

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./TA/ NO. 256/2009
R.A./CP/NO..... 2015
E.P./M.P./NO..... 2015

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22/07/2015

SECTION OFFICER (JUDL.)

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

256

1. ORIGINAL APPLICATION No : ----- / 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) : Md. Nazir Ans.

Respondent (S) : Union of India's M/s.

Advocate for the : Mrs. Adil Ahmed.
(Applicant (S))

Advocate for the : CGSC.
(Respondent (S))

Notes of the Registry	Date	Order of the Tribunal
<p>1. This application is in form is filed/C. P. for Rs. 50/- deposited vide I.P.C.B.D No. 376 438512 Dated 2-11-09</p> <p>Dy. Registrar <u>AK/11/09</u></p> <p><u>7-12-09</u> 4 (Four) Copies of Application with envelope received for issue notices to the respondents. No. 1 to 4. Copy served.</p> <p><u>AK/11/09</u></p> <p>No 10/5 filed</p> <p><u>AK/11/09</u> 18-1-2010</p>	08.12.2009	<p>The grievance of the applicants is that they have been denied benefits of ACP scheme as they passed the trade test at the first chance. On the other hand the stand of Respondents as reflected vide impugned communication dated 06.07.2009 is that the trade test was held on 2001 and its result was declared on 10th September 2001. Applicants appear to have missed said trade test.</p> <p>In view of above, notices be issued to the Respondents. Mrs. M. Das, learned Sr. CGSC for Respondents present in court accepts notice on behalf of Respondents. Thus service is complete. Further formal notices need not to be issued. Reply be filed within four weeks time. Rejoinder, if any be filed within two weeks time.</p> <p>List on 19.01.2010.</p> <p style="text-align: right;"> (Mukesh Kumar Gupta) Member (J)</p>

/pb/

19.1.2010 On the request of proxy counsel for the Respondents, four weeks time is extended as prayed for to file reply.

List the matter on 19.2.2010.

Mr. Md. Kr. Chaturvedi
Member (A)

(Mukesh Kumar Gupta)
Member (I)

/ʌm/

19.02.2010 Mrs. M. Das, learned Sr. CGSC appearing for Respondents states that since no instruction have been issued from the Respondents, further time may be granted to file reply. In the circumstances, time is extended to file reply.

List on 19.03.2010.

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

Member (Λ)

Member (D)

19.03.2010

Mrs. M. Das, learned Sr. CGSC for Respondents states that the written statement is under preparation. Further two weeks time may be granted to file reply. In the circumstances, time is extended to file reply.

list the matter on 07.04.2010.

(Madan Kumar Chatra
Member (A))

O.A.256 of 2009

07.04.2010 Learned proxy counsel for

7/4/2010
W.T.S. has been
filed by the Respondents
through Ms. M. Das,
for CGSC. Copy
served.
7/4/2010

Respondents states that reply will be filed
during the course of the day with copy to
the learned counsel for the Applicant.
Rejoinder, if any, may be filed in the
meantime.

List the matter on 3.5.2010.


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

Rejoinder not filed.

30/4/2010

lm

O.A. 256 of 2009

Rejoinder not
filed.

25/5/2010

03.5.2010 Proxy counsel for Applicant prays for
adjournment.

List the matter on 26.5.2010.


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

lm

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26.05.2010 .steeds eteadoz in tate
coult. k. 2010

O.A. is dismissed. No costs.

0105.50.00 Learned proxy counsel states that no
rejoinder will be filed in this case. In the
circumstances, admit subject to legal
exception, if any.

List for hearing on 21.06.2010.


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

nkm



(Mukesh Kumar Gupta)
Member (J)

MA-256/09

21.06.2010

None for the applicant despite second call. Even Mrs. M. Das, learned counsel for the respondents, prays for adjournment. Reluctantly, I adjourn the matter to 05.07.2010.

(Mukesh Kumar Gupta)
Member (J)

MA-256/09

/bb/

MA-256/09

None for the parties. List on

07.07.2010 for hearing.

(Madan Kumar Chaturvedi)
Member (A)

nk

(Mukesh Kumar Gupta)
Member (J)

MA-256/09

MA-256/09

07.07.2010 Heard Mr A. Ahmed, learned counsel for applicant and Mrs M. Das, learned Sr. C.G.S.C. for the respondents. Hearing concluded. Order reserved.

(Madan Kumar Chaturvedi)
Member (A)

nk

(Mukesh Kumar Gupta)
Member (J)

MA-256/09

09.07.2010 Judgment pronounced in open court. Kept in separate sheets.

O.A. is dismissed. No costs.

(Madan Kumar Chaturvedi)
Member (A)

/pb/

(Mukesh Kumar Gupta)

Member (J)

File No. 1545-1547

TE-710

16/7/2010

16.07.2010

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI:

O.A. No. 256 of 2009

Date of Decision: 9.07.2010

Md. Nazir & anr.
.....

Applicant/s

Mr. Adil Ahmed
.....

Advocates for the
Applicant/s

- Versus -

Union of India & Ors.
.....

Respondent/s

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

Advocate for the
Respondents

CORAM :

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

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

Judgment delivered by

MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 256 of 2009

Date of Order: This, the 9/7 Day of July, 2010

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

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

1. Md. Nazir
Son of Late Abdul Jalil
Fitter
Office of the Assistant Engineer
Guwahati Central Sub-Division-1
Central Public Works Department
Post Office – Amerigog, Khanapara
Guwahati, Pin – 781023.

2. Shri Kanak Kalita
Son of Khargeswar Kalita
Beldar
Office of the Assistant Engineer
Guwahati Central Sub-Division-1
Central Public Works Department
Post Office – Amerigog, Khanapara
Guwahati, Pin – 781023.Applicant

By Applicant: Mr. Adil Ahmed

-Versus-

1. The Union of India
represented by the Secretary
to the Government of India
Ministry of Urban Affairs
Nirman Bhawan, New Delhi
Pin – 110011.

2. The Director General of Works
Central Public Works Department
118-A, Nirman Bhawan, New Delhi
Pin – 110011.

3. The Superintending Engineer
Assam Central Circle – 1
Central Public Works Department
Post Office – Bamunimaidan, Guwahati
Pin – 781021.

4. The Executive Engineer
Guwahati Central Division

Central Public Works Department
Post Office – Bamunimaidan, Guwahati
Pin – 781021.

...Respondents

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

ORDER

MUKESH KUMAR GUPTA, MEMBER (J):

Two applicants in this O.A. challenge communication dated 06.07.2009 (Annexure-7) rejecting their request for grant of first financial upgradation from earlier dates. They seek direction to respondents to grant first financial upgradation to them under DOP&T OM dated 09.08.1999 w.e.f. 09.08.1999 and 14.11.2000 respectively on completion of twelve years of service with all consequential benefits.

2. The facts, as stated are, that the first applicant was appointed as fitter on 06.02.1975, while second applicant was appointed as Beldar as on 06.10.1988. They are working as regular work-charged staff of CPWD. Based on recommendation made by 5th CPC, to redress the problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues, DOP&T issued OM dated 09.08.1999 and introduced Assured Career Progression Scheme (ACP Scheme in short). Financial upgradations are allowed on completion of 12/24 years of service subject to fulfillment of conditions prescribed therein. Vide OM dated 28.08.2002, it was clarified that work-charged staff, who have completed 12/24 years of service as on 09.08.1999 may be allowed the benefit of ACP Scheme, subject to condition that he qualifies the prescribed trade test wherever required at the first chance. In case, such worker could not qualify the prescribed trade test at the first

chance, he/she will be entitled to get said benefit on subsequent date i.e., from the date of qualifying the prescribed trade test.

