

Sri. Mahendra Pratap Singh

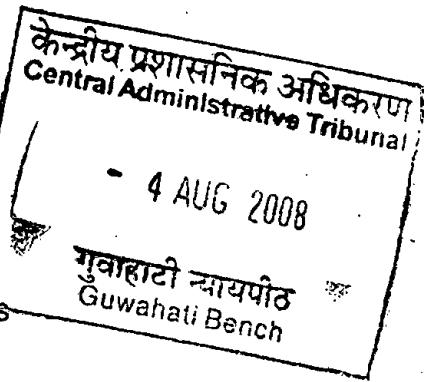
-----Applicant

Vs--

U.O.I. & Ors

-----Respondents

-AND-



IN THE MATTER OF :

Additional statement on behalf of the respondents

(ADDITIONAL STATEMENT ON BEHALF OF THE RESPONDENTS)

I, Sri Shiv Dutta Sharma, S/o Sri. Rameshwar Dayal Sharma presently working as Executive Engineer, Central Water Commission, Middle Brahmaputra Division, CWC Complex, Guwahati -14 do hereby solemnly affirm and state as follows:

1. That I am the Executive Engineer, Central Water Commission, Middle Brahmaputra Division, CWC Complex, Guwahati -14 representing the said O.A. on behalf of the said respondents. I have been authorized to represent the said O.A. on behalf of the respondents,
2. That your humble respondent begs to state that the applicant was initially appointed as Assistant Director on 29.9.86, in the Training Directorate under Central Water Commission, Ministry of Water Resources. Thereafter he was promoted to the post of Deputy Director /Executive Engineer on 1.10.93.

Shiv Dutta
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

3. That your humble respondent begs to state that the applicant was promoted to the post of Superintending Engineer/Director (Junior Administrative Grade) purely on the Ad-hoc basis vide order dated 11.10.99, In the said order in clause 3, it was clearly mentioned that the appointment of the officers including the applicant in the order of the grade of Director/Superintending Engineer (JAG) ordinary Grade is purely ad-hoc, temporary and internal arrangement and will not confer any right to them to claim regular promotion or seniority etc. in the higher grade.

A copy of the promotion order of the applicant dtd. 11.10.99 is annexed herewith and marked as Annexure -A.

4. That the Under Secretary to the Govt of India vide letter dtd. 17.10.97 issued a letter to the Secretary, Central Water Commission on the subject to implementation of the revised pay scale of Rs. 14,300-18,300/- in respect of Superintending Engineer/ Director of Central Water Engineering (Grade A service).

In the said letter it was mentioned that the pay scale of JAG level officers of Central Water Engineering (Group A) service who have completed 13 years of service in group A as per extent rules may be fixed provisionally in the revised scale of Rs. 14,300 - 18,300/-

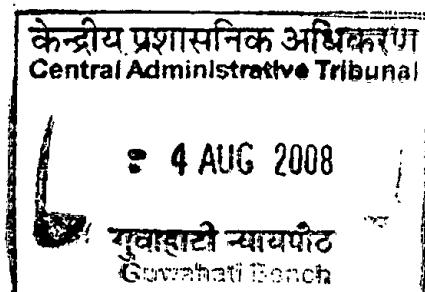
Further it was mentioned as

"The pay fixed as per above mentioned principle in respect of both JAG and STS officers are provisional. Any deduction in the pay, if required will be made in one installment from the future payments after final decision is taken in the matter of pay fixation"

A copy of the said letter dtd. 17.10.97 is annexed herewith and marked as Annexure -B.

Mr. Arun M
Executive Engineer
M. B. Division, CNC
Adabari, Guwahati-14

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5. That, your humble respondent begs to state that pending final decision, the Govt. of India, Central Water Commission, in terms of above order dtd, 17.10.97 tentatively decided to provisionally fix the pay scale of the officers who were promoted as Director / Superintending Engineer at Rs. 14,300 - 18,300/- after completion of 13 years of regular service in Group A vide order dtd, 21.10.99. In view of the above order the pay of the applicant was fixed in the scale of Rs. 14,300-18,300/- w.e.f. 11.10.99. which one is provisional and conditional,

A copy of the said letter dtd. 21.10.99 is annexed herewith and marked as Annexure -C.

6. That, the humble answering respondent begs to state that subsequently the Govt. of India took a final decision and issued an office memorandum dtd. 20.12.2000 on the subject of revised pay scale for Executive Engineer /Superintending Engineer and equivalent in the organized Group A Engineering services and accordingly made clarifications /modification in regard to various provisions (paragraphs) of the office memorandum dtd, 6.6.2000, of Department of Personal & Training, New Delhi.

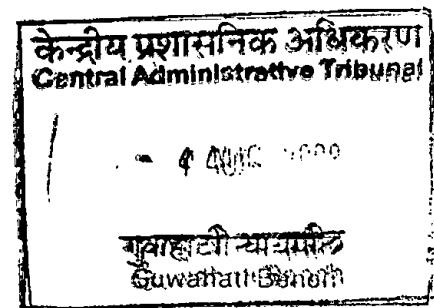
As per the said O.M. dtd. 20.12.2000 completion of 13 years regular service in Group A is not sufficient to earn higher pay scale of Rs. 14,300 - 18,300/- and one that one must necessarily complete 9 years of regular service in Grade of Executive Engineer and equivalent.

A copy of the said O.M. dtd. 20.12.2000 is annexed herewith and marked as annexure -D.

7. That, your humble respondent begs to state that admittedly the applicant was promoted to the post of Superintending Engineer/ Director on ad-hoc basis is a temporary one and his revised pay scale was fixed provisionally on the condition that any deduction of

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Arin Dutt
Executive Engineer
M. B. Division, CWS
Adabari, Guwahati-16



the pay if required will be made in one installment from the future payment after final decision is taken in the matter of pay fixation vide order dtd. 9.1.2003. Thereafter the Govt took a policy decision vide office memorandum dtd. 20.12.2000 and clarified /modified the office order dtd. 6.6.2000 mentioned above.

Hence in pursuance of the above order and O.M. issued by the Govt of India the applicant is entitled for the higher pay scale of Rs. 14,300 - 18,300/- w.e.f. 6.9.2002.

A copy of the office order dtd, 9.1.2003 is annexed herewith and marked as annexure -E

8. That the respondent begs to state admittedly that on 11.10.99, the applicant did not complete 9 years of regular service in STS Grade in cadre of Executive Engineer/Deputy Director and he completed 9 years of regular service in the cadre of Executive Engineer/ Deputy Director in STS Grade only on 6.9.2002. Therefore in pursuance of the policy decision taken by the Govt. of India, Ministry of Water Resources dtd, 06.01.2001, the pay of the applicant fixed vide CWC office order no, A 26011 /2 /9 / Estt-I (Vol.II) dtd. 12.10.2002. In the said order it was ordered that the excessed pay drawn by him will be recovered in one installment. The applicant is not entitled to higher pay scale of Rs, 14,300 - 18,300/- w.e.f, 10.10.99 as he has not completed 9 years of regular service in the cadre of Executive Engineer in STS Grade prescribed by the revised instructions of the Govt. Accordingly the recovery of excess payments drawn by him on account of fixation of his pay in the higher scale of Rs, 14,300 - 18,300/- from 11.10.99 - 5.09.2002 is recoverable from him in 12 installments vide order dtd. 14.03.2007.

9. That the respondent begs to state that pay fixation ordered by the respondents whether it was provisional or final or recovery of the excessed amount was uniformed to all the similarly circumstances officers and the applicant was not picked up singly for the purpose.

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Central Administrative Tribunal
Guwahati Bench
- 4 AUG 2008

That the respondent begs to state that similarly situated one Sri. K. Srinivas, Superintending Engineer, CWC, Ministry of Water Resources, Hyderabad, approached before the Hon'ble Central Administrative Tribunal, Hyderabad Bench at Hyderabad by filing O.A. NO. 445 / 07 seeking direction to the respondents to fix his pay at Rs, 14,300 - 18,300/- w.e.f. 3.3.2000 on which date he has been promoted as Director in the Central Water Commission and praying for setting aside the order of recovery of excessed salary paid to the applicant from 25.01.2001 to 15.9.2002 in 12 equal monthly installments.

In the said case the Hon'ble Tribunal after hearing was pleased to dismiss the O.A No.445/07 vide its judgment and order dt. 16.4.2008 by holding that the applicant is not entitled for higher pay scale till 16.9.2002. He was given by the Govt. of India higher pay scale w.e.f. 16.9.2002 after completion of 9 years of regular service in STS cadre. Therefore, there is no irregularity or illegality in the impugned order.

A copy of the said Judgement and order dtd. 16.4.2008 is annexed herewith and marked as Annexure -F.

10. In view of the above facts and circumstances and legal aspects it is prayed that the Hon'ble Tribunal may be pleased to dismiss the O.A. with cost.

Mr. Dutt
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

4 AUG 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

VERIFICATION

I, SHIV DUTTA SHARMA, S/o Sh. RAMESHWAR DAS, presently working as Executive Engineer, C.W.C. Complex, Middle Brahmaputra Division, CWC, Guwahati -14, aged about 42 years, do hereby solemnly verify and state that the statement made in paragraphs1..... are true to best of my knowledge and those made in paragraphs 2 to 9..... are being matters of records of the case derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

I have not suppressed any material facts.

And I sign this verification of this Aug 01, 08 at Guwahati.

Shiv Dutta
SIGNATURE
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

No. A.32013/3/99-Estt.I
Government of India
Ministry of Water Resources
Central Water Commission

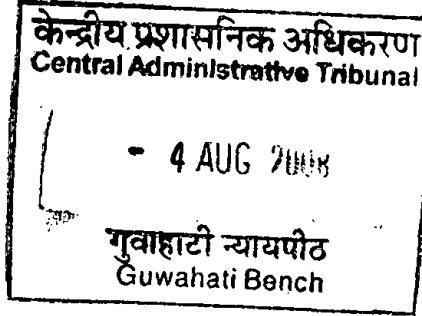
11th

New Delhi, the 11 October, 1999.

OFFICE ORDER

As per Ministry of Water Resources Order No. 6/2/89-Estt.I dt. 6.10.99, the President is pleased to appoint the following Senior Grade Scale officers of the Central Water Engineering (Group A) Service to the posts of Director, Superintending Engineer (Junior Administrative Grade- Ordinary (JAG)) of the same service in an officiating capacity on ad-hoc basis, from the date of their taking over charge of the post for a period of one year or until further orders, whichever is earlier.

Sl. No.	Name of Officer
1.	S/Shri
2.	S.K. Pandit
3.	N.K. Bhandari
4.	S.K. Srivastava
5.	P.K. Saha
6.	D.P. Singh
7.	K.D. Chokshi
8.	Mangat Ram
9.	R.K. Jain
10.	R.D.S. Yadav
11.	J.C. Iyer
12.	Vinod Kumar Talukar
13.	C.P.S. Sisinghpur
14.	I.K. Chugh
15.	K.V. Bhatt
16.	Chottee Lai
17.	Khushwinder Vohra
18.	S.R. Jagwani
19.	K.P.S. Seunger
20.	K.L. Kawale
21.	L.P. Singh
22.	M.P. Singh



Min. Dutta
 Executive Engineer
 M. B. Division, CATE
 Adabari, Guwahati-10

22. B.K. Chakraborty
23. S.M. Kansal

2. On appointment to the posts of Director/ Superintending Engineer and their pay will be regulated as per instructions issued by the Ministry vide letter No. 10-08/97-FSU I dated 17-10-97.

3. The appointment of the above officers to the Grade of Director- Superintending Engineer (Junior Administrative Grade- Ordinary Grade) of the Central Water Engineering (Group A) service is purely ad-hoc, temporary, internal arrangement and will not confer on them any right to claim regular promotion or seniority etc. in the higher grade.

4. The above appointments are subject to the final orders of the Division Bench of High Court of Delhi on the appeals filed against the judgement of the said High Court on the writ petition Nos 1208/80 and 1757/79.

5. The above appointments are also subject to the final orders in OA No. 146/96 in case of Sh. Pradeep Kumar Vs. Union of India.

6. Consequent upon their promotion to the grade of JAG on ad-hoc basis the following postings/ transfers are hereby ordered with immediate effect in public interest.

S.No.	Name	Where working	Where Posted	Remarks
1.	2.	3.	4.	5.
1.	S.K.G. Pandit	D&R	D&R Wing	
2.	N.K. Bhandari	SSCAC, Vadodara	Dir., SSCAC	
3.	S.K. Srivastava	Off CE, Bhubaneswar	SE C Bhubaneswar	
4.	P.K. Saha	WP&P	MoU Bhubaneswar	
5.	D.P. Singh	BID, Bhutan	SE C Siliguri	
6.	K.D. Chokshi	SSCAC, Vadodara	SE, HOC, Vadodara	vice Shri N.K. Mather

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

• 4 AUG 2008

गुवाहाटी न्यायालय
Guwahati Bench

h/m *DRB*
Executive Engineer
M. B. Division, CIV
Adabari, Guwahati-16

6201172

1.	Mangat Ram	MOWR	SE, Meghna Cycle, Silchar
2.	R.K. Jain	WP&P	D&R Wing
3.	R.D.S. Yadav	MOPD.HI, Varanasi	WP&P Wing
4.	J.C. Iyer	D&R	D&R Wing
5.	Vinod Kumar Talwar	D&R	D&R Wing
6.	C.P.S. Sisodia	RM	RM Wing
7.	I.K. Choudhury	D&R	D&R Wing
8.	K.V. Bhar	WP&P	WP&P Wing
9.	Chottee Lal	HGD, Dehradun	SE @ Yamuna Basin, Delhi
10.	Khushwinder Vohra	WP&P	WP&P Wing
11.	S.R. Jagwani	WP&P	WP&P Wing
12.	K.P.S. Sehgal	HRM	D&R Wing
13.	R.L. Kawale	D&R	D&R Wing
14.	L.P. Singh	GRCC, Patna	WP&P Wing
15.	M.P. Singh	RM Wing	RM Wing
16.	B.K. Chakraborty	MOWR	ER Wing, MOWR vice T.M. Venugopalan
17.	S.M. Kansal	D&R	SE, HOC, Maition

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
- 4 AUG 2008
गुवाहाटी न्यायालय
Guwahati Bench

In addition to the above, the following postings/transfers are ordered with immediate effect
in public interest :-

Umar Dutt M
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-16

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

- 4 AUG 2008

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Name & Shri	Where working	Where posted	Remarks
1. M.E. Haque	D&R Wing	Director (TC) HRM Unit Wef 29.10.99 (AN)	Vice Shri P Padmanabhan
2. T.M. Venugopalair	Sr. Jt. Commissioner ER Wing, M.C.W.R.	Director (M), O/o. CE (C&SR) Coimbatore	
3. N.K. Mehta	SE, HOC, Vadodara	SE (C), Vadodara	
4. P.S. Mandal	SE (C) Yamuna Basin, Delhi	RM Wing	
5. U.S. Bhatia	WP&P Wing	D&R Wing	

This issues with the approval of Chairman, CWC

(R.C. Talukar)
Section Officer

Copy to:

1. Secretary, Ministry of Water Resources, SS Bhavan, New Delhi (Attn: Sh. A.K. Banerji, US) with reference to their Order No. 6/2/99-List I dt. 8.10.99
2. PPS to Chairman, CWC/PPS to Chairman, CEA.
3. All Members, CWC.
4. Chairman, GFCC, Patna
5. Jt. Secretary(A), Ministry of Water Resources, SS Bhavan, New Delhi.
6. All Chief Engineers, CWC.
7. All Commissioners, Ministry of Water Resources, SS Bhavan, New Delhi.
8. Secretary, CWC/Dir. Admin./Estt./Engg/TC/HC/Coordin Wings, CWC
9. C.P. 1st Circle, CWC, Gangi & PAQ/AO, CWC.
10. All Under Secretaries, CWC
11. Section Officers Acs-III-IV/CM&V/E, II/E, VIII Section, CWC
12. Persons concerned. It is requested that the charge relinquishment and charge assumption report in triplicate, may please be sent to this Section.
13. Persons concerned. It is requested that the charge relinquishment and charge assumption report in triplicate, may please be sent to this Section.

1/100/2008
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

- 5897.59

5897

New Delhi 17.10.97

Shri M.L.Goyal
Secretary
Central Water Commission
Bawa Bhawan, R.K.Puram
New Delhi

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

- 4 AUG 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Subject: Implementation of revised pay scale of
Rs. 14300-400-18300 in respect of Superintending
Engineers/Directors of Central Water Engineering
(Group A) Service - regarding.

P. 18/C

I am directed to refer to your I.D. No. A-26011/2/97-
Fatt. 1/1052 dt. 9.10.97, on the subject mentioned above, and, to
estimate that the pay of JAG level Officers of CWE (Group A)
Service, who have completed 13 years service in Group 'A' as per
existing rules may be fixed provisionally in the revised scale of
Rs. 14300-18300.

As for STS level Officers of Central Water
Engineering (Group A) Service, their pay may be fixed in the
revised normal replacement scale as prescribed in Part 'A' of the
First Schedule of the Central Services (Revised Pay) Rules, 1997
amended vide GSR No. 869(E) dt 30.9.97 till a decision is taken
about the modalities of the implementation of Non-Functional
Selection Grade.

The pays fixed as per above mentioned principle in
respect of both JAG and STS officers are provisional. Any
deduction in the pay, if required, will be made in one instalment
from the future payments after final decision is taken in the
matter of pay fixation.

Yours faithfully,

A. K. Barua
(A. K. Barua)
UNDER SECRETARY
TO THE GOVT OF INDIA

Certified to be true.
This entry

Executive Engineer
M. B. Division, CWEC
Adabari, Guwahati-14

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

W. A. 12013/3/99-Estt 1/
Government of India
Central Water Commission

- 4 AUG 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

New Delhi, dated the 10th October, 1999.

OFFICE ORDER

Consequent upon their promotion, on adhoc basis, to the Junior Administrative (Adhoc Grade) of Central Water Engineering(Group A) Service via Ministry of Water Resources Order No. 6/1/99-Estt 1 dated 8.10.99 and their assuming charge of the post of Sub Intending Engineer, and on their completing 13 years of service in Group A, the pay of the officers is provisionally fixed in the scale of Rs.14,00-190-16,200 in terms of Ministry of Water Resources Letter No.19/68/97-C.I.M. 17-10-97 as under:-

Names of the officers	Date of completion of 13 years service in Group A	Date of assumption of charge on promotion to Group A	Pay drawn in the SIS	Pay fixed in the scale of Rs.14,00-190-16,200 and extra 325/- and extra 15200/- on the date from which the pay fixed	Date of next increment (Rs.)
S. S. Padil	26.03.99	11.10.99	13250/-	14200/- 11.10.99	1.10.2000
A.K. Jain	07.06.99	11.10.99	12275/-	14200/- 11.10.99	1.10.2000
C. D. D.	22.08.99	11.10.99	11950/-	14200/- 11.10.99	1.10.2000
A. K. D.	29.10.99	11.10.99	11950/-	14200/- 29.10.99	1.10.2000
S. S. Sengupta	05.05.99	11.10.99	11950/-	14200/- 11.10.99	1.10.2000
T. K. Chugh	31.01.99	11.10.99	11950/-	14200/- 11.10.99	1.10.2000
K. V. Bhatt	30.07.97	11.10.99	12925/-	14200/- 11.10.99	1.10.2000

Certified to be true

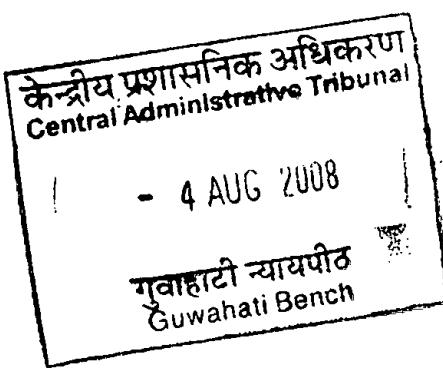
his secretary

Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

Contd. 2

1. S.K. Jagwanl	09.08.95	11.10.99	12925/- 225/- (EPA)	11100/- 4225 (EPA) 11.10.99	1.10.2000
2. S. Sanger	30.11.93	11.10.99	13250/-	14250/- 11.10.99	1.10.2000
3. P. K. Kavale	26.08.97	11.10.99	12600/-	13625/- 11.10.99	1.10.2000
4. C. P. Singh	29.09.93	11.10.99	11300/-	11300/- 11.10.99	1.10.2000

1. A. reclassification of pay has been provisionally made and is subject to adjustment in
2. A. Audit observations



(J.S.SASTRY)
UNDER SECRETARY

Ministry of Water Resources, New Delhi.

