

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (JUDL.)

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

✓ 1. ORIGINAL APPLICATION No : 190 / 2009

2. Transfer Application No : -----/2009 in O.A. No.-----

3. Misc. Petition No : -----/2009 in O.A. No.-----

4. Contempt Petition No : -----/2009 in O.A. No.-----

5. Review Application No : -----/2009 in O.A. No.-----

6. Execution Petition No : -----/2009 in O.A. No.-----

Applicant (S) : Shri Gobinda Kumar Nath

Respondent (S) : Union of India & Ors.

Advocate for the : Mr. B. Sarmah

{Applicant (S)} : Mr. D. Baruah

Advocate for the : -----

{Respondent (S)} : CGSC.

Notes of the Registry	Date	Order of the Tribunal
<p>The application is in form is filed/C.F. for Rs. 50/- deposited vide IPO/BB No. <u>399 422 941</u> Dated <u>5.9.09</u></p> <p><u>15.9.09</u> Three copies of application with envelope received for issue notices to the respondents No. 1 to 3. Copy sent.</p> <p><u>15.9.09</u> 14. Day Issue notice to the Respondents.</p> <p><u>18/9/09</u></p>	<p>17.09.2009</p> <p>/bb/</p>	<p>Ms.U.Das appeared on behalf of Mr.M.U.Ahmed, learned Addl. Standing counsel for the Union of India.</p> <p>Notices be issued to the Respondents requiring them to file reply/written statement/ counter by 05.11.2009.</p> <p>Call this matter on 05.11.2009.</p> <p>(M.K.Chaturvedi) Member (A)</p>

-2- A. 190/03

Copies of notices
along with order
dated 17/9/2009
sent to D/Sec. for
issuing to the
respondents by
regd. A/D post

D/No-11,643

29/9/09 D/No-11,643
25-10-09

① Service report
awaited.

4.11.09

05.11.2009

On the request of Mr.M.U.Ahmed,
learned Addl. C.G.S.C. for the Respondents
adjourned to 11.12.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

11.12.2009

Granting further four weeks time
to file reply Case is adjourned 12th
January, 2010.

(Mukesh Kumar Gupta)
Member (J)

/PB/

12.01.2010

On the request of Mr. M.U.
Ahmed, learned Addl. CGSC for
Respondents, time is extended to file reply.

List the matter on 15th February,
2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/PB/

15.02.2010

Last and final opportunity is granted to
Respondents, as prayed for to file reply.

List on 10.03.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

9.12.2010

9.3.2010

W/S has been
filed by the Respondents
No. 1 to 3 with
under taking to the
serve a copy to the
A/D Sec. for the Applicant
8/3/2010

10.03.2010

Reply has been filed by Mr. M.U. Ahmed, learned Addl. CGSC for Respondents. Learned proxy counsel for Applicant states that the same has not been served upon him. Written request has been filed by Mr. M.U. Ahmed, Addl. CGSC for Respondents that since he is out of station and therefore he will not be available today. In the circumstance, counsel for Respondents is directed to serve upon the applicant a copy of the reply.

N/S filed.

ms
9.4.2010

List on 12.04.2010.



(Mukesh Kumar Gupta)
Member (J)

/pb/

12.04.2010

Written statement has been filed by the Respondents on 9.3.2010. Learned counsel for the Applicant prays for three weeks time to file rejoinder.

List the matter on 5.5.2010.



(Madan Kumar Chaturvedi)
Member (A)

Rejoinder not
filed.

ms
24.5.2010

/lm/

05.05.2010

Enabling the Applicant to file rejoinder, as prayed for, O.A. be listed on 25th May 2010.



(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)



/pb/

O.A.190/2009

25.05.2010

Proxy counsel for applicant prays for further time to file rejoinder. It is seen that enough time has been granted to the applicant to do the same. Last and final opportunity of three weeks is granted to applicant to take appropriate steps failing which, it will be presumed that he has no rejoinder to file.

No rejoinder filed

17.6.2010

List on 18.06.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

18.06.2010

None for the applicant despite second call. Rejoinder has not been filed despite last and final opportunity granted on 25.05.2010.

Rejoinder not filed

14.7.2010

None appears for the parties. Admit, subject to legal pleas.

List for hearing on 08.07.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

08.07.2010

Proxy counsel for both sides pray for adjournment. List on 15.07.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

O.A. No. 190/2009

15.07.2010 Mr. U.K. Nair, learned counsel for Applicant prays for adjournment to examine as to whether Sashastra Seema Bal (SSB) has been declared as a force or not, and further whether the post in question is combatant or non combatant.

List on 22nd July 2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/PB/

22.07.2010 Both sides pray for time. Adjourned to 6th August 2010 and parties are expected to answer the question as per order dated 15th July 2010.

List on 6th August 2010.

(Mukesh Kumar Gupta)
Member (J)

/PB/

06.08.2010 Both side pray for some time.

List on 27.8.2010.

Respondents should file an affidavit whether the post in question is a combatant post or civilian and governed by Sahastra Seema Ball Act 2007.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pg/

Received by
Aug 24/8/10

27.08.2010 Mr. M.U. Ahmed, learned Addl. CGSC appearing for Respondents states that post held by Applicant is non-combatant, and thus he holds a civilian post, which fall within jurisdiction of this Tribunal.

Mr. B. Sarma, learned counsel for Applicant prays for adjournment on the ground that his Senior, who was to argue the matter is not available today.

List on 30th August 2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pb/

30.08.2010 Mr M.U.Ahmed, learned counsel for the respondents prays for adjournment. Such request has not been opposed by Mr U.K.Nair, learned counsel for the applicant.

Accordingly adjourned to 1.9.2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pg/

01.09.2010

Applicant was initially appointed as Sub Inspector on 31.5.1991. On passing the Limited Departmental Competitive Examination he was promoted to the next higher post of Circle Organiser vide order dated 18.4.1998 and he joined the said post on 11.11.1998. On completion of 10 years of service he was granted the benefit of financial upgradation under MACP with effect from 11.11.2008. His grievance is that similarly situated persons who were Circle Organiser along with him, when granted benefit of ACP Scheme were placed not only in higher pay band but in higher pay scale too. There is a vast difference between pay scale enjoyed by the applicant and other persons, for which reliance was placed on order dated 9.6.2009. For example it was pointed out that Shri Anil Kumar Sharma who was also a Circle Organiser in the scale of Rs.6500-10500/- prior to implementation of 6th CPC was granted revised pay scale of Circle Organiser i.e. Rs. 9300-34800/- with grade pay of Rs.4200/- and when he was conferred benefit of ACP with effect from 03.05.2006 vide order dated 9.6.2009 he was granted Rs.5400/- as a grade pay in PB-3 in the scale of Rs.15600-39100/-. His precise grievance is that such scale has not been granted to the applicant though he has been granted the benefit of ACP, as modified. Learned counsel further contends that the basic ground urged by the applicant is on implementation of 6th CPC O.M dated 19.5.2009 vide para 11 has not implemented the recommendation of 6th CPC in its true spirit, rather the same puts an embargo on declaring the anomaly on account of financial upgradation under the old ACP or MACP. Under the old ACP concept of pay band or grade pay was not in existence, which concept has been brought only on implementation of 6th CPC. Mr U.K. Nair, learned counsel for the applicant seeks time to make further argument.

List on 16.9.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

R. Vary of
Order dated
01.09.10
pgn
(Advocate)

16.09.2010

Proxy counsel for applicant prays for

*Compliance report
filed.*

adjournment. Even learned counsel for the respondents is not present. Ms U. Das states that Mr M.U. Ahmed, learned counsel for the respondents is unwell.

24.9.2010

In the circumstances, list on

27.09.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

*Draft Issues filed
by the applicant
at Hq-A.*

27.09.2010

Learned counsel for applicant prays for adjournment. Learned counsel for respondents also prays for time. On request of both sides, adjourned to 29.09.2010.

28-9-2010

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

29.09.2010

Present : Mr U.K.Nair for applicant and Mr M.U.Ahmed for respondents.

Heard both sides. Reserved for orders.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/pg/

O.A.190 of 2009

18.5.2011 At the request of learned counsel for both sides, this case is taken up today. Mr.U.K.Nair, learned counsel on behalf of the Applicant states that he would like to go through the judgments written by Members of this Bench before making his further submission.

Hence matter is fixed for arguments on Monday i.e. 23.5.2011.

~~Send copies of the aforesaid judgments to the learned counsel for both sides.~~ ✓

[Signature]
(N.A.Britto)
Member(J)

lm

23.5.2011 Heard learned counsel for the parties.
Hearing concluded. Reserved for orders.

~~(N.A.Britto)
Member(J)~~

[Signature]
(N.A.Britto)
Member(J)

pg

26.05.2011 The matter was listed as "To Be Spoken To" and was again heard on one point. Hearing concluded and reserved for orders.

[Signature]
(N.A.Britto)
Member (J)

/bb/

27.05.2011 Judgment pronounced in open court, kept in separate sheets.

The OA is dismissed in terms of the order.
No costs.

[Signature]
(N.A.Britto)
Member (J)

/bb/

Final judgement/order
of 27.6.2017 has been prepared

to be sent to Section for

issuing to the Respondent

Applicant by post

Free copy hand over to

Let counsel be party

Written by Members of the Bench before making

Memo No. 790 to 793

Hand matter is tried for documents on

15-6-2017

13.6.2017

(M.A. Bittor)
(Member)

in

Heard concluded reserved for order

Heard concluded reserved for order

(M.A. Bittor)
(Member)

(M.A. Bittor)
(Member)

29

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.190 of 2009

DATE OF DECISION: 27.05.2011

Sri Gobinda Kr Nath.....Applicant/s.

Mr.U.K.Nair

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

- Versus -

U.O.I. & Ors.

.....Respondent/s

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

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR.JUSTICE N.A.BRITTO, JUDICIAL MEMBER

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

Judgment delivered by

^{2/04}
Hon'ble Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 190 of 2009

Date of Decision: This, the 27th day of May, 2011.

HON'BLE MR. JUSTICE N.A. BRITTO, JUDICIAL MEMBER

Sri Gobinda Kumar Nath
S/o Tolan Chandra Nath
Resident of Teacher Colony
Diphu, Karbi Anglong
Assam.

...Applicant.

By Advocate: Mr. U.K. Nair

-Versus-

1. The Union of India
Represented by the Secretary
Ministry of Home Affairs
Department of Internal Security
Police-II Division, Janpath
New Delhi - 110 011.
2. The Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)
Represented by the Secretary, Janapath
New Delhi - 110 001.
3. The Directorate General
Sashastra Seema Bal
East Block-V, R.K. Puram
New Delhi-110 066.

...Respondents.

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

ORDER

PER JUSTICE N.A. BRITTO, (J.M.):

Heard Mr. U.K. Nair, learned counsel on behalf of the applicant
and Mr. M. U. Ahmed, learned Addl. C.G.S.C. on behalf of the respondents.

2. On account of difference of opinion between the learned
Members of this Bench, this matter has been referred to me by the

Handwritten signature

Hon'ble Chairman, CAT, under Section 26 of the Administrative Tribunals Act, 1985 vide his order dated 26.04.2011.

3. The applicant was appointed as Sub-Inspector (Pioneer) in the Sashastra Seema Bal (SSB) vide order dated 31.05.1991. Applicant's revised pay scale is Rs.6500-200-10500/-, which now in terms of recommendations of the 6th Pay Commission, has been fixed in the pay band of Rs.9300-34800/- plus grade pay of Rs.4200/-. He was promoted to the post of Circle Organiser vide order dated 18.04.1998, which he joined on 11.11.1998 in the revised pay scale of Rs.8000-13500/- and which now corresponds, as per recommendations of the 6th Pay Commission, to Rs.15600-39100/- plus grade pay of Rs.5400/-. His next promotion would have been to the post of Sub Area Organiser in the pre-revised pay scale of Rs.8000-13500/-, which now corresponds to pay band of Rs.15600-39100/- plus grade pay of Rs.5400/-.

4. As there was no much scope for promotion to the said post of Sub Area Organiser, on account of limited number of posts, he was looking forward for the grant of financial upgradation when the Government of India implemented the Modified Assured Career Progression Scheme w.e.f. 01.09.2008 in place of the Assured Career Progression Scheme. The latter Scheme was recommended by the 5th Pay Commission while the former was recommended by the 6th Pay Commission. The Assured Career Progression Scheme entails two financial upgradations on completion of 12 and 24 years of regular service while the Modified Assured Career Progression Scheme envisages three financial upgradations on completion of 10, 20 and 30 years of regular service. The applicant was due to receive his first financial upgradation on

11.11.2008, which has been subsequently granted to the applicant, after filing of this application. A wrong copy of the order was submitted at the time of hearing. However, it has been confirmed by the learned counsel that the applicant has been considered and he has been granted financial upgradation.

5. According to the applicant, the basic difference between the two Schemes is that under the ACP (Assured Career Progression) Scheme, the eligible incumbents were granted the financial benefits of the time scale of pay attached to the immediate higher grade/post while under the MACP (Modified Assured Career Progression) Scheme, the eligible incumbents become entitled to the financial benefits to the higher grade pay attached to the immediate higher time scale of pay and not the pay band attached to the minimum higher grade/post. According to the applicant, the MACP detrimentally affects the financial prospect of the applicant and similarly situated persons, and it is full of discrepancies, as the MACP envisages granting of minimum higher grade pay to an eligible incumbent excluding the pay band. Moreover, under the Revised Pay Rules, 2008, the pay scale of incumbents, who availed financial upgradations under the ACP Scheme has been fixed taking into account their previously upgraded pay scale thereby conferring upon them a higher scale of pay as compared to that of the applicant and similarly situated persons. The Circle Organisers, who were conferred the benefits of financial upgradation under the previous ACP Scheme, were granted the pay scale of the next promotional post, namely, Sub Area Organiser, which is at Rs.8000-13500/-, which under the Revised Pay Rules was fixed at Rs.15600-39100/- plus grade pay of Rs.5400/-, but the pre-revised scale

of pay attached to the post of Circle Organiser was Rs.6500-10500/-, which has been revised to Rs.9300-34800/- plus grade pay of Rs.4200/-. According to the applicant, in terms of the MACP, he would be entitled to the next higher grade pay of Rs.4600/- only and not the grade pay of the promotional post and that an incumbent under the MACP even after the receipt of the 3rd financial upgradation would never be entitled to the grade pay of Rs.5400/-, and thus, the MACP Scheme is in clear violation of the basic principle of "Equal Pay for Equal Work", as it lays down two different pay structures for incumbents holding the same post i.e., Circle Organiser and discharging the same nature of duties and responsibilities and thus violates the mandate of Articles 14 and 16 of the Constitution of India.

6. The MACP scheme became operational w.e.f. 01.09.2008. It made a provision that financial upgradation as per the provision of the earlier ACP Scheme would be granted till 31.08.2008. It also provided that:

"(10) No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under the MACP Scheme., and

(11) It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial upgradation under the old ACP Scheme (of August, 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly."

7. A few observations are required to be made before dealing with the controversy involved in the application, which would show, as per pleadings, that the application was premature.

8. The application was filed by the applicant on 05.09.2009 at a time when the applicant's representation dated 17.09.2008 was still pending before the Director General. The right course of action then, would have been, to direct the said Director General to dispose of the said representation of the applicant in accordance with law. Generally, this Tribunal is not meant to be a substitute to the Administrative or Disciplinary Authorities of the employees concerned under the relevant Service Rules to decide the claims of employees, on their behalf, but on the contrary it is meant to examine the correctness or otherwise of the orders passed by them, in exercise of its jurisdiction of judicial review. Section 20 of the Administrative Tribunals Act, 1985 is very clear in this regard, which requires that ordinarily, an application will be entertained by the Tribunal only after all remedies available under relevant service rules are exhausted (see **AIR 1989 SC 1185**).

9. The pleadings of the applicant also indicate that the applicant had filed this application even before his case was considered for the grant of financial upgradation. Granting of financial upgradation is not a matter of course. A candidate is required to be found fit by the Screening Committee and only in case he is found fit that he is entitled to be granted financial upgradation, whether under the old or the new Schemes and looked in this background the application of the applicant would appear to have been premature. It could be that his claim was rejected. If that be so, then he would have no right to complain that the MACP Scheme violates Articles 14 and 16 of the Constitution. Applicant's cause of action to challenge the MACP Scheme would have arisen only after he was considered under it and granted financial upgradation.