3. Their grievance is that respondent no.4 vide order dated 11.03.2008 notified trade test of work-charged Beldar for promotion to Carpenter, Mason, Fitter and Plumber and Carpenter, Mason, Fitter, Plumber to Work Assistant. Accordingly, they appeared in trade test, for the first time in their service career, conducted in April, 2008, results of which, were declared vide memorandum dated 12.06.2008. Applicant No.1 was declared passed in the grade of Work Assistant and applicant no.2 was declared successful in the grade of Plumber. This was the first chance of their undertaking such trade test and qualified it. In terms of CPWD OM dated 28.08.2002, they were eligible and entitled to first ACP on completion of 12 years of service or on 09.08.1999, whichever is later. But unfortunately, vide order dated 22.04.2009 (Annexure-5), they were granted said financial upgradation under ACP scheme w.e.f. 29.04.2008 and 04.06.2008 respectively. They had submitted their representations stating that they had passed trade test at the first attempt and as such, they ought to have been given said benefits retrospectively. Their representation did not find favour of the respondents and so rejected vide impugned communication dated 06.07.2009 holding that trade test was notified vide letter dated 30.04.1997 and 14.05.1997 for all work-charged staff having 10 years of service in the category of Carpenter, Mason, Blacksmith, Plumber and Painter etc. First applicant failed to apply for these trade tests, and therefore, he missed those opportunities. Similarly, applicant no.2 failed to participate in the trade test so conducted by the

department prior to 29.04.2008, and therefore, they have been correctly granted ACP benefits vide order dated 22.04.2009.

4. Mr.A.Ahmed, learned counsel appearing for the applicants strenuously urged that vide para 5.4 and 5.5 of O.A. specific pleading was raised that they qualified the trade test at first chance, and therefore, they are entitled to reliefs, as prayed for.

5. By filing reply, it was stated that notification for holding trade test was issued vide OM dated 01.04.1997, 05.05.1997 and 26.06.1997. Applicant no.1 failed to exercise said option. Vide reply para 3.7, it was stated that trade tests, for financial upgradation under ACP Scheme, under OM dated 21.05.2001 issued by the respondent no.2 were also conducted, but applicant no.1 did not avail said opportunity as well as past opportunities. He finally appeared in trade test conducted by the respondents no.4 on 29.04.2008, in response to communication dated 11.03.2008, results of which had been declared on 12.06.2008. As regards applicant no.2, trade test was notified by respondent no.4 vide letter dated 08.10.1994. Said applicant was placed under suspension due to his arrest by State Police in criminal case. Another trade test was conducted on 15.06.2001. He did not appear in said trade tests for reasons best known to him. At last he appeared in trade test held on 28.04.2008, conducted pursuant to notification dated 11.03.2008. The term "first chance" employed vide CPWD OM dated 28.08.2002 conveys that if the trade test is held immediately after issuance of ACP Scheme and work-charged staff participating in the trade test then held happened to qualify the same in "first chance", they would be granted financial upgradatin from the original date of implementation of ACP w.e.f.

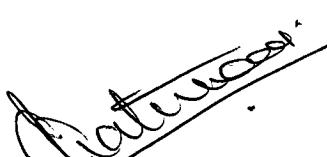
09.08.1999. In the instant case, both applicants did not participate in said trade tests conducted by the respondent department prior to April, 2008 nor even they expressed their willingness to appear said trade tests held earlier. Thus, there is no illegality committed in granting them benefit of first financial upgradation vide order dated 22.04.2009.

6. Mrs.M.Das, learned counsel for the respondents brought to our notice the notifications which notified the trade tests prior to 2008 particularly for the year 2001 to buttress the contention that though the trade tests were held after ACP Scheme was notified on 09.08.1999 and passing of said trade test was a condition precedent under the concerned Recruitment Rules for promotion to next higher post, which applicants have failed to satisfy.

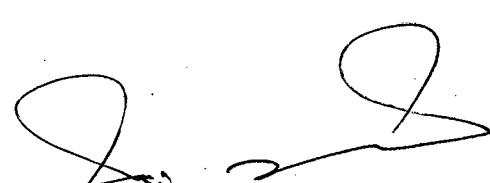
7. We have learned counsel for the parties, perused the pleadings, and materials placed on record. At the outset, we may note that though reply was filed on 07.04.2010, wherein specific pleadings were raised by the respondents vide paras 3, 3.4, 3.7 and 3.11 to the effect that trade tests were held in various years ranging from 1997 to 2001, but both the applicants did not appear in said trade tests, which averments have not been refuted and contested by filing any rejoinder or placing any material on record. Thus, the question, which arises for consideration is whether applicants have qualified the prescribed trade test at the "first chance." On examination of the matter, with reference to facts as noticed hereinabove, we have no hesitation to hold that the trade tests were held in 1997 as well as in 2001 in specific but the applicants did not avail said opportunities. ACP Scheme was notified on 09.08.1999 and as per the scheme, financial benefits prescribed therein would become due

only on satisfying the requirement prescribed for regular promotion. Para 3.1 of said OM in specific prescribes that grant of financial upgradation under ACP Scheme shall, however, be subject to fulfillment of conditions mentioned in Annexure-I. Para 6 of Annexure-I requires "fulfillment of normal promotion norms" before becoming eligible for such financial benefits. It is not in dispute that under the Recruitment Rules in vogue passing of trade test is a condition precedent. Bare look at the ACP Scheme would reveal that the scheme also emphasize fulfillment of promotional norms before becoming eligible for the benefit of financial upgradation. Trade test was notified after ACP Scheme has come into operation, yet the applicants did not submit their willingness and appeared in said trade test on 15.06.2001. Thus, it cannot be said that applicants passed the trade test held in April 2008 as "the first chance". In this view of the matter, there is no illegality in granting them the benefit of ACP vide order dated 22.04.2009 w.e.f. 29.04.2008 and 04.06.2008 respectively.

8. In view of discussion made hereinabove, and finding no merits, O.A. is dismissed. No costs.


(MADAN KUMAR CHATURVEDI)
MEMBER (A)

/BB/


(MUKESH KUMAR GUPTA)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT 1985)

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 7 DEC 2009
Guwahati Bench
गुवाहाटी न्यायालय

ORIGINAL APPLICATION NO. 256 OF 2009.

Md. Nazir & Another ... Applicants
-Versus-
The Union of India & Others ... Respondents

SYNOPSIS

The Applicants are regular Work-Charged staff of Central Public Works Department (C.P.W.D. in short) under the Ministry of Urban Affairs, Government of India. The Applicant No.1 was appointed as Fitter (Direct Recruit) on 06.02.1975 and the Applicant No.2 was appointed as Beldar on 06.10.1988. Presently they are working in the Office of the Assistant Engineer, Guwahati Central Sub-Division-I, CPWD, Khanapara as Fitter and Beldar respectively. The Government of India, Department of Personnel and Training vide O.M. dated 09.08.1999 granted the A.C.P. Scheme to the Central Government Civilian employees as a 'Safety Net' to deal with the problem of genuine stagnation and hardships faced by the employees due to lack of adequate promotional avenues. As per the said A.C.P. Scheme the Group "B", "C" and "D" employee are entitled to be granted two financial up-gradation on completion of 12 (twelve) years and 24 (twenty four) years of regular Service irrespective of availability of posts/vacancies. The office of the Respondent No.2 vide O.M. dated 28.08.2002 issued a clarification regarding implementation of A.C.P. Scheme for the Work-Charged staff of C.P.W.D. wherein it has been stated that the Work-Charged staff who have completed 12/24 years of service as on 09.08.1999 may be allowed the benefit of A.C.P. Scheme