Officer, A/c-III, CAC (2 copies)

Ministry of Water Resources (Attn: Shri A.K.Berua, Under Secretary, Shanti Sakti

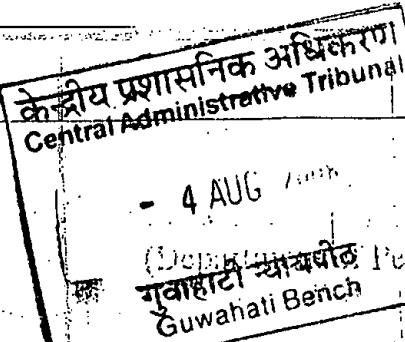
Building, New Delhi.

Officers concerned.

Viswanal files/Service Books.

Smti R.K.Tripal, LDC, E.I.

Certified to be true
By
Executive Engineer
M. B. Division, CAC
Adabari, Guwahati-14



Annex-D

63

New Delhi 110001
December 20, 2000

OFFICE MEMORANDUM

Subject: Revised scales of pay for Executive Engineer/Superintending Engineer and equivalent in the organized Group 'A' Engineering Services - clarifications/modifications regarding

The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum (O.M.) No.22/1/2000-CRD dated June 6, 2000 on the aforesaid subject which prescribes detailed norms for grant of the revised pay-scales of Rs.12,000-16,500 (non-functional) and Rs.14,300-18,300 (functional) to the Executive Engineer and Superintending Engineer (and equivalent in both the grades) respectively in the organized Group 'A' Engineering Services. Subsequent to the issue of the aforesaid instructions, various references/representations have been received in this Department pleading for reconsideration of certain conditions as stipulated in the instructions under reference. The issues/points raised in the aforementioned references/representations have been carefully examined in consultation with the Department of Expenditure and it has been decided to issue the following clarifications/modifications in regard to various provisions (paragraphs quoted below) of the aforementioned DoP&T O.M. dated June 6, 2000:

- (i) The first sentence of Paragraph 2, in its modified form, will now read as follows:-

Implementation of the FCPC recommendations will necessitate the restructuring of Group 'A' cadre in the Central Engineering Service, the Central Electrical and Mechanical Engineering Service and other organized Group 'A' Engineering Services.

- (ii) The conditions stipulated in Paragraph 3 will be prospective in nature and will, as such, be effective from the date of publication of the concerned Service/Recruitment Rules. Sub-paragraph 3(a), 3(b) and 3(c) of the said O.M. in the modified form, will now read as follows:-

*Executive Engineer
M. B. Division-CRDO
Adabari, Guwahati-3*

The 'Functional' grade of Rs.14300-18300 will be applicable to the posts of Superintending Engineer and equivalent. Executive Engineer and equivalent may be eligible to be considered for promotion to the grade of Superintending Engineer and equivalent only on completion of nine years of regular service in the grade of Executive Engineer and equivalent, including regular service, if any, rendered in the 'non-functional' second grade for the Executive Engineer and equivalent in the pay-scale of Rs.12000-16500. Placement of personnel in the functional grade of Rs.14300-18300 will, however, be subject to actual availability of vacancies in the grade.

Sub-para 3(b):

It is likely that functional promotions to posts of Superintending Engineer and equivalent may be possible in some of the organized Group 'A' Engineering Services before completion of the eligibility service prescribed at sub-para 3(a) above because of the cadre structure of individual services. Members of Services so promoted will continue to remain only in the scale of pay of Rs.12000-16500 till they become eligible for the scale of Rs.14300-18300 in terms of sub-para 3(a) above. They will, however, be entitled to the benefit of pay fixation under FR 22(I)(a)(i) on promotion. This benefit will not be available again on their placement in the scale of Rs.14300-18300.

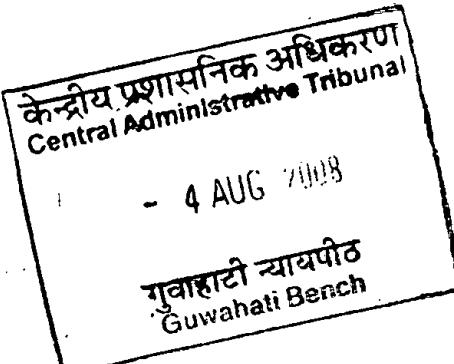
Sub-para 3(c):

Executive Engineer and equivalent (in the pay-scale of Rs.10000-15200) may be eligible to be considered for placement in the 'non-functional' grade of Rs.12000-16500 only on completion of five years of regular service in the pay-scale of Rs.10000-15200.

Assistant Executive Engineer and equivalent (in the pay-scale of Rs.8000-13500) may be eligible to be considered for promotion to the functional grade of Executive Engineer and equivalent in the pay-scale of Rs.10000-15200 only on completion of four years of regular service in the pay-scale of Rs.8000-13500/-.

- (iii) The conditions stipulated in Para 4 will apply in relation to the regular incumbents of the posts of the Superintending Engineer and equivalent. In its modified form it (paragraph 4) would now read as follows:-

Arin Dutta
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-10



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Only a higher eligibility criterion as at sub-para 3(a) above has now been prescribed for appointment to the posts of Superintending Engineer and equivalent in the 'functional' scale of pay of Rs.14300-18300. Placement in the said higher scale of pay does not, however, involve assumption of higher responsibilities in the case of regular incumbents of the post in the erstwhile 'functional' grade in the pay-scale of Rs.12000-16500 (pre-revised: Rs.3700-5000). Appointments to this scale of pay (Rs.14300-18300) will consequently be governed by the instructions contained in paragraph 2.2 of DoP&T.O.M. No.22011/10/84-Estt(D) dated February 4, 1992. In other words, in the case of regular incumbents of these posts (Superintending Engineer and equivalent), who had completed the prescribed qualifying service as at sub-para 3(a) above on or before January 1, 1996, they may be placed in the scale of Rs.14300-18300 from that date (January 1, 1996). In the case of other regular incumbents of these posts, who fulfill the said qualifying service on a later date, they should be appointed to the scale of Rs.14300-18300 only from the date on which they complete the prescribed qualifying service as at sub-para 3(a) above. Their placement in the scale will be further subject to the condition that they had been promoted functionally to the posts of Superintending Engineer and equivalent against vacancies and after observing the prescribed selection procedures.

(iv)

Paragraph 5 in its modified form will now read as follows:-

In view, however, of the fact that the implementation of the FCPC recommendation in respect of the posts of Executive Engineer and equivalent would involve restructuring of the cadre by re-distributing the existing posts in the 'functional' and 'non-functional' scales of Rs.10000-15200 and Rs.12000-16500 respectively, the 'non-functional' pay-scale of Rs.12000-16500 will be applicable only prospectively based on the recommendations of the Departmental Promotion Committees to be constituted for the purpose. Till such time as the existing regular incumbents of the posts of Executive Engineer and equivalent are appointed to the 'non-functional' pay-scale of Rs.12000-16500 after due observance of the prescribed procedure, they shall be entitled only to the functional scale of Rs.10000-15200. It should also be ensured that they had been promoted functionally to the posts of Executive Engineer and equivalent (in the pay-scale of Rs.10000-15200) against vacancies and after observing the prescribed selection procedures and that they have completed the prescribed qualifying service (in the pay-scale of Rs.10000-15200) as at sub-para 3(c) above before they are placed in the scale of Rs.12000-16500.

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M. B. Division, CWC
Adabari, Guwahati-14

2. There shall be no change in other conditions prescribed in the Office Memorandum of even number dated June 6, 2000.

3. The revised eligibility conditions prescribed above is meant to provide guidance for amending Service/Recruitment Rules (as already instructed/authorized vide paragraph 6 of the Office Memorandum dated June 6, 2000) for grant of promotion to the grades of the Executive Engineer/Superintending Engineer and equivalent in the organized Group 'A' Engineering Services.

4. The Cadre Controlling Authorities are counselled to attend to the problem of stagnation in the cadres under their control by better cadre management through the prescribed mechanism of cadre review which is required to be undertaken with regular periodicity.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

4 AUG

(K.K. JHA)

DIRECTOR(Establishment)

गुवाहाटी न्यायपीठ

Guwahati Bench

All Ministries/Departments of the Government of India

Copy to:-

1. The Union Public Service Commission, New Delhi with reference to its letter No.F.5/23(1)/2000-RR dated October 25, 2000.
2. The Comptroller and Auditor General of India, New Delhi.
3. The Department of Expenditure (Implementation Cell), New Delhi (50 copies)
4. The Legislative Department, Shastri Bhavan, New Delhi.
5. Establishment(RR) Section, DoP&T.
6. Establishment(D) Section, DoP&T (100 copies)
7. Cadre Review Division, DoP&T (200 copies)

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Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

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ANNEX-E
ANNEXURE-~~EE~~

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

- 4 AUG 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

No. A.26011/2/97-Estt.I(Vol.II)
Government of India
Ministry of Water Resources
Central Water Commission

New Delhi, the 9th January, 2003

OFFICE ORDER

Consequent upon promotion, on ad-hoc basis, to the Junior Administrative Grade of Central Water Engineering (Gr.A) Service, the pay of following officers was provisionally fixed in the pay scale of Rs. 14300-400-18300 with the stipulation that any deduction, required, will be made in one instalment from the future payments after final decision is taken in the matter of pay fixation.

S.No. Name of the Officer

S/Shri

- 1 M.P. Singh
- 2 B.K.Chakraborty
- 3 A.K. Mohinta
- 4 M.K. Srinivas
- 5 R.Devasahyam
- 6 R.K.Pachauri

Subsequently, the above officers were promoted on regular basis to the Junior Administrative Grade of CWE(Gr.A) Service in the pay scale of Rs. 12000-375-16500 w.e.f. 6/6/2001 vide Ministry of Water Resources order No. 3/3/95-E.I dated 6/6/2001

Min. Order No. 1
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

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Id they have not exercised option for fixing the pay. Ministry of Water Resources vide Order No. 19/68/97-Estt I dated 6/6/2001 have directed that the above officers will continue in the scale of Rs. 12000-16500 until further orders

In pursuance of Ministry of Water Resources order No. 19/68/97-Estt I dated 27/11/2002 placing, inter-alia, the above officers who have completed 9 years of regular service since appointment in Senior Time Scale of the service, in the scale of pay of Rs. 14300-18300 w.e.f. the date mentioned against their names, their pay is initially fixed in the pay scale of Rs. 12000-375-16500 under FR 22 (I) (a)(1) and thereafter refixed in the pay scale of Rs. 14300-400-18300 under FR 22 (I) (a)(2) as under:

S.No.	Name	Date of ad-hoc appointment to JAG	Pay on the date in the STS scale of Rs. 10000-1530 (Rs.)	Pay fixed in JAG scale of Rs. 12000-375-16500 (Rs.)	Date of increment and pay thereon	Effective date of placement in the scale of Rs. 14300-400-18300	Pay fixed (Rs.)	Date of next increment
1.	S/Shri M.P. Singh	11/10/1995	11300/-	12000/- 11.10.99	1/10/2000 12375/- 1/10/2001 12750/- 1/10/2000 14250/- 1/10/2001 14625/- 1/2/2001 14250/- 1/2/2002 14625/- 1/3/2001 12375/- 1/3/2002 12750/- 1/2/2001 14250/- 1/2/2002	6/9/2002	14300/-	1/9/2003
2.	B.K. Chakraborty	29/10/1999AN)	13250/-	13875/- 30.10.99	1/10/2000 14250/- 1/10/2001 14625/- 1/2/2001 14250/- 1/2/2002 14625/- 1/3/2001 12375/- 1/3/2002 12750/- 1/2/2001 14250/- 1/2/2002	6/9/2002	14700/-	1/9/2003
3.	A.K. Mohinta	9/2/2000	13250/-	13875/- 9.2.2000	1/2/2001 14250/- 1/2/2002 14625/- 1/3/2001 12375/- 1/3/2002 12750/- 1/2/2001 14250/- 1/2/2002	6/9/2002	14700/-	1/9/2003
4.	M.K. Srinivas	3/3/2000	11625/-	12000/- 3.3.2000	1/3/2001 12375/- 1/3/2002 12750/- 1/2/2001 14250/- 1/2/2002	16/9/2002	14300/-	1/9/2003
5.	R. Devasahayam	14/2/2000	13250/-	13875/- 14.2.2000	1/2/2001 14250/- 1/2/2002 14625/-	6/9/2002	14700/-	1/9/2003

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Central Administrative Tribunal
Guwahati Bench

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Niru Datta
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

R.K.Pachauri	1/5/2000	11625/	12000/ 1.5.2000	1/5/2001 12375/ 1/5/2002 12750/	6/01/2002	14300/	1/9/2003
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In the light of above pay fixation, any deduction, if required to be made on account of excess payment, shall be made in one instalment as per the stipulation mentioned in the first paragraph of this Office Order.

The above fixation of pay is subject to adjustment in the light of audit observations

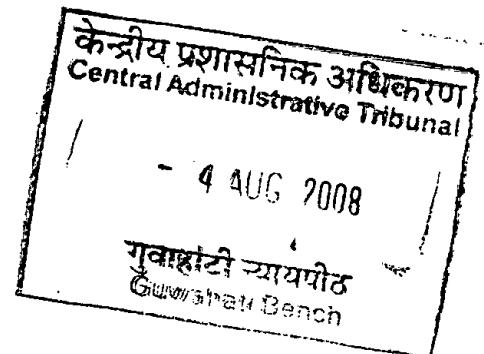
This office order supercedes Commission's earlier office order of even number dt.12.12.02.

on 9.1.03
(J.S.S. Sastry)

Under Secretary (E.I)

Copy to:

1. The Controller of Accounts (Internal Audit Branch), Ministry of Water Resources Shastri Bhavan, New Delhi.
2. PAO, CWC/ PAO, CWPRS, Pune.
3. Shri M.P.Singh, Director, FCA, CWC, New Delhi.
4. Shri B.K.Chakraborty, Director (Mon), CWC, Kolkata- 3 copies (2 for DDO).
5. Shri A.K. Mohinta, Director (M&A), CWC, Agra.- 3 copies (2 for DDO).
6. Shri M.K. Srinivas, Director, NWA, Pune- 3 copies (2 for DDO).
7. Shri R. Devasahayam, SE (Coord), CWC, Coimbatore – 3 copies (2 for DDO).
8. Shri R.K.Pachauri, SE (Coord), CWC, Bhopal- 3 copies (2 for DDO).
9. Section Officer, A/cs-III, CWC- 2 copies.



Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

O.A. No. 445 OF 2007

DATE OF ORDER: THE 16TH APRIL, 2008

Between:

Shri M.K. Srinivas
S/o M. Kameswar Rao
Superintending Engineer
Central Water Commission
Ministry of Water Resources
Hyderabad.

And

1. Union of India
Rep. by the Secretary to Govt.
Ministry of Water Resources
Shram Shakti Bhavan
Rafi Marg, New Delhi-110 001.

2. The Central Water Commission
Rep. By Chairman
Seva Bhavan, R.K. Puram
New Delhi – 110 066.

... Respondents

Counsel for Applicant
Counsel for Respondents

: Mr. Siva, Advocate

: Mr. G. Jayaprakash Babu, Sr.CGSC ✓

Coram :

The Hon'ble Mr. Justice P. Lakshmana Reddy, Vice Chairman
The Hon'ble Mr. R. Santhanam, Member (Admn.)

(Order per Hon'ble Mr. Justice P. Lakshmana Reddy, VC)

This is an application filed by the Director/ Superintending Engineer, Central Water Commission seeking a direction to the respondents (Union of India) and the Chairman, Central Water Commission to fix his pay in the revised pay scale of Rs. 14,300 – 18,300 with effect from 3.3.2000, on which date he has been promoted as Director in the R-2 organisation, and to release all consequential benefits with interest thereon at the rate of 12% per annum, after setting aside the impugned order dated 25.4.2007 issued by R-1 allowing the pay scale of Rs. 14,300 –

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binu dutt
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

18,300 only from 6.9.2002 and ordering recovery of the excess salary paid to the applicant from 25.1.2001 to 15.9.2002 in 12 equal monthly installments.

2. The relevant facts in brief are as follows:

The applicant was selected by Union Public Service Commission (UPSC) for recruitment into the Combined Engineering Services and he was appointed as Assistant Director in R-2 organisation in 1988. He was promoted as Deputy Director in September 1993 and thereafter he was promoted as Director on 3.3.2000. As per the Fifth Pay Commission's recommendations, the pay scale attached to the post of Director is Rs.14,300 – 18,300. Prior to Fifth Pay Commission's recommendations, the pay scales of Assistant Director, Deputy Director and Director were as follows:

Assistant Director	- Rs. 2200 - 4000 (Revised 8000 - 13500)
Deputy Director/ Executive Engineer	- Rs. 3000 - 4500 (Revised 10000 - 15200)
Director (functional)/ Superintending Engineer	- Rs. 3700 - 5000 (Revised 12000 - 16500)

There was a selection grade in the cadre of Director (non-functional) which carried the pay scale of Rs.4500 – 5700. The 5th Pay Commission recommended that the non-functional pre-revised scale of Rs.4500 – 5700 (revised pay scale of Rs.14300 – 18300) applicable to the Superintending Engineers/ Directors in the Central Public Works Department, CPWD should be converted into a functional grade and promotion in this scale should be permitted only on completion of 13 years of regular service in Group 'A'. The Commission further recommended that the functional pre-revised scale of Rs.3700 – 5000 (revised scale of Rs.12000 – 16500) applicable to the Superintending Engineers of the initial grade on their promotion from the post of Executive Engineers should instead be a non-functional grade for Executive Engineers in the pre-revised pay scale of Rs.3000 –

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Binu Sethi
Executive Engineer
M. B. Division, GWC
Adabari, Guwahati-14

4500 (revised scale of Rs.10000 – 15200). In other words, the Pay Commission suggested creation of non-functional post in the cadre of Deputy Director Executive Engineer giving pre-revised scale attached to the Superintending Engineer initial grade and to convert the non-functional Superintending Engineer/ Director post to be functional Superintending Engineer/ Director and to fix their scale in Rs. 14300 – 18300 subject to the condition that one should not be given that scale unless the officer completes 13 years of regular service in Group 'A'. The Union of India accepted the recommendations of the Pay Commission but found it necessary to restructure Group 'A' cadres in the Central Engineering Service to which recruitment is made through Combined Engineering Services Examination and to amend the relevant recruitment rules also in order to implement the Pay Commission's recommendations in this regard. As per preamble to Part-B of the 1st Schedule to the Central Civil Services (Revised) Rules 1997 in cases where cadre restructuring, re-distribution of posts etc. are pre-requisites for the grant of pay scales recommended by the 5th Pay Commission for certain posts, it will be necessary for the Ministry concerned not only to accept those pre-conditions but also to implement them the recommended pay scales as applied to those posts. The Government required lot of time for the purpose of restructuring of Group 'A' cadres and for amendment of the relevant recruitment rules. Pending fulfillment of pre-requisites, the Government gave instructions in its letter dated 6.6.2000 to fix the pay scale of Rs.14300 – 18300 to the regular incumbents of the Superintending Engineer posts as and when they complete 13 years of regular service in Group 'A'. According to the applicant, though he was promoted on 3.3.2000 as Director, his pay scale was provisionally fixed at Rs.14300 – 18300 only with effect from 25.1.2001, the date on which he completed 13 years' regular service in Group 'A'. Since then the applicant has

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Suru Datta
Executive Engineer
M. B. Division/CCE
Adabari, Guwahati

drawn salary as per the said pay scale. Later, a final decision was taken by the Government to apply the said pay scale of Rs.14300 – 18300 only to those who completed 9 years of regular service as Executive Engineer/ Deputy Director. As the applicant completed 9 years of regular service in the senior time scale, in the cadre of Executive Engineer/ Deputy Director only by 15.9.2002, he was given the pay scale of Rs.14300 – 18300 only from 16.9.2002, but by then as the applicant has already drawn salary on the basis of the higher pay scale of Rs.14300 – 18300 with effect from 25.1.2001, the Government vide impugned office order dated 25.11.2007, ordered recovery of the excess salary paid to the applicant for the period from 25.1.2001 to 15.9.2002 in 12 equal monthly installments.