Validity of a scheme cannot be questioned in the abstract or in a vacuum. However, the fact remains, as brought to light now, that the case of the applicant has been considered and he has been granted financial upgradation while the application was pending. The least the applicant could have done, is to amend the application and challenge the order granting financial upgradation. For best reasons known to the applicant, the applicant has not called in question the said order. In fact, it was incumbent upon the applicant to have challenged the validity of the said order. The said order is in full force and effect. The applicant sought no relief of declaration that it was invalid. It is well settled law that a relief, which is not claimed, cannot be granted by a Court or a Tribunal. In this context I may refer to a decision of the Apex Court in the case of **State of Orissa and Another v. Mamata Mohanty, 2011 (1) AISLJ 429** wherein the Apex Court has held that relief not claimed cannot be granted. Failure to question the validity of the order granting financial upgradation is fatal the case of the applicant. It is a good ground to dismiss the application as the said order is in full force and effect. This is the first view of the matter.

10. The long and short of the controversy is that those, whose cases were considered for financial upgradation under the ACP Scheme prior to 31.01.2008 have been fitted in the revised pay band of the Sub-Area Organiser of Rs.15600 to 39100/- with grade pay of Rs.5400/-, like in the case of Anil Kumar Sarma (seen from Annexure 4 to the application) while those who have been granted financial upgradation after 01.09.2008 like the applicant have been fitted in the same pay band of

the Circle Inspector i.e. Rs.9300 to 34800/- with grade pay of Rs.4200/- (now Rs.4600/-).

11. The respondents have filed their reply. In that they have, inter-alia, stated that in the erstwhile ACP Scheme Group B, C & D employees, on completion of 12 and 24 years of regular service, were entitled to 1st and 2nd financial upgradations in their respective hierarchy subject to other laid down conditions, while under the MACP Scheme the number of financial upgradations have been increased from 2 to 3. Besides, Group A employees have also been included in the list of beneficiaries and under the MACP Scheme employees completing 10, 20 and 30 years of regular service and subject to other laid down conditions, would be entitled to 1st, 2nd and 3rd financial upgradations in the hierarchy of their respective pay band and attached grade pay. The respondents have also stated that no past cases are to be re-opened and the difference in pay scales on account of grant of financial upgradation under the old ACP scheme and under the MACP scheme within the same cadre are not be construed as anomaly and besides the MACP Scheme is a policy decision of the Government of India, which is applicable to all central government employees, and therefore, the prayer of the applicant for quashing the MACP scheme and for granting him financial upgradation under the ACP Scheme is untenable as the provisions of erstwhile ACP scheme are no more in existence. The respondents have also stated that Recruitment Rules are proposed to be revised and after the revision the post of Sub-Area Organiser would be filled up by 100% promotion from Circle Organisers instead of 75% quota presently being followed and once that is done 22 Circle Inspectors will get the promotion to the next higher grade

i.e. Sub-Area Organiser. Respondents have stated that there can be no comparative study of the candidates of erstwhile ACP scheme and the present MACP scheme. According to the respondents, if the erstwhile ACP scheme provided for two financial upgradations, the MACP scheme provides for three and that apart Group A officers have also now been included and as such applicant would also now enjoy 3rd financial upgradation even after his promotion to Group A post which was not available in the erstwhile ACP scheme. According to the respondents, the principle of "Equal Pay for Equal Work" was duly maintained in erstwhile ACP scheme and it has been squarely covered in the present MACP scheme and no comparison of the benefits of the two schemes can be drawn; MACP scheme being a policy decision of the Government of India is applicable to all central government employees unanimously.

12. I have perused the orders delivered by the learned Members of this Tribunal. I do not propose to refer to them in detail. According to learned Member (J), the fixation of different scale of pay of Rs.9300-34800 plus grade pay of Rs.4600/- for MACP beneficiaries and scale of pay of Rs.15600-39100 plus grade pay of Rs.5400/- to ACP beneficiaries is anomalous and faulty, and therefore, cannot withstand the scrutiny of law, and therefore, miserably fails the tests of equality clause enshrined in Articles 14 and 16 of the Constitution of India and principle of "Equal Pay for Equal Pay". The learned Member (J) therefore directed the MACP Scheme to be reformulated. According to learned Member (A), the MACP Scheme was introduced on the basis of recommendation of an expert body after considering all the relevant aspects of the ACP Scheme and as MACP Scheme is a policy decision of the Government, it cannot

be tinkered and tailored as it is not violative of Articles 14 & 16 of the Constitution of India. The controversy could also be looked at another angle.

13. There is no dispute that persons like Anil Kumar Sharma (of Anneuxre-4) as well as the applicant, belong to the same cadre; belong to the same post, and do similar duties, but according to Mr.U.K.Nair, learned counsel of the applicant, this is a case where you have two scales in the same cadre, for the same post. Learned counsel submits that normally policy decisions are not interfered with, but when they are arbitrary they can be read down or interfered with. According to the learned counsel, the applicant has been given by way of financial upgradation only the grade pay of Rs.4600/- and not the pay band of Rs.15600 to 39100/- plus grade pay of Rs.5400/-, which according to the learned counsel, violates the principle of "Equal Pay for Equal Work" as the previous incumbents like the said Anil Kr. Sharma have been given grade pay of Rs.5400/- in the pay band of Rs.15600 to 39100/-. This, according to learned counsel, violates the principle of "Equal Pay for Equal Work" and in this context learned counsel has placed reliance on certain decisions to which reference would be made a little later.

14. On the other hand, Mr.M.U.Ahmed, learned Addl. C.G.S.C. on behalf of the respondents, concedes that there are some microscopic anomalies on the whole in the new Scheme but the MACP scheme as a whole is beneficial to a large number of employees and as it is a policy decision of the Government of India it cannot be interfered with. Learned counsel has placed reliance on the case of **Union of India & Ors. v. Hiranmoy Sen & Ors., (2008)1 SCC 630.**

15. In the case of **E.P.Royappa v. State of Tamil Nadu & Another**,

AIR 1974 SC 555, the Constitution Bench of the Apex Court held that:-

"Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

The Constitution Bench further held that:-

"It is also necessary to point out that the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. It is therefore, no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post. That might have some relevance to Article 311 but not to Articles 14 and 16."

16. In the case of **Pathumma v. State of Kerala, AIR 1978 SC 771**, Hon'ble Supreme Court speaking through seven learned Judges observed that it is well settled that before a person can claim to be discriminated against another, he must show that all the other persons are similarly situated or equally circumstanced. In other words, discrimination violative of Article 14 can only take effect if there is discrimination between equals and not where unequals are being differently treated.

17. In the case of **Randhir Singh v. Union of India, (1982) 1 SCC 618** the Apex Court observed that:-

"We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same..."

...It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of

"equal pay for equal work" would be an abstract doctrine not attracting Article 14 if sought to be applied to them.

8. It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."

18. The above observations were made by the Apex Court in a case where the drivers of Delhi Police Force had claimed equal pay along with drivers of Delhi Administration and they had succeeded and in that Apex Court had directed that Drivers of the Delhi Police Force ought to be given pay scale on par with the Drivers of Railway Protection Force.

19. In the case of **State of Orissa & Ors. v. Bhikari Charan Khuntia & Ors. (2003) 10 SCC 144**, it has been held that court cannot interfere with the policy decisions of the Government for recruitment unless it is arbitrary.

20. In the case of **Union of India & Ors. v. Hiranmoy Sen & Ors., (2008) 1 SCC 630**, it has been held that it is entirely on the Government and the authorities to fix the pay scales and to decide whether the pay scale of post B should be increased or not and the Judiciary must exercise self-restraint and not encroach into the executive or legislative domain.

21. Admittedly, this is not a case where juniors occupying the same post in the cadre are getting more than the seniors, but on the contrary it is a case of seniors who got better benefits of financial upgradation under the old scheme, than the juniors. The applicant cannot be heard to say that this is a case where there are two scales given to the same post, in the same cadre. The applicant does not complain that he is luckier than his seniors, for he got financial upgradation after 10 years while his seniors had to wait for 12 years. He only complains that they get more!

22. Article 14 of the Constitution – equality provision – is a slippery slope, and a fine balancing act must be done by the court to avoid slipping down the slope. Article 14 of the Constitution does not take away from the State or its instrumentality, the power of classification, which to some degree is bound to produce some inequality. Article 14 does not prohibit reasonable classification for the purpose of legislation or for the purpose of adoption of a policy of the legislature or the executive, provided the policy takes care to reasonably classify persons for achieving the purpose of the policy and it deals equally with all persons belonging to a well defined class. There is often a misunderstanding about Article 14 of the Constitution, and often the Lawyers and Judges tend to construe it in a doctrinaire and absolute sense, which may be totally impractical and make the working of the executive authorities extremely difficult if not impossible. These are some of the observations made by the Hon'ble Supreme Court in the case of **Transport & Dock Workers Union & Ors. v. Mumbai Port Trust & Another [2011 (1) AISLJ 403]**. The Hon'ble Supreme Court in that case was dealing with a case of Typist cum

Computer Clerks of Mumbai Port Trust, those who were appointed prior to 01.11.1996 and those, who were appointed thereafter. Those, who were appointed prior to 01.11.1996, were required to work for 6 ½ hours per day while those, who were appointed after 01.11.1996, were required to work 7 ½ hours a day. The Apex Court noted that it was nobody's case that the decision of the Port was not bonafide and as it was bonafide no fault could be found with the said decision, an observation, which is also very relevant to the case at hand. The Hon'ble Supreme Court even observed that Article 14 cannot be interpreted in a doctrinaire or dogmatic manner. Absolute and inflexible concepts are an anathema to progress and change. Apex Court referred to the case of **State of Andhra Pradesh & Ors. v. N.Subbarayudu & Ors., [2008 (14) SCC 702]** and noted:-

"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government."

(emphasis supplied)

Referring to Lord Denning Hon'ble Supreme Court noted:-



"This power to overturn executive decision must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own responsibilities and they have the right to make decisions. The courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the courts and the Government and the authorities, which would be most undesirable. The courts must act very warily in this matter."

Further, the Apex Court also noted that Judges must maintain judicial self-restraint while exercising the power of judicial review of administrative and legislative decisions. Referring to the case of **Keshavanand Bharti v. State of Kerala, AIR 1973 SC 1461**, the Hon'ble Supreme Court noted that: "*In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the Government. The door has to be left open for trial and error.*" the Hon'ble Supreme Court ultimately concluded observing that there was reasonable basis for the classification, and hence there was no violation of Article 14 of the Constitution.

23. The ACP Scheme as well as the MACP Scheme were framed to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The ACP Scheme envisaged merely placement in the higher pay scale/grant of financial benefits through financial upgradation only to the government servant concerned on personal basis. MACP Scheme also contemplates placement on personal basis in the immediate higher grade pay/grant of financial benefits only. Financial upgradation granted under both the Schemes does not amount to functional/regular promotion nor does it require creation of new post. The MACP Scheme came to be implemented from 01.09.2008. In my view there is nothing arbitrary in the

MACP scheme, which provides for better benefits and to a larger number of employees including all Group A employees. Due to a fortuitous circumstance of the MACP Scheme coming into force w.e.f.01.09.2008 that the employees like the applicant may get lesser benefits by way of financial upgradation than those whose cases were considered earlier under the ACP Scheme upto 31.08.008, but one cannot forget that they got them 2 years earlier unlike their seniors, who had to wait for 12 years. What is granted in both the cases by way of financial upgradation is a pay, which is personal to the employee concerned, for want of promotion, not a separate pay scale. Only the methodology of working out differs. Although this is a case where the seniors to the applicant, who got financial upgradation under the ACP Scheme, might have got more emoluments than those, whose cases were considered under the MACP Scheme after 01.09.2008, in my view, this is not a case where the principle of "Equal Pay for Equal Work" could be invoked or violation of Articles 14 and 16 of the Constitution could be complained of. As already stated, there is nothing arbitrary as such in the MACP Scheme, which has been made by the Government of India possibly after taking into consideration the financial implications of working the ACP Scheme.

24. For the reasons stated by me, above, I will have to concur with the conclusion arrived at by the learned Member (A), namely, that the application need be dismissed. The Hon'ble Chairman has expressed his opinion that there has already been delay in finalizing the matter. No purpose would be served in reverting back the matter to learned Division Bench and further delaying the matter. That would be an exercise in futility. In consonance with the view expressed by the Principal Bench in

Vikash Keraba Suryawanshi & Ors. v. Union of India & Ors., 2011(1) AISLJ

(CAT) 373, I proceed to dismiss the application, in conformity with the majority view. Accordingly, OA shall stand dismissed with no order as to costs.

gr
(N.A.BRITTO)
JUDICIAL MEMBER

/BB/

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

OA NO.190/2009

DATED THE ____ DAY OF FEBRUARY, 2011

CORAM:

HON'BLE SHRI MUKESH KUMAR GUPTA MEMBER(J)
HON'BLE SHRI MADAN KUMAR CHATURVEDI MEMBER(A)

Sri Gobinda Kumar Nath,
resident of Teacher Colony,
Karbi Anglong, Assam

... Applicant

By Advocate Mr U K Nair

V/s

- 1 The Union of India represented by
the Secretary, Ministry of Home Affairs,
Department of Internal Security, Police-II
Division, Janpath, New Delhi-110001.
- 2 The Ministry of Personnel Public
Grievances and Pensions(Department of
Personnel and Training) represented by the
Secretary, Janpath, New Delhi-110001.
- 3 The Directorate General,
Sashastra Seema Bal,
East Block -V, R.K.Puram,
New Delhi-110066.


... Respondents

By Advocate Mr U Ahmed

(O R D E R)**Per Hon'ble Mr Mukesh Kumar Gupta M(J)**

Gobinda Kumar Nath, Circle Organizer, in this OA filed under Section 19 of the A.T. Act, 1985, challenges validity of Office Memorandum dated 19.05.2009 to extent it deprives him from enjoying benefits of same pay and allowances as compared to incumbents, who were granted the benefits of financial upgradation under earlier ACP Scheme of 1999, alleging it to be contrary to principle of equal pay for equal work besides violative of Articles 14 and 16 of the Constitution of India. He also seeks direction to the respondents to grant him financial upgradation in same time scale of pay (Pay Band + Grade Pay) granted to incumbents, who have enjoyed benefits of financial upgradation under ACP Scheme of 1999.

2. Admitted facts are that he was initially appointed as Sub Inspector (Pioneer) in the Sashastra Seema Bal vide order dated 31.05.1991. Next promotional post is Circle Organizer, a selection post. One has to qualify in Limited Departmental Competitive Examination for promotion to said cadre, and, person with six years regular service as Sub Inspector is eligible for appearing in said examination. Being eligible, he appeared in such examination and vide communication dated 18.04.1998, he was promoted to Circle Organizer and joined said post on 1.11.1998. Though, further higher grades of Sub Area Organizer, Joint Area Organizer, Area Organizer, DIG etc. are available, but due to seniority




position in feeder cadre of Circle Organizer, there is very limited scope for further promotion. On promotion as Circle Organizer, he was granted pay scale of Rs. 6500-10500/- revised to Rs. 9,300-34,800/- in Pay Band-2, in terms of 6th CPC recommendations. On implementation of said recommendations, the Central Government adopted a different yardstick for fixing the pay scales of different categories of employees, which is anew to the Indian context. While making recommendation, 6th CPC merged various different pre-revised pay scales in the hierarchal system of cadres/posts. As per Revised Pay Rules of 2008 pay scale includes the pay Band+Grade Pay.

3. His grievance arose when DOP&T (respondent no.2) vide OM dated 19.05.2009 introduced Modified Assured Career Progression Scheme (MACP scheme in short) in tune with earlier ACP scheme of 1999 albeit with certain changes. As per MACP Scheme, Central Government employees would now be entitled to three financial upgradation on completion of 10, 20, & 30 years of regular service, while earlier ACP Scheme provided two financial upgradations on completion of 12 & 24 years of regular service respectively. Said MACP Scheme had been implemented w.e.f. 01.09.2008. His precise grievance is that on grant of benefit under MACP w.e.f. 11.11.2008, he has neither been treated at par with similarly situated persons, recruited along with him nor granted similar pay & allowances, thus he has been treated differently, and discriminated,



violative of Article 14 of the Constitution Such a classification is impermissible. Modified MACP leaves very little chance to catch up position attained by his colleagues in terms of earlier ACP Scheme & thus he would be at disadvantageous position for all times to come.