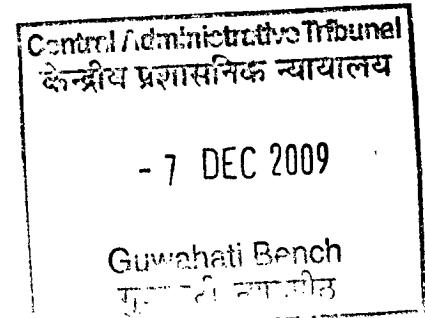
मीटिंग

- 7 DEC 2009

subject to the condition that he ~~qualifies~~ ^{Guwahati Ben} the prescribed Trade test wherever required at the first chance. In case of such worker could not qualify the prescribed Trade Test at the first chance, he/she will be entitled to get the benefit on subsequent date i.e. from the date of qualifying the prescribed Trade Test. The office of the Respondent No.4 vide office order dated 11.03.2008 notified the Trade Test of Work-Charged staff for promotion to the post of Carpenter, Mason, Fitter, Plumber and Work Assistant. Accordingly the Applicants appeared in the Trade Test which was conducted by the Executive Engineer, Guwahati Central Division, Central Public Works Department for the first time. The Applicant No.1 appeared for the Trade Test for the Grade of Work Assistant and the Applicant No.2 appeared for the Trade Test for the Grade of Plumber. The result was declared on 12.06.2008. In the said result sheet the Applicant No.1 was declared pass in Sl. No.1 for the Grade of Work Assistant and Applicant No.2 was Sl. No.4 for the Grade of Plumber. The office of the Respondent No.3 vide office Order dated 22.04.2009 granted the 1st financial up-gradation under the A.C.P. Scheme to the Applicant No.1 w.e.f. 29.04.2008 and Applicant No.2 w.e.f. 04.06.2008 respectively. Being aggrieved by the decision of the Respondent No.3, the Applicants approached before the Respondent No.4 to grant them the 1st A.C.P.. w.e.f. 09.08.1999 and 14.11.2000 respectively as both of them have appeared the aforesaid Trade Test for first time. Accordingly, the Respondent No.4 vide his letter dated 12.05.2009 requested the Respondent No.3 to review the date of effect of 1st financial up-gradation under the A.C.P. Scheme for the Applicant No.1 09.08.1999 and for the Applicant No.2 14.11.2000 respectively. The office of the Respondent No.3 vide letter dated 06.07.2009 informed the Respondent No.4 that the request of the Applicants cannot be acceded to and directed the Respondent No.4 to implement the

1st financial up-gradation under the A.C.P. Scheme to the Applicant No.1 and 2 w.e.f. 29.04.2008 and 04.06.2008 respectively. Accordingly, and the Respondent No.4 vide O.M. dated 28.07.2009 granted the 1st financial up-gradation under the A.C.P. Scheme to the Applicants w.e.f. 01.07.2008.

Hence, this Original Application for seeking justice into this matter.



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. 256 OF 2009.

Md. Nazir & Another

... Applicants

-Versus-

The Union of India & Others

... Respondents

CC 2009

Bench
7/7/09

LIST OF DATES

06.02.1975 The Applicant No.1 was appointed as Fitter in
Para 4.2 the Central Public Works Department.

06.10.1988 The Applicant No.2 was appointed as Beldar in
Para 4.2 the Central Public Works Department.

09.08.1999 The Government of India, Department of
Para 4.4 Personnel and Training granted the Assured
Annexure 1 career Progression (A.C.P.) Scheme to the
 Central Government civilian employees Group
 "B", "C" and "D".

28.08.2002 The Respondent No.2 issued a clarification
Para 4.5 regarding implementation of A.C.P. Scheme for
Annexure 2 the Work-Charged staff of the Central Public
 Works Department.

11.03.2008 The office of the Respondent No.4 notified the
Para 4.6 Trade Test of Work-Charged staff Beldar for
Annexure 3 promotion to Carpenter, Mason, Fitter and
 Plumber and Carpenter, mason, Fitter, Plumber
 to Work Assistant.

28.04.2008 The Trade Test was conducted by the Executive
to Engineer, Guwahati central Division for the
29.04.2008 Grade of Plumber, Mason, Fitter, carpenter and
Para 4.7 Work Assistant.

12.06.2008 The result of the Trade Test was declared.
Para 4.7
Annexure 4

22.04.2009 The office of the Respondent No.3 granted the
Para 4.8 1st financial up-gradation under the A.C.P.
Annexure 5 Scheme to the Applicant No.1 w.e.f. 29.04.2008
 and the Applicant No.2 w.e.f. 04.06.2008
 respectively.

At-75/2

12.05.2009 The Respondent No.4 requested the Respondent No.3 to review the date of effect of 1st financial up-gradation under the A.C.P. Scheme for the Applicant No.1 & 2.

Para 4.9
Annexure 6

06.07.2009 The office of the Respondent No.3 informed the Respondent No.4 the request of review of the Applicants date of effect of 1st financial up-gradation under the A.C.P. Scheme cannot be acceded to.

Para 4.10
Annexure 7

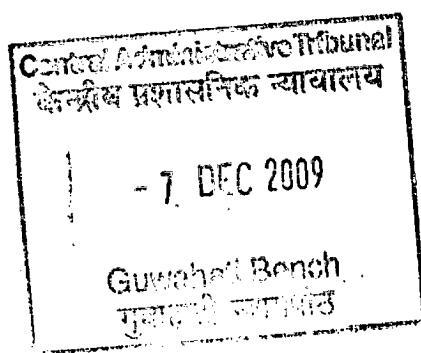
28.07.2009 The Respondent No.4 granted the 1st financial up-gradation under the A.C.P. Scheme to the Applicants w.e.f. 01.07.2008.

Para 4.11
Annexure 8 & 9.

Date: 7/12/09

Filed by

Nuruddin Ahmed
Advocate



मेरा नं २१२

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. 256 OF 2009.

Md. Nazir & Another

... Applicants

-Versus-

DEC 2009

The Union of India & Others

... Respondents

C Bench
नायपोठ

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5	Copy of the office order No.10(Trade Test)/WC/GCD/2008/568 dated 11.03.2008.	3	20
6	Copy of the office Memo. No.10(26)/ACC-I/GS/08/862 dated 12.06.2008.	4	21 to 22
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11. N/S
Date: 7/12/09

30-49
Filed by

Narindar Ahmed
Advocate

10-11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. 256

OF 2009

Central Administrative Tribunal

দায়িত্বপ্রাপ্ত প্রশাসনিক ব্যায়ালয়

BETWEEN

1. Md. Nazir

Son of Late Abdul Jalil
Fitter,

Office of the Assistant Engineer,
Guwahati central Sub-Division-I,
Central Public Works Department,
Post Office-Amerigog, Kahanpara,
Guwahati, PIN-781023.

- 7 DEC 2009

Guwahati Bench

2. Shri Kanak Kalita

Son of Khargeswar Kalita
Beldar

Office of the Assistant Engineer,
Guwahati central Sub-Division-I,
Central Public Works Department,
Post Office-Amerigog, Kahanpara,
Guwahati, PIN-781023.

Applicants

-AND-

1. The Union of India represented by the
Secretary to the Government of India,
Ministry of Urban Affairs,
Nirman Bhawan, New Delhi,
PIN-110011.

2. The Director General of Works,
Central Public Works Department,
118-A, Nirman Bhawan, New Delhi
PIN-110011.

3. The Superintending Engineer
Assam central Circle-I
Central Public Works Department,
Post Office-Bamunimaidan, Guwahati,
PIN-781021.

4. The Executive Engineer
Guwahati Central Division,
Central Public Works Department,
Post Office-Bamunimaidan, Guwahati,
PIN-781021.

Respondents

FILED BY

Md. Nazir
Amalgam No. 1
through
Shambhu Singh
Advocate

20/12/2009

- 7 DEC 2009

Guwahati Bench
গুৱাহাটী ন্যায়সৌধ

DETAILS OF THE APPLICATION:

1) PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

The Application is made against the impugned Office letter No.10(26)/ACCI/GS/2626 dated 06.07.2009 issued by the Office of the Respondent No.3 whereby the Respondents have granted the 1st financial up-gradation under the Assured Career Progression (A.C.P. in short) Scheme to the instant Applicants w.e.f. 29.04.2008 and 04.06.2008 respectively by rejecting the claim of the Applicants for granting them the 1st financial up-gradation under the A.C.P. Scheme w.e.f. 09.08.1999 and 14.11.2000 respectively.

2) JURISDICTION OF THE TRIBUNAL

The Applicants declare that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3) LIMITATION

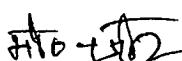
The Applicants further declare that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

4) FACTS OF THE CASE:

Facts of the case in brief are given below:

4.1] That your humble Applicants are citizen of India and as such they are entitled to all rights and privileges guaranteed under the Constitution of India and the laws framed thereunder from time to time.

4.2] That the Applicants are regular Work-Charged staff of Central Public Works Department under the Ministry of Urban



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Guwahati Bench
গুৱাহাটী বৰ্ষাধীন

Affairs, Government of India. The Applicant No.1 was appointed as Fitter (Direct Recruit) on 06.02.1975 in the Central Public Works Department (C.P.W.D. in short). Presently he is working as Fitter in the office of the Assistant Engineer, Guwahati Central Sub-Division-I, Central Public Works Department, Khanapara, Guwahati-23. The Applicant No.2 was appointed as Beldar on 06.10.1988 in the Central Public Works Department (C.P.W.D. in short). Presently he is working as Beldar in the office of the Assistant Engineer, Guwahati Central Sub-Division-I, Central Public Works Department, Khanapara, Guwahati-23.