3. Aggrieved by the same, the applicant filed the present application contending that as he was promoted to the post of Director which carried the pay scale of Rs.14300 – 18300 on 3.3.2000 and discharging duties as a Director since then, he is entitled for the said pay scale with effect from 3.3.2000, but however, as the applicant did not complete 13 years of service in Group 'A' by 3.3.2000, he was granted the benefit of fixation of pay in the super time scale with effect from 25.1.2001 on which date he completed 13 years of service in Group 'A'. The Department of Personnel & Training (DOPT) has issued OM dated 6.6.2000 dealing with fixation of pay in respect of posts of Superintending Engineers and Executive Engineers and the equivalent in the Organized Group 'A' Engineering Services. As per the said OM, the non-functional grade of 12000 – 16500 would be introduced for the Executive Engineers and equivalent will be admissible on completion of 9 years in Group 'A' service in respect of officers, who are directly recruited or promoted to the scale of Rs.8000 – 13500. It has been made clear in the said OM, that in view of the implementation of the recommendations of the 5th Central Pay Commission in respect of the posts of Executive Engineers would

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Central Pay Commission in respect of the posts of Executive Engineers would

Binu Sethi M
~~Executive Engineer~~
M. B. Division, CVC
Adabari, Guwahati-16

involve restructuring of the cadre by re-distributing the existing posts in the functional and non-functional scales of Rs.10000 – 15200 and Rs. 12000 – 16500 in the ratio of 70: 30 and the non-functional pay scale will be applicable only prospectively based on the recommendations of DPC constituted for the purpose. Certain clarifications/ modifications have been issued in OM dated 20.12.2000. Though the said OM speaks of only prospective operation, R-2 issued orders dated 6.6.2001 in respect of officers working in Junior Administrative Grade (JAG) on ad hoc basis or in the grade of Senior Time Scale (STS) as on 6.6.2001 and who have not completed 9 years of regular service in the STS as on 6.6.2001 to continue to work in the scale of Rs.12000 – 16500 until further orders. Based on the said order, the applicant was called upon to exercise his option for fixing pay in the scale of Rs.12000 – 16500 either from the date of ad hoc officiation or from the date of next increment in the grade of STS. On receipt of such communication, the applicant submitted representation dated 5.7.2001, stating that

since he was promoted to the JAG grade in February 2000, his pay fixation has to be done in accordance with the replacement scales indicated by Part-B of the revised pay scale notified in the gazette dated 30.9.1999. He requested that his pay be fixed in the pay scale of Rs.14300 – 18300 with effect from 3.3.2000. As there was no response to his representation, he submitted two more representations dated 29.1.2002 and 1.4.2003 with similar requests. After a gap of over four years, R-2 issued impugned order dated 25.4.2007 to the effect that since the applicant has completed 9 years of service in STS and JAG on 16.9.2002, he would be entitled to higher pay scale only from the said date. The applicant contended that the basis for the entire action is the letter issued by DOPT on 6.6.2000 and the very letter says it would have prospective operation and not retrospectively. As the applicant was already promoted on 3.3.2000, the

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गुवाहाटी न्यायपाठी
Guwahati Bench

केन्द्रीय प्रणासनिक अधिकारी
Central Administrative Tribunal

Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

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Binu Dutt M/T

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instructions of the said OM are not applicable to him. Further, no notice preceded the impugned action of ordering recovery of excess payment. The applicant further contended in the application that the white collared employees would not be setting apart certain portion of salary and allowances in anticipation of a recovery at a later point of time, more particularly when the applicant is not guilty of a misrepresentation of fact by virtue of which he was given a benefit of a higher pay. It is the settled proposition and therefore, the said principle is required to be applied in this case. The applicant further pleaded that he had got more than 16 years of service left and there is no need to recover the excess payment, if any, only in 12 installments.

4. The respondents contested the application and filed reply contending that the 5th Pay Commission recommended the posts in JAG of the organized engineering services will be operated in the scale of Rs. 14300 – 18300 and the posts in STS will be operated in two pay scales viz., ordinary grade of Rs.10000 – 15200 which is equal to the normal replacement scale of STS and non-functional second grade in the pay scale of Rs.12000 – 16500 which is identical to normal replacement scale of erstwhile ordinary grade of JAG. The implementation of the said recommendations required restructuring of JAG and STS as well as revision of recruitment rules. The OM dated 20.12.2000 stipulated that the pay scale of Rs.14300 – 18300 for the officers holding the post of Superintending Engineer would be given only to regularly promoted officers having 9 years of regular service in the grade of Executive Engineer and equivalent. Pending fulfillment of pre-requisites, Government decided to allow the higher pay scale of Rs.14300 – 18300 to such JAG officers who have completed 13 years of Group 'A' Service purely on provisional basis as per letter dated 17.10.1997 and in the said letter, it is

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clearly specified that the said pay scale was given subject to the condition that any

Min. Adutty
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

deduction in the pay, if required, would be made in one installment in the future payments after final decision is taken in the matter of pay fixation. The criteria adopted for allowing the pay scale of Rs.14300 – 18300 has been spelt out in DOPT's OM dated 20.12.2000 which provides that JAG officers should have put in 9 years of regular service for the senior time scale for being placed in the scale of Rs.14300 – 18300 and those officers who met the above criteria were given the said benefit. Similarly, those who have satisfied the criteria of 9 years regular service in STS were given higher pay scale only from the date on which they completed the prescribed 9 years' qualifying service in STS subject to the condition that they had been promoted functionally to the JAG post against vacancies and after observing the prescribed procedure. The respondents pleaded that as the applicant completed 9 years' regular service only on 15.9.2002, he was given the benefit of higher pay scale with effect from 16.9.2002 and as the applicant had drawn excess salary with effect from 25.1.2001, the respondents ordered recovery of the same in 12 monthly installments. There is no irregularity or illegality in the impugned orders and hence the said orders are not liable to be set aside and the application is liable to be dismissed.

The points that arise for consideration in this case are:

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Central Administrative Tribunal
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(i) Whether the applicant is entitled for higher pay scale of Rs.14300 -

18300 with effect from 3.3.2000 on which date he has been working

4 AUG 2002 as Director on his promotion from Deputy Director.

(ii) If not, whether the applicant is entitled for the said higher pay scale at least with effect from 25.1.2001 on which date he completed 13 years of regular service in Group 'A'?

(iii) Whether the impugned orders permitting the said higher pay with effect from 16.9.2002 is sustainable in law?

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Min. Zulfiqar
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

(iv) If so, whether the order of recovery of the excess payments in 12 equal installments is required to be modified?

(v) To what result?

6. Point No. (i):

It is not disputed that the applicant's promotion as Director was on ad hoc basis and not on regular basis. It is also not disputed that as per the then existing rules also, the applicant is not entitled for regular promotion or pay scale attached to the Director in pre-revised scale, unless he completes 13 years of regular service in Group 'A'. It is also not in dispute that by 3.3.2000, the applicant has not completed 13 years of Group 'A' service and he completed 13 years of regular service only on 25.1.2001. Merely because the applicant was discharging duties as Director with effect from 3.3.2000, it cannot be said that he is entitled for the salary attached to the Director. Even the 5th Pay Commission in its recommendations clearly stipulated that the scale of Rs.14300 – 18300 cannot be granted unless the officer completes 13 years of regular service in Group 'A'. Therefore, we have no hesitation to hold that the applicant's claim for higher salary from 3.3.2000 is not at all tenable. Thus, this point is found against the applicant.

7. Point No. (ii):

It is true that the applicant completed 13 years of regular service in Group 'A' by 25.1.2001. Prior to the 5th Pay Commission's recommendations, after completion of 13 years of regular service in Group 'A' cadre, the officer was entitled only for Rs.3700 – 5000 (pre-revised scale), but not to the pre-revised scale of Rs.4500 – 5700, as the post of Director (functional) was carrying the pay scale of Rs.3700 – 5000. As the posts of Director (functional) and the posts of Director (non-functional) in the scale of Rs.4500 – 5700 are restructured into one

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cadre of Director (functional) as recommended by the 5th Pay Commission, it is for

Min. Duties
Executive Engineer
B Division, CWS
Adabari, Guwahati-14

the Government to take a policy decision as to from which date the higher pay scale is to be given to the officers who are promoted to the post of Director as per the recruitment rules which were in force prior to restructuring of posts. The Government of India felt that the process of restructuring of posts and amendment of recruitment rules in order to implement the 5th Pay Commission's recommendations in this regard, may take considerable time and pending final decision, the Government tentatively decided to provisionally fix the pay scale of the officers who were promoted as Directors/ Superintending Engineers (functional) at Rs.14,300 – 18300 as and when they completed 13 years of regular service in Group 'A'. In view of the tentative decision of the Union of India, the pay of the applicant was fixed in the pay scale of Rs.14300 – 18300 with effect from 25.1.2001 on which date he completed 13 years of regular service in Group 'A'. Subsequently, the Government of India took a final decision that mere completion of 13 years' regular service in Group 'A' is not sufficient to earn higher pay scale of Rs.14,300 - 18,300 and that one must necessarily complete 9

~~years of service in the STS grade in order to earn the higher pay scale. It is a policy decision taken by the Government. Admittedly, by 25.1.2001, the applicant did not complete 9 years of continuous service in STS cadre, and he completed 9 years' regular service in STS cadre only on 15.9.2002. Therefore, in pursuance of the policy decision taken by the Government, on 27.11.2002, the provisional pay of the applicant fixed by office order No. 94 dated 31.1.2001 (Annexure A-V) was revised and the higher pay scale was fixed with effect from 16.9.2002 on which date the applicant completed 9 years of regular service in STS grade. In P.U. Joshi and others Vs. Accountant General, Ahmedabad and others, reported in AIR~~

~~2003 SC 2156, the Hon'ble Apex Court held that the questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/~~

Chiranjit M
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-16

abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State.

Here, in the instant case, the eligibility conditions prescribed by the Government to earn higher pay scale of Rs.14,300 – 18,300 is a policy decision of the Government, which cannot be interfered with by this Tribunal. The counsel for the applicant has not disputed that the Government of India took a final decision only on 27.11.2002 prescribing 9 years regular service in STS grade is a condition precedent to earn the higher pay scale of Rs.14,300 – 18,300. But his contention is that the said instructions are only prospective and not retrospective. The applicant's counsel relied on para 2 of the OM dated 6.6.2000 (Annexure A-VII) issued by Ministry of Personnel, Public Grievances and Pensions (DOPT), which reads as follows:

"2. Implementation of the FCPC recommendations will necessitate the restructuring of Group 'A' cadres in the Central Engineering Service, the Central Electrical and Mechanical Engineering Service and other organized Group 'A' Engineering Services, recruitment in which is made through the Combined Engineering Services Examination. The related recruitment/ service rules will also need to be appropriately amended. In terms of the provisions contained in the preamble to Part 'B' of the First Schedule to the Central Civil Services (Revised Pay) Rules 1997, in cases where cadre restructuring, re-distribution of posts, etc. are pre-requisites for the grant of pay-scales recommended by the FCPC for certain posts, it will be necessary for the Ministry/ Department concerned to not only accept these pre-conditions but also to implement them before the recommended pay-scales are applied to these posts. It is, therefore, implicit that such scales will necessarily have only prospective effect and only the normal replacement scales will be applicable to the posts concerned until the pre-requisites are fulfilled."

We are unable to understand as to how the words "prospective effect" used at the end of para 2 supports the contention of the applicant's counsel in this case. On the other hand, in our considered view, para 2 of this OM clearly indicates that unless the pre-requisites for the grant of pay scales recommended by the Pay

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Commission for certain posts are fulfilled the recommended pay scales cannot be

Lin Dutt M
Executive Engineer
M B Division, CPO
Adabari, Guwahati-6

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applied to those posts and that those pay scales will be prospective and that only the normal replacement scales will be applicable to the posts concerned until the pre-requisites are fulfilled. As per the said OM it is clear that normal replacement scales will be applicable only temporarily until the pre-requisites, viz. restructuring and revision of relevant recruitment rules etc. are completed. We are unable to accept the interpretation given to para 2 of DOPT's OM dated 6.6.2000 given by the applicant's counsel. As seen from Annexure A-V dated 31.1.2001, while fixing the pay of the applicant in the pay scale of Rs.14300 – 18300, with effect from 25.1.2001, it is clearly specified that the above fixation of pay has been provisionally made and it is subject to the adjustment at the future date. So, it is clear that the pay fixation under Annexure A-V dated 31.1.2001 giving the higher pay scale with effect from 25.1.2001 was only provisional subject to revision after the final decision taken by the Government. Now, final decision has been taken to grant higher pay scale only after completion of 9 years regulars service in STS cadre and till then, those who have been promoted as Director shall continue in the revised pay scale of Rs.12000 – 16500 which is equivalent to the pre-revised scale of Rs.3700 – 5000 which was the pay scale fixed for Director/ Superintending Engineer (functional). In our considered view, the applicant is not entitled for higher pay scale of Rs.14300 – 18300 with effect from 25.1.2001 as he has not completed 9 years of regular service in STS cadre prescribed by the revised instructions of the Government. Thus this point is also found against the

Point No. (iii):

In view of the findings on points (i) and (ii), the applicant is not entitled for higher pay scale till 16.9.2002. Admittedly, as per the impugned orders, the applicant is given higher pay scale with effect from 16.9.2002 after completion of

[Signature]
Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14

9 years of regular service in STS cadre as prescribed by the Government in the revised instructions. Therefore, we do not find any irregularity or illegality in the impugned orders in this regard. Thus, this point is also found against the applicant.

9. Point No. (iv):

Admittedly, the applicant has drawn higher pay scale with effect from 25.1.2001, though he is entitled for such pay scale only from 16.9.2002. We have already observed supra that the applicant's pay was fixed in the higher pay scale with effect from 25.1.2001 only on provisional basis subject to the condition that it shall be adjusted after final decision is taken regarding pay fixation. Therefore, the respondents are entitled to revise the pay scale and recover the amount paid in excess of the eligible amount. Regarding the recovery in 12 installments, the applicant pleaded hardship stating that the white collared employees would not be setting apart certain portion of salary and allowances in anticipation of a recovery at a later point of time, more particularly when the applicant is not guilty of a misrepresentation of fact by virtue of which he was given a benefit of a higher pay. We find considerable force in the said submission of the applicant. Therefore, we consider it fit to direct the respondents that the recovery amount shall not exceed 10% of the basic pay every month, and to issue modified recovery orders accordingly. Thus, this point is found accordingly.

10. Point No. (v):

In the result, OA is dismissed in all respects except the modification of mode of recovery of the excess amount paid to the applicant. The respondents are directed that the recovery of the amount shall not exceed 10% of the basic pay of the applicant every month. There is no order as to costs.

Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-16

श्रमिक प्रति
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केन्द्रीय प्रशासनिक सचिव
Central Adminstrative Secretary

CASE NO. 374/2007

नियन्त्रित दिन: 4/4/2007

DATE OF JUDGEMENT: 16/4/08

प्रति तैयार किया गया दिन: 24/4/08

4 AUG 2008
COPY MADE READY ON 24/4/08

गुवाहाटी न्यायालय
Guwahati Bench

सचिवालय / Court Office
केन्द्रीय प्रशासनिक सचिवालय
Central Adminstrative Secretary
गुवाहाटी अधिनियामित न्यायालय
Guwahati Administrative Tribunal
हैदराबाद अधिनियामित न्यायालय
Hyderabad Bench

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

1 IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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GUWAHATI BENCH: GUWAHATI

गुवाहाटी अधिकारण
Guwahati Bench

Additional Rejoinder in

O.A. No. 140/2007

Shri Mahendra Pratap Singh : Applicant

-Versus-

Union of India & Others. : Respondents.

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Filed by:



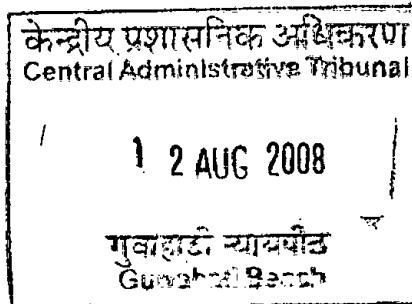
Advocate

Date: 07.08.08

Received
M. P. Paul Counsel
Sr. Peon Counsel
7/8/08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

13
 Filed by the applicant
 through U. Datta, advocate
 on 07.08.08



In the matter of:-

O.A. No. 140 of 2007

Shri Mahendra Pratap Singh
 Applicant.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of:-

Additional Rejoinder submitted by the applicant in reply to the additional statement filed by the Respondents.

The humble applicant above named most humbly and respectfully state as under:-

1. That the applicant has duly received a copy of the additional statement filed on behalf of the respondents and carefully gone through the same and understood the contents thereof.
2. That with regard to the statements made in paragraph 2, 3, 4, 5 and 6 of the additional statement the applicant denies the correctness of the same and further begs to say that the present applicant attained eligibility for regular promotion to the cadre of Superintending Engineer/Director (Junior Administrative Grade) way back in the month of 1998 since he was promoted to the post of Dy. Director/Executive Engineer. It is evident from the reply statement filed by the same respondents in O.A. No. 445/2007 that no DPC was convened till 2000 against the vacancies of 1994-1995 in spite of existing vacancies on the alleged ground of protracted litigation on the issue of seniority in the feeder grade and also due to

Mahendra Pratap Singh

complication related to implementation of Fifth CPC, cadre restructuring in the grade of Superintending Engineer/Executive Engineer. As a result ad hoc promotions were made from time to time with the approval of competent authority. The relevant portion of reply statement in O.A. No. 445/2007 of the CAT, Hyderabad Bench is quoted below:

"2. The last DPC for promotion to
Dir./Superintending Engineer was convened in Dec.,
1994/Jan. 1995 for the vacancies of 1993-94 and thereafter no
DPC could be convened for the vacancies occurred from
1994-95 onwards due to protracted litigation on the issue of
seniority in the feeder grade and complication related to
implementation of 5th CPC i.e. restructuring of
Superintending Engineer and Executive Engineer grade i.e.
revision of service rules etc. However, keeping in view the
functional requirement of the posts in the cadre, ad-hoc
promotions were made from time to time with the approval
of the Competent authority.

In view of the position stated above, pending amendment of Central Water Engineering (Group 'A') Service Rules, 1995, Union Public Service Commission was approached for convening the DPC for promotion to Junior Administrative Grade of the service. The UPSC initially refused to convene the DPC on the ground that existing Recruitment Rules ceased to be operative w.e.f. 1.1.1996. However, after long persuasion, Union Public Service Commission agreed to convene a DPC for Junior Administrative Grade as per the existing Recruitment Rules with the stipulation that promotion to the Junior Administrative Grade of the Central Water Engineer (Group 'A') Service will be made in the normal replacement scale of pay of Rs. 12,000-16,500/. They further advised that administrative Ministries have also been vested with the power to place the officers so promoted in the higher replacement scale of Rs. 14,300-18,300 on

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Central Administrative Tribunal

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Guwahati Bench

Mahendra Patal Singh

completion of 9 years service as Executive Engineer and equivalent. However, officers who have not completed 9 years of regular service in the grade of Executive Engineer and equivalent on promotion to the grade of Superintending Engineer and equivalent will continue to remain in the pay scale of Rs. 12000-16,500/- and will be placed in the higher pay scale of Rs. 14,300-18,300 only on

केन्द्रीय प्रशासनिक अधिकारपरिषद्
Central Administrative Tribunal

completion of 9 years of service as Executive Engineer and equivalent.