4. The applicant elucidated aforementioned contention by comparing pay scale of ACP and MACP beneficiaries both before and after conferment of the benefits under the respective schemes. Pre-revised scale of pay of a Circle Organiser was Rs. 6,500-10,500/- and on conferment of the 1st ACP an incumbent Circle Organiser receives the scale of pay of Rs. 8000-13,500/- attached to the post of Sub-Area Organiser. Scale of pay is further enhanced on receipt of 2nd ACP. Scale of pay under 6th Central Pay Commission is fixed on the basis of the pre-revised scale of an incumbent. As such ACP recipient Circle Organisers receive the replacement scale of pay (Pay Band + Grade Pay) of Rs. 15,600-39,000/- + Grade Pay of Rs. 5400/-, whereas non ACP recipients Circle Organisers receive Scale of Pay of Rs. 9300-34,800 + Grade Pay of Rs. 4200/-. The Circle Organisers who receive the benefit of financial upgradation for the first time under the provisions of MACP never receive the scale of pay of Rs. 15,600-39,000/- (Pay Band) and even after receipt of three financial upgradation under MACP he would not ever receive the Grade Pay of Rs. 5400/- received by ACP beneficiaries, which Grade Pay is further enhanced in their case on receipt of financial upgradation again under MACP. This has resulted in



huge financial disparity and discrimination against the applicant in relation to the Circle Organisers, who is the recipient of ACP benefits, although the nature of the duties and responsibilities entrusted and discharged by them are similar in all respects and there is no difference in the status of the Circle Organisers who are recipients or non recipients of benefits under the provisions of ACP and/or MACP. Therefore, applicant contends that said Scheme which has resulted in prescription of two different pay scale to the post of Circle Organiser, is violative of the mandates of "Equal Pay of Equal Work" as well as Articles 14 and 16 of the Constitution of India. He further prays for equalization of his scale of pay, as enjoyed by the incumbent Circle Organisers who are the ACP recipient beneficiaries.

5. Representation made highlighting grievances remain unconsidered. Modified ACP Scheme vide para 10 specifically debars stepping up of Pay Band or Grade, and, para 11 further prescribes that such would not be construed "**as an anomaly**". It virtually debars judicial review of the matter, which is unsustainable. Sh. U.K.Nair, learned counsel thus vehemently contended para 10 & 11 of MACP Scheme is liable to be set-aside.

6. By filing reply, the respondents have contested the claim stating that in MACP Scheme, number of financial upgradation have been increased from two to three. Besides, increasing number of pay upgradation, Group A post has also been included in the list of

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beneficiaries. In MACP, an employee completing 10, 20 & 30 years of regular service and subject to fulfillment of other laid down conditions is entitled to first, second and third pay upgradation in the hierarchy of their respective Pay Band and attached Grade Pay. MACP is a Policy decision, and such OM has been issued in supersession of earlier ACP Scheme. Applicant prayer for quashing the MACP is untenable. He had appeared and qualified in PET/written test through Limited Departmental Competitive Examination for the post of Circle Organiser vide Force Hqrs Order dated 1st May, 1998 & joined his duty on 11.11.1998 as Circle Organiser, at Tezu Circle of AP Division. Promotion of Circle Organisers/Sub Area Organisers/Joint Area Organisers to the next higher rank is being considered regularly as per availability of vacancy and suitability of the incumbents. DPC was held 10.9.2009 to consider cases of Circle Organiser in the pay scale of PB-2 Rs. 9,300-34,800/- +GP Rs. 4200 (now 4600) for their empanelment and eventual promotion as Sub Area Organiser in the pay scale of PB-3Rs. 15600-39000/- +GP Rs.5400/- for the vacancy year 2009-2010, and, as per recommendations of DPC, vide order dated 12.10.2009, 8 officials were promoted to the rank of Sub Area Organiser. As per proposed revised RRs, the post of Sub-Area Organiser is to be filled 100% by promotion from Circle Organiser, instead of 75% provided earlier, and once said revised RRs are notified, 22 Circle Organisers will get promotion to next higher grade. There can be no

comparative study of the benefits of erstwhile ACP Scheme and present MACP Scheme. Grade Pay of Circle Organiser has been upgraded from Rs. 4200/- to 4600 in PB-2. Therefore, Circle Organisers who have completed 10 years of service as on 1.9.2008, the cutoff limit prescribed under MACP Scheme, would be granted Grade Pay of Rs. 4800/- on grant of 1st of first upgradation under MACP, instead of Rs. 4600/-. The principle of Equal Pay for Equal Work was duly maintained in the erstwhile ACP Scheme and has been available in present MACP Scheme too. There is no relation of Grade Pay/Pay Scale of a particular Officer with Grade Pay granted on MACP Scheme. The financial upgradation is being granted to employee on personal basis after completion of stipulated years of regular service. Applicant's representation was taken up with the Ministry of Home Affairs for approval of the competent authority, but the same has been returned with remarks that proposal has been examined in MHA in consultation with Ministry of Finance and request of SSB for grant of Grade Pay of Rs. 4800/- in Pay Band-2 in respect of Circular Organiser have not been agreed to. However, it has now been decided to authorize the Grade Pay of Rs. 4600/- to the Circle Organiser in SSB w.e.f. 1.1.2006 as per Department of Expenditure, Ministry of Finance Order dated 13.11.2009, which inter-alia means that they will be entitled to Grade Pay of Rs. 4800/- on attaining the zone for grant of first financial upgradation under MACP Scheme. In view of afore-noted aspects, Sh. M.U.Ahmed, Ld. Counsel for




the respondents contended that there is no scope for judicial interference in the matter and OA needs to be dismissed.

7. We have heard both sides at length, perused the pleadings and other material placed on record very carefully. Short question which arises for consideration is whether conditions imposed vide para 10 & 11 of MACP OM dated 19th May, 2009 is legally justified and needs judicial interference. We have bestowed our anxious and thoughtful consideration to rival contentions.

8. It is amply clear from the material available from the record of case that the incumbents in the post of Circle Organiser are now in receipt of two different scales of pay (Pay Band + Grade Pay) in terms of the 6th Central Pay Commission owing to conferment of financial benefits under two different schemes i.e. ACP Scheme and MACP Scheme; the scales of pay being Rs. 9300-34800 + Grade Pay of Rs./ 4600 and Rs. 15600-39000/- + Grade Pay of Rs. 5400/- respectively. Although said discrimination in the scales of pay is the result of implementation of two different Schemes, which are the product of policy decisions of the Government of India and the same being immune to judicial scrutiny/review in the normal parlance, yet has to pass the test of equality clause enshrined in Article 14 of the Constitution of India, and such proposition is no more res-integra.

9. What is apparent from perusal of both Schemes i.e. ACP and

MACP is that conferment of financial upgradation under the provisions of the same does not confer any additional responsibility or enhance the position of an incumbent; neither his status, duties nor any other parameter of service condition gets altered to a superior state. Apparently and in fact, the status, duties and responsibilities of recipients of financial upgradation under ACP or MACP Scheme and for that matter even the non recipients of said benefits are same. It would have been a different aspect altogether had the non recipients of financial upgradation under MACP scheme been denied the benefit of enjoyment of the same scale of pay as was under the provisions of the Erstwhile ACP Scheme. Both ACP as well as the MACP Schemes are policy decisions of the Government of India formulated to ameliorate the heart burning of the employees and to deal with the problem of genuine stagnation and hardship faced by the employee in service by way of conferring certain financial benefits. There is not much difference between two schemes. Both are on the same pattern, formulated with same objective as stated above albeit, the years of service rendered against a post without any promotion for conferment of the benefits under MACP Scheme being different i.e.; 10, 20 and 30 years respectively. Once an incumbent is conferred with the benefit of financial upgradation under MACP Scheme, there remains absolutely no difference between the incumbents who enjoyed the benefits of financial upgradation under erstwhile ACP Scheme. Hence, in our considered opinion there cannot be



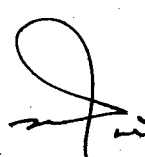

any difference in the enjoyment of the scale of pay by incumbents conferred with the benefits of financial upgradation under MACP Scheme in comparison to an incumbent conferred with said benefit under erstwhile ACP Scheme. The fixation of different scale of pay i.e.; Rs.9300-34800 + Grade Pay of Rs.4600/- for MACP beneficiaries and scale of pay of Rs.15600-39000/- + Grade Pay of Rs.5400/- to ACP beneficiaries is anomalous and faulty and cannot withstand the scrutiny of law and miserably fails the tests of equality clause enshrined in Articles 14 and 16 of the Constitution of India and "Equal Pay for Equal Work". What appears from the contentions raised in the Written Statement filed by the respondents is that they failed to construe applicant's grievance in its true perspective merely stating that he cannot compare two schemes of ACP and MACP for securing higher scale of pay where in fact, he was agitating his grievance against the discrimination and disparity in the matter of enjoyment of his pay scale. Another astonishing disparity and discrimination inherent in MACP Scheme is with regard to enjoyment of Grade Pay by the incumbents who are recipients of benefit under MACP Scheme inasmuch as the recipients of benefits under ACP Scheme owing to their fixation of pay scale under the 6th Central Pay Commission at a higher stage in the Pay Band, are in receipt of Grade Pay at a much higher stage, which stage the recipients of benefits under MACP Scheme would never reach in case of the Circle Organisers, and ACP recipients would be

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in receipt of further enhanced Grade Pay under MACP Scheme whenever they become eligible and the same may be case with regard to other posts also.

10 Thus there can exist no doubt that the provisions of MACP Scheme notified vide Office Memorandum dated 01.09.2008, more particularly, paragraph 11 that has resulted in mandating two different scales of pay for same post, is faulty and anomalous and requires judicial interference. Accordingly, the same is set aside and quashed. OA is allowed. The respondents are directed to formulate appropriate replacement provisions in MACP Scheme towards equalizing the scale of pay of incumbent Circle Organisers, who are recipients of the benefit of financial upgradation under erstwhile ACP or MACP Scheme. Aforenoted exercise may be undertaken as expeditiously as possible and not later than three months from the date of receipt of this order. No costs.

(Madan Kumar Chaturvedi)
Member(A)

 
(Mukesh Kumar Gupta)
Member(J)

cmj/



(O R D E R)**Per Hon'ble Mr Madan Kumar Chaturvedi M(A)**

11. I have carefully perused the order proposed by my learned brother Shri Mukesh Kumar Gupta, Hon'ble Member (J). This order was placed before me on 18th February, 2011. Since I have not been able to agree with the findings, I record my views as under.

12. The grievance projected in the present O.A pertains to the grant of benefit under Modified Assured Career Progression Scheme (MACP) with effect from 01.09.2008. It is the case of the applicant that MACP Scheme violates the mandate of **"EQUAL PAY FOR EQUAL WORK"** and applicant has neither been treated at par with similarly situated persons recruited along with him nor granted similar pay and allowances; thus he has been treated differently, and discriminated.

13. The 6th Central Pay Commission vide para 6.1.15 of its report has recommended MACP scheme. In this scheme number of financial upgradation have been increased. Group A posts have also been included in the list of beneficiaries. The O.M. dated 19.5.2009 was issued in supersession of the earlier ACP Scheme.

14. Hon'ble Supreme Court in the case of U.P.State Sugar Corporation Ltd. & another vs. Sant Raj Singh & Ors., AIR 2006 SC 2296 at page 2299 has held ; "the doctrine of equal pay for equal work as adumbrated under Article 39(d) of the Constitution of India read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects....."

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15. Article 14 forbids discrimination but where the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action, it would not be construed to be a case of discrimination.

16. If all men were created equal, and remained equal throughout their lives, then the same laws would apply to all men. But we know that men are unequal; consequently, a right conferred on persons that they shall not be denied "the equal protection of the laws" cannot mean the protection of the same laws for all. It is here that the doctrine of classification steps in, and given content and significance to the guarantee of the equal protection of the laws. Equal protection of the laws must mean the protection of equal laws for all persons similarly situated. A law based on a permissible classification fulfils the guarantee of the equal protection of the laws and is valid. On the contrary a law based on impermissible classification violates that guarantee and is void. All dogs are mammals. All cats are mammals. On the basis of these two statements it can not be concluded that all cats are dogs, despite the fact that both these creatures are mammals, and bear similarity to some extent. It is not open for the Tribunal to interfere with Government freedom which pertains to policy matter, unless the decision taken by the Government is vitiated by arbitrariness, unfairness, illegality, irrationality or wednesbury unreasonableness. Test is whether wrong is of such a nature as to require intervention on the decision making process. Government as the guardian of the finances, is expected to protect the financial interest of the State.

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17. Tribunal must not usurp the discretion of the public authority, exercised within the bounds of legal reasonableness. It must therefore, resist the temptation to draw the bounds too tightly, merely according to its own opinion, and strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the Tribunal's function to look further into its merits. Justice Warrington L.J. in *Short v. Poole Corporation* [(1926) Ch. 66 and 91] has held : "With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority." In the case of *Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation* [1948] 1 K.B.223 at 230, Lord Greene M.R. propounded the formula which is explained as under :

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in *Short v. Poole Corporation* [1926] Ch. 66 gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might

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almost be described as being done in bad faith; and, in fact, all these things run into one another."

In *Tata Cellular vs. Union of India*, (1994) 6 SCC 651, Hon'ble Supreme Court laid down the following basic principles relating to administrative law :-

- "(i) The modern trend points to judicial restraint in administrative action.
- (ii) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (iii) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (iv) Decisions made qualitatively by experts are not open to judicial scrutiny.
- (v) The decision must be tested by application of Wednesbury principle of reasonableness but must be free from arbitrariness not affected by bias or actuated by male fides.
- (vi) Quashing decisions may impose heavy administrative burden on the administration and lead to increase and unbudgeted expenditure.

18. It is a trite law canonized in the dictum "LEGES POSTERIORES PRIORES CONTRARIAS ABROGANT" (later law repeal earlier law inconsistent therewith). The legislature which possesses the supreme law making power in the State, possesses, as incidental thereto, the right to change, modify and abrogate the existing laws. In the present case MACP was notified by the Government vide O.M. dated 19.5.2009. In the erstwhile ACP Scheme Group 'B', 'C' & 'D' employee on completion of 12 and 24 years of regular service were entitled to first and second financial upgradation in their respective hierarchy subject to fulfillment of other conditions, whereas in the MACP Scheme the number of financial upgradation have been increased from two to three, and the Group 'A' has also been included in the list of beneficiaries. In the MACP an employee completing 10, 20 and 30 years of regular service and subject to fulfillment of other conditions is entitled to the first, second

and third pay upgradation in the hierarchy of their respective Pay Band and attached Grade Pay.

19. MACP Scheme supersede erstwhile ACP Scheme. It is made clear (Para 11 MACP) that no past cases would be re-opened while implementating MACP Scheme and the difference in pay scales on account of financial upgradation under the old ACP and under the new MACP Scheme within the same cadre shall not be construed as an anomaly. This Scheme was introduced on the basis of recommendation of the expert body, after considering all the relevant aspects of ACP Scheme. The modification in the ACP cannot be construed to be unreasonable or partial as it is a policy decision of the Government of India and is applicable to all the Central Government employees with effect from 01.09.2008. The conditions imposed in MACP Scheme cannot be tinkered and tailored as the Scheme is not violative of Article 14 and 16 of the Constitution of India.

In the result O.A stands dismissed. No costs.


(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER

REFERENCE UNDER SECTION 26 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

We, the Members of the Guwahati Bench of the Central Administrative Tribunal have differed in the order to be passed in the O.A No.190/2009. The question on which we have differed is referred to the Hon'ble Chairman under Section 26 of the Administrative Tribunals Act 1985 as under :-

“Whether in the facts and circumstances of the case the conditions imposed in MACP Scheme, more particularly, in para 10 & 11 as notified vide O.M. dated 19.5.2009 are violative of Article 14 and 16 of the Constitution of India and requires judicial interference ?”

(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER

(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ::

GUWAHATI BENCH:: GUWAHATI

ORIGINAL APPLICATION NO. 190 / 2009

Sri Gobinda Kumar Nath

.....Applicant

-Versus -

The Union of India & ors

....Respondents

SYNOPSIS

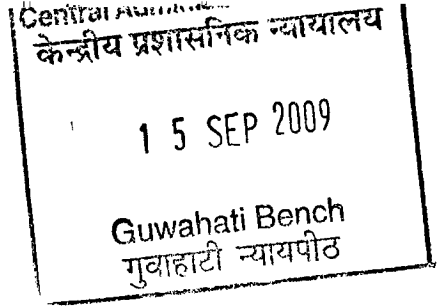
The applicant has preferred the present Original Application assailing the provisions of the Modified Assured Career Progression (MACP) Scheme introduced vide Office Memorandum bearing No. 35034/ 3/ 2008- Estt (D) dated 19.05.09 which places the applicant in a much disadvantageous position as compared against the benefits conferred to the incumbents under the previous Assured Career Progression Scheme introduced vide Office Memorandum bearing No. 35034/ 1/ 97-Estt (D) dated 09.08.1999.