4.3] That your Applicants beg to state that as the grievances and reliefs prayed in this application are common, therefore, they pray for grant of permission under Section 4(5) (a) of the Central Administrative Tribunal (procedure) rules, 1987 to move this application jointly.

4.4] That on the recommendation of the Fifth Central Pay Commission, the Government of India Department of Personnel and Training granted the Assured Career Progression (A.C.P in short) Scheme to the Central Government civilian employees in all Ministries/Departments vide O.M. No.35034/1/97-Estt. (D) dated 09.08.1999. The A.C.P 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 A.C.P. Scheme recommended by the Fifth Central Pay Commission with certain modification. As per the said A.C.P. Scheme the Group "B", "C" and "D" employee are entitled to be granted two financial up-gradation on completion of 12 (twelve) years and 24 (twenty four) years of regular Service irrespective of availability of posts/vacancies.

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Copy of the A.C.P. Scheme vide O.M. No.35034/1/97-Estt. (D) dated 09.08.1999 is annexed herewith and marked as ANNEXURE-1.

4.5] That the office of the Respondent No.2 vide office Memorandum No.8/1/99-EC.X dated 28.08.2002 issued a clarification regarding Implementation of A.C.P. Scheme for the Work-Charged staff of C.P.W.D. In the serial No.1 of the aforesaid memorandum clarified that "the work-charged staff who have completed 12/24 years of service as on 09.08.99 may be allowed the benefit of A.C.P. Scheme, subject to the condition that he qualifies the prescribed Trade Test wherever required at the first chance. In case, such worker could not qualify the prescribed Trade Test at the first chance, he/she will be entitled to get the benefit on subsequent date i.e. from the date of qualifying the prescribed Trade Test".

Copy of the office Memorandum No.8/1/99-EC.X dated 28.08.2002 is annexed herewith and marked as ANNEXURE-2.

4.6] That the office of the Respondent No.4 vide office order No.10(Trade Test)/WC/GCD/2008/568 dated 11.03.2008 notified the Trade Test of Work-Charged staff Beldar for promotion to Carpenter, Mason, Fitter and Plumber and Carpenter, Mason, Fitter, Plumber to Work Assistant.

Copy of the office order No.10(Trade Test)/WC/GCD/2008/568 dated 11.03.2008 is annexed herewith and marked as ANNEXURE-3.

4.7] That the Applicant No.1 and 2 appeared in the Trade Test for the first time in their service career in pursuance to the office order No.10(Trade Test)/WC/GCD/2008/568 dated 11.03.2008. The Trade Test was conducted by the Executive Engineer, Guwahati Central Division, C.P.W.D. w.e.f.

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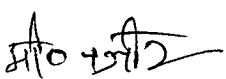
28.04.2008 to 29.04.2008 for the Grade of Plumber, Mason, Fitter, Carpenter and Work Assistant. The result of the Trade Test was declared vide office Memo. No.10(26)/ACC-I/GS/08/862 dated 12.06.2008. In the said result in serial No.1 the Applicant No.1 was declared passed for the Grade of Work Assistant. In serial No.4 of the result sheet the Applicant No.2 was declared passed for the Grade of Plumber. It is worth to mention here that both the instant Applicants have qualified the prescribed Trade Test in their first chance.

Copy of the office Memo. No.10(26)/ACC-I/GS/08/862 dated 12.06.2008 is annexed herewith and marked as ANNEXURE-4.

4.8] That the office of the Respondent No.3 vide office order F.No.10(26)/ACC-I/GS/2252 dated 22.04.2009 granted the 1st financial up-gradation under the A.C.P. Scheme to the Applicant No.1 w.e.f. 29.04.2008 in the pay scale of Rs.4000-100-6000/- and vide the same order the Applicant No.2 was also granted the 1st financial up-gradation under the A.C.P. Scheme w.e.f. 04.06.2008 in the pay scale of Rs.3050-75-3950-80-4590/-.

Copy of the office order F.No.10(26)/ACC-I/GS/2252 dated 22.04.2009 is annexed herewith and marked as ANNEXURE-5.

4.9] That being aggrieved by the decision of the Respondent No.3 for granting 1st financial up-gradation under the A.C.P. Scheme to the Applicants w.e.f. 29.04.2008 and 04.06.2008 respectively, the instant Applicants approached the Respondent No.4 to grant them the 1st A.C.P. w.e.f. 09.08.1999 and 14.11.2000 respectively as both of them have appeared in the aforesaid Trade Test for first chance and they have qualified. The Respondent No.4 vide his letter No.2(7)/GCD/08/1185 dated 12.05.2009 requested the



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Respondent No.3 to review the date ^{Guwanai Branch} ~~of effect~~ of 1st financial up-gradation under the A.C.P. Scheme for the Applicant No.1 & 2. In the said letter he has stated that "Md. Nazir, Fitter (DR) has completed 12 years of service on 05.02.1987 and 24 years of service on 05.02.1999 being his date of appointment is 06.02.1975 and Shri Kanak Kalita, Beldar has completed his 12 years service on 05.10.2000 being his date of appointment is 06.10.1988 as per Service Record. As Md. Nazir has directly recruited in the post of Fitter, hence he will have to pass Trade Test for the post of Work Assistant to be eligible for 1st A.C.P. in the scale of Rs.4000-100-6000 and for the post of Care-Taker to be eligible for 2nd A.C.P. in the scale of Rs.4500-125-7000/- being the both the post are in hierarchical order for the purpose of A.C.P. However, Md. Nazir, Fitter has appeared and passed the Trade Test for the post of Work Assistant on 1st attempt as per Service Record (no unsuccessful attempt is in record). Hence, the official concerned is entitled for 1st A.C.P. w.e.f. 09.08.1999, as A.C.P. Scheme is introduced by Government of India on that date. Over & above, the official concerned will be entitled for 2nd A.C.P. w.e.f. 09.08.1999 on passing the Trade Test for the post of Care-Taker on first attempt, as he completed 24 years of service on 05.02.1999 and A.C.P. Scheme is introduced on 09.08.1999. In this regard, Shri Kanak Kalita, Beldar has completed his 12 years of service on 05.10.2000 being his date of appointment is 06.10.1988 and passed Trade Test for the post of Plumber in 2008 on first attempt as per Service Record (no unsuccessful attempt is in record). Hence, the official concerned is entitled for 1st financial up-gradation under the A.C.P. Scheme on completion of 12 years of service deferred by 38 days non-qualifying service (EOL without MC) i.e. w.e.f. 14.11.2000".

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Guruchari Bench
गुरुचारी बैचन

Copy of the letter No.2(7)/GCD/08/1185 dated 12.05.2009 is annexed herewith and marked as ANNEXURE-6.

4.10] That the office of the Respondent No.3 vide letter No.10(26)/ACCI/GS/2626 dated 06.07.2009 informed the Respondent No.4 that the request of Md. Nazir, Fitter i.e. the Applicant No.1 and Shri Kanak Kalita, Beldar i.e. the Applicant No.2 for grant of 1st financial up-gradation under the A.C.P. Scheme w.e.f. the date of completion of 12 years regular service cannot be acceded to. Further, it has been stated by the Respondent No.3 that the Applicants have missed the earlier Trade Tests notified by the Department from time to time for promotion to next higher post. Accordingly the Respondent No.3 directed the Respondent No.4 to implement the 1st financial up-gradation under the A.C.P. Scheme to Md. Nazir, Fitter and Shri Kanak Kalita, Beldar w.e.f. 29.04.2008 and 04.06.2008 respectively in their appropriate scale of pay as granted under A.C.P. by the office order No.10(26)/GS/ACC-I/2252 dated 22.04.2009 instead of w.e.f. 09.08.1999 and 14.11.2000 respectively as suggested by the Respondent No.4.

Copy of the letter No.10(26)/ACCI/GS/2626 dated 06.07.2009 is annexed herewith and marked as ANNEXURE-7.