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Guwahati Bench

Accordingly, a DPC was convened in April, 2001 for 120 existing and anticipated vacancies of 1994-95 to 2001-2002. Thereafter, two orders dated 6.6.2001 relating to promotion/placement were issued."

On a mere reading of the aforesaid statement of the respondents it is evident that regular vacancies of S.E/Director were available in the department which occurred from the year 1994 to 2000 and after a lapse of 6 (six) years DPC was convened in April, 2001 for 120 vacancies although applicant attained illegibility in the month of October 1998.

It is to be noted here at this stage that respondents have fairly admitted that the ad hoc promotion to the cadre of S.E/Director was affected earlier since regular promotion could not be effected for certain reasons as stated above. Moreover, it is also admitted by the respondents herein above that the UPSC finally agreed to effect promotion to the cadre of Junior Administrative Grade in terms of the 1995 recruitment rule i.e. the then existing recruitment rules.

Admittedly when the ad hoc promotion was given to the cadre of Director/S.E vide order dated 11.10.1999 after issuance of Revised Pay Rules 1997 where scale of pay of Director/Supdt. Engineer has been provided in the scale of Rs. 14,300-18,300/- which was also granted to the applicant while discharging the higher duties and responsibilities. As such the applicant has been rightly given the scale of pay of Rs. 14,300-18,300/- which provided by a statute. Therefore condition imposed by the Govt. letter dated 17.10.1997 is highly arbitrary, illegal and unfair. By the Govt. letter dated 17.10.1997 it is alleged that fixation of pay in the promotional

Mahendra Pralop Singh

post in the scale of Rs. 14,300-18,300/- in respect of S.E/Director is provisional and deduction in the pay, if required would be made in one installment after final decision is taken in the matter of pay fixation. Such a condition of the respondents even if the same is expected is contrary to the statutory rule where the same pay scale of Rs. 14,300-18,300/- in respect of S.E/Director has been provided by the Statutory Pay Rule 1997, which should prevail over the executive decision, imposing condition communicated vide letter dated 17.10.1997.

It is stated that Government is not entitled to impose any pay scale for a particular post or grade in violation of the scale provided by a statutory pay rules i.e. Revised Pay Rules 1997.

~~केन्द्रीय प्रशासनिक अधिकारी~~
Central Administrative Tribunal It is further stated that condition of fulfillment of 13 years/9 years imposed by the Govt. letter dated 17.10.1997, 06.06.2000 and 20.12.2000 are

~~गुवाहाटी न्यायालय~~
Guwahati Bench 12 AUG 2008 not sustainable on the face of the statutory recruitment rule 1995. The aforesaid letter dated 17.10.1997 and the O.M dated 20.12.2000 are in fact decision of the Ministry communicated in the nature of Executive instructions, as such it cannot supersede the statutory recruitment rules 1995 as well as statutory Pay Rules 1997. Since the statutory recruitment rules 1995 simply provided 5 (five) years regular service in the grade of Dy. Director/Executive Engineer as eligibility criteria for consideration of promotion to the cadre of SE/Director in the scale of pay of Rs. 3700-125-4700-150-5000 and the Govt. of India after the acceptance of 5th CPC report provided corresponding scale of Rs. 14,300-18,300/- for Gr. 'A' Engineering Services vide notification dated 30.09.2007 published in the Gazette of India.

It is further stated that recruitment rule 2004 (Central Water Engineering Group 'A' service rules, 2004) came into force on 18.11.2004, as such the condition of minimum 9 (nine) years regular service in STS Grade in the cadre of E.E/Dy. Director as provided in recruitment rule 2004 shall be applicable prospectively only and the said recruitment rule cannot be applied retrospectively in the instant case of the applicant.

3. That the applicant categorically denies the contention raised in para 7, 8, 9 and 10 of the Additional statements on behalf of the respondents in O.A.

Mahendra Ponal Singh

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No. 140/2007 and further beg to say that when a policy decision of the Govt. of India has been published in the form of Statutory Rule under Article 309 of the Constitution of India and the said decision at the relevant point of time holding the field in the form of recruitment rule 1995 as well as Statutory Pay Rule 1997 were in force. As such condition of fulfillment of 9 years regular service in STS Grade in the cadre of E.E/Dy. Director does not arise. The O.M dated 06.06.2000, 20.12.2000 and the letter dated 17.10.1997 issued by the Govt. of India cannot supersede the condition laid down in recruitment rule 1997. Therefore question of recovery and re-fixation of pay in the instant case of the applicant does not arise at all. The judgment relied upon by the respondent Union of India cannot be made applicable in the instant case of the applicant since the judgment in O.A No. 445/2007 passed by the learned CAT, Hyderabad Bench on 16.04.2008 is per incurium i.e. without noticing the judgment of the Hon'ble Supreme Court rendered in the case of Punjab State Warehousing Corporation Chandigarh - Vs- Manmohan Singh & Ors. decided on 20.02.2007, reported in (2007) 9 SCC 337 wherein the Hon'ble Supreme Court has held in para 12 as follows:-

“12. Furthermore, when the terms and conditions of the services of an employee are governed by the rules made under a statute or the proviso appended to Article 309 of the Constitution of India laying down the mode and manner in which the recruitment would be given effect to, even no order under Article 162 of the Constitution of India can be made by way of alterations or amendments of the said rules. A fortiori if the recruitment rules could not be amended even by issuing a notification under Article 162 of the Constitution of India the same cannot be done by way of a circular later.”

In view of the above decision of the Hon'ble Supreme Court the respondents are not entitled to change conditions of promotions in the Grade of S.E/Director by issuing letter dated 17.10.1997, O.M dated 06.06.2000 and 20.12.2000. Moreover, the respondents are also not entitled

Mahendra Pratap Singh

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Governer's Bench

to change the pay scale in the grade of S.E/Director when the ~~Govt. of India~~ pay
Rules 1997 provides corresponding scale of Rs. 14,300-18,300/- from the
pre-revised scale of Rs. 3,700-5,000/- that too by way of Executive
instruction.

It is further submitted that grounds taken in the instant Original Application are totally different than the grounds taken in O.A. No. 445/2007 before the learned CAT, Hyderabad Bench. The applicant in O.A. No. 445/2007 did not raise any ground that conditions laid down in statutory recruitment rule including the pay scale cannot be changed by way of Executive instruction in the form of issuing Govt. letters/O.M. as such the judgment passed in O.A. No. 445/2007 cannot be made applicable in the instant O.A. since the same is made without noticing the judgment of the Hon'ble Supreme Court as stated above.

The applicant further relies upon the following decisions rendered by the Hon'ble Supreme Court:

- (1) (1985) (Supp) SCC 94 (P. Savita & Ors. - Vs- U.O.I & Ors.)
- (2) (1997) 6 SCC 473 (K. Ajitbabu & Ors. - Vs- U.O.I & Ors.)
- (3) (2001) 10 SCC 496 (K.C. Derasari & another - Vs- U.O.I & Ors.)
- (4) (2007) 9 SCC 337 (Punjab State Warehousing Corporation - Vs- Monmohan Singh & Ors.)

It is further submitted that allotment of separate pay scale among the same set of employees promoted in the cadre of S.E/Director only on the basis of length of service in absence of evidence that separate pay scales allotted for higher qualification either academic or otherwise is not a reasonable classification and on that score alone such discriminatory treatment in the matter of allotment of two separate pay scale is liable to be declared unconstitutional. As an abundant caution the applicant enclosing herewith a copy of O.A. No. 445/2007 and the written statement filed on behalf of the respondents for proper adjudication of the instant case of the applicant.

Mahendra Pathip Singh

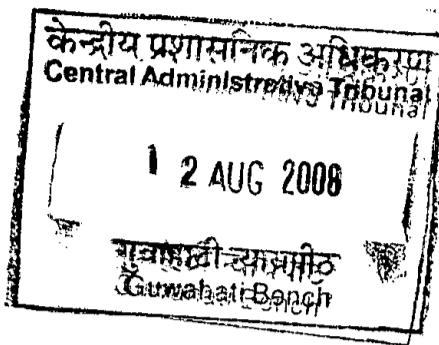
2 AUG 2008

Applicant in support of his contention also relies on the judgment and order dated 30.10.2006 in W.P (C) No. 7883/2002 (Union of India & Ors - Vs- Sri Debendra Ch. Das) passed by the Hon'ble Cauhati High Court.

A certified copy of the O.A. No. 445/07 and a certified copy of the written statement in O.A. No.445/07 filed before learned CAT, Hyderabad Bench, judgment and order dated 30.10.2006 in W.P (C) No. 7883/2002 and judgment dated 20.02.2007, reported in (2007) 9 SCC 337 are enclosed herewith and marked as Annexure- A, B, C and D respectively.

4. That in the facts and circumstances, the applicant humbly prays that he is entitled to the reliefs prayed for and the Original Application deserves to be allowed with costs.

Mahendra Patalip Singh



VERIFICATION

I, Shri Mahendra Pratap Singh, S/O Shri Tilak Raj Singh, aged about 45 years, applicant in the instant original application, 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 this 2nd day of August 2008.

Mahendra Pratap Singh

-9- C.D. No. 217/2008
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD
BENCH: AT HYDERABAD

ANNEXURE-A

Original Application No. 445 of 2007



Between:

MK Srinivas, S/o M. Kameswar Rao
Aged about 44 years
Occ. Superintending Engineer, Central Water Commission
Ministry of Water Resources
Hyderabad

Applicant

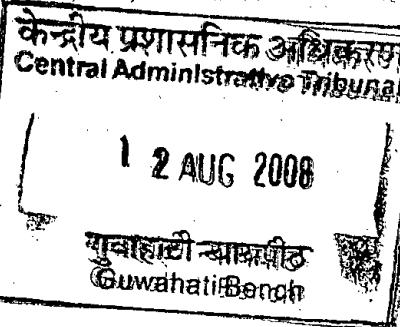
(The Address for service of summons and other correspondence in relation to the applicant is that of his Counsel, M/s Siva, Parvati, and G. Ramalakshmi, Advocates, 413, Brindavan Apartments, Red Hills, Hyderabad)

And

1. Union of India, rep. by the Secretary to Government, Ministry of Water Resources
Shram Shakti Bhavan, Rafi Marg
New Delhi - 110 001

2. The Central Water Commission, rep by Chairman
Sewa Bhavan, RK Puram
New Delhi - 110 066

1 2 AUG 2008



Respondents

(The address for service of all notices and processes on the above named Respondents is same as shown in the cause title)

DETAILS OF APPLICATION:

1. Particulars of the order against which the application is made:
Impugned Order No. : A-26011/2/97-Estt.I(Vol-III)/150

Dated : 25th April 2007

Of the : 2nd Respondent

Subject Matter in Brief:

On promotion, the pay of the applicant has been fixed in the scale of 14,300 - 18,300 with effect from 25.1.2001. By the impugned order, the Respondent has ordered that the applicant would be entitled to the higher pay, i.e. 14,300 - 18,300 on and from 6.9.2002. Consequent upon such a decision, the amount of pay and allowances drawn in the said scale from 25.1.2001 till 6.9.2002 is sought to be recovered. Hence, this Original Application.

2. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

Attested
Shanta
dw

M.K. Srinivas

(APPLICANT)

3. Limitation:

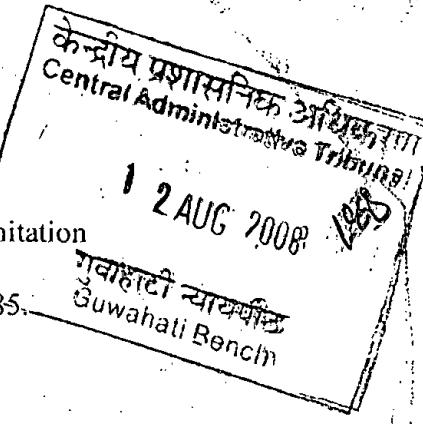
The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case :

- a) The Applicant, after completing his Bachelor of Engineering, he responded to the notification issued by the Union Public Service Commission for recruitment into the Combined Engineering Services in 1986. After participating in the selection process and before it could be finalised, he has also completed his Masters of Engineering. On being found fit, he was offered appointment and he joined as an Assistant Director in the 2nd Respondent organisation in 1988. He earned his promotions as Deputy Director in September, 1993 and as Director in February 2000. He joined as Director on 3.3.2000. All through his career, he has maintained a decent record of service.
- b) The pay scale for the post of Director is 14,300 - 18,300. In the normal course, he would be entitled to have his pay fixed in the said scale on and from the date from which he started discharging his duties as a Director, i.e. 3.3.2000. However, as per the extant rules governing the field in respect of officers in the Combined Engineering Services required that one must put in 13 years of service before being granted the super time scale (STS for short). It is also pertinent to point out that the post of Director is one which carries the said scale.
- c) Based on the said position of law governing the field, the applicant was granted the benefit of fixation of pay in the super time scale with effect from 25.1.2001 (after he has put in 13 years of service from the time of his recruitment as Assistant Director) vide Order dated 31.1.2001 based on the Ministry of Water Resources order dated 17.10.1997. The applicant was drawing the salary and allowances in the said grade on and from the 25.1.2001.

Mukundan

(APPLICANT)



d) Subsequently, the Department of Personnel and Training has issued Office Memorandum dated 6.6.2000 dealing with fixation of pay in respect of the posts of Superintending Engineers and Executive Engineers and equivalent in the organised Group A Engineering Services. As per the said Office memorandum, the non-functional grade of 12000-16500 would be introduced for the Executive Engineers and equivalent will be admissible on completion of 9 years in Group A service in respect of officers who are directly recruited or promoted to the pay scale of 8000-13500. It has been made clear in the said Office Memorandum that in view of the implementation of the recommendations of Fifth Central Pay Commission in respect of the posts of Executive Engineers would involve restructuring of the cadre by redistributing the existing posts in the functional and non-functional scales of Rs.10000-15200 and 12000-16500 in the ratio of 70:30.

- e) The non-functional pay scale will be applicable only prospectively based on recommendations of Department Promotion Committees constituted for the purpose.
- f) Certain clarifications / modifications have been issued vide Office Memorandum dated 20.12.2000. Though the said memoranda speak of only prospective operation, the 2nd Respondent has issued Order No. 19/68/97-Estt.I dated 6.6.2001 in respect of Officers working in JAG on adhoc basis or in the Grade of STS as on 6.6.2001 and who have not completed 9 years regular service in STS as on 6.6.2001 to continue to work in the scale of 12000-16500 until further orders. The applicant has been included at Serial No. 7 on the list. Based on the said Order, the applicant was called upon to exercise his option for fixing pay in the scale of 12000-16500 either from the date of adhoc officiation or from the date of next increment in the Grade of STS.

NK Srinivas

(Signature)

g) On receipt of such communication from the Respondent, the applicant submitted a representation dated 5.7.2001 requesting that since he was promoted to the JAG Grade in February 2000, his pay fixation has to be done in accordance with the replacement scales indicated by Part B, of the revised pay scales notified in the Gazette dated 30.9.1997. It was further requested that his pay may be fixed accordingly in the pay scale of 14,300 - 18,300 with effect from 3.3.2000. This representation was followed up by two more representations dated 29.1.2002 and 1.4.2003.

h) The above representations did not evoke any response leave alone a positive action of fixing up his pay in the scale of 14,300 - 18,300 with effect from 3.3.2000. After a gap of over four years from the last representation submitted by him, the 2nd Respondent has issued the impugned order dated 25.4.2007, the effect of which was that since the applicant has completed 9 years of service in STS and JAG on 16.9.2002, he would be entitled to the higher pay scale from the said date. The excess payments drawn by him on account of fixation of pay in the higher pay scale of Rs. 14,300 - 18,300 from 25.1.2001 till the grant of higher scale is recoverable in 12 instalments.

i) The said action of the Respondents is assailed in the present Original Application.

5. Grounds for relief with legal provisions:

I. The impugned order is liable to be set aside on the solitary ground that the basis for the entire action is the letter issued by the DOPT on 6.6.2000. As stated *supra*, it has been pointed out in the very same OM that the same would have prospective operation. Since the Applicant has been promoted on 3.3.2000, he would be entitled for having his pay fixed in the scale

M.K. Sahoo

(APPLICANT)

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नायकी न्यायालय
Guwahati Bench



attached to the said post. Any action contra thereto would be totally unsustainable.

II. Despite of the fact that it was more than four years from the date of the last representation, the Respondents did not think it appropriate even to reply to the same. At least before the benefit which was conferred upon him could not have been stripped off without putting him on notice. In the present case and as is evident from the impugned order itself, no notice preceded the impugned action of ordering recover of excess payments. Since the order is passed without putting the Applicant on notice, it cannot but be set aside by this Hon'ble Tribunal.

III. It has been a settled proposition of law that the white collared employees would not be setting apart certain portion of salary and allowances in anticipation of a recovery at a later point of time, more particularly when the Applicant is not guilty of a misrepresentation of fact by virtue of which he was given a benefit of a higher pay. In the present case also, the same principle is liable to be applied. Of course, without prejudice to the contention that denial of the benefit of higher pay on and from 3.3.2000.

IV. Since the order itself would state that recovery has to be made in 12 instalments and the same having been communicated during the first week of May, the Respondents have not yet commenced the recovery of the alleged excess payment. The Applicant has over 16 years of service left and assuming for the sake of argument that the Original Application is liable to be rejected, the Respondents' interests would be adequately protected.

M.K. Srinivas

(ADVISANT)

Balance of convenience, therefore, lies very heavily in favour of Applicant.

6. Details of the remedies exhausted :

The applicant declares that since the order impugned herein has been passed by the 2nd Respondent who is the highest authority in the 2nd Respondent organisation, he has no other remedy available to him under the relevant service rules etc.

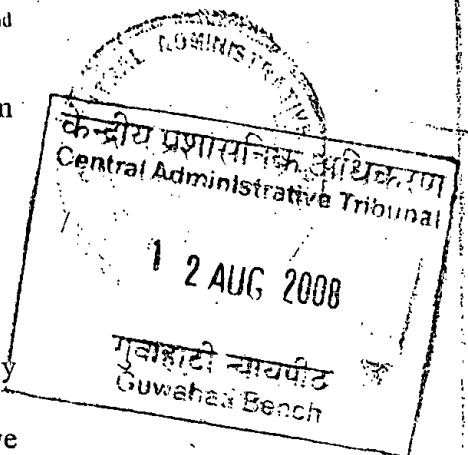
7. Matters not previously filed or pending with any other court :

The applicant further declares that he had not previously filed any application except those narrated in the facts of the case which have not even been responded to by the Respondents within the expected time, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief sought :

For the aforesaid reasons, it is prayed that this Hon'ble Tribunal in the interest of justice be pleased to

- a) call for all the relevant and connected records relating to the order No. A-26011/2/97-Estt.I(Vol-III)/150 dated 25th April 2007 of the 2nd Respondent and quash or set aside the same holding it as arbitrary, illegal, unjust, without following the principles of natural justice and being violative of Articles 14 and 16 of the Constitution of India;
- b) consequent upon the setting aside of the impugned order direct the Respondents to fix the pay of the Applicant in the scale of Rs.14,300 - 18,300 on and from 3.3.2000, the date on which the Applicant has been promoted as Director in the 2nd Respondent organisation and release all the benefits that flow from out of the



M.K. Srinivasan
(APPLICANT)

7-15
setting aside of the impugned order and direction prayed for above together with interest at the rate of 12% per annum with quarterly rests payable from the date on which it has become due till the date of release of the amounts;

and pass such other and further order or orders as are deemed fit and proper by this Hon'ble Tribunal in the circumstances of the case.