The applicant was appointed as a Sub-Inspector (Pioneer) in the Sashastra Seema Bal (SSB) pursuant to a process of selection vide an order dated 31.05.1991. Subsequently, on completion of 6 years of service, the applicant became entitled to appear in the Limited Departmental Competitive Examination, which he cleared successfully and was thus promoted to the post of Circle Organiser vide the communication bearing No. 6/SSB/A2/ 94 (5)-II dated 18.04.98, which he joined on 11.11.1998. However, there remains little scope of further promotion of the applicant owing to limited posts in the higher grade and his seniority position in the gradation list of Circle Organisers.

The Ministry of Personnel, Public Grievance and Pensions introduced the Assured Career Progression Scheme as per the recommendations of the

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5th Pay commission. Similarly, the Modified Assured Career Progression Scheme was introduced as per the recommendations of the 6th pay commission. The Assured Career Progression Scheme entails two financial upgradation on completion of 12 and 24 years of regular service while the Modified Assured Career Progression Scheme envisages 3 financial upgradations on completion of 10, 20 and 30 years of service. However, the basic difference between the two schemes is that under the old scheme the eligible incumbents were granted the financial benefit of the time scale of pay attached to the immediate higher grade/ post while under the new scheme the eligible incumbents became entitled to the financial benefit of the higher grade pay attached to the immediate higher time scale of pay and not the pay band attached to the immediate higher grade/post. Thus, the new scheme detrimentally affects the financial prospects of the applicant and similarly situated persons. The Modified Assured Career Progression scheme implemented w.e.f. 01.09.08 is full of discrepancies such as the scheme envisages the granting of immediate higher grade pay to an eligible incumbent excluding the pay band. Moreover, under the Revised Pay Rules of 2008, the pay scale of incumbents who availed financial upgradations under the Assured Career Progression scheme has been fixed taking into account their previously upgraded pay scale thereby conferring upon them a higher scale of pay as compared to that of the applicant and similarly situated persons. The Circle Organisers who were conferred the benefits of financial upgradation under the previous Assured Career Progression scheme were granted the pay scale of the next promotional post, namely, Sub-Area Organiser, which is Rs. 8000-13500/- consequently their pay under the revised pay rules of 2008 has been fixed in the scale of Rs. 15600-39000/- + Grade Pay of Rs. 5400/- (PB-3). However, the pre-revised scale of pay attached to the post of Circle Organiser was Rs. 6500-10500/- which has been revised to Rs. 9300-34800/- and Grade pay of Rs. 4200. The applicant in terms of the Modified Assured Career Progression Scheme is due to receive his first financial upgradation on 11.11.08 and thus would be entitled to the next higher grade pay i.e. Rs. 4600 and not the grade pay of the promotional post. Also, an incumbent under the Modified Assured Career Progression Scheme even after receipt of the 3rd Assured Career Progression would never be entitled to the grade pay of Rs. 5400. Thus the Modified Assured Career



Progression Scheme is in clear violation of the basic principle of "Equal Pay for Equal Work" as it lays down two different pay structures for incumbents holding the same post i.e. Circle Organiser and discharging the same nature of duties and responsibilities and enjoying the same status and also infringes upon the mandate of Articles 14, 16 (1), 39(a) and 309 of the Constitution of India. The applicant highlighting his grievances preferred a representation dated 17.09.08 before the Director General, Sashastra Seema Bal, which remained unanswered. Thus aggrieved the applicant approached this Hon'ble Tribunal seeking and hoping for justice.

Filed By

Debjit Baruah
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ::

GUWAHATI BENCH:: GUWAHATI

ORIGINAL APPLICATION NO. 190 / 2009

Sri Gobinda Kumar Nath

....Applicant

-Versus -

The Union of India & ors

....Respondents

LIST OF DATES

1. 31.05.91 - The applicant pursuant to a process of selection appointed as a Sub-Inspector (Pioneer) in the Sashastra Seema Bal.
2. 18.04.98 - The applicant promoted to the grade of Circle Organiser subsequent to his successful clearance of the Limited Departmental Competitive Examination, vide communication bearing No. 6/SSB/A2/94 (5) II.
3. 09.08.99 - Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) introduced the Assured Career Progression Scheme vide the office memorandum bearing No. 35034/1/97- Estt (D), as per the recommendations of the 5th Pay Commission.
4. 01.09.08 - The Modified Assured Career Progression Scheme notified on 19.05.09 and made retrospective in operation comes into effect from 01.09.08.

5. 17.09.08 - The applicant preferred a representation before the Director General, Sashastra Seema Bal, highlighting his grievances as regards the discriminations that would be meted out to him while implementing the provisions of the Modified Assured Career Progression Scheme in his favour.
7. 6. 11.11.08 - The benefits under the Modified Assured Career Progression becomes due for receipt by the applicant.
7. 19.05.09 - Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) notified the Modified Assured Career Progression Scheme vide the office memorandum bearing No. 35034/3/2008- Estt (D), making in effective from 01.09.08 as per the recommendations of the 6th Pay Commission.

Filed by

Debjit Baruah

Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL::

GUWAHATI BENCH:: GUWAHATI

ORIGINAL APPLICATION NO. 190 / 2009

Sri Gobinda Kumar Nath

....Applicant

-Versus -

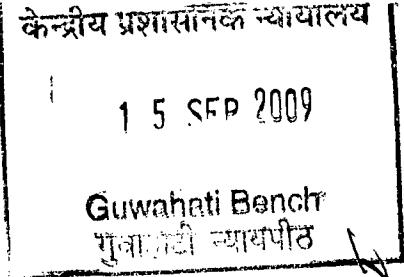
The Union of India & ors

....Respondents

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		Filed By

Debjit Baruah
Advocate



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

ORIGINAL APPLICATION NO. 190 / 2009

BETWEEN

Sri Gobinda Kumar Nath, son of Late
Tolan Chandra Nath, resident of Teacher
Colony, Diphu, Karbi Anglong, Assam.

....Applicant

-AND-

1. The Union of India represented by
the Secretary, Ministry of Home Affairs,
Department of Internal Security, Police – II
Division, Janpath, New Delhi – 110001.

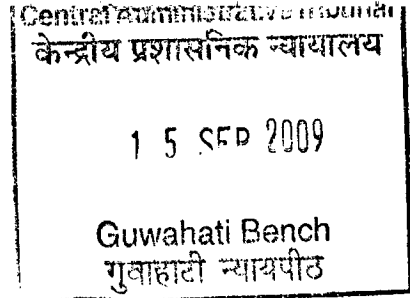
2. The Ministry of Personnel Public
Grievances and Pensions (Department of
Personnel and Training) represented by the
Secretary, Janpath, New Delhi-110001.

3. The Directorate General, Sashastra
Seema Bal, East Block-V, R.K.Puram,
New Delhi-110066.

....Respondents

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE:

This original application is preferred against the Office Memorandum bearing No. 35034/ 3/ 2008-Estt (D) dated 19.05.2009 which has the effect of meting out the applicant and similarly situated persons with hostile deprivation and discrimination in the matter of enjoying the benefits under



the Modified Assured Career Progression Scheme (MACPS) notified by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) inasmuch as the incumbents who becomes eligible for the grant of financial benefits under the scheme dated 19.05.2009 are placed at a much disadvantageous position with regard to the incumbents who had already enjoyed the benefits under the previous Assured Career Progression Scheme dated 09.08.1999, thereby violating the very basic principle of "Equal Pay For Equal Work".

2. **JURISDICTION:**

The applicant further declares that the subject matter of the case is within the jurisdiction of this Administrative Tribunal.

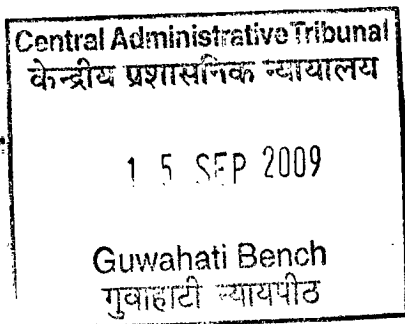
3. **LIMITATION:**

The applicant declares that the instant case has been filed within the limitation period prescribed under Section 21 of the Central Administrative Tribunal Act, 1985.

4. **FACTS OF THE CASE:**

4.1. That the applicant is a citizen of India and a resident in the state of Assam and as such he is entitled to all the rights, protections and privileges guaranteed under the Constitution of India and the laws framed there under.

4.2. That the applicant states that pursuant to a process of selection, he was selected and appointed as a Sub-Inspector (Pioneer) in the Sashastra Seema Bal in the year 1991 vide an order dated 31.05.1991. Thereafter, he was posted at Mizoram and deputed for undergoing the prescribed 7 (seven) months basic training, which he completed successfully. The applicant was in the course of his engagement in the organization posted at various locations through the country and always discharged the duties and responsibilities entrusted to him to the best of his abilities and without any blemish to any quarter.



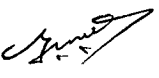
4.3 That the applicant states that one of the avenues of promotion for the incumbents in the cadre of Sub-Inspector is the cadre of Circle Organizer, which is a selection grade post and one has to qualify in the Limited Departmental Competitive Examination to be promoted to the cadre of Circle Organizer. The applicant after having rendered 6 (six) years of service in the cadre of Sub-Inspector was eligible for appearing in the said Limited Departmental Competitive Examination and successfully cleared the same. Thereafter vide a communication bearing No.6/SSB/A2/94(5)-II dated 18.04.1998, the applicant came to be promoted to the grade of Circle Organizer and he joined the said grade on 11.11.1998 on being released by the concerned authority to facilitate his joining in the new grade.

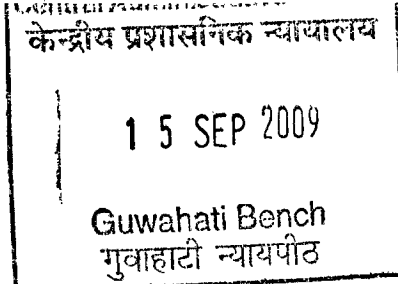
A copy of the order dated 18.04.1998 is annexed as Annexure – 1.

4.4 That your applicant states that since the year 1998 he has been continuing in the same grade till date and there is no scope for his further promotion to higher grades of Sub Area Organiser, Joint Area Organiser, Area Organiser, DIG etc. inasmuch as there are very limited posts in the said higher promotional grades and owing to his seniority position in the gradation list of Circle Organizers, it would not be possible for him during his service career to achieve promotion to the said higher grades in the service.

4.5 That your applicant states that the scale of pay attached to the post of Circle Organizer in the pre-revised scale was Rs. 6500-200-10500/- which was revised to Rs.9300-34800/- in the Pay Band – 2 in terms of the recommendation of the Sixth Pay Commission. The applicant has been granted the benefit of pay fixation in terms of the provisions of the Revised Pay Rules of 2008.

4.6 That your applicant states that prior to the recommendations of the Sixth Pay Commission, all the Revision of Pay Rules adopted by the Central Government as well as the different State Governments had recommended higher pay scale to different categories of employees in



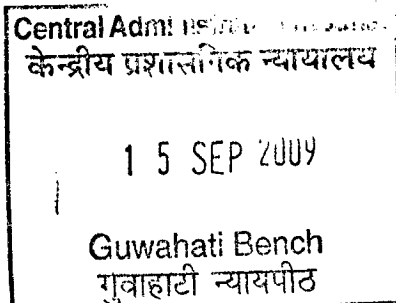


relation to the cadre/post. The recommendations of the Sixth Pay Commission accepted and implemented by the Central Government had adopted a different yard stick for fixing the pay scales of the different categories of employees, which is anew to the Indian context. This time around the Sixth Pay Commission while recommending pay scale to different categories of cadres/posts, have taken note of the pre-revised pay scales attached to a particular cadre/post and on the basis of the pre-revised scale, a new pay scale has been prescribed for the various cadres/post. Further merger has been effected of different pre-revised scales attached to various cadres/posts in the hierarchal system of cadres/posts and a common pay scale have been prescribed for said various cadres/posts thereby flouting with the financial hierarchy system of the cadres/posts. It is pertinent to mention here that under the provisions of the Revised Pay Rules of 2008, pay scale means and includes the Pay Band + Grade Pay.

4.7 That the applicant states that in terms of the recommendation of the Fifth pay Commission, the Central Government in the Ministry of Personnel Public Grievances and Pensions (Department of Personnel and Training) formulated the Assured Career Progression Scheme vide the Office Memorandum bearing No. 35034/1/97-Estt(D) dated 09.08.1999 to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. In terms of the provisions of the said scheme, two financial upgradations were granted to the employees of Group – B, C and D categories on completion of 12 (twelve) and 24 (twenty four) years of regular service respectively.

A copy of the Office Memorandum dated 09.08.1999 is annexed as **Annexure – 2.**

4.8 That your applicant states that after coming into effect the Sixth Pay Commission, the Ministry of Personnel Public Grievances and Pensions (Department of Personnel and Training) vide the Office Memorandum bearing No. 35034/3/2008-Estt(D) dated 19.05.2009 introduced the Modified Assured Career Progression Scheme in tune with the Assured Career Progression Scheme of 1999, albeit with certain changes. In terms of the new



scheme, the Central Government employees have been granted the benefit of 3 (three) financial upgradations on completion of 10 (ten), 20 (twenty) and 30 (thirty) years of regular service respectively. The most vital difference between the two schemes is that under the old scheme the incumbents were granted the financial benefit of the time scale of pay attached to the immediate higher grade/post where as under the new modified scheme, the eligible incumbents would be entitle to the financial benefit of the higher grade pay attached to the immediate higher time scale of pay and not the pay band attached to the said higher grade/post, which is the root cause of the deprivations and discriminations being meted out to the applicant and other similarly situated employees.

A copy of the Office Memorandum dated 19.05.2009 is annexed as Annexure – 3.

4.9 That your applicant states that the Modified Assured Career Progression Scheme has been implemented w.e.f 01.09.2008. The scheme contemplates grant of the immediate higher grade pay to an eligible incumbent and not the actual pay structure i.e. the pay band. Further it allows incumbents who had enjoyed the financial benefits of placement in the immediate higher pay scale of the promotional post under the previous scheme to have their pay fixed under the Revised Pay Rules of 2008 by taking into account the financial benefit enjoyed under the previous scheme thereby facilitating the said incumbents to enjoy a higher pay scale i.e. Pay Band + Grade Pay, which is attached to a particular cadre/ post. Further discrepancy in the new scheme is that the higher grade pay granted to eligible incumbents under the modified scheme, in most of the cases is lower than the grade pay enjoyed by the incumbents who had enjoyed the benefit of fixatation of their pay scales under the Revised Pay Rules by taking into account the financial upgradations under the previous Assured Career Progression Scheme.

4.10 That your applicant states that the pre-revised scale of pay attached to the post of Circle Organiser is Rs. 6500-10500/- which has been revised to 9300-34800/- under the new Pay Rules. The next avenue of

promotion for the Circle Organizers is the post of Sub-Area Organiser (SAO). The post of Sub-Area Organiser (SAO) carried the per-revised scale of Rs. 8000-13500/-, which has been revised to Rs. 15600-39100 + Grade Pay of 5400 (PB-3). The Circle Organisers who got the benefit of financial upgradation under the previous ACP Scheme were granted the pay scale of the promotional post i.e., Rs. 8000-13500/-. Consequently, their pay under the Revised Pay Rules has been fixed in the scale of pay of Rs. 15600-39000 + Grade Pay of Rs. 5400 (PB-3). The incumbents who becomes eligible under the new Modified Assured Career Progression Scheme, by virtue of the discriminatory provisions therein would get the benefit of the next higher grade pay, which Rs 4600/- and not the grade pay of the promotional post.. An incumbent who gets the benefit under the new scheme would never even after receipt of the 3rd ACP be entitled to the grade pay of Rs.5400/ whereas the incumbents enjoying the benefits under the old scheme would be eligible for further financial upgradations.

A copy of an order dated 09.06.2009 fixing pay of incumbents who enjoyed financial upgradations under the previous ACP Scheme is annexed as Annexure – 4.