4.11] That the Respondent No.4 vide office Memorandums No.2(7)/GCD/2008/2097 and No.2(7)/GCD/2008/2098 dated 28.07.2009 granted the 1st financial up-gradation under the A.C.P. Scheme to Md. Nazir, Fitter and Shri Kanak Kalita, Beldar w.e.f. 01.07.2008.

Copies of office Memorandums
No.2(7)/GCD/2008/2097 and
No.2(7)/GCD/2008/2098 dated 28.07.2009 are
annexed herewith and marked as ANNEXURE-8 & 9.

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Guwahati Bench
Tribunal

4.12] That your Applicants beg to state that they have not received any earlier notification by the Department before 11.03.2008 for holding Trade Test for the post of Work Assistant and Plumber from the post of Fitter and Beldar respectively. Therefore, the non appearing or missed of earlier Trade Test stated by the Respondent No.3 is not correct.

4.13] That your Applicants submit that the Respondent No.4 vide his letter dated 12.05.2009 (at ANNEXURE-6) has clarified that "the Work-Charged Staff who have completed 12/24 years service as on 09.08.1999 may be allowed the benefit of A.C.P. Scheme, subject to the condition that he qualifies the prescribed Trade Test where-ever required at the first chance. In case, such worker could not qualify the prescribed Trade Test at the first chance, he/she will be entitled to get the benefit on subsequent date i.e. from the date of qualifying the prescribed Trade Test". Further, in the said letter the Respondent No.4 has clarified that Md. Nazir i.e. the Applicant No.1 has appeared and passed the Trade Test for the post of Work Assistant on 1st attempt as per Service Record (no unsuccessful attempt is in record). Hence, the official concerned is entitled for 1st A.C.P. w.e.f. 09.08.1999, as the A.C.P. Scheme is introduced by Government of India on that date. In this regard, Shri Kanak Kalita, Beldar has completed his 12 years of service on 05.10.2000 being his date of appointment is 06.10.1988 and passed Trade Test for the post of Plumber in 2008 on first attempt as per Service Record (no unsuccessful attempt is in record). Hence, the official concerned is entitled for 1st financial up-gradation under the A.C.P. Scheme on completion of 12 years of service deferred by 38 days non-qualifying service (EOL without MC) i.e. w.e.f. 14.11.2000.

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- 7 DEC 2009

Guru Nanak Dev Bench
गुरु नानक देव न्यायपाठी

However, inspite of aforesaid clarification and request made by the Respondent No.4, the Respondent No.3 without going through the same and also without application of the proper mind directed the Respondent No.4 to implement the 1st financial up-gradation under the A.C.P. Scheme to the instant Applicants w.e.f. 29.04.2008 and 04.06.2008 vide order dated 06.07.2009. Hence, the Applicants are compelled to approach this Hon'ble Tribunal for seeking justice in this matter.

4.14] That your Applicants submit that due to non-consideration of their case for granting 1st financial up-gradation under the A.C.P. Scheme w.e.f. 09.08.1999 and 14.11.2000 respectively, they are suffering from heavy financial loss.

4.15] That your Applicants submit that the Respondents have acted with a mala-fide intention only to deprive the Applicants from his legitimate right.

4.16] The action of the Respondents is prima-facie illegal, unjustified, arbitrary and also whimsical.

4.17] That the Applicants submit that the Respondents have violated the Articles 14, 16 and 21 of the constitution of India.

4.18] That the Applicants submit he is demanding justice and the same has been denied by the Respondents.

4.19] That the Application is filed bona fide and for the interest of justice.

5) GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1] For that, due to the above reasons narrated in detail the action of the Respondents is in prima facie illegal, mala-fide, arbitrary and without jurisdiction.

Ato 7/12

7 DEC 2009

Guwahati Bench
Gujarat High Court
सुनियोग नियमित

5.2] For that, the office of the Respondent No.2 vide office O.M. dated 28.02.2002 clarified that the Work-Charged Staff of C.P.W.D. who have completed 12/24 years of service as on 09.08.1999 may be allowed the benefit of A.C.P. Scheme subject to condition that he qualifies the prescribed Trade Test wherever required at the first chance. Therefore, the Applicants who have appeared in the prescribed Trade Test at a first chance are entitled for 1st financial up-gradation A.C.P. Scheme w.e.f. 09.08.1999 and w.e.f. 14.11.2000 respectively. Hence, the impugned office letter No.10(26)/ACCI/GS/2626 dated 06.07.2009 is liable to be set aside and quashed and the Respondents should implement the 1st financial up-gradation under the A.C.P. Scheme to the Applicants w.e.f. 09.08.1999 and 14.11.2000 respectively.

5.3] For that, the Respondent No.4 in his letter dated 12.05.2009 in details clarified before the Respondent No.3 that the Applicants are entitled for 1st financial up-gradation under the A.C.P. Scheme w.e.f. 09.08.1999 and 14.11.2000 respectively as they have passed their respective Trade Test in first attempt. Therefore, he requested the Respondent No.3 to review the date of effect of 1st financial up-gradation under the A.C.P. Scheme for the Applicant No.1 & 2. But the Respondent No.3 without application of proper mind directed the Respondent No.4 to implement the 1st financial up-gradation under the A.C.P. Scheme to the instant Applicants w.e.f. 29.04.2008 and 04.06.2008 respectively. Hence, the impugned office letter No.10(26)/ACCI/GS/2626 dated 06.07.2009 is liable to be set aside and quashed and the Respondents should implement the 1st financial up-gradation under the A.C.P. Scheme to the Applicants w.e.f. 09.08.1999 and 14.11.2000 respectively.

5.4] For that, the Applicants have not received any earlier notification by the Department before 11.03.2008 for holding

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Chembur Branch

Trade Test to the post of Work Assistant and Plumber from the post of Fitter and Beldar respectively. Hence, the impugned office letter No.10(26)/ACCI/GS/2626 dated 06.07.2009 is liable to be set aside and quashed and the Respondents should implement the 1st financial up-gradation under the A.C.P. Scheme to the Applicants w.e.f. 09.08.1999 and 14.11.2000 respectively.

5.5] For that, both the Applicants have appeared in the Trade Test at first chance and qualified in the Trade Test. Therefore, the Respondents can not deny the benefit of 1st financial up-gradation under the A.C.P. Scheme w.e.f. 09.08.1999 and 14.11.2000 respectively. Hence, the impugned office letter No.10(26)/ACCI/GS/2626 dated 06.07.2009 is liable to be set aside and quashed and the Respondents should implement the 1st financial up-gradation under the A.C.P. Scheme to the Applicants w.e.f. 09.08.1999 and 14.11.2000 respectively.

5.6] For that, the Respondents being a model employee cannot deny the aforesaid benefit to the Applicants, which they are legally entitled. Hence, the impugned office letter No.10(26)/ACCI/GS/2626 dated 06.07.2009 is liable to be set aside and quashed and the Respondents should implement the 1st financial up-gradation under the A.C.P. Scheme to the Applicants w.e.f. 09.08.1999 and 14.11.2000 respectively.

5.7] For that, due to non-consideration of the 1st financial up-gradation under the A.C.P. Scheme to the Applicants w.e.f. 09.08.1999 and 14.11.2000 respectively, they are suffering from great financial loss and also mental anxiety due to neglected attitude of the Respondents.

5.8] For that, in view of the matter the action of the Respondents are not sustainable in the eye of law as well as fact of this case.

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Guwahati Bench
গুৱাহাটী ন্যায়পৌঠ

The Applicants crave leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

6) DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious and remedy available to the Applicants except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

7) MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

That the Applicants further declare that ~~he has~~ ^{they have} not filed any application, Writ Petition or suit in respect of the subject matter of the instant application before any other court, authority, 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 Applicants most respectfully prayed that Your Lordships may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the Applicants may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relief(s).

8.1] To set aside and quashed the impugned letter No.10(26) /ACCI/GS/2626 dated 06.07.2009 issued by the Office of the Respondent No.3.

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- 7 DEC 2009

Guwahati Bench
গুৱাহাটী ব্যায়পীঠ

8.2] To direct the Respondents to grant the 1st financial up-gradation to the Applicants under the A.C.P. Scheme w.e.f. 09.08.1999 and 14.11.2000 respectively (on completion of 12 years of continuous service) with all consequential benefit.