9. Interim order, if any prayed for :

Pending disposal of the above Original Application, it is prayed that this Hon'ble Tribunal may be pleased to stay the recovery in pursuance of the Office order No. A-26011/2/97-Estt.I(Vol-III)/150 dated 25th April 2007 of the 1st Respondent and pass such other and further order or orders as are deemed fit and proper by this Hon'ble Tribunal in the circumstances of the case.

✓ 26/50
I.P.O./B.C./D.D./REMARKS

10. Particulars of Banks Draft/Postal Order filed in respect of the application fee. 32G 29 1856 RS.50/-

11. List of enclosures: Vakalat, Annexures and Covers

VERIFICATION

I MK Srinivas, S/o M. Kameswar Rao aged about 44 years Occ. Superintending Engineer, Central Water Commission, Ministry of Water Resources, Hyderabad do hereby verify that the contents of paras01..... to04.....are, true to my personal knowledge and paras.....05..... to11..... believed to be true on legal advice and that I have not suppressed any material fact.

Date : 25th June 2007
Place : Hyderabad

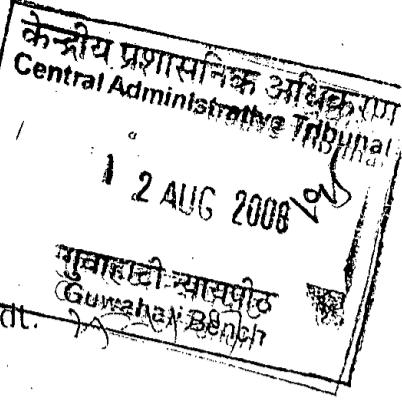
MK Srinivas
Signature of the Applicant

Counsel for the Applicant
SIVA(128)

-17-

No. A-26011/2/97-Estt.I (Vol.III)
Government of India
Ministry of Water Resources
Central Water Commission

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New Delhi, dt.

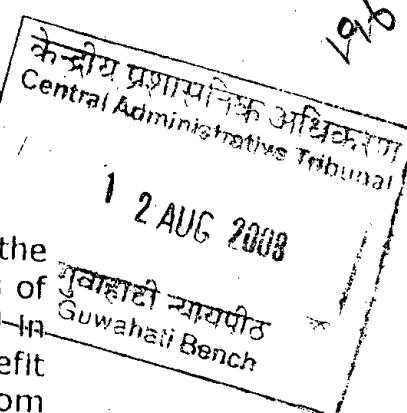
Office Order

Consequent upon his promotion to the grade of Director vide MOWR Order No. 6/3/99-Estt.I dated 27.1.2000, the pay of Shri M.K. Srinivas was provisionally fixed in the pay scale of Rs. 14,300-18300 w.e.f. 25.1.2001 in pursuance of MOWR's Order No. 19/68/97-Estt.I dated 17.10.97. MOWR order dated 17.10.1997 Inter-alia provided that the pay of JAG level officers of CWE (Gr.A) Service who had completed 13 years of regular service in Group A may be provisionally fixed in the revised scale of Rs. 14300-400-18300.

Subsequently, it was Inter-alia decided by MOWR's vide para 3 (iii) of their order No. 19/68/97-Estt.I dated 6.6.2001 that the officers promoted to the JAG on regular basis in the normal replacement scale of Rs. 12000-16500 vide MOWR order No. 13/3/95-Estt.I dated 6.6.2001 but have not completed nine years regular service as on 6.6.2001 in the STS will continue in the scale of Rs. 12000-16500 until further orders. The name of Shri M.K. Srinivas appeared at S.No. 7 of the above para of MOWR orders dated 6.6.2001. Against the above order, Shri M.K. Srinivas submitted a representation dated 5.7.2001 which was forwarded to MOWR.

MOWR vide their order No. 19/68/97-Estt.I dated 27.11.2002 placed Shri M.K. Srinivas, Director in the higher scale of Rs. 14300-18300 with effect from 16.9.2002 and accordingly his pay was fixed vide CWC office order No. A-26011/2/97-Estt.I (Vol.II) dated 12.12.2002. In the said order, it was ordered that the excess pay drawn shall be recovered in one instalment. Against the said order also, Shri M.K. Srinivas submitted a representation dated 1.4.03 inter-alia praying for protection of pay and date of his increment taking into account last pay drawn in the pay scale of Rs. 14300-18300 and excess payment be not recovered till the final decision is taken by the MOWR. The said representation of Shri M.P. Singh was also forwarded to MOWR.

Now MOWR, in consultation with DOPT and Ministry of Finance, vide their letter No. 19/33/2001-Estt.I dated 6.2.2006 have Inter-alia decided as under :-



- I) Only officers in the grade of DD/EE promoted to the Junior Administrative Grade who had completed 9 years of regular service in STS including service, if any, rendered in the JAG on regular/adhoc basis may be allowed the benefit of higher pay scale of Rs. 14300-18300 w.e.f 1.1.96 or from the date of appointment to the grade on completion of 9 years of service in STS whichever is later.
- II) Recovery to be made from the officers who were allowed higher pay scale of Rs. 14300-18300 on completion of 13 years Group A service without completion of 9 years service in STS as allowed vide MOWR's letter No.19/68/97-Estt.I dated 17.10.97 in 12 monthly instalments.
- III) Since promotion is only on prospective basis counting of adhoc service towards regular service cannot be accepted.

As Shri M.K. Srinivas had completed 9 years of service in STS and JAG on 6.9.2002, he is entitled for the higher pay scale of Rs. 14300-18300 from the said date and the excess payments drawn by him on account of fixation of his pay in the higher scale of Rs. 14300-18300 from 25.1.2001 till the granting of the higher scale is recoverable from him in 12 instalments.

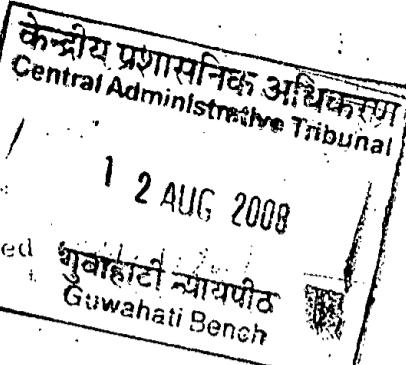
Shri M.K. Srinivas, Director is accordingly informed and is requested to pay the excess pay and allowances drawn by him during the period from 25.1.2001 to 15.9.2002 in 12 equal monthly instalments.

Gulshan Lal
(Gulshan Lal)
Under Secretary

Copy to :-

1. PAO, CWPRS, NWA, Pune
2. DDO, NWA, CWC, Pune. It is requested that the excess payments made to Shri M.K. Srinivas, Director, NWA, Pune may be recovered from his salary in 12 monthly instalments under intimation to this office. A copy of office order No. A-26011/2/97-Estt.I (Vol.II) dated 9.1.2003 is enclosed for ready reference.
3. Shri M.K. Srinivas, Director, NWA, Pune

Government of India
Ministry of Water Resources
Ganga Flood Control Commission
Sinchai Bhawan, 3rd Floor
PATNA - 800015



NO. GFCC/Adm.II(199)/2000/746/14

OFFICE ORDER NO. 74

Dated

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

Consequent upon his promotion on adhoc basis to the Junior Administrative Grade (Ordinary Grade) of Central Water Engineering (Group A) Service vide Ministry of Water Resources' Order No. 6/3/99-Estt-I dated 27-01-2000 and posting to the post of Director vide C.W.C's Office Order No.A-320/3/3/99-Estt-I dated 09-02-2000 and on his assuming the charge of the post of Director, Ganga Flood Control Commission and also of his completing 13 years of service in Group 'A' the pay of Shri M.K.Srinivas is provisionally fixed in the pay scale of Rs. 14300-400-18000 in terms of FR-22(I)(a)(1) and Ministry of Water Resource's letter No.19/68/97-E-I dated 17-10-97 as under:-

Sl. No.	Name of the Officer.	Date of comple- tion of 13 yrs service in Group A.	Date of assump- tion of charge on promo- tion to JAG.	Pay drawn in the STS Scale of Rs.10,000- 325-15200 (i.e. Director) on the date.	Pay fixed in the scale of Rs. 14300- 400- 18300 & date (Rs.)	Date of next increment.
1.	2.	3.	4.	5.	6.	7.
1.	Shri M.K. Srinivas	24.01.2001 (AN)	03.03.2000 (AN)	Rs.11625/- 01-02-2000 w.e.f. 25.01.2001	Rs.14300/-	01-01-2002

The above fixation of pay has been provisionally made and is subject to adjustment in the light of audit observations. This issues with the approval of Chairman, GFCC.

(A.K.SINGH)
Assistant Director(Adm)
GFCC/PATNA

Copy forwarded for information to :-

1. The Secretary, Central Water Commission, Sewa Bhawan, R.K.Puram, New Delhi-110066.
2. Shri M.K.Srinivas, Director, GFCC, Patna.
3. The Pay & Accounts Officer, Min. of Water Resources, 'C' Wing, Shastri Bhawan, New Delhi.
4. Accounts Section(induplicate), GFCC, Patna.
5. Office Order file/Service Book.

{ Hindi Version will follow }

CD 1/16 53/08
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH AT HYDERABAD
O.A.NO.445 OF 2007

ANNEXURE-B

Between

Shri M. K. Srinivas
S/o M. Kameswar Rao
Superintending Engineer
Central Water Commission
Ministry of Water Resources
Hyderabad

-- Applicant

And

1. Secretary to Government
Ministry of Water Resources
Shram Shakti Bhavan
Rafi Marg
New Delhi-110 001

2. The Central Water Commission
Rep. By Chairman
Sewa Bhavan, R.K.Puram,
New Delhi-110 066

-- Respondents

REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS

I, S.B.V. Somayajulu son of Late S.L.N. Sastry, aged about 59 years, occupation service, resident of Hyderabad do hereby solemnly affirm and state on oath as follows:

1. That at present I am working as Deputy Director in the office of the Chief Engineer, Krishna & Godavari Basin Organisation, Central Water Commission, Hyderabad, respondent herein and as such I am well acquainted with the facts of the case. I submit that I have been authorised to file this Reply Statement on behalf of the respondents. I respectfully submit that, I have gone through the O.A. filed by the applicant herein and I deny the allegations contained therein except those that are specifically admitted herein and the applicant is put to strict proof of all those allegations.

Attested
Pulla Rao

Ex-Officio

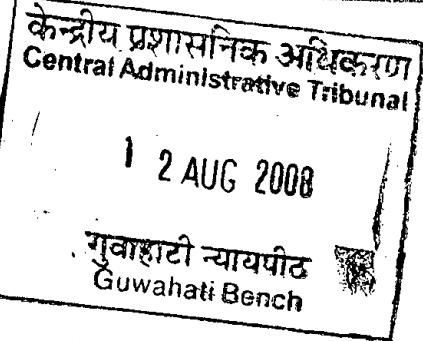
ATTESTOR
मधिकारी/Section Officer

२५ अप्रैल २००८

S. Somayajulu
DEPONENT
Deputy Director
मध्या अधिकारी कार्यालय



21



2. BRIEF FACTS OF THE CASE

The 5th CPC had recommended that posts in Junior Administrative Grade of the Organized Engineering Services will be operated in a single scale i.e. Rs. 14,300-18,300 and the posts in Senior Time Scale will be operated in two pay scales viz. the ordinary grade in the pay scale of Rs.10,000-15,000 which is equal to the normal replacement scale of the Senior Time Scale and Non functional Second grade in the pay scale of Rs.12,000-16,500 which is identical to normal replacement scale of erstwhile ordinary grade of Junior Administrative Grade. The implementation of the above recommendations of the pay scales required restructuring of the Junior Administrative Grade and Senior Time Scale as well as revision of the Recruitment Rules. The modalities for implementation of recommendations of the 5th CPC on the above pay scale were provided in O.M. dated 6.6.2000 and 20.12.2000 (enclosed and marked **Annexures R-I & II**). The above O.M. dated 20.12.2000 stipulated that pay scale of Rs.14,300-18,300 for the officers holding the post of Superintending Engineer could be given only to regularly promoted officers having 9 years of regular service in the grade of Executive Engineer and equivalent.

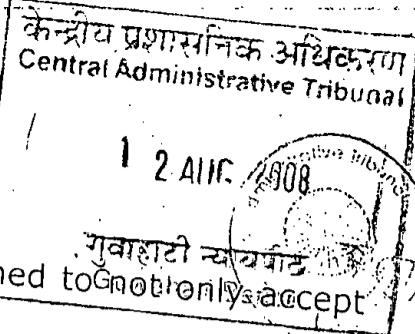
In terms of the provisions contained in the Preamble to Part 'B' of the first Schedule of CCS (RP) Rules, 1997, in cases where cadre restructuring, re-distribution of posts, etc. are pre-requisites for the grant of pay scales recommended by the 5th CPC, it would be

knowledgy
ATTESTOR

अनुभाग अधिकारी / Section Officer
मुख्य अभियंता का कार्यालय
O/o Chief Engineer.
केन्द्रीय जल आयोग

2

(Signature)
लुप्त निवेशक
REPOSENT
Deputy Director
मुख्य अभियंता कार्यालय
O/o Chief Engineer
केन्द्रीय जल आयोग
Central Water Commission



necessary for the Ministry / Department concerned to ~~not only accept~~ these pre-conditions but also to implement them before the recommended pay scales are applied. It is therefore implicit that such scale will necessarily have prospective effect and only the normal replacement scales will be applicable to the posts concerned until the pre-requisite are fulfilled. However on receipt of 5th CPC recommendations in 1997 and keeping in view the position explained herein below and in order to obviate any hardship being caused to officers working in the Junior Administrative Grade of CWE (Gr. A) Service, it was decided to allow the pay scale of Rs.14,300-18,300 purely on provisional basis to such JAG officers who have completed 13 years Gr. A Service as per extant rules vide letter dated 17.10.1997. It was further subject to be condition that any deduction in the pay, if required, would be made in one installment in the future payments after final decision is taken in the matter of pay fixation.

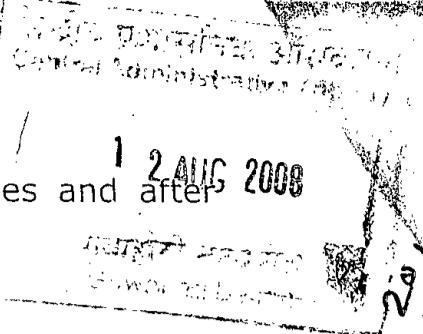
As brought out in previous para, the criteria for allowing the scale of Rs.14,300-18,300 has been spelt out in DOPT OM dt. 20.12.2000 which inter-alia provides that for placement in the scale of Rs.14,300-18,300 a JAG officer should have put in 9 years of regular service in the Sr. Time Scale. Further, officers who met the above criteria as on 1.1.96 and in respect of other incumbents who fulfill the said qualifying service on the later date, they should be appointed to be scale of Rs.14,300-18,300 only from the date on which they complete the prescribed qualifying service. Their placement in the scale would be further subject to the condition that they had been

Kann Reddy
ATTESTOR
 उभाग अधिकारी / Section Officer
 मुख्य अभियंता का कार्यालय
 O/o Chief Engineer

Conrad?
DEPONENT
 उप निदेशक
 मुख्य अभियंता कार्यालय
 O/o Chief Engineer

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promoted functionally to the JAG posts against vacancies and after observing the prescribed procedure.

The last DPC for promotion to Dir. / Superintending Engineer was convened in Dec., 1994/Jan.95 for the vacancies of 1993-94 and thereafter no DPC could be convened for the vacancies occurred from 1994-95 onwards due to protracted litigation on the issue of seniority in the feeder grade and complication related to implementation of 5th CPC i.e. restructuring of Superintending Engineer and Executive Engineer grade i.e. revision of service rules etc. However, keeping in view the functional requirement of the posts in the cadre, ad-hoc promotions were made from time to time with the approval of the Competent authority.

In view of the position stated above, pending amendment of Central Water Engineering (Group 'A') Service Rules, 1995, Union Public Service Commission was approached for convening the DPC for promotion to Junior Administrative Grade of the service. The UPSC initially refused to convene the DPC on the ground that existing Recruitment Rules ceased to be operative w.e.f. 1.1.1996. However after long persuasion, **Union Public Service Commission agreed to convene a DPC for Junior Administrative Grade as per the existing Recruitment Rules with the stipulation that promotion to the Junior Administrative Grade of the Central Water Engineer (Group 'A') Service will be made in the normal replacement scale of pay of Rs.12,000-16,500/-**. They further advised that administrative Ministries have also been vested with the power to place the officers so promoted in the higher

Kamal Dhy
ATTESTOR

अनुभाग अधिकारी / Section Officer
मुख्य अभियन्ता का कायलिय

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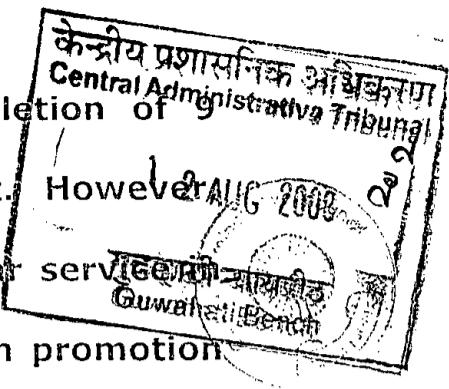
उप निदेशक
DEPONENT
मुख्य अभियन्ता का कायलिय
O/o Chief Engineer

24-5-

replacement scale of Rs.14,300-18,300 on completion of 9 years service as Executive Engineer and equivalent. However, officers who have not completed 9 years of regular service will remain in the grade of Executive Engineer and equivalent on promotion to the grade of Superintending Engineer and equivalent will continue to remain in the pay scale of Rs.12,000-16,500/- and will be placed in the higher pay scale of Rs.14,300-18,300 only on completion of 9 years of service as Executive Engineer and equivalent.

Accordingly, a DPC was convened in April, 2001 for 120 existing and anticipated vacancies of 1994-95 to 2001-2002.

Thereafter, two orders dated 6.6.2001 relating to promotion / placement were issued. The first order promoted the officers to the grade of Junior Administrative Grade in the pay scale of Rs.12,000-16,500 and the second order placed some of the promoted officers, who have rendered 9 years of regular service since their promotion to the Senior Time Scale, in the higher pay scale of Rs.14,300-18,300 w.e.f. 6.6.2001 i.e. the date of regular promotion. (About 34 officers promoted to the Junior Administrative Grade vide order dated 6.6.2001 who had not completed 9 years of service in the grade of Executive Engineer and equivalent (Senior Time Scale) by that time were initially placed in the pay scale of Rs.12,000-16,500. Subsequently after they completed 9 years of service since their promotion to the Senior Time Scale grade, they were also placed in the scale of Rs.14,300-18,300).