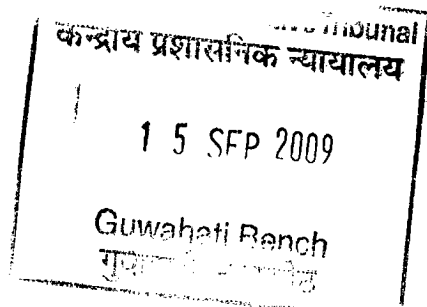
4.11 That your applicant states that on coming into force of the Revised Pay Rules of 2008, his pay has been fixed in the scale of Rs. 9300-34800 (PB-II) + Grade Pay of Rs. 4200/-. The applicant in terms of the provisions of the Modified Assured Career progression Scheme is due to receive his 1st ACP w.e.f 11.11.2008. On being bestowed with the aforesaid financial upgradation, the applicant would be granted the Grade Pay of Rs. 4600/-, which is the next higher Grade Pay in PB-II and there would be no upgradation in the mater of enjoyment of the Pay Band, whereas the incumbents who are his batch mates, but enjoyed the benefit of financial upgradation under the previous Assured Career Progression Scheme have been receiving their pay scale in the Pay Band of Rs.15600-39000 + Grade Pay of Rs. 5400. The anomalous policy adopted vide the Office Memorandum dated 19.05.2009 had resulted in deprivation and

discrimination against the applicant and similarly situated persons, which is uncalled for and cannot be justified under any circumstance.

4.12 That your applicant states that the financial benefits that he would be entitled to under the Modified Assured Career progression Scheme and the incumbents who had enjoyed the benefits under the previous ACPS are hugely disproportionate. The applicant and the illegally and arbitrarily benefited incumbents under the previous Assured Career Progression Scheme are holding the same post i.e., Circle Organiser and they are discharging the same nature of duties and responsibilities and their status is also similar. In such circumstance, two different pay structures could not have been prescribed for similarly situated incumbents, which is outrightly discriminatory being in clear violation of the mandate of Article 14 and 16 of the Constitution of India. There is no reasonable basis for such discrimination and is against the mandate of the catena of judicial pronouncements both of the Apex Court as well as the various High Courts of the country, which prohibits "Class Discrimination" without any "Intelligible Differentia".

4.13 That the applicant states that the impugned policy decision contained in the Office Memorandum dated 19.05.2005 is against the basic principle of "Equal Pay For Equal Work" enunciated over the years by the judicial pronouncements of the highest judicial authority of the country i.e., the Apex Court. There can be no discrimination in respect of the pay scale enjoyed by incumbents whose status, duties and responsibilities are same in nature and on that count alone the impugned Office Memorandum dated 19.05.2009 is liable to be set aside and quashed.

4.14 That the applicant states that the service conditions of an employee cannot be altered to his disadvantage by way of modification/alteration brought in subsequently to the provisions of law applicable to an employee. The impugned Modified Assured Career Progression Scheme dated 19.05.2009 has the effect of modifying/altering the service condition of the applicant and other similarly situated persons to their disadvantage and detriment inasmuch as matters relating to enjoyment of pay and allowance being a service condition, the applicant and similar others have



been discriminated and illegally deprived of their right to enjoy the same financial benefits which are being enjoyed by the incumbents who were bestowed with the benefit of financial upgradation under the previous Assured Career Progression Scheme of 1999.

4.15 That the applicant states that he had preferred a representation dated 17.09.2008 before the Director General, SSB, highlighting amongst others, the above stated aspect of the matter and praying for rectification of the same, but the respondent authorities have turned a blind eye to his such entreaties making him to suffer the consequences of such faulty policy decision adopted vide the Office Memorandum dated 19.05.2009. As such the applicant is before the protective hands of Your Lordships' praying for appropriate relief(s).

A copy of the representation dated 17.09.08 is annexed as Annexure – 5.

4.16 That the applicant states that inaction and the wanton attitude on the part of the respondent authorities in failing to rectify the above mentioned anomaly has violated the principles of Natural Justice, Administrative Fair Play and the basic principle of "Equal Pay For Equal Work" established by law and not extending to the applicant his just and legitimate claim has thereby infringed upon the mandate of Articles 14, 16(1), 39(a) & 309 of the Constitution of India.

4.17 That the applicant states that he has no other appropriate, equally efficacious alternative remedy available to him and the remedy sought for herein when granted would be just, adequate, proper and effective.

4.18 That the applicant demanded justice, but the same has been denied to him.

4.19 That this application has been filed bonafide for securing the ends of justice.

15 SEP 2009

Guwahati Bench
गुवाहाटी न्यायपीठ**5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:**

5.1 For that the action on the part of the respondent authorities in formulating a faulty and discriminatory scheme by the name and style "Modified Assured Career Progression Scheme" vide the Office Memorandum dated 19.05.2009 is bad in law as well as in facts.

5.2 For that the Office Memorandum dated 19.05.2009 having denied the benefit of fixation of pay scale to incumbents in the scale of pay attached to the higher/ promotional post, the same has resulted in perpetuation of illegality against the applicant and other similarly situated employees.

5.3 For that the Office Memorandum dated 19.05.2009 has the effect of flouting the very basic principle of "Equal Pay For Equal Work" by allowing fixation of pay scale of incumbents by prescribing different yard sticks and such an action is unsustainable in the eye of law.

5.4 For that the implementation of the provisions of the Office Memorandum dated 19.05.2009 has meted out the applicant and similarly situated incumbents with hostile discrimination inasmuch as the incumbents who had enjoyed the financial upgradations under the previous Assured Career Progression Scheme are enjoying their pay and allowance at a much higher rate than the incumbents who have become eligible for financial upgradations under the new Modified Assured Career Progression Scheme dated 19.05.2009 and such discrimination being in violation of the provisions of Article 14 and 16 is unconstitutional and liable to be set aside and quashed.

5.5 For that Article 14 and 16 prohibits "Class Discrimination" without there being any "Intelligible Differentia" and the impugned Office Memorandum having prescribed different yard sticks for fixation of pay and allowance for incumbents eligible for financial upgradations under the two different Assured Career Progression Schemes without there being any reasonable basis for the same, the same is in clear violation of the mandate of the abovementioned constitutional provisions.



15 SEP 2009

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

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5.6 For that the impugned Office Memorandum dated 19.05.2009 has the effect of modifying/altering the service condition of the applicant and similar employees to their disadvantage and detriment in relation to the incumbents whose pay and allowance have been fixed in terms of the previous Assured Career Progression Scheme and such modification/alteration is impermissible in the eye of law.

5.7 For that in any view of the matter the impugned action on the part of the respondent authorities has the effect of prescribing different pay structure to similarly situated employees, which is unsustainable in the eye of law.

6. **DETAILS OF THE REMEDIES EXHAUSTED:**

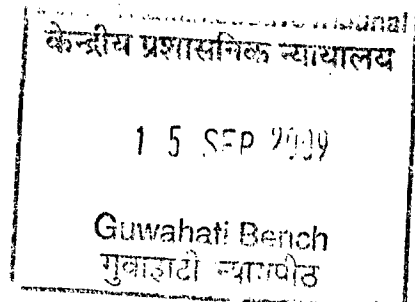
The applicant declares that he has no other alternative and efficacious remedy except by way of filing this application. As such he is seeking urgent and immediate relief.

7. **MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:**

The applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other court, authority or any other bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. **RELIEF SOUGHT FOR:**

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the relief's sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following relief's.



8.1 To set aside and quash the provisions of the Office Memorandum dated 19.05.2009 to the extent it deprives the applicant from enjoying the benefit of same pay and allowances as compared to the incumbents who were granted the benefits of financial up-gradation under the previous Assured Career Progression Scheme of 1999, which are contrary to the principle of "Equal Pay For Equal Work" and being in violation of Article 14 and 16 of the Constitution of India.

8.2 To direct the respondent authorities to grant financial upgradation to the applicant in the time scale of pay (Pay Band + Grade Pay) granted to the incumbents who have enjoyed the benefit of financial upgradation under the previous Assured Career Progression Scheme of 1999. ✓

8.3 Cost of the application.

8.4 Any other relief/ relief's that the applicant in the facts and circumstances of the case would be entitled to.

9. **INTERIM ORDER PRAYED FOR:**

In this facts and circumstance the applicant does not pray for an interim direction at this stage but however prays for early hearing and disposal of the matter.

10.

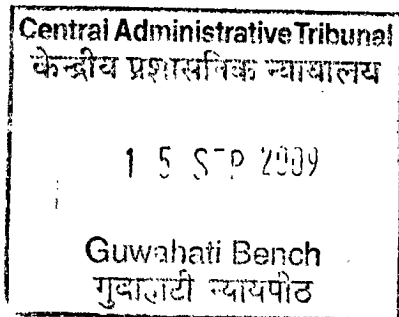
11. **PARTICULARS OF THE I.P.O:**

- i) I.P.O No. : 396 422941
- ii) Date : 05/09/09.
- iii) Payable at : Guwahati

12. **LIST OF ENCLOSURES:**

As stated in the index.

-12-



--VERIFICATION--

I, Shri Gobinda Kumar Nath, aged about 42 years, son of Late Tolan Chandra Nath, resident of Teacher Colony, Diphu, in the district of Karbi Anglong, Assam, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case, the statements made in paragraph 1 to 3, 4'1, 4'2, 4'4-4'6
4'9, 4'11-4'14 are true to my knowledge; those made in paragraphs 4'3, 4'7, 4'8, 4'10 and 4'15 are true to my information derived from the records and the rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign this verification on this the 8th day of September 2009, at Guwahati.

Gobinda K. Nath.
(G. K. NATH)
DEPONENT

ANNEXURE-1

No. 1340	Date 20/04/98
Comdt	8/84/98
2 IC	
Adj	
QM	0099
Hd Ck	12/19/98

No. 6/SSB/A2/94(5)-II
DIRECTORATE GENERAL OF SSB,
OFFICE OF THE DIRECTOR
EAST BLOCK, V. R.K. PURAM,
NEW DELHI- 110066.

DATED,

THE,

1 MARCH,

1998.

TEZU

O R D E R

On the basis of recommendations of the DPC, Director, SSB is pleased to promote the following departmental candidates, who appeared and qualified in the PET/written test through Limited Departmental Competitive Examination for the posts of CO held at G.C. SSB, Delhi on 7th & 8th Jan, 1998 to the grade of Circle Organiser in the pay scale of Rs. 2000-3200/- (pre-revised) with effect from the date, they assume charge in the respective units:-

SNo.	Name of candidate.	Present rank.	Present place of posting.	Posting on promotion.
<u>S/Shri.</u>				
1.	Umed Singh	SI(P)	GC Srinagar.	UP Divn.
2.	Gobind Kr. Nath.	SI(P)	GC Tezu.	AP Divn.
3.	P.V. Joy.	SI(GD)	on depu to SPG	NB's.
4.	Pramjit Singh Kutlehria	SI(GD)	GC Shamshi	HP Divn.
5.	G.C. Barman (SC)	SI-(GD)	GC Barasat.	NB's.
6.	Pradeep Kr. Gunwant	SI(GD)	GC Tezu.	AP Divn.
7.	B.S. Chauhan.	SI(Tele)	GC S. Nagar.	UP Divn.
8.	Hrishikesh Konwar.	SI(P)	GC Raiganj	NA Divn.
9.	Sudhir Bhardwaj.	DFO(T)	TC FBD.	HP Div.
10.	Surendra Singh Rawat.	DFO(M)	AO, Bauri	UP Div.
11.	Dilip Mandal (SC)	SI(GD)	GC K. Nagar	NB's.

2. The above said officer will be on probation for a period of two year.

3. The promotion is subject to passing the OGC course and CO/PC course. During the probation period, the aforesaid officers have to pass these courses from any of the Training Centres in which they are sponsored failing which their services shall be terminated.

(S. S. BORA)

JOINT DEPUTY DIRECTOR (EA)

Distribution:-

- The Director of Accounts, Cabinet Secretariat, P.V. Puram, New Delhi.
- Asstt. Director (SRG), 1, Safdarjung Lane, N. Delhi.

Contd.....2/-

Central Administrative Tribunal
केंद्रीय प्रशासनिक न्यायालय
15 SEP 2009
Guwahati Bench
গুৱাহাটী ন্যায়ালয়

Certified to be true copy
Dilip Mandal
Guwahati

: 2 :

2. The DOs: UP/AP/HP/SE Division. They are requested to decide their place of posting and intimate the same to the concerned unit through signal. They may be allowed to join only after they produce, following documents ~~xxxxxxx~~ which may please be forwarded to this Directorate to enable us to issue necessary notification in respect of their appointment as Circle Organiser:-
- (a) Medical fitness certificate through Medical Board.
 - (b) Original Matriculation & original degree certificates.
 - (c) Photostat copies of verification of character and antecedents done at their initial appointment.
 - (d) SSu clearance.
 - (e) Declaration that he has not got more than one wife living.
 - (f) Taking of oath of allegiance duly countersigned.
 - (g) Caste certificate, if any.

3. Commandant, GC Srinagar/GC Tezu/GC Shamshi/GC Sx Raigunj/
IC Faridabad/GC Krishnanagar./GC Barasat.

Section Officers, El/Al Br. at Dte.

Office order file.

Individual concerned.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

15 SEP 2009

Guwahati Bench

गुवाहाटी न्यायापीठ

MOST IMMEDIATE

No.35034/1/97-Est(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi 110001
August 9, 1999

OFFICE MEMORANDUM

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

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

2. GROUP 'A' CENTRAL SERVICES

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

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

POSTS IN GROUP 'A', 'B', 'C' AND 'D' CATEGORIES

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two

financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

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

*Certified
to be
true copy
Deputy Secretary
Advocate*

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

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

3. SCREENING COMMITTEE

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

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

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

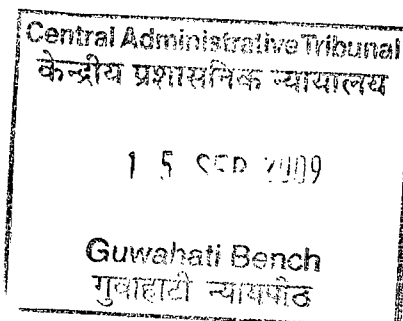
3.4 To make the Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee of the current financial year within a month from the date of issue of these instructions to consider the cases that have already matured or would be maturing upto March 31, 2000 for grant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

7. Ministries/Departments are advised to explore the possibility of effecting savings so as to minimise the additional financial commitment that introduction of the ACP Scheme may entail.

8. The ACP Scheme shall become operational from the date of issue of this Office Memorandum.

9. In so far as persons serving in the Indian Audit and Accounts Departments are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

10. The Fifth Central Pay Commission in paragraph 52.15 of its Report has also separately recommended a "Dynamic Assured Career Progression Mechanism" for different streams of doctors. It has been decided that the said recommendation may be considered separately by the administrative Ministry concerned in consultation with the Department of Personnel and Training and the Department of Expenditure.



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11. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP Scheme shall be given by the Department of Personnel and Training (Establishment-D).

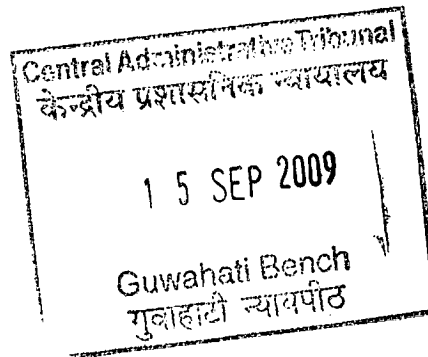
12. All Ministries/Departments may give wide circulation to these instructions for guidance of all concerned and also take immediate steps to implement the Scheme keeping in view the ground situation obtaining in services/cadres/ posts within their administrative jurisdiction;

13. Hindi version would follow.

(K.K. JHA)
Director(Establishment)

To

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



CONDITIONS FOR GRANT OF BENEFITS UNDER THE ACP SCHEME

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

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

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

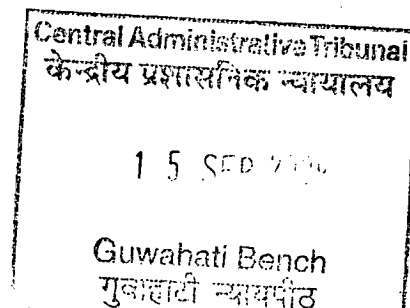
4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation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

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

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

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

7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-I, which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-I, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which



have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;

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

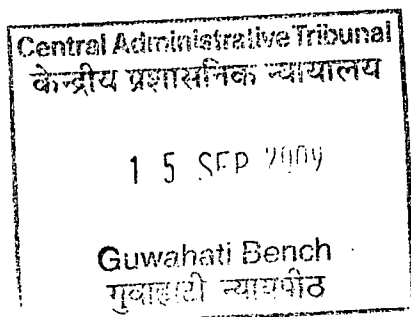
9. On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(I) a(1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office Memorandum No.1/3/97-Pay.I dated July 5, 1999. The financial benefit allowed under the ACP Scheme shall be final and no pay-fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade;

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

11. In the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CCA) Rules, 1985 and instructions thereunder;

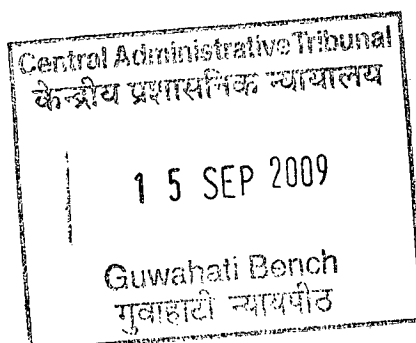
12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department -- not the employees -- shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;



14. In case of an employee declared surplus in his/her organisation and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the purpose of giving financial upgradation under the Scheme; and

15. Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the scheme) shall be given at the subsequent stage (second) of financial upgradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently, they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme.