8.3] To pass any other relief(s) to which the Applicants may be entitled and as may be deemed fit and proper by the Hon'ble Tribunal.

8.4] To pay the cost of the application.

9) INTERIM ORDER PRAYED FOR:

At this stage Applicants do not seek any interim relief but if the Hon'ble Tribunal may deem fit and proper may pass any appropriate order/orders.

10) Application is filed through Advocate.

11) Particulars of I.P.O.:

I.P.O. No. : 396 438512

Date of Issue : 2.11.09

Issued from : Guwahati GPO

Payable at : Guwahati

12) LIST OF ENCLOSURES:

As stated above.

Verification

10/12

VERIFICATION

Guwahati Bench
Assam High Court

I, Md. Nazir, aged about 59 years, son of Late Abdul Jalil, working as Fitter in the Office of the Assistant Engineer, Guwahati Central Sub-Division-1, Central Public Works Department, Khanapara, Post Office-Amerigog Guwahati-781023, Assam do hereby solemnly verify that I am the Applicant No.1 of the instant Original Application. I am authorized by another Applicant to sign this verification on his behalf.

That the statements made in paragraph nos 4.1, 4.2, 4.3, 4.7 (Partly), 4.9 (Partly), 4.10, ... are true to my knowledge, those made in paragraph nos 4.4, to 4.6, 4.7 (Partly), 4.8, 4.9 (Partly), 4.10, 4.11, ... are being matter of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 7th day of December 2009 at Guwahati.



DECLARANT

-TYPED COPY-

7 DEC 2009

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

Government of India

Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

North Block, New Delhi 110001

August 9, 1999

Office Memorandum**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 organizations/cadres on functional grounds by way of organizational study, cadre review, etc., as per prescribed norms.

**3. GROUPS 'B', 'C' AND 'D' SERVICES/POSTS AND ISOLATED POSTS IN GROUPS
'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 Groups 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Groups '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 Groups '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.

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 organizations/cadres on functional grounds by way of organizational study, cadre reviews, etc., as per prescribed norms should not be given up on the ground that the ACP Scheme has been introduced.

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ADVOCATE

7 DEC 2009

Gandhakri Ranch

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

6. SCREENING COMMITTEE

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

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

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

6.4 To make the Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee of the current financial year within a month from the date of issue of these instructions to consider the cases that have already matured or would be maturing up to 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 minimize the additional financial commitment that introduction of the ACP Scheme may entail.

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

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

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

11. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP Scheme shall be given by the Department of Personnel 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.

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ADVOCATE

- 7 DEC 2009

13. Hindi version would follow.

Guwahati Bench

Sd/- Illegible

(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.

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ADVOCATE

18
MOST IMMEDIATEGOVERNMENT OF INDIA
DIRECTORATE GENERAL OF WORKS
CENTRAL PUBLIC WORKS DEPARTMENTAdministrative Tribunal
कानूनी प्रशासनिक न्यायालय

7 DEC 2009

No. 8/1/99-EC.X

Nirman Bhawan, New Delhi, dated : 28-8-2002

Guwahati Bench
গুৱাহাটী ন্যায়পৌঠ

OFFICE MEMORANDUM

Subject : Implementation of Assured Career Progression Scheme for the Work-charged staff - Clarification regarding.

242(c) (Linked file)

In continuation of this Directorate's O.M. of even number dated 21.5.2001 and 8.4.2002 on the above mentioned subject, wherein clarifications were given on various points of doubts, following further clarifications are given on the Points of Doubt raised by the various field units :-

S.No.	Point of Doubt	Clarification
1.	The date from which the benefit of ACP may be allowed to the Work-charged staff of CPWD.	The work-charged staff who have completed 12/24 years of service as on 9.8.99 may be allowed the benefit of ACP Scheme, subject to the condition that he qualifies the prescribed Trade test where-ever required at the first chance. In case, such worker could not qualify the prescribed Trade test at the first chance, he/she will be entitled to get the benefit on subsequent date i.e. from the date of qualifying the prescribed Trade test.
2.	Whether the CPWD unit is supposed to take a Trade test for the category of Foreman/Senior Operator even if these categories do not exist in their Unit.	The concerned unit is supposed to take the Trade test of the eligible workers in the feeder category even if the promotional grades do not exist in their unit for the purpose of ACP, as these categories exist in the Work-charged Establishment of CPWD.
3.	Whether Operators on completion of 12/24 years of service can be allowed the scale of pay of Senior Operator under the provisions of ACP Scheme even though the category of Senior Operator has been declared as a dying category.	Yes. However, the Operators on completion of 12/24 years of service could be allowed the promotional grade of Senior Operator subject to the condition that he qualifies the prescribed Trade test of Senior Operator and otherwise eligible.

Amr
(A. Madhukumar Reddy)
Director of Administration

Contd.....2/

ATTESTED
ADVOCATE

To

1. All ADGs(Regions) / CES / SEs / SEs(Coord.) / EEs / Director of Horticulture/ Additional Director of Horticulture/Dy. Director of Horticulture.
2. All Dy. Labour Welfare Commissioners/Asstt. Labour Welfare Commissioners.

Copy to :-

1. PPS to DG(W)/ADG(S&P)/PS to ADG(TD)/DDG(W).
2. PA to DA.
3. Ministry of UD & PA (EW-2 Section)/Finance Division.
4. All Recognised Unions of Work-charged Staff in CPWD.
5. Hindi Shakha for Hindi version.
6. Section Officer, EC-V Section.
7. Stock file/Guard file/Circular file.

Meetali Ghosh
 (Meetali Ghosh)
 Deputy Director(EC.X)

-7 DEC 2009

A TESTED
 (A)
ADVOCATE



20 -

Government of India
Office of the Executive Engineer
Guwahati Central Division
Central Public Works Department
Bamunimaidan, Guwahati -781 021
(Ph: 0361-2550086; Fax: 0361-2656199)

No. 10(Trade Test)/WC/GCD/2008/ 568

Date: 11/03/2008

OFFICE ORDER

In pursuance of the office order vide No. 10(2)/ACC-I/GS/08/151 dated 31.01.2008 issued by the Superintending Engineer, Assam Central Circle-I, CPWD, Bamunimaidan, Guwahati -21, the Trade Test of W. C. Beldar for promotion to Carpenter, Mason, Fitter and Plumber and Carpenter, Mason, Fitter, Plumber to Work Assistant will be held as per Schedule furnished hereunder:

Date & Time	Trade Test of	For promotion to	Venue
28.04.08 at 10:00 A.M.	Belder	Carpenter Mason Plumber Fitter	CPWD Complex Bamunimaidan, Guwahati -21
29.04.08 at 10:00 A.M.	Carpenter Mason Plumber Fitter	Work Assistant	

Interested candidates are requested to submit their willingness for participation in the Trade Test on or before **15.04.2008** in enclosed proforma in duplicate.

Executive Engineer
11/03/08

Copy to:

- 1) The Addl. Director General (ER), CPWD, Kolkata-20 for information please.
- 2) The Chief Engineer (NEZ), CPWD, Dhankheti, Shillong for information please.
- 3) The Superintending Engineer, Assam Central Circle-I, CPWD, Guwahati-21, for information please.
- 4) All Assistant Engineer under this division.
- 5) The Junior Accounts Officer, Guwahati Central Division, CPWD, Guwahati-21
- 6) The General Secretary, All India CPWD Employees Union, New Delhi.
- 7) The General Secretary, CPWD Mazdoor Union, E-26, Raja Bazar (old Qtrs.), Baba Kharag Singh Marg, New Delhi- 110001
- 8) The General Secretary, CPWD Workders Union, M-86-88, Aligange, New Delhi.

Executive Engineer
11/03/08
Guwahati Central Division
Central Public Works Department
Government of India

- 1 DEC

Guwahati

ATTESTED
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ADVOCATE

Central Administrative Tribunal
 Government of India
 O/O the Superintending Engineer
 Assam Central Circle No.1
 CPWD, Guwahati-21

7 DEC 2009

Dated 12.06.2008.