Kamlesh

ATTESTOR

অনুভাব অধিকারী / Section Officer

মুখ্য অভিযন্তা কা কায়লিয়

O/o Chief Engineer

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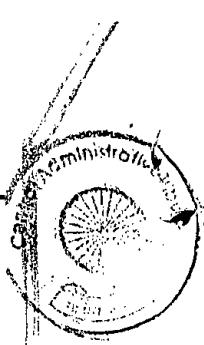
B. Sonowal

উপ নির্দেশক
DEPONENT

মুখ্য অভিযন্তা কায়লিয়
O/o Chief Engineer

কেন্দ্রীয় জল আয়োগ

— Water Commission



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Against the Ministry's placement Order dated 6.6.2001, a large no. of representations were received from the officers officiating in the grade of Dir./Superintending Engineer on ad-hoc basis, prior to their regular promotion in JAG for protection of their pay and counting of their ad-hoc service in Junior Administrative Grade. The matter was taken up with other nodal Departments viz- DoPT, Ministry of Finance and Union Public Service Commission to settle the issues raised by the Central Water Engg. (Gr.A) Service officers and after long deliberations, the issues were settled and conveyed to Central Water Commission vide Ministry's letter dated 6.2.2006. The placement of Junior Administrative Grade officers in the scale of Rs.14,300-18,300 would be guided by the conditions spelt out in the above letter. The conditions spelt out in Ministry's letter dated 6.2.2006 are applicable to the cadre as a whole and there cannot be any special dispensation for individual officers. For the sake of convenience, these conditions inter-alia are as under:

1. Only officers in the grade of DD/EE promoted to the Junior Administrative Grade who had completed 9 years of regular service in STS including service, if any, rendered in the JAG on regular/ ad-hoc basis may be allowed the benefit of higher pay scale of Rs. 14300-18300 w.e.f. 1.1.96 or from the date of appointment to the grade on completion of 9 years of service in STS whichever is later.
2. Recovery to be made from the officers who were allowed higher pay scale of Rs. 14300-18300 on

Kanu Dddy

ATTESTOR

अनुभाग अधिकारी / Section Officer

मुख्य अभियंता का कार्यालय

O/o Chief Engineer

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B. Soni

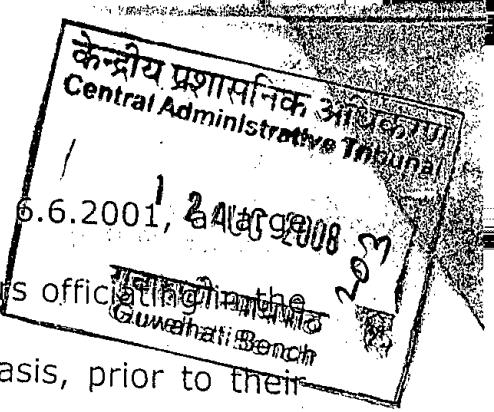
उप निदेशक

DEPONENT

मुख्य अभियंता कार्यालय

O/o Chief Engineer

केन्द्रीय जल आयोग



completion of 13 years Group A Service without
completion of 9 years service in STS as allowed vide
MoWR's letter No. 18/9/68/97-Estt,I dated 17.10.97
in 12 monthly instalments.

3. Since promotion is only on prospective basis
counting of ad-hoc service towards regular service
cannot be accepted

That the applicant was appointed in the Senior Time Scale with effect from 17.9.1993 and he completed nine years regular service in the said grade on 16/9.2002. He was allowed the scale of Rs. 14300-18300 on provisional basis with effect from 25.01.2001. In the office order dated 31.01.2001 (Annexure V enclosed with the O.A.) granting the scale of Rs. 14300-18300, it was clearly mentioned that the said fixation was on provisional basis.

3. In reply to paras 4 (a & b) of the application it is denied that the applicant would be entitled to pay scale of Rs. 14300-18300 on the post of Director in the normal course. It is submitted that granting of scale of Rs. 14300-18300 was not automatic and the same is applicable to only those officers who were promoted to the grade of Director after minimum 9 years of regular service in the Senior Time Scale including service, if any rendered in the grade of JAG on regular/ad-hoc basis. Those officers who were promoted as Director prior to their completing the requisite service in STS were initially placed in the scale of Rs. 12,000-16,500 and subsequently placed in the scale of Rs. 14,300-18,300 on their completing the requisite nine years service. It is submitted that the Super Time Scale (i.e. NFSG)

K. M. K. D.

ATTESTOR

अनुभाग अधिकारी / Section Officer

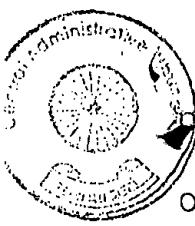
मुख्य अभियंता का कार्यालय

B. J. J. S.

उप निदेशक
Deputy Director

मुख्य अभियंता कार्यालय

O/o Chief Engineer



28- 2

mentioned in this para of the OA ceases to be applicable to JAG officers of CWE (Gr. A) Service w.e.f. 1.1.96 i.e. the date from which the scale of Rs. 14300-18300 has been allowed to them. As per the conditions applicable w.e.f. 1.1.1996, the scale of Rs. 14300-18300 is applicable to those officers who were promoted to the JAG after rendering 9 years regular service, as mentioned above.

4. In reply to para 4(c) of the application it is submitted that the scale of Rs. 14300-18300 was granted to the applicant on provisional basis as is evident from the said order enclosed as Annexure-V of the application. It is denied that the scale of Rs. 14300-18300 is super time scale. It is submitted that as per the 5th Pay Commission recommendations no such scale is applicable to officers of JAG of CWE (Gr.A) Service. It is further submitted that the applicant was drawing the salary in the scale of Rs. 14300-18300 on provisional basis only.

5. In reply to para 4 (d & e) of the O.A. it is submitted that the OM dated 6.6.2000 issued by the DoPT and quoted by the applicant in this para of this application inter-alia lay down the criteria for placement in the scale of Rs. 14300-18300 of JAG officers of CWE (Gr.A) Service. It also provides the conditions for placement in the Non-Functional Second Grade of Rs. 12000-16,500 to STS Officers i.e. nine years Group (A) Service. However, the criteria of nine years service for grant of NFSG to STS officers was revised by DoPT vide their Orders dated 20.12.2000.

As per the above order an officer of regularly appointed JAG grade can be placed in the scale of Rs. 14300 - 18300 after he has rendered at least 13 years Gr. A Service. The condition of 13 years Gr. A

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ATTESTOR

अनुभाग अधिकारी / Section Officer

मुख्य अभियंता का कार्यालय

O/o Chief Engineer

केन्द्रीय जल आयोग

Central Water Commission

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Omrao
उप निदेशक

DEPONENT

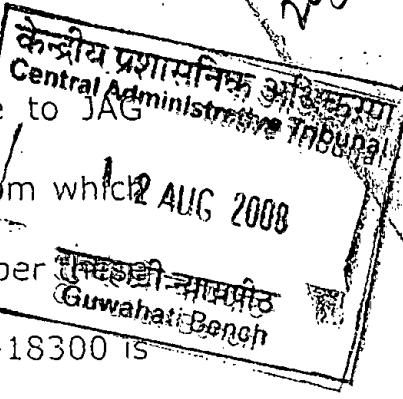
मुख्य अभियंता कार्यालय

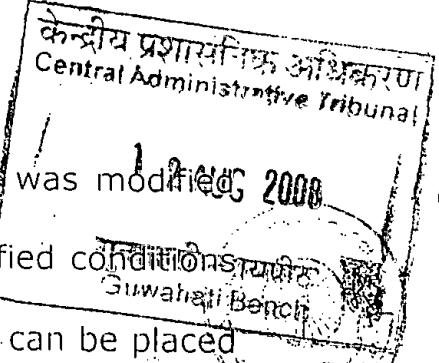
O/o Chief Engineer

केन्द्रीय जल आयोग

Central Water Commission

हैदराबाद/Hyderabad.





Service for placement in the scale of Rs. 14300-18300 was modified^{12/12/2008} by DoPT vide their OM dated 20.12.2000. As per modified conditions^{12/12/2008} laid down in DOPT O.M. dated 20.12.2000, a JAG officer can be placed in the scale of Rs. 14300-18300 in the event of his regular promotion to the said grade provided he has completed 9 years of regular service in the grade of STS. It further provides that officers who are regularly promoted in the JAG prior to their completing 9 years regular service in STS are to be placed in the normal replacement scale of Rs. 12000-16500 and are to be placed in the scale of Rs. 14300-18300 from the date they have completed the 9 years regular service in STS as well as JAG. Those officers who were promoted in JAG prior to 1.1.96 after rendering 9 years service in the grade of STS were to be placed in the scale of Rs. 14300-18300 from 1.1.96 itself. The orders issued by the respondents on 6.6.01 were based on the above guidelines issued by DoPT. However, as already mentioned above, the officers in CWE (Gr.A) Service could not be promoted to the grade of JAG on regular basis for a number of years due to the reason mentioned above and were promoted on ad-hoc basis due to the functional requirements. As the criteria laid down in the DoPT OM dated 20.12.2000 provides placement in the scale of Rs. 14300-18300 to regularly appointed JAG officers, the officers promoted in CWC as JAG on ad-hoc basis who were adversely affected represented and requested for treating their ad-hoc service as JAG for the purpose of granting the scale of Rs. 14300-18300. Accordingly, the matter was taken up with DoPT and Ministry of Finance and looking to the hardships being faced by CWE (Gr.A) Officers the criteria for placement of CWE (Gr.A) Service in the scale of Rs. 14300-18300 was relaxed and orders were issued on

अनुभाग कार्यकारी सेक्शन ऑफिसर
ATTESTOR/Section Officer

मुख्य अभियंता का कार्यालय
O/o Chief Engineer

उप निदेशक

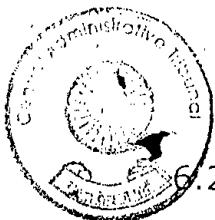
DEPONENT

मुख्य अभियंता कार्यालय

C/o Chief Engineer

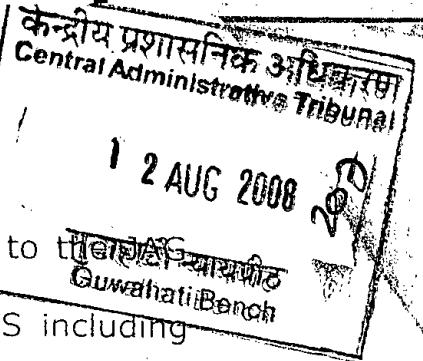
केन्द्रीय सत्र आप्योग

Central Water Commission



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6.2.06. As per the above criteria, STS officers promoted to the JAG category and who had completed 9 years of regular service in STS including service, if any, rendered in JAG on regular/ad-hoc basis can be placed in the scale of Rs. 14300-18300 w.e.f. 1.1.1996 or from the date of completion of 9 years regular service in STS.

6. In reply to Para 4(f) of the O.A. it is submitted that the placement of the applicant in the scale of Rs. 12000-16500 on his regular promotion w.e.f. 6.6.01 was in accordance with the decision taken by DoPT vide their O.M. dated 20.12.2000. These instructions inter-alia provide a minimum of nine years service in STS for placement in the scale of Rs. 14300-18300. Since the applicant had not completed the requisite nine years service in STS including the service rendered in JAG on 6.6.01 he was not entitled to be placed in the scale of Rs. 14300-18300 and was rightly placed in the scale of Rs. 12000-16500. The applicant was subsequently placed in the scale of Rs. 14300-18300 from the date on which he completed his nine years service in STS and JAG. The above condition of nine years service in STS for placement in the said scale was uniformly applicable to all the officers promoted as JAG of CWE (Gr.A) Service.

7. Para 4(g) of the O.A. so far it relates to submission of the representation and the contents thereof is a matter of record. However, it is submitted that the pay fixation of the applicant in the scale of Rs. 14,300-18300 on his promotion to the grade of Director/SE on ad-hoc basis was on provisional basis subject to the condition that any deduction in the pay, if required, would be made in one installment in the future payments after final decision is taken in

Kennedy

अनुभाग अधिकारी/Section Officer

मुख्य अभियंता का कार्यालय

O/o Chief Engineer

केन्द्रीय जल आयोग

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James

उप निदेशक

DEPONENT

मुख्य अभियंता कार्यालय

O/o Chief Engineer

केन्द्रीय जल आयोग

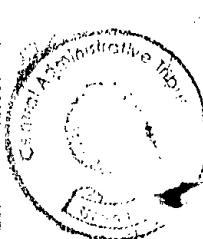
Central Water Commission

-30-

the matter of pay fixation. It may be mentioned that the **provisional pay fixation** in the scale of Rs. 14,300-18,300 was accepted by the applicant as he did not raise any objection/question to the fixation of pay on provisional basis. Therefore, the applicant has no right to agitate the said issue at this stage. Further, the pay fixation ordered by the respondents – whether it was provisional or otherwise – was uniform to all the similarly circumstanced officers and the applicant was not picked up singly for the said purpose. The final fixation of pay, as ordered vide the order challenged by the applicant in this application was the outcome of the decisions taken by the respondents in consultation with various authorities concerned with the matter. As per the final decision taken in the matter, the officers who were promoted to the grade of Director/SE prior to their completing the requisite nine years service were to be placed in the scale of Rs. 12,000-16,500/- and on completion of their requisite service of nine years in the said grade(s), are to be placed in the scale of Rs. 14,300-18,300/-. It is submitted that same criteria has been followed in the case of the applicant and after his completing requisite nine years, he has been placed in the scale of Rs. 14,300-18,300/-. The promotion of the applicant on regular basis as Director/SE in the scale of Rs.12,000-16,500/- was ordered on the basis of the decisions taken by the respondents in consultation with the concerned authorities. It is submitted that while accepting the promotion, the applicant is deemed to have accepted all the conditions attached with it.

Kamal Reddy
अनुभाग अधिकारी
मुख्य अभियंता का कार्यालय
ESTATE Officer

Omangal
उप निदेशक
Deputy Director
DEPONENT
मुख्य अभियंता का कार्यालय
O/o Chief Engineer
मुख्य अभियंता का कार्यालय



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8. In reply to para 4(h) of the application it is submitted that all the issues raised by the applicant in his above representation have been finally addressed to and he has been informed of the decision of the Central Administrative Tribunal on the order now challenged by the applicant.

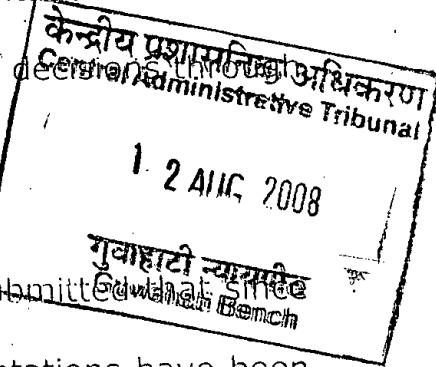
9. In reply to para 4(i) of the application it is submitted that all the issues raised by the applicant in his representations have been addressed and replied, he has no cause of action to agitate these issues before this Hon'ble Tribunal.

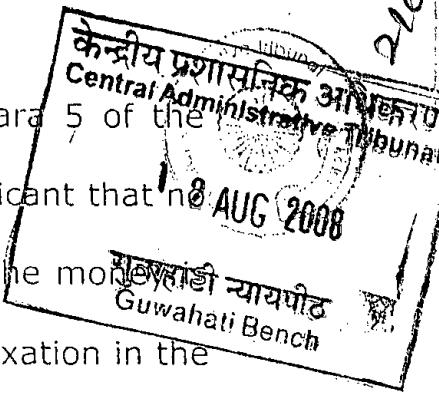
10 REPLY TO THE GROUNDS:

I. The allegation in sub para I of para 5 of the application is wrong and is denied. It is denied that the basis for the entire action is the letter issued by the DoPT on 6.6.2000. It is submitted that the DoPT had thereafter issued another order dated 20.12.2000 modifying their earlier order dated 6.6.2000. Therefore, the above contention of the applicant that the entire issue is based on the order dated 6.6.2000 is not correct. Subsequently, the orders were issued by the respondents with regard to the granting of the scale of Rs.14300-18300 to those officers promoted as JAG after 9 years regular service as STS including service render in JAG on regular/ad-hoc basis in consultation with the DoPT. Since a final decision with regard to the granting of scale of Rs. 14300-18300 had not been taken at the time when the applicant was promoted and granted the said scale, he was placed in the said scale on provisional basis, which was accepted by him. Therefore, the applicant cannot retract at this stage.

Kamlesh
अनुभाग अधिकारी / Section Officer
ATTESTOR
मुख्य अभियंता का कार्यालय
O/o Chief Engineer
केन्द्रीय जल आयोग
Hyderabad/Hyderabad,

उप निदेशक
DEPONENT
मुख्य अभियंता का कार्यालय
O/o Chief Engineer
केन्द्रीय जल आयोग
Central Water Commission
Hyderabad/Hyderabad,

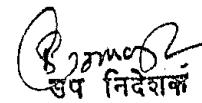




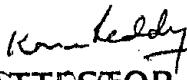
II. In reply to the grounds taken in sub para II of para 5 of the application, it is submitted that the plea taken by the applicant that no notice was given to him before ordering the recovery of the money is not tenable as the applicant knew very well that the pay fixation in the scale of Rs. 14300-18300 was done on provisional basis and was subject to recovery after finalization of the case. Therefore, it was well within the knowledge of the applicant that the recovery could be made. As a matter of fact, the recovery had been ordered in one instalment itself in the order dated 9.1.03 (enclosed with the OA) on which the applicant submitted the representation and the competent authority after considering the hardships caused to the applicant, ordered the recovery to be made in twelve instalments. Even otherwise also, the recovery from the applicant is on account of fixation of pay, for which in the normal course, no notice is required to be served on the government servant.

III. In reply to the grounds taken in sub para III of para 5 of the application, it is submitted that the competent authority after considering the hardships being faced by the applicant in the matter of recovery being made in one instalment, ordered the recovery to be made in twelve monthly instalments. As already mentioned above, the fact that money was to be refunded by the applicant was well within his knowledge. However, due to one reason or the other the applicant has been delaying the payment thereof.

IV. In reply to the grounds taken in sub para IV of para 5 of the application, it is submitted that it was the duty of the applicant also to pay the money immediately after receipt of the orders. It is submitted


रमेश निदेशक

DEPONENT
मुख्य अभियन्ता कार्यालय
O/o Chief Engineer
केन्द्रीय जल आयोग


अनुभाग अधिकारी
WITNESS
Signature Officer
मुख्य अभियन्ता का कार्यालय
O/o Chief Engineer.



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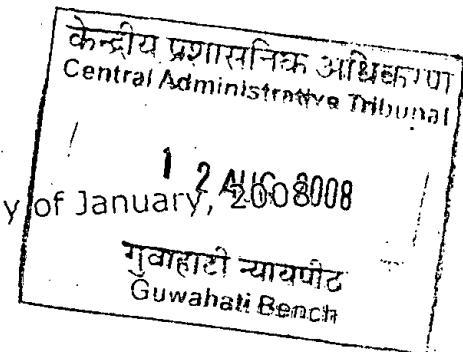
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that the applicant was duty bound to implement the orders issued by the respondents. The length of service of the respondent yet to be served is not relevant for the present case.

In view of the above, the applicant has not made out any case and the OA does not deserve any consideration, warrants and interference of this Hon'ble Tribunal.

It is, therefore, prayed that this Hon'ble Tribunal may be pleased to dismiss the O.A. and pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Sworn and signed before me on this 16th January, 2008
at Hyderabad.



Kanu Reddy
(ATTESTOR)

अनुभाग अधिकारी / Section Officer
मुख्य अभियन्ता का कार्यालय
O/o Chief Engineer.
केन्द्रीय जल आयोग
Central Water Commission
हैदराबाद / Hyderabad

Q. S. M. S.
(DEPONENT)
उप निदेशक
Deputy Director
मुख्य अभियन्ता कार्यालय
O/o Chief Engineer
केन्द्रीय जल आयोग
Central Water Commission
हैदराबाद / Hyderabad.

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ANNEXURE

No. 22/1/2000-CRD

Government of India

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

M. K. Srinivasan
Director
FCPC, Patna

New Delhi 110011

June 6, 2001

OFFICE MEMORANDUM

Subject: Recommendations of the Fifth Central Pay Commission on the scales of pay of posts of Superintending Engineers and Executive Engineers and equivalent in the Organized Group 'A' Engineering Services.