(K.K. JHA)
Director (Establishment)

No.35034/3/2008-Estt. (D)

Government of India

Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)**ANNEXURE- 3**North Block, New Delhi, the 19th May, 2009OFFICE MEMORANDUM**SUBJECT: - MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.**

The Sixth Central Pay Commission in Para 6.1.15 of its report, has recommended Modified Assured Career Progression Scheme(MACPS). As per the recommendations, financial upgradation will be available in the next higher grade pay whenever an employee has completed 12 years continuous service in the same grade. However, not more than two financial upgradations shall be given in the entire career, as was provided in the previous Scheme. The Scheme will also be available to all posts belonging to Group "A" whether isolated or not. However, organised Group "A" services will not be covered under the Scheme

2. The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of a MACPS and has accepted the same with further modification to grant three financial upgradations under the MACPS at intervals of 10, 20 and 30 years of continuous regular service .

3. The Scheme would be known as "**MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.**" This Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group "A", "B", and "C" Central Government Civilian Employees **except officers of the Organised Group "A" Service.** The status of Group "D" employees would cease on their completion of prescribed training, as recommended by the Sixth Central Pay Commission and would be treated as Group "C" employees. Casual employees, including those granted 'temporary status' and employees appointed in the Government only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme. The details of the MACP Scheme and conditions for grant of the financial upgradation under the Scheme are given in Annexure-I.

4. An Screening Committee shall be constituted in each Department to consider the case for grant of financial upgradations under the MACP Scheme. The Screening Committee shall consist of a **Chairperson** and **two members.** The members of the Committee shall comprise officers holding posts which are at least one level above the grade in which the MACP is to be considered and not below the rank of Under Secretary equivalent in the Government. The Chairperson should generally be a grade above the members of the Committee.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

15 SEP 2009

Guwahati Bench
गुवाहाटी न्यायापीठ

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*Certified
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Debjit Baruah
Advocate*

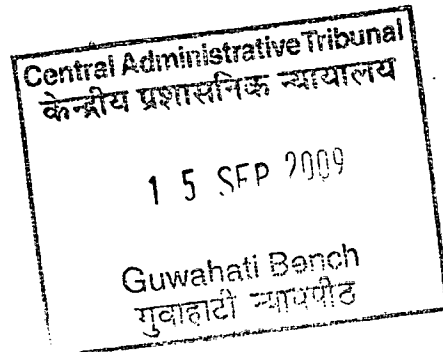
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Screening

- ainendra Kumar)

To

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Copy to :-

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

15 SEP 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

-4-

ANNEXURE-I

MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS)

1. There shall be three financial upgradation s under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.

2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section I, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion.

3. The financial upgradation s under the MACPS would be admissible up-to the highest grade pay of Rs. 12000/ in the PB-4.

4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage.

5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs.

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-5-

Illustration-1

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

Rs. 5000-8000, Rs. 5500-9000 & Rs. 6500-10500.

- (a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.
- (b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs. 4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs. 4600 and Rs. 4800 in the pay band PB-2.

6. In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS.

6.1 In the case of ACP upgradations granted between 01.01.2006 and 31.08.2008, the Government servant has the option under the CCS (RP) Rules, 2008 to have his pay fixed in the revised pay structure either (a) w.e.f. 01.01.2006 with reference to his pre-revised scale as on 01.01.2006; or (b) w.e.f. the date of his financial upgradation under ACP with reference to the pre-revised scale granted under ACP. In case of option (b), he shall be entitled to draw his arrears of pay only from the date of his option i.e. the date of financial upgradation under ACP.

6.2 In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a result of the implementation of Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay, the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1st ACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs. 6500-10500 corresponding to the revised grade pay of Rs. 4200 in the pay band PB-2, he will now be granted grade pay of Rs. 4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. In CPWD by granting them the grade pay of Rs. 4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPS, all the financial upgradations under the Scheme should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008.

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Civil Service
Anwarul Haq Bhatti

7. With regard to fixation of his pay on grant of promotion/financial upgradation under MACP Scheme, a Government servant has an option under FR22 (I) (a) (I) to get his pay fixed in the higher post/ grade pay either from the date of his promotion/upgradation or from the date of his next increment viz. 1st July of the year. The pay and the date of increment would be fixed in accordance with clarification no.2 of Department of Expenditure's O.M. No.1/1/2008-IC dated 13.09.2008.

8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.

9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.

10. Past service rendered by a Government employee in a State Government/statutory body/Autonomous body/Public Sector organisation, before appointment in the Government shall not be counted towards Regular Service.

11. 'Regular service' shall include all periods spent on deputation/foreign service, study leave and all other kind of leave, duly sanctioned by the competent authority.

12. The MACPS shall also be applicable to work charged employees, if their service conditions are comparable with the staff of regular establishment.

13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.

14. The MACPS is directly applicable only to Central Government Civilian employees. It will not get automatically extended to employees of Central Autonomous/Statutory Bodies under the administrative control of a Ministry/Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective Governing Body/Board of Directors and the administrative Ministry concerned and where it is proposed to adopt the MACPS, prior concurrence of Ministry of Finance shall be obtained.

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न्यायपीठ

15. If a financial upgradations under the MACPS is deferred and not allowed after 10 years in a grade pay, due to the reason of the employees being unfit or due to departmental proceedings, etc., this would have consequential effect on the subsequent financial upgradation which would also get deferred to the extent of delay in grant of first financial upgradation.
16. On grant of financial upgradation under the Scheme, there shall be no change in the designation, classification or higher status. However, financial and certain other benefits which are linked to the pay drawn by an employee such as HBA, allotment of Government accommodation shall be permitted.
17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs. 7600 and above.
18. In the matter of disciplinary/ penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder.
19. The MACPS contemplates merely placement on personal basis in the immediate higher Grade pay /grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Therefore, no reservation orders/roster shall apply to the MACPS, which shall extend its benefits uniformly to all eligible SC/ST employees also. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme.
20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS.
21. Pay drawn in the pay band and the grade pay allowed under the MACPS shall be taken as the basis for determining the terminal benefits in respect of the retiring employee.
22. If Group "A" Government employee, who was not covered under the ACP Scheme has now become entitled to say third financial upgradation directly, having completed 30 year's regular service, his pay shall be fixed successively in next three immediate higher grade pays in the hierarchy of revised pay-bands and grade pays allowing the benefit of 3% pay fixation at every stage. Pay of persons becoming eligible for second financial upgradation may also be fixed accordingly.

23. In case an employee is declared surplus in his/her organisation and appointed in the same pay-scale or lower scale of pay in the new organization, the regular service rendered by him/her in the previous organisation shall be counted towards the regular service in his/her new organisation for the purpose of giving financial upgradation under the MACPS.

24. In case of an employee after getting promotion/ACP seeks unilateral transfer on a lower post or lower scale, he will be entitled only for second and third financial upgradations on completion of 20/30 years of regular service under the MACPS, as the case may be, from the date of his initial appointment to the post in the new organization.

25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal.

26. Cases of persons holding higher posts purely on adhoc basis shall also be considered by the Screening Committee alongwith others. They may be allowed the benefit of financial upgradation on reversion to the lower post or if it is beneficial vis-a-vis the pay drawn on adhoc basis.

27. Employees on deputation need not revert to the parent Department for availing the benefit of financial upgradation under the MACPS. They may exercise a fresh option to draw the pay in the pay band and the grade pay of the post held by them or the pay plus grade pay admissible to them under the MACPS, whichever is beneficial.

✓ 28. Illustrations

A (i) If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 gets his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs.2400 on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-I in the Grade Pay of Rs.2800 after completion of 18 years (8+10 years).

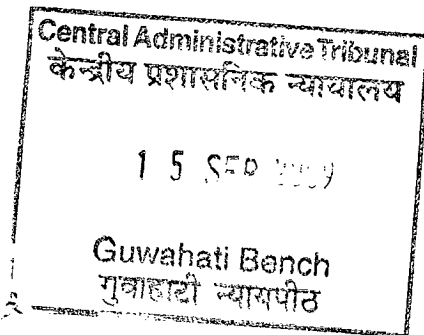
(ii) In case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200 on completion of further 10 years of service i.e. after 28 years (8+10+10).

(iii) However, if he gets 2nd promotion after 5 years of further service in the pay PB-II in the Grade Pay of Rs.4200 (Asstt. Grade/Grade "C") i.e. on completion of 23 years (8+10+5years) then he would get 3rd financial upgradation after completion of 30 years i.e. 10 years after the 2nd ACP in the PB-II in the Grade Pay of Rs.4600.

In the above scenario, the pay shall be raised by 3% of the total pay in the Pay Band and Grade Pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same Grade Pay or in the higher Grade Pay. Only the difference of grade pay would be admissible at the time of promotions.

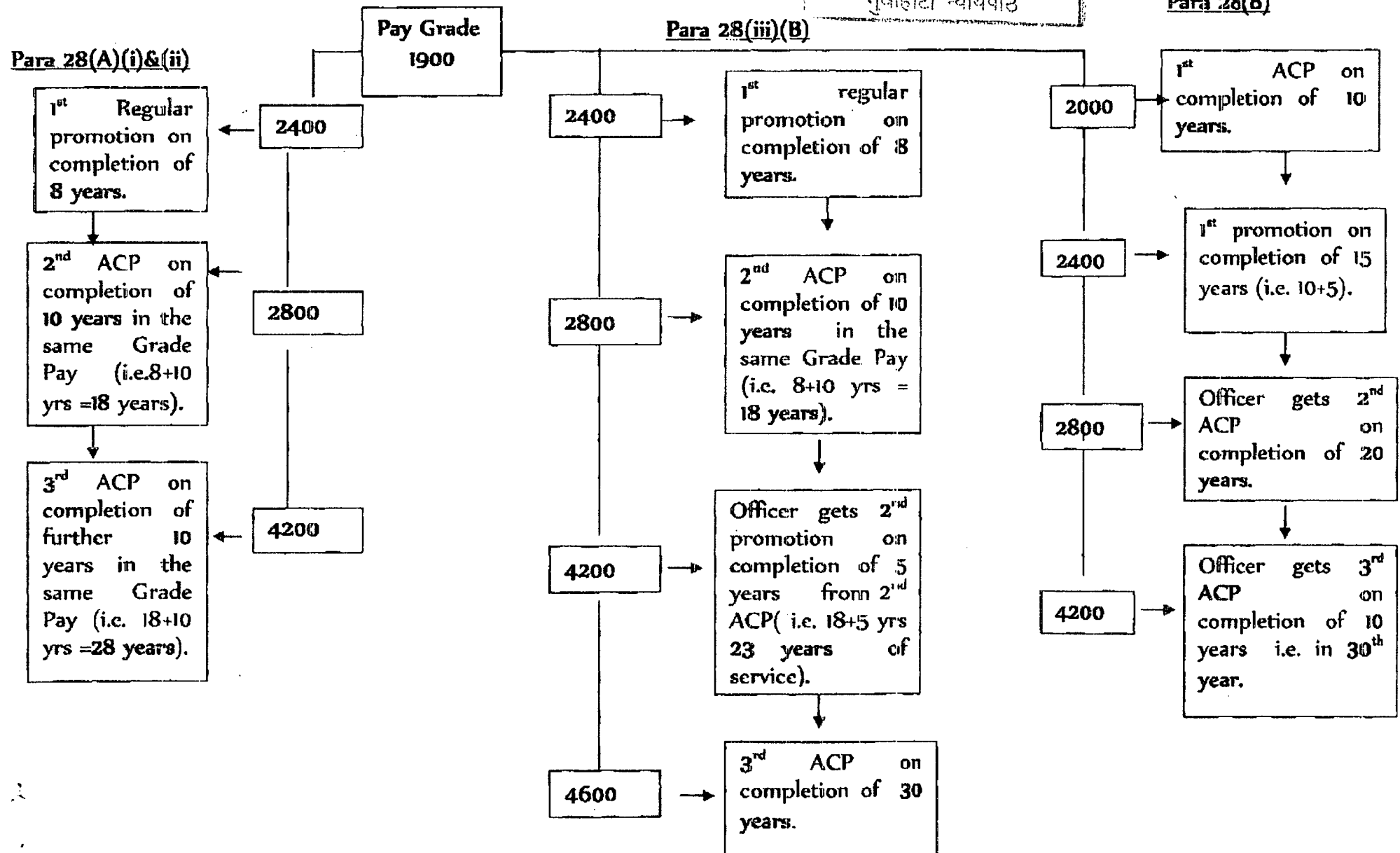
29-
B. If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-I in the Grade Pay of Rs.2000 and 5 years later he gets 1st regular promotion (UDC) in PB-I in the Grade Pay of Rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-I in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier.

C. If a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy.



7
(S.Jainendra Kumar)
Deputy Secretary to the Govt. Of India.

ILLUSTRATIONS



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ATTENTION SH. SHAMCHET SINGH, CO

12866
10/6/09

1/2

No 05943263590

Kind Attention A. Raman Tyagi, CO

Directorate General
Sashastra Seema Bal
Ministry of Home Affairs,
New Delhi

Sh. Satish Khatana C.O

No. 30/SSB/Pers.1/2004(7) 4/89-4202

Dated 09-06-2009

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
15 SEP 2009
Guwahati Bench
গুৱাহাটী সায়

ORDER

In pursuance of Paragraph 1 of Annexure-1 of D.O. No. 35034/3/2008 Estt. (B) dated 19.05.2009, the pay of the following Circle Organisers who have been granted financial upgradation under ACP Scheme on 01.01.2006, 12 years regular service in the grade w.e.f. dates as mentioned against each and opted to fix their pay with effect from 01.01.2006 under CCS(RP) Rules 2008 is hereby fixed as under: -

Existing Pay scale of Circle Organiser
Revised pay scale of Circle Organiser
Pay scale after granting ACP

- ① Rs. 6500-10500/-
- ② PB-2 Rs. 9300-34800/- + G.P. Rs. 4200/-
- ③ (i) Pre-revised: Rs. 8000-13500/-
- ④ (ii) Revised: PB-3 Rs. 15600-39100+
G.P. Rs. 5400/-

Sl. No.	Name of CO	Pay as on 01.01.06	Pay fixed in the revised pay band as per fitment table as on 01.01.06	Pay fixed on granting 1st financial upgradation under ACP Scheme w.e.f. the date mentioned against each	Pay after granting increments	Remarks
1	And Kumar Sharma	Ra 8500/- (Ra. 6500-10500/-) (Pre-revised)	Ra. 15810+ G.P. Ra. 4200/- In PB-2 (Ra. 9300-34800/-)	Ra. 15810+ 5400 GP (PB-3) Ra. 15600-39100/- w.e.f. 03.05.06	01.07.06-Ra 17030+Ra.5400/-GP 01.07.07-Ra.17710+Ra.5400/-GP 01.07.08-Ra.18410+Ra.5400/-GP	Opted for fixation of pay on ACP w.e.f. the accrual of increment in the lower grade on 01.07.06.
2	Kamaljeet Singh	Ra. 8500/- (Ra. 6500-10500/-) (Pre-revised)	Ra. 15810+ G.P. Ra. 4200/- In PB-2 (Ra. 9300-34800/-)	Ra. 15810+ 5400 GP (PB-3) Ra. 15600-39100/- w.e.f. 25.04.06	01.07.06-Ra.17030+Ra.5400/-GP 01.07.07-Ra.17710+Ra.5400/-GP 01.07.08-Rs.18410+Ra.5400/-GP	Opted for fixation of pay on ACP w.e.f. the accrual of increment in the lower grade on 01.07.06.