No.10(26)/ACC-I/GS/08/ 862

OFFICE MEMO

On the basis of Trade Test, conducted by EE, GCD w.e.f. 28.04.2008 to 29.04.2008 for the Grade of Plumber, Mason, Fitter, Carpenter and Work Assistant, the results are declared as under:-

1) Result for the Grade of Work Assistant.

Sl.No.	Name & Designation S/Shri	Father's name S/Shri	Date of Birth	Date of appointment	Result
1	2	3	4	5	6
✓ 1	Md. Nazir, Fitter	Abdul Zahil	05.02.1950	06.02.1975	Passed

2) Result for the Grade of Plumber.

1	2	3	4	5	6
1	Kamakhya Hazarika, Belder	Puspa Ram Hazarika	31.03.1965	04.10.1988	Passed
2	Babul Ch. Baishya, Belder	Sandhya Ram Baishya	31.03.1966	04.10.1988	Passed
3	Abdus Samad, Belder	Afazuddin Ahmed	31.12.1961	06.11.1984	Passed
4	Kanak Kalita, Belder	Khageswar Kalita	16.05.1964	06.10.1988	Passed
5	Sunil Bhowmik, Belder	K. Bhowmik	01.01.1963	04.10.1988	Passed
6	Anil Dutta Kumar, Belder	Jalti Ram Kumar	01.12.1957	06.11.1984	Passed

3) Result for the Grade of Mason.

1	2	3	4	5	6
1	Rajdeo Rabidas, Belder	Chandra Rabidas	23.05.1961	08.12.1983	Passed
2	Rabin Kalita, Belder	Khageswar Kalita	30.11.1962	06.10.1988	Passed
3	Nagen Ch. Das, Belder	Lohit Ch. Das	01.03.1963	06.11.1984	Passed

4) Result for the Grade of Carpenter.

1	2	3	4	5	6
1	Jamaluddin, Belder	Sabhanuddin	30.11.1966	04.10.1988	Passed

ATTESTED
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5) Result for:-

1	2	3	4	5	6
1	K.C. Nath, Belder	Padma Ram Nath	31.03.1966	06.10.1988	Absent

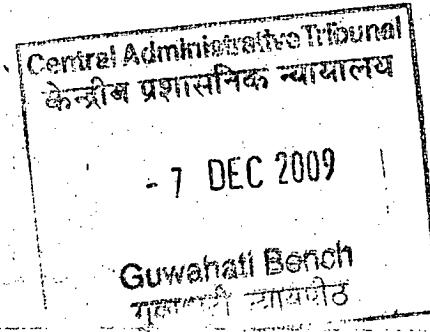
Necessary entries about result of the Trade Test may also be made in the service books of the official concerned and intimated to the workmen concerned.

Superintending-Engineer

Copy forwarded to:-

1. The Chief Engineer(NEZ), CPWD, Dhankheti, Shillong-3.
2. The SE(Co-Ordn.), ER, CPWD, Nizam Palace, Kolkata-20.
- ✓ 3. The Executive Engineer, GCD, CPWD, Guwahati-781021.
4. Notice Board.

Superintending-Engineer



A-TESTED
ADVOCAATE

GOVERNMENT OF INDIA
OFFICE OF THE SUPERINTENDING ENGINEER
ASSAM CENTRAL CIRCLE NO.1
C.P.W.D., GUWAHATI 781021

7 DEC 2009

F.No.10(26)/ACC-I/GS/ 2252

Dated, Guwahati the 22/04/2009

OFFICE ORDER

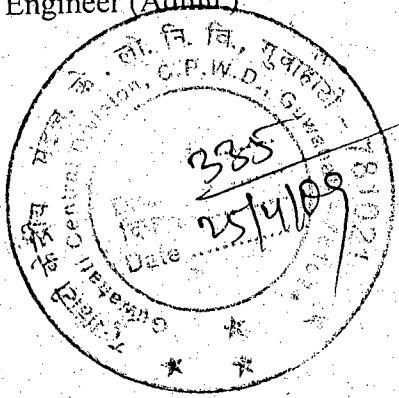
In pursuance of O.M.No.35034/1/97E dt.09.08.99 of Min. of Personal, Public Grievances and Pension Circulated under DG's OM. No.5/25/99 ECIV (C) dt. 06.09.99 and in the light of clarification of DG(W),CPWD,New Delhi vide No.8/1/99 ECX dt. 21.05.2001 and as approved by the Departmental Promotion Committee, the following employees borne on W.C Estt. are granted 1st Financial up gradation under ACP Scheme as indicated against each on completion of their 12 of years service in the direct entry grade i.e Fitter & Belder and shall be effective from the date of passing of the requisite trade tests by them as shown below against their respective names. The pay of the incumbent may be fixed after allowing benefit under FR22(i)a(1) as per instructions contained in the OM Dt. 09.08.99 of Min. of Personnel, Public grievance and pension

Sl. No.	Name & Designation	Date of Birth	Date of appointment	Date of effect	Scale of Pay
1.	Md. Nazir, Fitter	05.02.1950	06.02.1975	29.04.08	Rs.4000-100-6000
2.	Sh. Kanak Kalita, Belder	16.05.1964	06.10.1988	04.06.08	Rs.3050-75-3950-80-4590

(Er. Nand Lal Chauhan)
Executive Engineer (Admn.)

Copy to :-

1. The ADG(ER),CPWD,Nizam Palace,Kolkata-20
2. The Chief Engineer (NEZ),CPWD, Dhankheti, Shillong-3
3. The Pay & Accounts Office (NEZ),CPWD,Malki Point, Shillong-1
4. The Executive Engineer, GCD,CPWD,Guwahati-21



(Er. Nand Lal Chauhan)
Executive Engineer (Admn.)

NO. 10(1)/GCD/09/1128 Dated, 30/4/09

copy to:- ① Md. Nazir, Fitter and
Sh. Kanak Kalita, Belder
through AE/GCD I, CPWD, Ghy-2
for necessary action.

Executive Engineer
Dr. Guwahati Central Division

ATTESTED
ADVOCATE



Government of India
 Office of the Executive Engineer
 Guwahati Central Division
 Central Public Works Department
 Bamunimaidan, Guwahati-781021

No.2(7)/GCD/08/ 1185

Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय

- 7 DEC 2009

Dated: 12/05/2009
 (१२/०५/२००९) न्यायपीठ
 Guwahati Bench

To
 The Superintending Engineer
 Assam Central Circle No.I
 CPWD, Guwahati-21

Subject:- Regarding grant of 1st financial upgradation under ACP Scheme in r/o Md. Nazir, Fitter and Sri Kanak Kalita, Beldar.

Reference:- Your Office Order No.10(26)/ACC-I/GS/2252 dated:22/04/2009.

Sir,

With reference to your above-referred Office Order on the subject, it is to inform that 1st financial upgradation has been granted to Md. Nazir, Fitter and Shri Kanak Kalita, Beldar w.e.f. 29.04.2008 and 04.06.2008 respectively in appropriate scale of pay.

In this regard, your attention is drawn to the DG(W)/N.Delhi's OM No.8/1/99-EC.X dated:28-8-2002 (**Annexure-A**) wherein at point No.1 it is clarified that " the work-charged staff who have completed 12/24 years service as on 9.8.99 may be allowed the benefit of ACP Scheme, subject to the condition that he qualifies the prescribed Trade Test where-ever required at the first chance. In case, such worker could not qualify the prescribed Trade Test at the first chance, he/she will be entitled to get the benefit on subsequent date i.e. from the date of qualifying the prescribed Trade Test".

It is clear that upgradation under the ACP Scheme are to be allowed on completion of 12/24 years of service counted from direct entry in the Government employment and the same has been reiterated in DG(W)'s OM No.8/1/99-EC.X dated:8/4/2002 dated:8-4-2002 (**Annexure-B**) at point No.2.

In this regard, it also pertinent to highlight the case of Shri Jai Prakash, Mechanic (AC&R) as exemplified vide DG(W)'s OM. No.22/3/2006-EC.X dated:19/5/2006 (**Annexure-C**) wherefrom it observe that:-

Name & Designation	Date of appointment	Date of Completion of 12 years service	Effect date of 1 st ACP	Date of Completion of 24 years ACP	Effect date of 2 nd ACP
Shri Jai Prakash, Mechanic (AC&R)	07/10/81	06/10/93	1 st ACP allowed from 9/8/99 as ACP scheme introduced from that date	06/10/05	To be allowed w.e.f. 07/10/05 on passing of Trade Test for foreman on first attempt.