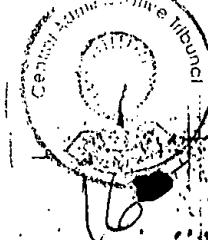
In paragraph 50.45 of their Report, the Fifth Central Pay Commission (FCPC) has recommended the following:-

- (i) the 'non-functional' pre-revised pay scale of Rs.4500-5700 (revised: Rs.14300-18300) applicable to the Superintending Engineers in the Central Public Works Department (CPWD) should be converted into a 'functional' grade and promotions in this scale should be permitted only on completion of three years of regular service in Group 'A';
- (ii) the 'functional' pre-revised pay scale of Rs.3700-5000 (revised: Rs.12000-16500) applicable to the Superintending Engineers as the first grade on the promotion list, the posts of Executive Engineers should instead be a 'non-functional' grade for Executive Engineers in the pre-revised pay-scale of Rs.10000-14500 (revised: Rs.10000-15200).

The FCPC had also clarified that, though their recommendations in regard to the pay scale of these two posts were being made in the context of the CPWD engineers, the dispensation will be available to all engineering cadres in the Government. The revised pay scales of Superintending Engineers and Executive Engineers were also notified by the Department of Expenditure at S.Nos. VIII (a) and (b) of Part 'B' of the First Schedule to the Central Civil Services (Revised Pay) Rules, 1997, promulgated in that Department Notification No.CSR.569(E) dated September 30, 1997.

2. Implementation of the FCPC recommendations will necessitate the restructuring of Group 'A' cadres in the Central Engineering Service, the Central Electrical and Mechanical Engineering Service and other organized Group 'A' Engineering Service recruitment in which is made through the Combined Engineering Services Examination. The related recruitment/service rules will also need to be appropriately amended. In term

*Attested
K. Srinivasan*
अनुभाग अधिकारी / Section Officer
मुख्य अधिकारी का कार्यालय
O/o Chief Engineer
मुख्य कार्यालय
Central Water Commission
हैदराबाद / Hyderabad



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Central Administrative Tribunal
Gauhati Bench
2 AUG. 2008

- 2 -

of the provisions contained in the preamble to Part 'B' of the First Schedule to the Central Civil Services (Revised Pay) Rules 1997, in cases where cadre restructuring, re-distribution of posts, etc. are pre-requisites for the grant of pay-scales recommended by the FCPC for certain posts, it will be necessary for the Ministry/Department concerned to not only accept these pre-conditions but also to implement them before the recommended pay-scales are applied to these posts. It is, therefore, implicit that such scales will necessarily have only prospective effect and only the normal replacement scales will be applicable to the posts concerned until the pre-requisites are fulfilled.

3. Issues of relevance to the implementation of the FCPC recommendations and their operationalisation, the criteria to be adopted for the distribution of posts in the scales of pay recommended by the FCPC, etc have been under Government's consideration for quite some time now. After careful consideration of all relevant aspects, the President is now pleased to decide as follows:-

- (a) The 'functional' grade of Rs.14300-18300 shall be applicable to the posts of Superintending Engineers and equivalent that are variously designated and included in the organized Group 'A' Engineering Services, recruitment to which is made through the Combined Engineering Services Examination. Placement of personnel in this 'functional' grade will, however, be subject to actual availability of vacancies in the grade. This shall be permitted only on completion of at least thirteen years of regular service in Group 'A' and the prescribed regular service of four years in the scale of pay of Rs.12000-16500, which will henceforth be the 'non-functional' second grade for Executive Engineers and equivalent.
- (b) It is likely that functional promotions to posts of Superintending Engineers and equivalent may be possible in some of the organized Group 'A' Engineering Services before completion of thirteen years of regular service in Group 'A', as stipulated by the FCPC because of the cadre structure of individual services. Members of Services so promoted will continue to remain only in the scale of pay of Rs.12000-16500 till they become eligible for the scale of Rs.14300-18300 in terms of (a) above. They will, however, be entitled to the benefit of pay fixation under FR 22(I)(a)(i) on promotion. This benefit will not be available again on their placement in the scale of Rs.14300-18300.
- (c) The 'non-functional' grade of Rs.12000-16500 now to be introduced for the Executive Engineers and equivalent will be admissible on completion of:-
- (i) minimum regular service of nine years in Group 'A' (four years in the pay-scale of Rs.8000-13500 and five years in the pay-scale of Rs.10000-15200) in respect of those officers who are directly recruited or promoted to the pay-scale of Rs.8000-13500; and
- (ii) minimum regular service of five years in the pay-scale of Rs.10000-15200 in respect of those officers who are directly promoted from Group 'B' to posts in this pay-scale.

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- (d) The number of posts of Executive Engineers and equivalent to be operated in the 'non-functional' pay-scale of Rs.12000-16500 shall be restricted to 30% of the Senior Duty posts (i.e. posts in the pay-scale of Rs.10000-15200 and above) in the respective cadres, ensuring at the same time that (i) there is no increase in the overall strength of the cadre; and (ii) the number of posts to be operated in the 'non-functional' grade (Rs.12000-16500) does not exceed the number of posts available in the pay-scale of Rs.10000-15200.
- (e) Placement of officers in the 'functional' grade of Rs.14300-18300 shall be done through the process of 'Selection by Merit' subject to actual availability of vacancies in the grade. On the other hand, placement of officers in the 'non-functional' pay scale of Rs.12000-16500 shall be done subject to suitability in terms of guidelines contained in the Department of Personnel and Training O.M.No.28038/L/88-Esu(D) dated October 9, 1989 (copy enclosed). These should be scrupulously adhered to.
- (f) The composition of the Departmental Promotion* Committees (including association of the Union Public Service Commission) for appointment of officers to the posts of Superintending Engineers and equivalent in the 'functional' grade of Rs.14300-18300 shall be the same as already prescribed in the relevant Service/ Recruitment Rules for appointments to the erstwhile 'functional' grade in the pay-scale of Rs.12000-16500 (pre-revised: Rs.3700-5000). Similarly, the composition of the Departmental Promotion Committees for appointment of officers to the posts of Executive Engineers and equivalent in the 'non-functional' pay-scale of Rs.12000-16500 shall be the same as already prescribed in the relevant Service/ Recruitment Rules for appointments to the erstwhile 'non-functional' grade in the pay-scale of Rs.14300-18300 (pre-revised: Rs.4500-5700).
4. Only a higher eligibility criterion of thirteen years of regular Group 'A' service has now been prescribed for appointment to the posts of Superintending Engineer and equivalent in the 'functional' scale of pay of Rs.14300-18300. Placement in the higher scale of pay does not, however, involve assumption of higher responsibilities in the case of regular incumbents of the post in the pay-scale of Rs.12000-16500 (pre-revised: Rs.3700-5000). Appointments to this scale of pay will consequently be governed by the instructions contained in paragraph 2.2 of this Department's O.M.No.22011/10/84-Esu(D) dated February 4, 1992. In other words, in the case of regular incumbents of these posts (Superintending Engineer), who had completed the prescribed qualifying service of thirteen years on or before January 1, 1996, they may be placed in the scale of Rs.14300-18300 from that date. In the case of other regular incumbents of these posts, who fulfill the qualifying service on a later date, they should be appointed to the scale of Rs.14300-18300 only from the date on which they complete thirteen years of regular service in Group 'A'. Their placement in the scale will be further subject to the condition that they had been promoted functionally to the posts of Superintending Engineer and equivalent against vacancies and after observing the prescribed selection procedures.

After 1st July

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प्रायोगिक प्रशासनिक अधिकारी
Central Administrative Tribunal
1 AUG 1988
गुवाहाटी न्यायपीठ
Guwahati Bench

5. In view, however, of the fact that the implementation of the FCPC recommendation in respect of the posts of Executive Engineers and equivalent would involve the restructuring of the cadre by re-distributing the existing posts in the functional and non-functional scales of Rs.10000-15200 and Rs.12000-16500 respectively in the ratio of 70:30, the 'non-functional' pay-scale of Rs.12000-16500 will be applicable only prospectively based on the recommendations of the Departmental Promotion Committees to be constituted for the purpose. Till such time as the existing regular incumbents of the posts of Executive Engineer and equivalent are appointed to the 'non-functional' pay-scale of Rs.12000-16500 after due observance of the prescribed procedure, they shall be entitled only to the functional scale of Rs.10000-15200. It should also be ensured that they had been promoted functionally to the posts of Executive Engineer and equivalent against vacancies and after observing the prescribed selection procedures and that they have completed the prescribed qualifying service of nine years before they are placed in the 'non-functional' scale.

6. Cadre controlling authorities in various Ministries and Departments should, in pursuance of the above decisions, take immediate steps to restructure the cadres, redistribute posts in the applicable revised scales of pay and to amend appropriately the relevant Service/Recruitment Rules. This exercise should be completed within a period of two months in order to facilitate expeditious action in this regard, powers are hereby delegated to the Ministries/Departments concerned to make the necessary amendments in the relevant Service/Recruitment Rules in conformity with the above decisions, without reference to the Recruitment Rules Division in the Department of Personnel and Training. The amendments may, however, be notified in consultation with the Union Public Service Commission and the Legislative Department.

Arbo
(K.K. JHA)

DIRECTOR(Establishment)

All Ministries/Departments of the Government of India

Copy to:-

1. The Union Public Service Commission, New Delhi
2. The Comptroller and Auditor General of India, New Delhi
3. The Department of Expenditure (Implementation Cell), New Delhi
4. The Legislative Department, Shastri Bhavan, New Delhi with reference to paragraph 6 above.
5. Establishment(RR), DoP&T
6. Establishment(D), DoP&T (200 copies)
7. Cadre Review Division, DoP&T (500 copies)

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जनरल अफारिस्तान कार्यालय
Old Civil Bldg, Sector
केन्द्रीय नियन्त्रण
Central Water Commission
Hyderabad

ANNGXURG - R-II

No.22/1/2000-CRD
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

• New Delhi 110001
December 20, 2000

OFFICE MEMORANDUM

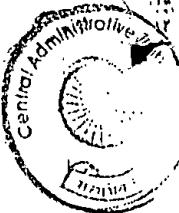
Subject:-Revised scales of pay for Executive Engineer/Superintending Engineer and equivalent in the organized Group 'A' Engineering Services - clarifications/modifications regarding.

The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum (O.M.) No.22/1/2000-CRD dated June 6, 2000 on the aforesaid subject which prescribes detailed norms for grant of the revised pay-scales of Rs.12,000-16,500 (non-functional) and Rs.14,300-18,300 (functional) to the Executive Engineer and Superintending Engineer (and equivalent in both the grades) respectively in the organized Group 'A' Engineering Services. Subsequent to the issue of the aforesaid instructions, various references/representations have been received in this Department pleading for reconsideration of certain conditions as stipulated in the instructions under reference. The issues/points raised in the aforementioned references/representations have been carefully examined in consultation with the Department of Expenditure and it has been decided to issue the following clarifications/modifications in regard to various revisions (paragraphs quoted below) of the aforementioned DoP&T O.M. dated June 6, 2000:

The first sentence of Paragraph 2, in its modified form, will now read as follows:-

✓ Implementation of the FCP/C recommendations will necessitate the restructuring of Group 'A' cadres in the Central Engineering Service, the Central Electrical and Mechanical Engineering Service and other organized Group 'A' Engineering Services.

The conditions stipulated in Paragraph 3 will be prospective in nature, and will, as such, be effective from the date of notification of the revised Service Recruitment Rules. Sub-paragraphs 3(a), 3(b) and 3(c) of the said Paragraph 3 will be deleted.



Sub para 3(a):

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The "functional" grade of Rs.14300-18300 will be applicable to the posts of Superintending Engineer and equivalent. Executive Engineer and equivalent may be eligible to be considered for promotion to the grade of Superintending Engineer and equivalent only on completion of nine years of regular service in the grade of Executive Engineer and equivalent, including regular service, if any, rendered in the non-functional second grade for the Executive Engineer and equivalent in the pay-scale of Rs.12000-16500. Placement of personnel in the functional grade of Rs.14300-18300 will, however, be subject to actual availability of vacancies in the grade.

Sub para 3(b):

It is likely that functional promotions to posts of Superintending Engineer and equivalent may be possible in some of the organised Group 'A' Engineering Services before completion of the eligibility service prescribed at sub-para 3(a) above because of the cadre structure of individual services. Members of Services so promoted will continue to remain only in the scale of pay of Rs.9200-15300 till they become eligible for the scale of Rs.14300-18300 in terms of sub-para 3(a) above. They will, however, be entitled to the benefit of HTY fixation under FA 22(IX)(xi) on promotion. This benefit will not be available again on their placement in the scale of Rs.14300-18300.

Sub para 3(c):

Executive Engineer and equivalent (in the pay-scale of Rs.10000-15200) may be eligible to be considered for placement in the non-functional grade of Rs.12000-16500 only on completion of five years of regular service in the pay-scale of Rs.14300-15200.

Assistant Executive Engineer and equivalent (in the pay-scale of Rs.8000-13500) may be eligible to be considered for promotion to the functional grade of Executive Engineer and equivalent in the pay-scale of Rs.10000-15200 only on completion of four years of regular service in the pay-scale of Rs.8000-13500/..

(iii) The conditions stipulated in Para 4 will apply in relation to the regular incumbents of the posts of the Superintending Engineer and equivalent. In its modified form it (paragraph 4) would now read as follows:

Attested
Kamal Dey
मनुष्य अधिकारी / Section Officer
मुख्य अधिकारी अधिकारी 31-
Central Administrative Tribunal
Hyderabad

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केन्द्रीय प्रशासन
Central Administration
Government of India
Bureau of Indian Standards
2 AUG 1992

Only a higher eligibility criterion as at sub-para 3(o) above has been prescribed for appointment to the posts of Superintending Engineer and equivalent in the 'functional' scale of pay of Rs.14300-18300. Placement in the said higher scale of pay does not, however, involve assumption of higher responsibilities in the case of regular incumbents of the post in the erstwhile 'functional' grade in the pay-scale of Rs.12000-16500 (pre-revised: Rs.3700-5000). Appointments to this scale of pay (Rs.14300-18300) will consequently be governed by the instructions contained in paragraph 2.2 of O.P.T.C.M. No.33011/1.C.84-Estt(D) dated February 4, 1992. In other words, in the case of regular incumbents of these posts (Superintending Engineer and equivalent), who had completed the prescribed qualifying service as at sub-para 3(c) above on or before January 1, 1992, they may be placed in the scale of Rs.14300-18300 from that date (January 1, 1992). In the case of other regular incumbents of these posts, who fulfill the said qualifying service on a later date, they should be appointed to the scale of Rs.14300-18300 only from the date on which they complete the prescribed qualifying service as at sub-para 3(o) above. Their placement in the scale will be further subject to the condition that they had been promoted functionally to the posts of Superintending Engineer and equivalent against vacancies, and after observing the prescribed selection procedures.

(iv) Paragraph 5 in its modified form will now read as follows:-

In view, however, of the fact that the implementation of the FCPC recommendation in respect of the posts of Executive Engineer and equivalent would involve restructuring of the cadre by re-distributing the existing posts in the 'functional' and 'non-functional' scales of Rs.10000-15200 and Rs.12000-16500 respectively, the 'non-functional' pay-scale of Rs.12000-16500 will be applicable only prospectively based on the recommendations of the Departmental Promotion Committees to be constituted for the purpose. Till such time as the existing regular incumbents of the posts of Executive Engineer and equivalent are appointed to the 'non-functional' pay-scale of Rs.12000-16500 after due observance of the prescribed procedure, they shall be entitled only to the functional scale of Rs.10000-15200. It should also be ensured that they had been promoted functionally to the posts of Executive Engineer and equivalent (in the pay-scale of Rs.10000-15200) against vacancies and after observing the prescribed selection procedures and that they have completed the prescribed qualifying service (in the pay-scale of Rs.10000-15200) as at sub-para 3(c) above before they are placed in the 'non-functional' scale of Rs.12000-16500.

Attested
K. M. Reddy
अनुभाग अधिकारी / Section Officer
मुख्य अधिकारी वा नियमित
O/o Chief Engineer
केन्द्रीय नदी नियंत्रण
Central Water Commission
Hyderabad

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2. There shall be no change in other conditions, prescribed in the Office Memorandum of even number dated June 6, 2000.

3. The revised eligibility conditions prescribed above is meant to provide guidance for amending Service/Recruitment Rules (as already instructed/authorized in paragraph 6 of the Office Memorandum dated June 6, '2000) for grant of promotion to the grades of the Executive Engineer/Superintending Engineer and equivalent in the organized Group 'A' Engineering Services.

4. The Cadre Controlling Authorities are counselled to attend to the problem of stagnation in the cadres under their control by better cadre management through the prescribed mechanism of cadre review, which is required to be undertaken with regular periodicity.

Signature
(K.K. JHA)
DIRECTOR(Establishment)

All Ministries/Departments of the Government of India

The Union Public Service Commission, New Delhi with reference to its letter No. F.5/23(1)/2000-RR dated October 25, 2000.

The Comptroller and Auditor General of India, New Delhi.

The Department of Expenditure (Implementation Cell), New Delhi (50 copies)

The Legislative Department, Shastri Bhavan, New Delhi.

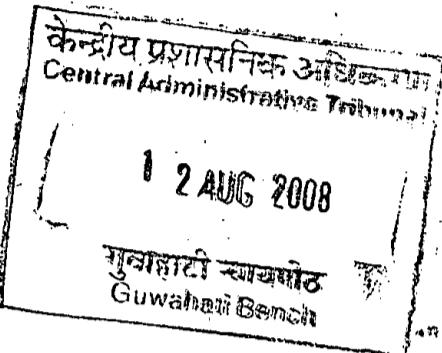
Establishment(RR) Section, DoP&T.

Establishment(D) Section, DoP&T (100 copies)

Cadre Review Division, DoP&T (200 copies)

*Attested
Kareeb Ali*
अनुभाग अधिकारी / Section Officer
मुख्य अधिकारी का कार्बिलिय
O/o Chief Engineer
केंद्रीय जल विभाग
Central Water Commission
हैदराबाद / Hyderabad

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C.D. No. 53/08

Al.K. Srinivas Application

Date of first hearing, 2008

of application for hearing L. 21.7.08

No. of pages 22

Case filing fees Rs. 44/-

Office fees Rs. 10/-

TOTAL Rs. 54/-

Date when fees remitted by 21.7.08

Date when fees remitted by 21.7.08

Date of preparation of copy 21.7.08

Date of delivery of copy 21.7.08

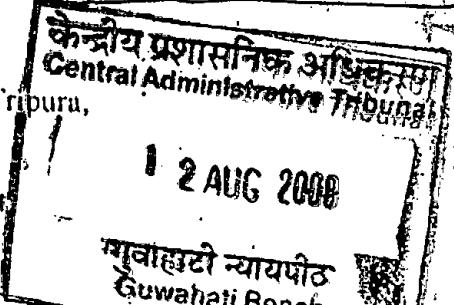
SECTION OFFICER
Central Administrative Tribunal
Hyderabad Bench

प्रतिलिपि के तिर्यक व्यापेन का तारीख Date of application for issuing copy	स्टाप और फोलियो की अपेक्षित रोमांच घोषित करने की तिरिया Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाप और फोलियो की तारीख Date of delivery of the requisite stamps and folios, i.e. date	स्टाप, जबकि ऐने के लिए अपेक्षित तारीख Date on which the copy was ready for delivery.	अपेक्षित तारीख को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
2/11/06	3/11/06	3/11/06	4/11/06	4/11/06

IN THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE



Appeal from

Civil Rule

W.P.(C)

No. 7883 of 2008

2008 A.T.O.

Appellant

Mr. B. C. Chakraborty, Advocate

Petitioner

Member of producer Board

and Head of the Board

versus Mr. B. C. Chakraborty, Advocate

Member of producer Board

and Head of the Board

Respondent

Appellant

For Mr. B. C. Chakraborty, Advocate

Petitioner

Mr. B. C. Chakraborty, Advocate

and Head of the Board

Respondent

For

Opposite Party

Opposite Party

Mr. M. Chakraborty, Advocate

and Head of the Board

Respondent

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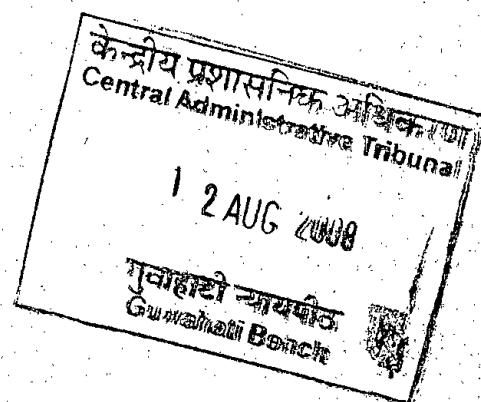
and Head of the Board

Respondent

Opposite Party

Mr. M. Chakraborty, Advocate

-44-



H.