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Deputy Director
Advocate

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Sl No.	Name of CO	Pay as on 01.01.06	Pay fixed in the revised pay band as per fixation table as on 01.01.06	Pay fixed on granting 1 st financial upgradation under ACP Scheme w.e.f. the date mentioned against each	Pay after granting increments	Remarks
3	Vikash Marwah (Presently on deputation with SPG)	Rs 8500/- (Rs. 6500/- 10500/-) (Pre-revised)	Rs 15810+ G.P. Rs 4200/- in PB-2 (Rs. 9300- 34800/-)	Rs 15810+ 5400 GP (PB-3) Rs. 16600- 39100/- w.e.f. 28.04.06	01.07.06-Rs. 17030+Rs 6400/- GP 01.07.07-Rs. 17710+Rs. 5400/- GP 01.07.08-Rs. 18410+Rs. 5400/- GP	Opted for fixation of pay on ACP w.e.f. the award of increment in the lower grade on 01.07.06.
4	Devender Singhi Agwal (Presently on deputation with SPG)	Rs 8500/- (Rs. 6500 10500/-) (Pre-revised)	Rs 15810+ G.P. Rs. 4200/- in PB-2 (Rs. 9300- 34800/-)	Rs 17030+ 5400 GP (PB-3) Rs. 16600- 39100/- w.e.f. 12.09.06	01.07.06-Rs 16410+Rs 4200/- GP 12.09.06-Rs. 17030+Rs. 5400/- GP Date of granting 1 st financial upgradation under ACP Scheme. 01.07.07-Rs 17710+Rs. 5400/- GP 01.07.08-Rs 18410+Rs 5400/- GP	

2. All the officers have opted for fixation of pay in the pay scale of Rs. 8000-13500/- (Pre revised) w.e.f. 01.01.2006 under CCS(RP) Rules 2008. The pay has been fixed as per the option exercised by the officers.

3. Ministry of Finance vide their O.M. No. 1/1/2008 dated 30.08.2008 has dispensed with the requirement of pre-check of pay fixation. While every care has been taken to fix the pay in the revised pay scales correctly there is possibility of some discrepancy cropping up. Any excess payment made to the officers will be recovered as and when noticed.

4. The fixation of pay is subject to vetting by the Audit and any excess payment which may be found to have been made as a result of wrong fixation of pay, will be refunded by them Government either by adjustment against future payments or otherwise.

(P.S.S. Negi)
Assistant Director (Pers.)

Distribution

1. The Controller of Accounts, PAO, SSB, MHA, Easty Block-IX, R.K. Puram, New Delhi.
2. The Director General of Audit, Central Revenue, AGCR building, IP, East New Delhi-110002.
3. The Accounts Officer (IU), Force Hqrs. SSB New Delhi.
4. The Accounts Officer (DDO), Force Hqrs., SSB, New Delhi.
5. Officers Concerned.
6. Office order folder.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
15 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

REGD. POST
No. COB/GKN/PC/08-09/ 152
Government of India, MHA
Office of the Circle Organiser,
SSB Balem Circle
Distt.: West Kameng (AP)

Dated, 17th September'2008.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

15 SEP 2008

Guwahati Bench
गुवाहाटी न्यायपीठ

To,

The Director General,SSB
Force Hqr., New Delhi.
[Through proper channel]

Subject :

Appeal for redress of Genuine Grievances against the anomalies in the Pay Scale of Circle Organizer's (Group B, Gazetted Executive Cadre) of SSB as per 6th Pay Commission's recommendation.

Sir,

With humble submission I am to put forward herewith the following genuine grievances being faced by the Circle Organisers of SSB after the implementation of the recommendations of 6th the Pay Commission .

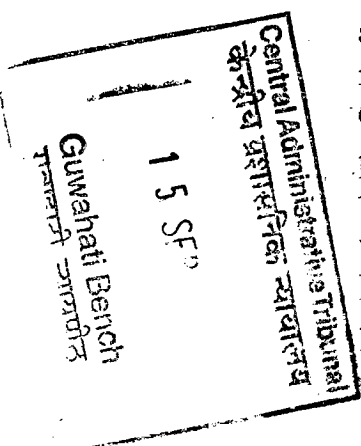
- i) In the 6th pay Commission's recommendation, there has been a total neglect towards the post of Circle Organiser, SSB which is a Group B ,Gazetted Executive Cadre and the entry grade to the SSB Area wing executive Cadres.
- ii) Where as , the Inspectors and Subedar Major(Group C non-Gazetted Supervisory Cadre) in CPMFs have been upgraded to the scale of Rs.7,450-11,500/- (Grade Pay Rs.4,600/-) in S-13 and Rs.7,500-12,000/- (Grade Pay Rs.4,800/-) in S-14 , the Circle Organiser's have been placed in the Pay Bend of Rs.6,500-200-10,500(S-12), with **Grade Pay of Rs.4,200/-** in PB-2. Even the ACIO-I(again Group C Non-Gazetted Post) in the Intelligence Bureau have also been upgraded to the pay scale of Rs.7,450-11,500/- with the grade pay of Rs.4,600/-.
- iii) Being in the same organization and working in the same area of jurisdiction, it will definitely create a lot of Administrative difficulties in the working of Circle Organisers , if, inspite of being Group B Gazetted Executive Cadres, they were places below Inspectors at least in case of pay Bend/Grade Pay .
- iv) At the present juncture, no one can deny that, the anomaly in the pay Scale of Circle Organiser's as per the 6th Pay Commissions Recommendation is due to the non projection of the post of Circle Organiser's as Group B Gazetted Executive Cadre by the department to the Pay Commission.

*Certified to be true copy
Deputy Director
Advocate*

v) The Circle Organisers like me ,who were selected through LDCE from among the Sub-Inspectors of SSB, have crossed double competitive examinations for selection as Circle Organisers of SSB . 1st during the selection for the post of Sub Inspectors from open competitive examination and than through LDCE from amongst the eligible Sub Inspectors through departmental examination/Test. Unfortunately, it is a fact the , the Sub Inspectors who have failed to qualify for selection to the post of Circle Organiser in SSB are now getting every benefit from the department including promotions to serve in the same organization in ranks like Senior ACs or DCs. The reason for explaining the above fact is not to criticize such SIs , but to explain that , there is definitely insufficient input at the higher level with regards to Circle Organisers of SSB , because of which the situations as pointed out at point No (ii) might have arised.

vi) As per the recommendation of the 6th Pay Commission , there are provision of ACP after every 10th, 20th and 30th year of service. Unfortunately, at the same time the financial benefit under ACP will be the immediate next higher Grade Pay in the hierarchy of revised Pay bands and Grade pay being recommended. Under such ACP provisions , if the Circle Organiser's are placed in the Grade Pay of 4,200 in PB -2, the junior Circle Organisers of the department will get the benefit of the 1st ACP after 10th years of service with increase in the Grade Pay to Rs.4,600/- , 2nd ACP after 20th year of service will give Grade pay of Rs.4,800/- and the 3rd ACP after completion of 30th years of service will give Grade Pay of Rs.5,400/- , where as , the Circle Organisers who have got the ACP under the previous system have acquired the Grade Pay of Rs.5,400/- immediately after completion of 12 years of service. Being in the same rank , I think, this simple equation is more than enough to justify that the present scale of pay and Grade Pay given to Circle Organisers is nothing but an action of immature decision.

vii) There has always been announcements on the part of Govt. for more facilities etc to intelligence organizations for better functioning. It is definitely effective with regards to the organizers like IB/SB etc., where as, we the Circle Organisers of SSB inspite of working in the similar nature of job, are just deprived again and again. It is a fact that Salary of Govt. employee is the key motivational factor . If one is paid less or paid disproportionate to its lower rank , there is every possibility that , the things may not run smoothly , specially in the field of Intelligence work. Unfortunately , in the case of Circle Organiser's of SSB , the 6th Pay Commission has just failed to motivate we people to work properly with cool mind.



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In view of above points and situations, I would like to suggest following options to find a good solution to the problem please.:

- (a) Circle Organiser's(Group B , Gazetted Executive Cadre) of SSB be allowed pay of **at least** Rs.7,500-12,000(PB-2), Grade Pay Rs.4,800/- w.e.f. 01/01/2006 so that through the next 1st ACP all the Circle Organiser's can go equally at per Grade Pay Rs.5,400/-
- (b) If the department is not convinced/Satisfied to consider the point (a) as above , the Circle Organiser's may be separated from "Sashastra Seema Bal" and adjusted in other civil departments of Government of India , or
- (c) As has been suggested by Shri B.L.Vohra , IPS Former DG,SSB , in SSB Samachar 45th Anniversary Special 2008 in his article "SSB , As I know it" , the Circle Organisers may be allowed to be gainfully adopted in Civil Defence Organisation .

It is therefore requested, to kindly look into the matter and consider the same sympathetically , with the view to alleviate the grievances of the Circle Organisers of SSB as prayed above please.

It is further requested that, the exercise of the Option for implementation of 6th pay commissions may be kept in abeyance till the settlement of the matter.

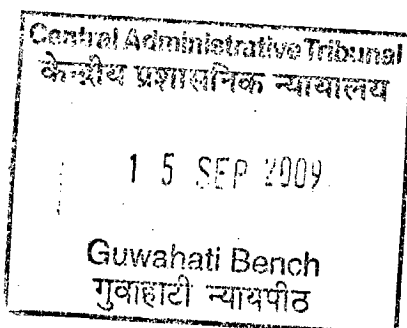
Yours faithfully,


(G.K.NATH)

Circle Organiser,SSB Balemuru Circle
Dirang Area (AP)

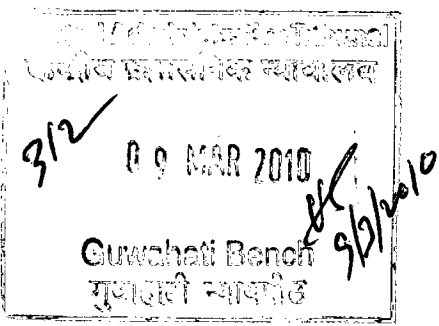
Advance Copy forwarded to :

1. The Home secretary, MHA ,
Government of India for favour of information and necessary action please.
2. The Director General, SSB for favour of information with request to initiate the matter with MHA please.



filed by N. Prasad
M. V. Ahmed, case
27/2/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH



IN THE MATTER OF

Original Application No.190/2009.

Sri Gobinda Kumar Nath

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

IN THE MATTER OF

Written statement submitted by the
Respondents No. 1 to 3

WRITTEN STATEMENT

The humble answering respondents

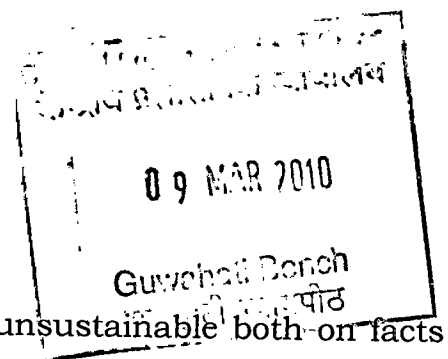
Submit their written statement as
follows :

2. Copy for
Ms. B. Sarma
G.2. Ahmed
10.03.10.

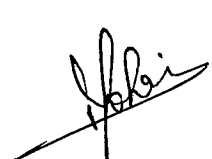
1 (a) That I, Nilambar Buragohain son late Mohan Chandra Buragohain aged about 56 years, working as Deputy Inspector General at Frontier Hqr. SSB Guwahati, resident of A-10, Games village, Guwahati, Assam having gone through a copy of the application served on me, and have understood the contents thereof. Save and except whatever is specifically admitted in the written statement, the contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the statement on behalf of all the respondents.

Undertake to serve
the copy of the application
as and when part will be
available.
27/2/10 Service com
attached hereto

Dy Inspector General
Ftr. HQ. SSE, (MHA)
Guwahati.



- (b) The application is filed unjust and unsustainable both on facts and in law.
- (c) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.
- (d) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.
2. That with regard to the statements made in para 1 of the Original Application the answering respondents beg to state that subsequent to recommendation of the 6th CPC and in supersession of the Assured Career Progression Scheme (ACP) the Modified Assured Career Progression Scheme (MACP) was notified by the Government vide O.M. No. dated 19.5.2009. In the erstwhile ACP Scheme Group 'B', 'C' & 'D' employee on completion of 12 and 24 years of regular service were entitled to first and second financial upgradation in their respective hierarchy subject to fulfillment of other laid down conditions. Whereas, in the MACP Scheme the number of financial upgradation have been increased from two in the ACP to three. Besides, increasing the number of pay upgradation, the Group 'A' has also been included in the list of beneficiaries through the MACP. In the MACP, an employee completing 10, 20 and 30 years of regular service and subject to fulfillment of other laid down conditions is entitled to the first, second and third pay upgradation in the hierarchy of their respective Pay Band and attached Grade Pay.



Dy. Inspector General
Ftr. HQ. SSB, (MHA)
Guwahati.

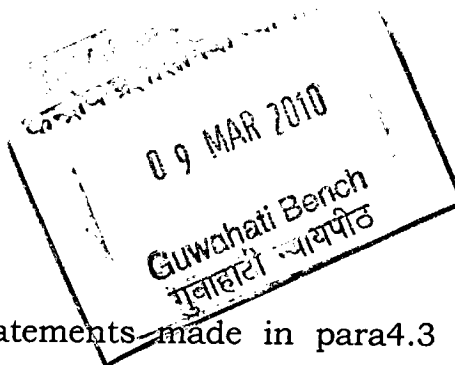
It is further worthwhile to mention here that vide para 11 of the MACP Scheme, notified in supersession of the erstwhile ACP Scheme, it has been amply clarified that no past cases would be re-opened and that while implementing the MACP Scheme, the differences in pay scales on account of grant of financial upgradation under the old ACP scheme and under the MACP Scheme within the same cadre shall not be construed as an anomaly.

Apart from this the MACP Scheme is a policy decision of the Government of India which is applicable to all the Central Government employees unanimously and has been issued in supersession of the erstwhile ACP Scheme. The prayer of the applicant for quashing the MACP Scheme and for granting him financial upgradation under the provisions of the ACP Scheme is untenable as the provisions of the erstwhile ACP Scheme is no more in existence as on date.

3. That with regard to the statements made in paragraphs 2, 3, 4.1, 6 & 7 of the Original Application the answering respondents beg to offer no comment and do not admit anything which is beyond the record. The applicant may be put to strict proof thereof.

4. That with regard to the statements made in paragraphs 4.2, 4.6 & 4.7 of the Original Application the answering respondents beg to state that those are admitted being matter of record. The applicant has joined in SSB on 31.5.1991 as Sub Inspector (Pioneer).



Dy. Inspector General
Ftr. HQ. SSB, (MHA)
Guwahati.

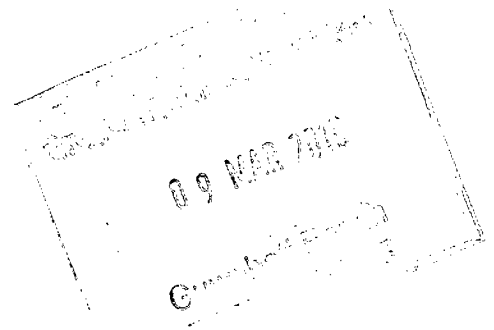


5. That with regard to the statements made in para 4.3 of the Original Application the answering respondents beg to state that the applicant has appeared and qualified in PET/Written Test through Limited Departmental Competitive Examination for the post of Circle Organiser vide Force Hqrs Order No.6/SSB/A2/94(5)-II dated 1.05.1998 and joined his duty on 11.11.1998 as Circle Organiser at Tezu Circle of AP Division.

6. That with regard to the statements made in para 4.4 of the Original Application the answering respondents beg to state that the same is incorrect and denied vehemently. In fact promotion of Circle Organisers/ Sub Area Organisers/ Joint Area Organisers to the next higher rank is being considered regularly as per availability of vacancy and suitability of the incumbents. Recently a DPC was held on 10.9.2009 to consider the cases of Circle Organiser in the pay scale of PB-2 Rs. 9300-34800/- + GP Rs. 4200 (now 4600) for their empanelment and eventual promotion as Sub Area Organiser in the pay scale of PB-3 Rs.15600-39100/- + GP Rs.5400/- for the vacancy year 2009-2010 and as per the recommendation of DPC, 08 Circle Organisers have been promoted to the rank of Sub Area Organiser and accordingly their promotion order has been issued vide Force Hqrs. Order No.7/SSB/Pers-I/2009(7)-8066-8118 dated 12.10.2009.