- AND -

IN THE MATTER OF :

1. Union of India, through the

Secretary, Government of India,

Ministry of Defence,

H.S. Grade-II.

2. Headquarter,

Chief Engineer,

Shillong Zone,

Shillong.

contd... 3.

- 3 -

3. The Asstt. Garrison Engineer (1) AE

Kumbhirgram

P.O. Kumbhirgram Airport

Dist.: Cachar (Assam).

4. Headquarter 137

Works Engineers

C/O 99 APO

(Same Cause of action)

.. Petitioners

-Vs-

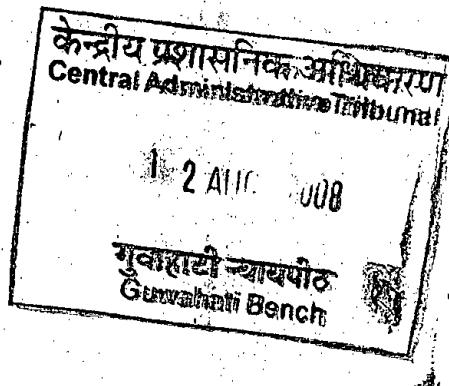
Sri Debendra Chandra Das

S/O Late Raj Meham Das

MES, Quarter Senatola,

P.O. Kumbhirgram (Airport)

Cachar (Assam)



.. Respondents

Deputy Commissioner of Assam

46

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
<p style="text-align: right;">1</p> <p>केन्द्रीय प्रशासनिक अधिकारी Central Administrative Tribunal</p> <p>1 2 AUG 2002</p> <p>गुवाहाटी न्यायपीठ Guwahati Bench</p> <p style="text-align: right;">2</p>			<p style="text-align: center;"><i>WP(C) No.7883/2002</i></p> <p style="text-align: center;">BEFORE</p> <p style="text-align: center;">THE HON'BLE MR JUSTICE D. BISWAS</p> <p style="text-align: center;">THE HON'BLE MR JUSTICE U.D.SAINA</p> <p>30.10.2006</p> <p>Heard Mr. H. Rahman, learned Asstt. Solicitor General of India and also Mr. Mr. M. Chanda, learned counsel for the respondent.</p> <p>2. The Union of India has preferred this writ petition challenging the order dated 4.3.2002 passed in O.A. No.152/2001 by the learned Central Administrative Tribunal (hereinafter referred to as the Tribunal), Guwahati Bench, Guwahati whereby the learned Tribunal directed to promote the applicant (respondent) to the post of Vehicle Mechanic HS-II with all consequential benefits from the date of passing trade test.</p> <p>3. The respondent as applicant filed the aforesaid application before the learned Tribunal for consideration of his case for promotion to the post of Vehicle Mechanic HS-II. The case of the applicant (respondent) before the learned Tribunal was that he became eligible for promotion to the said post before 1992. In fact, the authority conducted the trade test during the period from 2.12.91 to 5.12.91 and the result thereof was declared on 14.12.92. The respondent (applicant) came out successful in the said test. There is no dispute that despite there being vacancies available at that point of time, the respondent (applicant) was not promoted though his name was recommended by the competent authority on the basis of the result of the trade test. Having noticed the aforesaid circumstances, the learned Tribunal had passed the impugned order</p> <p style="text-align: right;">X</p>

1p. - 49 -

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>directing respondent's promotion to the aforesaid post.</p> <p>1. Mr Rahman, learned Asstt.Solicitor General of India submitted that the rules regarding promotion were amended with effect from 21.7.94 and under the amended rules, the respondent (applicant) was not eligible for promotion to the aforesaid post. However, Mr Rahman did not dispute the contention that the respondent(applicant) had earlier qualified for promotion in the trade test held in the year 1992 and that vacancies were available to accommodate him at that point of time.</p> <p>5. Mr Chanda, learned counsel for the respondent (applicant) submitted that the new rules which came into force with effect from 21.7.94 cannot be applied in the instant case. According to him, various judgments of the Apex Court as well as this Court would show that the law relating to promotion in the given circumstances is well settled. Mr Chanda relied upon a decision of the Apex Court in State of Rajasthan vs. R. Dayal, (1997) 10 SCC 419. In order to show that the posts which fell vacant prior to the amendment of the rules would be governed by the original rules and not by the amended rules, the ratio in this behalf is available in para-8 and 9 of the judgment referred to above. This view was also earlier taken by the Hon'ble Supreme Court in Y.V.Rangalal and others vs. J. Sreenivasa Rao, (1983) 3 SCC 284.</p> <p>6. From the aforesaid two decisions we find that promotion to a vacant post would be governed by the rules as in force at the time when the vacancy arose and this position will remain unaltered even if the rules are amended by prescribing new eligibility criteria.</p>

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Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>7. In the facts and circumstances of the case, we are of the view that the order of the learned Tribunal warrants no interference by this Court. The writ petition is accordingly dismissed.</p> <p>8. No order as to costs.</p>

Sd/ U. B. Saha

10/11/08

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2/11/08

CERTIFIED TO BE TRUE COPY

.....K. N. Singh, B.A., LL.B.

Date Superintended (or in charge)

Gauhati High Court

Authorised U/s 16, 1872

22
4/11/08

केन्द्रीय प्रशासनिक अधिकारपा
Central Administrative Tribunal

2 AUG 2008

गुवाहाटी न्यायालय
Guwahati Bench

Section 389(1) of the Code empowers the appellate court to stay the conviction also. But suspension will not amount to staying the conviction. It was held as under: (SCC p. 527, para 19)

"19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the appellate court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the appellate court. But while granting a stay of (sic or) suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company."

14. As already pointed out above that on 31-5-2002, the appellate court

while granting him the bail only suspended the impugned order dated 9-5-2002. Thus suspension does not amount to temporarily washing out the conviction. The conviction still remains, only the operation of the order and the sentence remain suspended that does not amount to temporary stay of the conviction. A specific order staying conviction has to be sought.

15. Hence, the view taken by the learned Single Judge of the Chhattisgarh High Court is correct and there is no ground to interfere. This appeal is dismissed with no order as to costs.

केन्द्रीय प्रशासन
Central Admin.
Chhattisgarh High Court
Bench of Mr. Justice
D. P. Singh
Cuttack Bench
Cuttack, Odisha
Date: 25/10/2007
Time: 10:30 AM
Case No. 10307 of 2004

a PUNJAB STATE WAREHOUSING CORPN.,
CHANDIGARH

Appellant:

b Versus
MANMOHAN SINGH AND ANOTHER

Respondents.

c Civil Appeal No. 857 of 2007^f, decided on February 20, 2007

d A. Constitution of India — Arts. 16, 14, 12 and 309 — Regularisation — Employees of instrumentalities of State/“Other authorities” (statutory State warehousing corpn.) — Regularisation of employees in — Proper mode for — Necessity of amendment of the applicable statutory rules — Permissible role of State Government — Attempt by State Government to direct regularisation of employees in appellant statutory corporation and other public sector undertakings, boards, local authorities and other autonomous bodies by circular letter applicable to government employees — Impermissibility — Held, the State had no say in this behalf — A policy made by a State would ordinarily apply only in respect of the employees working under it, and cannot be extended to a statutory corporation unless it is permitted by the statute — Public Sector — Service Law — State Owned/Operated Corporations

e B. Constitution of India — Arts. 16 and 14 — Public employment — Appointment made in violation of the constitutional scheme — Effect — Held, the same would be a nullity — Service Law — Appointment

f C. Constitution of India — Arts. 309 proviso and 162 & 73 — Public employment — Statutory rules or rules made under Art. 309 proviso — Priority of, over notification or circular issued in exercise of power under Art. 162 — Service Law — Service Rules para 12

g D. Service Law — Regularisation — Irregular and illegal appointments — Distinction between, reiterated — Regularisation when permissible — In present case recruitment procedure as per the constitutional scheme of public employment/rules applicable not having been followed, held, respondent employee was not “irregularly appointed” but was “illegally appointed” and hence could not be regularised in service — Hence benefit of para 53, *Umadevi* (3), (2006) 4 SCC 1, could not be extended to respondent

h The State of Punjab formulated a scheme on 23-1-2001 for regularisation of its employees who were work-charged/daily wage/other category workers. It was stated in the scheme that if the department concerned’s recruitment rules came in the way, such provisions of the recruitment rules would stand relaxed. The appellant in appeal questioned the validity of the said scheme.

i Allowing the appeal, the Supreme Court

g Held :

The terms and conditions of the services of the employees of the appellant Corporation which is a body constituted and governed under the Punjab Warehousing Corporation Act, 1957 are governed by the provisions thereof and

^f Arising out of SLP (C) No. 19496 of 2005. From the Final Judgment and Order dated 25-4-2005 of the High Court of Punjab and Haryana at Chandigarh in CWP No. 10307 of 2004

the rules framed thereunder. The terms and conditions of employees of the appellant Corporation being governed by a statute and statutory rules could have been altered only by reason of amendment of the rules only. The State had no say in that behalf. It cannot be understood as to under what circumstances the State had issued the aforementioned circular letter dated 23-1-2001. A policy made by a State would ordinarily apply only in respect of the employees working under it. The policy decision of a State cannot be extended to a statutory corporation unless it is permitted to do so by the statute. (Paras 10 and 11).

Pawan Alloys & Casting (P) Ltd. v. U.P. SEB. (1997) 7 SCC 251, followed

Any appointment made in violation of the constitutional scheme would be a nullity. (Para 14)

When the terms and conditions of the services of an employee are governed by the rules made under a statute or Article 309 proviso of the Constitution laying down the mode and manner in which the recruitment would be given effect to, no order even under Article 162 of the Constitution can be made by way of alterations or amendments of the said rules. A fortiori if the recruitment rules could not be amended even by issuing a notification under Article 162 of the Constitution the same cannot be done by way of a circular letter. (Para 12)

The said purported scheme of the State was not made in terms of Article 162 of the Constitution. It was by way of a circular letter dated 23-1-2001. The State, without issuing any notification or without even exercising its statutory power governing the constitution and functioning of the statutory authorities like the appellant, sought to extend the same to public sector undertakings, corporations, boards, local authorities and other autonomous bodies, which it could not do in law. (Para 8)

Respondent 1 was not appointed upon compliance with the constitutional scheme as adumbrated in Articles 14 and 16 of the Constitution. It is also not the case of the respondent that prior to his appointment either any advertisement was issued or even the employment exchange was notified in regard to the then existing vacancies. It is also not known whether there existed a sanctioned post. (Para 10)

Lastly, the scheme in question does not come within the protective umbrella of para 53 of *Umadevi (3)*, (2006) 4 SCC 1, for three reasons: firstly, because the High Court did not proceed on that basis; secondly, the scheme itself was not applicable in case of Respondent 1. Lastly, in view of series of decisions of the Supreme Court explaining para 53 of *Umadevi (3)*, such a scheme could be made out only in respect of such employees whose appointments were irregular and not illegal. (Para 15)

A. Umarani v. Registrar Coop. Societies. (2004) 7 SCC 112 : 2004 SCC (L&S) 918. *Secy. Punjab State of Karnataka v. Umadevi (3).* (2006) 4 SCC 1 : 2006 SCC (L&S) 753; *Punjab Water Supply & Sewerage Board v. Ranjodh Singh,* (2007) 2 SCC 491 : (2007) 1 SCC 373, 37007 : 2007) 1 SCC (L&S) 256 : (2006) 13 Scale 266. followed

D-M/NF/35789/SL

Advocates who appeared in this case :
 1. Mr. Gurinder Singh, A.P. Dhamija, Ram Niwas, B.K. Sharma and Ms. Pratibha Jain.
 Advocates, for the Appellant;
 2. Mr. Nidhesh Gupta, Vinod Shukla, J. Goel and Ms. S. Janani. Advocates, for the Respondent.

Guwahati Bench

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- a 1. (2007) 2 SCC 491 : (2007) 1 SCC (L&S) 713 : (2006) 13 Scale 426. *Punjab Water Supply & Sewerage Board v. Ranjodh Singh* 341e
 2. (2007) 1 SCC 373 : (2007) 1 SCC (L&S) 256 : (2006) 13 Scale 266. *Municipal Corp., Jabalpur v. Om Prakash Dubey* 341f-g
 3. (2006) 4 SCC 1 : 2006 SCC (L&S) 753, Secy., State of Karnataka v. *Umadevi (3)* 341b-c, 341d, 341d-e
 4. (2004) 7 SCC 112 : 2004 SCC (L&S) 918. *A. Umarani v. Registrar, Coop. Societies* 341a-b
 b 5. (1997) 7 SCC 251. *Pawan Alloys & Casting (P) Ltd. v. U.P. SEB* 340g-h

The Judgment of the Court was delivered by

S.B. SINHA, J.—Leave granted.

2. The State of Punjab formulated a scheme on 23-1-2001 for regularisation of its employees.

c 3. The question which arises for consideration in this appeal arising out of a judgment and order dated 25-4-2005 passed by a Division Bench of the Punjab and Haryana High Court in Civil Writ Petition No. 10307 of 2004 is as to whether the appellant herein was bound to invoke the said scheme in respect of its own employees.

d 4. The validity or otherwise of the said scheme came to be questioned before this Court. This Court passed an interim order. Pursuant thereto or in furtherance thereof, Respondent 1 herein was appointed on contract basis as Restorer or a consolidated monthly salary. His services indisputably were extended from time to time.

e 5. The contention of the appellant is that the contract of the respondent's service was not renewed as the services of Respondent 1 were not required any further and, thus, by an order dated 24-12-2001 his services were terminated. Questioning the validity of the said order, a writ petition was filed by the respondent before the High Court. The said writ petition was disposed of directing the appellant herein to consider the case of Respondent 1 in the backdrop of the said scheme dated 23-1-2001. Inter alia on the premise that in view of a clarification issued by the State Government that the said scheme was not applicable to the case of contract employees, the respondent's claim for regularisation was rejected by an order dated 17-6-2004. A fresh writ petition was filed which by reason of the impugned judgment has been allowed.

g 6. The High Court, however, in its judgment opined that the case of Respondent 1 was covered by the said policy decision and as such he was entitled to the benefit thereof. The appellant is, thus, before us.

7. One of the questions which was raised for its consideration before the High Court was as to whether the workmen engaged on contract basis were covered by the scheme dated 23-1-2001.

h 8. The said purported scheme of the State was not made in terms of Article 162 of the Constitution of India. It was by way of a circular letter dated 23-1-2001. The State, without issuing any notification or without even

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exercising its statutory power governing the constitution and functioning of the statutory authorities like the appellant, sought to extend the same to public sector undertakings, corporations, boards, local authorities and other autonomous bodies which it could not do in law. Therein, it was stated:

"(iv) For accommodating work-charged/daily wage/other category workers as per the above policy against the existing vacancies the existing instructions requiring permission of the DOP and FD for filling up the vacancies would not apply. Wherever for the absorption/regularisation of workers as per the above policy any department's own recruitment rules come in the way, such provisions of the recruitment rules will stand relaxed."

9. However, a clarification was sought for from the State Government by the Managing Director of the appellant by a letter dated 29-3-2001 as to whether the staff not being charged against any project or work is to be regularised or not; in response thereto, it was clarified:

"It is clarified that those employees who are working in the Corporation for last more than three years continuously apart from work-charged/daily wages, are to be regularised because these categories of workers are covered under Policy Instructions No. 11/34/2000-4 P. p. 31301 dated 23-1-2001 issued by the Government of Punjab."

10. It is not the case of the parties hereto that Respondent 1 was appointed upon compliance with the constitutional scheme as adumbrated in Articles 14 and 16 of the Constitution of India. It is also not the case of the respondent that prior to his appointment either any advertisement was issued or ever the employment exchange was notified in regard to the then existing vacancies. It is also not known whether there existed a sanctioned post. It is furthermore either in doubt nor in dispute that the terms and conditions of the services of the employees of the appellant Corporation which is a body constituted and governed under the Punjab Warehousing Corporation Act, 1957 are governed by the provisions thereof and the rules framed thereunder.

11. The terms and conditions of employees of the appellant Corporation being governed by a statute and statutory rules could have been altered only by reason of amendment of the rules only. The State as is well known had no say in this regard. We fail to understand as to under what circumstances the State issued the aforesaid circular letter dated 23-1-2001. A policy made by a State would ordinarily apply only in respect of the employees working under it. The policy decision of a State cannot be extended to a statutory corporation unless it is permitted to do so by the statute. [See *Pawan Alloys & Casting (P) Ltd. v. U.P. SEB*¹.]

12. Furthermore, when the terms and conditions of the services of an employee are governed by the rules made under a statute or the proviso to Article 309 of the Constitution of India laying down the mode and manner in which the recruitment would be given effect to, even no order

under Article 162 of the Constitution of India can be made by way of alterations or amendments of the said rules. A fortiori if the recruitment rules could not be amended even by issuing a notification under Article 162 of the Constitution of India the same cannot be done by way of a circular letter.

13. This aspect of the matter is covered by a decision of this Court in *A. Umarani v. Registrar, Coop. Societies*² wherein the law was stated in the following terms: (SCC p. 126, para 45)

"45. No regularisation is, thus, permissible in exercise of the statutory (sic executive) power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules."

14. A Constitution Bench of this Court in *Secy., State of Karnataka v. Umadevi (3)*³ categorically held that any appointment made in violation of the constitutional scheme would be a nullity.

15. Submission of Mr Nidhesh Gupta, learned counsel appearing on behalf of the respondent that having regard to the fact that the policy decision was made as a one-time measure, the scheme in question would come within the protective umbrella of para 53 of *Umadevi (3)*³ could be accepted for more than one reason. Firstly, because the High Court did not proceed on that basis; secondly, if the scheme itself was not applicable in case of Respondent 1, even in terms of the said policy decision, as has been clarified by it, the question of invoking the said paragraph in the instant case would not arise. Moreover, in view of series of decisions of this Court explaining para 53 of *Umadevi (3)*³, such a scheme could be made out only in respect of such employees whose appointments were irregular and not illegal.

16. This aspect of the matter has recently been considered in *Punjab Water Supply & Sewerage Board v. Ranjodh Singh*⁴ in the following terms: (SCC p. 500, para 17)

"17. A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularisation was in relation to such appointments, which were irregular in nature and not illegal ones."

(See also *Municipal Corpn., Jabalpur v. Om Prakash Dubey*⁵.)

17. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.

¹ (2004) 7 SCC 112 : 2004 SCC (L&S) 918

² (2006) 4 SCC 1 : 2006 SCC (L&S) 753

³ (2007) 2 SCC 491 : (2007) 1 SCC (L&S) 713 : (2006) 13 Scale 426

⁴ (2007) 1 SCC 373 : (2007) 1 SCC (L&S) 256 : (2006) 13 Scale 266

NOTICE

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From:

U. Dutta
Advocate

To,

Mrs. M. Das
Addl. C.G.S.C.

Mam,

Please find herewith a copy of the additional
rejoinder filed in O.V. NO. 140/2007, Sri M. P. Singh
-vs- U. O.I. & ors. Kindly acknowledge the receipt
of the same.

Received

(M)

7/8/08

(M. Das)

Thanking you,
Dutta
(U. Dutta)