Apart from this in the revised Recruitment Rules it has been proposed that the post of Sub Area Organiser will be filled 100 % by promotion from Circle Organiser instead of the 75 % quota presently being followed presently as the RRs in vogue, in an attempt to get the promotional avenues of the COs explored to the optimum. Once the revised RRs are notified, 22 Circle Organisers will get promotion to the next higher grade i.e. Sub Area Organiser immediately.



Dy Inspector General
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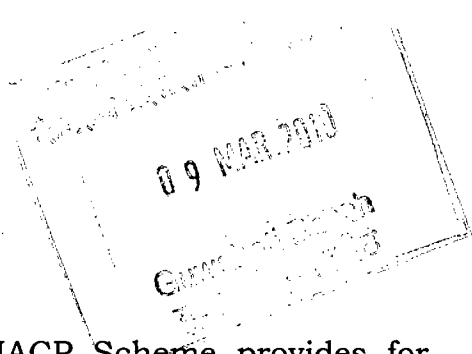


7. That with regard to the statements made in para 4.5 of the Original Application the answering respondents beg to state that the pay of the applicant has been revised as per the 6th Central Pay Commission recommendation which was approved by Government of India under Central Civil Services (Revised Pay) Rules, 2008. As per the recommendation of 6th CPC COs has been placed in PB-2 in the pay scale of Rs.9300-34800/- with grade pay of Rs. 4600/-.

8. That with regard to the statements made in para 4.8 of the Original Application the answering respondents beg to state that the same is admitted to the extent that vide the MACP Scheme Govt. employees has been benefited by three financial upgradation in the service tenure in place of the two applicable in the erstwhile ACP Scheme. The contention of the applicant that incumbent are not entitled to higher pay band is factually incorrect. In fact where no further hierarchy in terms of Grade Pay exists in the existing Pay Band, the effected Officer/ officials are being granted the Grade Pay in the higher Pay Band.

9. That with regard to the statements made in para 4.9 of the Original Application the answering respondents beg to state that the Government of India after careful consideration of the recommendation of the 6th CPC took a policy decision to notify the MACP Scheme in supersession of the erstwhile ACP Scheme to extend maximum benefits to its employees. There can be no comparative study of the benefits of erstwhile ACP Scheme and the present MACP Scheme. If the erstwhile ACP Scheme

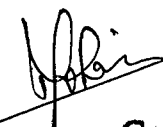

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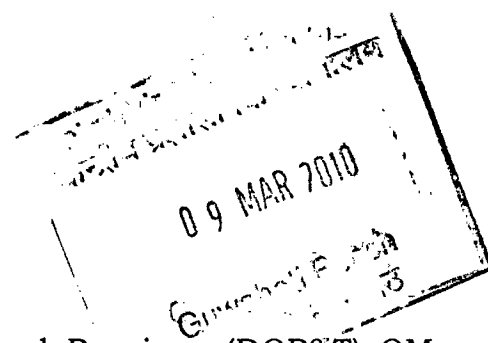


provisioned for 02 financial upgradation the MACP Scheme provides for three. Apart from this Group 'A' officers have also been included in the list of beneficiaries in the MACP Scheme which was missing in the erstwhile ACP Scheme. In fact the applicant will enjoy the third pay upgradation even after his promotion to Group 'A' post which was not available in the erstwhile ACP Scheme.

10. That with regard to the statements made in para 4.10 of the Original Application the answering respondents beg to state that as per Department of Expenditure, Implementation Cell, Ministry of Finance, New Delhi Order F.O. 1/1/2008-IC dated 13.11.2009, the post which were in the pre-revised scale of Rs. 6500-10500/- as on 01.01.2006 and which were granted the normal replacement pay structure of grade pay of Rs. 4200/- in the pay band PB-2, will be granted grade pay of Rs. 4600/- in the pay band PB-2 corresponding to the pre-revised scale of Rs. 7450-11500/- w.e.f. 01.01.2006. Hence, the Grade Pay of Circle Organiser has been upgraded from 4200/- to 4600/- in PB-2 Rs. 9300-34800/- with effect from 01.01.2006. Since the Grade Pay of Circle Organisers has been upgraded from Rs. 4200 to Rs. 4600 in PB-2, therefore, Circle Organisers who have completed 10 years of service as on 01.09.2008 in the grade will be granted grade pay of Rs. 4800/- on grant of 1st financial upgradation under the Modified Assured Career Progression Scheme (MACPS) instead of Rs. 4600/-.

11. That with regard to the statements made in para 4.11 of the Original Application the answering respondents beg to state that as per Para


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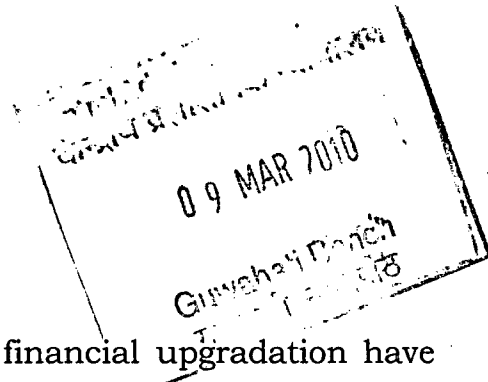
9 of Ministry of Personnel, Public Grievances and Pensions (DOP&T) OM dated 19.5.2009 "the Modified Assured Career Progression Scheme (MACPS) would be operational w.e.f. 01.09.2008. In other words, financial upgradation as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.

12. That with regard to the statements made in para 4.12 of the Original Application the answering respondents beg to reiterates the reply given in the preceding paragraphs for the sake of brevity.

13. That with regard to the statements made in para 4.13 of the Original Application the answering respondents beg to state that the principle of "Equal Pay for Equal Work" was duly maintained in the erstwhile ACP Scheme and has been squarely covered in the present MACP Scheme. No comparison of the benefits of the two Schemes can be drawn being a policy decision of the Government of India and applicable to all Central Government employees unanimously. In the present MACP Scheme the applicant, will enjoy three (03) financial upgradation in his service career subject to fulfillment of other laid down conditions in place of the two (02) provisions in the erstwhile ACP Scheme.

14. That with regard to the statements made in para 4.14 of the Original Application the answering respondents beg to state that it is not correct that due to Modified Assured Career Progression Scheme (MACPS) dated 19.5.2009 the service condition of applicant has been changed. Under



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Guwahati.

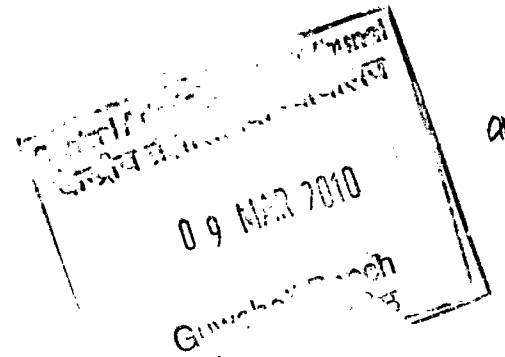


the previous ACP Scheme of August 1999, the financial upgradation have been granted to next hierarchy pay scale of promotional post however, under the MACP Scheme of May 2009 the financial up-gradation have been granted to immediate next higher grade pay. It is further submitted that the entitlements availed by the employees out of the earlier ACP Scheme cannot be compared with those being availed presently under the MACP Scheme. Further, it has been categorically clarified by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) in their O.M. dated 19.5.2009 that **"no past cases would be re-opened"**. In this context para 11 of the Annexures-3 to the O.A. instant may kindly be referred to.

Moreover, status of employees drawing higher grade pay on ACP Scheme/ MACP Scheme will remain unchanged. There is no relation of Grade Pay/ Pay scale of a particular rank with Grade Pay granted on MACPS. The financial upgradation is being granted to employee on personal basis after completion of the stipulated years of regular service.

15. That with regard to the statements made in para 4.15 of the Original Application the answering respondents beg to state that the same is incorrect. Representations submitted by Circle Organisers regarding anomalies in pay scale of COs have been examined and a proposal for upgradation of pay scale of Circle Organiser from Rs. 6500-10500/- to Rs. 7500-11500/- replacement pay scale in pay band-2 in the pay scale of Rs. 9300 - 34800/- with grade pay Rs. 4800/- was taken up with MHA for



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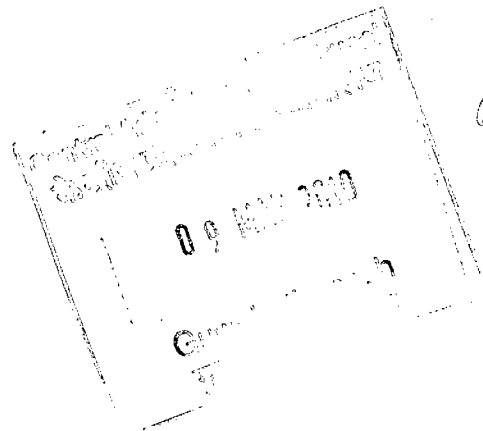


approval of the competent authority by MHA have returned the proposal with the remarks **that the proposal have been examined in MHA in consultation with Ministry of Finance and the request of SSB for grant of grade opay of Rs. 4800/- in pay band-2 in respect of Circle Organiser have not been agreed to.** However, it has now been decided to authorize the Grade pay of Rs. 4600/- to the Circle Organisers in SSB with effect from 01.01.2006 as per Department of Expenditure, Implementation Cell, Ministry of Finance, New Delhi Order F. No.1/1/2008-IC dated 13.11.2009 which interalia mean that they will be entitled to the Grade Pay of Rs. 4800/- on attaining the eligibility zone for grant of the first financial upgradation under the MACP Scheme.

16. That with regard to the statements made in paragraphs 4.16 to 4.18 of the Original Application the answering respondents beg to state that those are mere repetition of the averments made earlier which have been replied suitably and the same is reiterated here for the sake of brevity.

17. That with regard to the statements made in paragraphs 5.1 to 5.7 of the Original Application the answering respondents beg to state that no sustainable grounds have been made out by the applicant. The respondents have rightly placed the applicant in the Pay Band 2 with Grade Pay of Rs. 4600/- with effect from 01.01.2006 and further authorized the Grade Pay of Rs. 4800/- on attaining the eligibility zone for grant of first financial upgradation under the provisions of the MACP Scheme in vogue.


Dy Inspector General
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Guwahati.




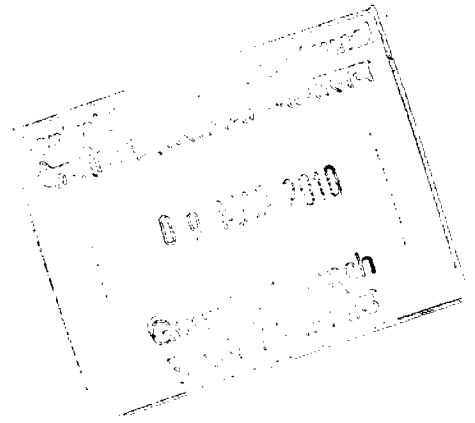
The MACP Scheme has been formulated exclusively in supersession of the erstwhile ACP Scheme and no comparative study of the two different Schemes can be drawn at this stage. Moreover, it has been categorically mentioned in the MACP Scheme that no past cases would be re-opened while implementing the provisions of the MACP Scheme.

18. That the application filed by the applicant has no merit which may be dismissed with costs.

19. That the reply has been made bonafide and for the ends of justice and equity.

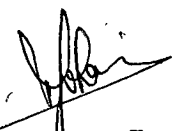
It is therefore humbly prayed before this Hon'ble Tribunal that the present application filed by the applicant may be dismissed with costs.


Dy. Inspector General
Ftr. HQ. SSB, (MHA)
Guwahati.



VERIFICATION

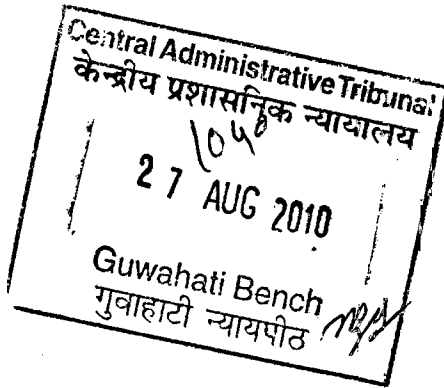
I, Nilambar Buragohain son late Mohan Chandra Buragohain aged about 56 years, resident of A-10, Games village, Guwahati, Assam working as Deputy Inspector General at Frontier Hqr. SSB Guwahati, duly authorized and competent officer of the answering respondents to sign this verification, do hereby solemnly affirm and verify that the statements made in paras 274, 5th ^{13, 14, 15, 17} are true to my knowledge, belief and information & those made in para _____ being matter of record are true to my knowledge as the legal advice and I have not suppressed any material facts and I sign this verification on this 27th day of February 2010 at Guwahati


Deputy Inspector General
Ftr. HQ SSB. (MHA)
Guwahati.

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M. U. Ahmed, (C.A. Sec. 27/8/10)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI
BENCH, GUWAHATI



IN THE MATTER OF

Original Application No.190/2009.

Sri Gobinda Kumar Nath

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

IN THE MATTER OF

Order dated 06-08-10 passed in O.A.
190/2009 whereby this Hon'ble
Tribunal was pleased to direct the
Respondent to file an affidavit.


-And-

IN THE MATTER OF

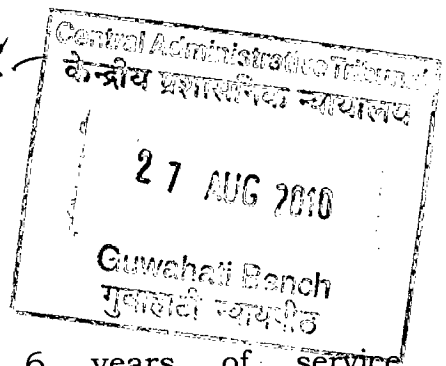
The compliance report or Affidavit
whether the post in question is a
combatant or civilian.

The aforesaid Respondent most respectfully sheweth:

1 The applicant in the instant O.A. has challenged the provisions of the Modified Assured Career Progression (MACP) Scheme. The applicant was appointed as a Sub-Inspector (Pioneer) in the Sashastra Seema Bal (SSB) vide order dated 31/05/1991.


Dy. Inspector General
Ptr. HQ. SSB, (MHA)
Guwahati.

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on 27.08.10
G. Z. Ahmed,
Advocate.

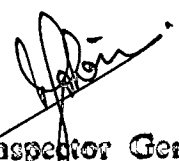


Subsequently, on completion of 6 years of service the petitioner/applicant joined as Circle Organiser on 11/11/1998 after qualifying Limited Departmental Competitive Examination.

2. That the Applicant/Petitioner being a Circle Organiser in SSB is holding a Civil Post under Central Civil Service (CCA) Rules 1965 and as such the Applicant is not governed by the Sashastra Seema Bal (SSB) Act, 2007 in any purpose.

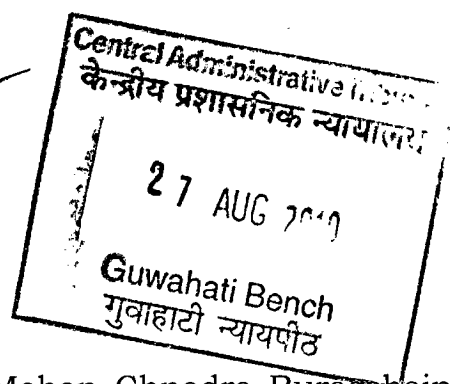
3. That this affidavit has been made as a piece of evidence that the Applicant in the aforesaid O.A is holding a civil post in SSB.

4. That this petition is made bona-fide and for the ends of justice and equity.


Dy. Inspector General
Hr. HQ SSB, (MH-4)
Guwahati.

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AFFIDAVIT



I, Sri Nilambar Buragohain son of late Mohan Chnadra Buragohain aged about 56 years and at present working as Deputy Inspector General at Frontier Hqr. SSB Guwahati do hereby solemnly affirm and declare as follows :-

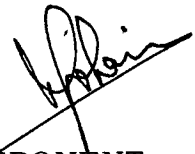
1. That I Nilambar Buragohain, Deputy Inspector General and I am fully conversant and acquainted with the facts and circumstances of the case and competent to swear this affidavit as I am fully authorized to file this affidavit.
2. That the statement made in paragraph 1 to 4 are true to my knowledge and belief based on records. I have not suppressed any material facts before this Hon'ble Tribunal.

And I sign this affidavit on this 26th day of August 26, 2010 at Guwahati.

Identified by



(M. A. Ahmed, CGSC)



DEPONENT
Dy Inspector General
Ftr. HQ. SSB, (MHA)
Guwahati.