It clarified vide above-said O.M. that the official was not allowed 2nd ACP due to non-passing of Trade Test for the post of Foreman due to one reason or the other. If the official qualifies the trade-test in the first attempt, he may be allowed/granted 2nd ACP from the date of completion of

ATTESTED
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 ADVOCATE

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- 7 DEC 2009

-(2)-

In the instant case, Md. Nazir, Fitter (DR) has completed 12 years of service on 05/02/87 and 24 years of service on 05/02/99 being his date of appointment is 06/02/75 and Sri Kanak Kalita, Beldar has completed his 12 years service on 05/10/2000 being his date of appointment is 06/10/88 as per Service Record. As Md. Nazir has directly recruited in the post of Fitter, hence he will have to pass Trade Test for the post of Work Assistant to be eligible for 1st ACP in the scale of Rs.4000-100-6000 and for the post of Care-taker to be eligible for 2nd ACP in the scale of Rs.4500-125-7000/- being the both the post are in hierarchical order for the purpose of ACP. However, Md. Nazir, Fitter has appeared and passed the Trade Test for the post of Work Assistant on 1st attempt as per Service Record (no unsuccessful attempt is in record), hence the official concerned is entitled for 1st ACP w.e.f. 09/8/99, as ACP Scheme is introduced by Government of India on that date. Over & above, the official concerned will be entitled for 2nd ACP w.e.f. 09/8/99 on passing the Trade Test for the post of Care-taker on first attempt, as he completed 24 years of service on 05/02/99 and ACP Scheme is introduced on 09/8/99.

In this regard, Sri Kanak Kalita, Beldar has completed his 12 years of service on 05/10/2000 being his date of appointment is 06/10/1988 and passed Trade Test for the post of Plumber in 2008 on first attempt as per Service Record (no unsuccessful attempt is in record). Hence, the official concerned is entitled for 1st financial upgradation under ACP Scheme on completion of 12 years of service deferred by 38 days non-qualifying service (EOL without MC) i.e. w.e.f. 14/11/2000.

However, 1st ACP has been granted w.e.f. 29.04.08 in respect of Md. Nazir, Fitter (DR) and w.e.f 04.06.08 in respect of Kanak Kalita, Beldar.

In the view of the foregoing paras, the 1st ACP granted to the above-said officials may please be reviewed and guide this office in this regard for final settlement of the case please.

Encl: Annexure – A to C.

Yours faithfully,

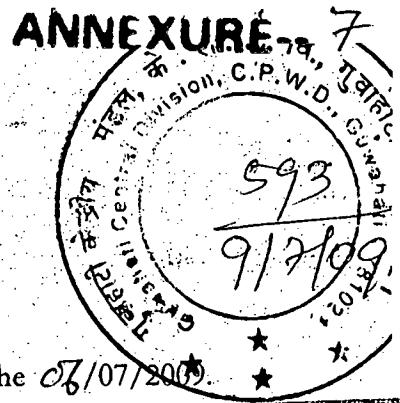
(V.S.RAO)
Executive Engineer

Copy to:-

1) The Assistant Engineer, Guwahati Central Sub-division No.I, CPWD, Guwahati for information.

Executive Engineer

ATTESTED
ADVOCATE



Government of India
Office of the Superintending Engineer
Central Public Works Department
Assam Central Circle-I
Bamunimaidan, Guwahati-21

No.10(26)/ACCI/GS/ 2626

Dated, Guwahati, the 07/07/2009

To

Shri V.S.Rao,
Executive Engineer,
Guwahati Central Division,
CPWD, Guwahati -21.

Central Administrative Tribunal
কেন্দ্ৰীয় প্ৰশাসনিক বিধায়ক

-7 DEC 2009

Guwahati Bench

Subject: - Regarding grant of 1st financial upgradation under ACP Scheme.

Ref:- Your letter nos. 2(7)/GCD/08/1185 dated 12.05.2009 and 2(7)/GCD/08/1258 dated 19.05.2009

With reference to your above mentioned letter, it is informed that the ACP case of Shri Jai Prakash, Mechanic (AC&R) as cited by you in your reference letter doesn't apply to the instant case of grant of ACP to Md. Nazir, Fitter as the Directorate General of Works vide its O.M. no. 22/3/2006-EC.X dated 19.05.2006 had given relaxation to the requirement of five years of regular service for the Sr.Mechanic (AC&R) to become eligible to appear in the Trade Test for the post of Foreman (AC&R).

As regards your reference to the O.M. No. 8/1/99-EC.X dated 28.08.2002 issued by the Directorate General of Works, it is clarified that Trade Test for Financial upgradation in the scale of Rs. 4000-100-6000 were certainly conducted in the year 2001 for which the result was declared vide this office letter of even no. 1885 dated 10.09.01 (photocopy enclosed). But, Md.Nazir, Fitter appears to have missed the said trade test.

Further, even prior to the year 2001, notification for holding Trade Tests for promotion to the post of Work Assistant had been issued by SE, Co-ordination Circle (ER), Kolkata vide their no. 9(53)WA/96/SE(C)/Cal/268 dated 01.04.1997 and also vide their O.M. of no. 9(53)WA/96/SE(C)/KOL/348 dated 05.05.1995 which were then circulated to all the Executive Engineers for obtaining application from the eligible and willing W.C.Staff vide this office letter of even nos. 677 dated 30.04.97 and no.772 dated 14.05.1997. The Trade Test was notified to be conducted for all W.C.Staff having 10 years service in the category of Carpenter, Mason, Blacksmith, Plumber and painter etc. Apparently, Md. Nazir, Fitter failed to apply for these Trade Tests so notified by the Department from time to time for promotion to the post of Work Assistant.

Another circular bearing no. 10(16)/GS/ACCI/1454 dated 10.07.01 (copy enclosed) was also issued to all Executive Engineers, wherein, it was desired that all eligible and willing candidates may be identified on the basis of recruitment rules and their names may be intimated to Circle office on priority so that date and venue of the Trade Test can be decided. This opportunity was apparently missed by Md. Nazir, Fitter for submitting application to appear in the Trade Test so notified by the SE(Coord)ER vide its letter dated 16.05.01 (copy enclosed).

Contd.P/2

A.I.TESTED
ADVOCATE
(A)

- 7 DEC 2009

- 27 -

Guwahati Bench
न्यायपीठ

Thus, from the above stated facts, it is evidently clear that Md. Nazir, Fitter did not avail the above noted opportunities to appear in the Trade Tests so notified by the Department from time to time. Therefore, it cannot be interpreted that Md. Nazir, Fitter had been given the first opportunity to appear in the Trade Test conducted by the Department on 29.04.08, as trade test for financial upgradation in the pay scale of Rs. 4000-100-6000 and as well as for the promotion to the post of Work Assistant had been conducted and / or notified to be conducted by the Department on various occasions earlier to 29.04.08 as mentioned in the para above.

In view of the above facts and circumstances, Md. Nazir, Fitter is only entitled to get the benefit of ACP w.e.f date he qualified the prescribed Trade Test conducted by the Department on 29.04.08 and not from 09.08.99 as opined by you in your letter under reference.

Your further interpretation that 2nd ACP to Md. Nazir, Fitter shall also become effective w.e.f 09.08.99 on passing the trade test for the post of Caretaker is also not correct as said fitter had appeared for the trade test to become eligible for grant of first ACP from 29.04.08 and that he has yet to pass the trade test for the post of Caretaker, which has not been held so far.

Likewise, Trade Tests for the post of Carpenter, Mason, Beldar, Blacksmith, Plumber and painter etc had been held on various occasions prior to the date of 29.04.08 but Shri Kanak Kalita, Beldar apparently failed to participate in those Trade Tests so conducted by the Department prior to 29.04.08. So, Shri Kanak Kalita, Beldar had also been correctly granted ACP vide this office letter dated 22.04.09.

You are, accordingly, requested to implement the ACP granted to Md. Nazir, Fitter and Shri Kanak Kalita, Beldar w.e.f 29.04.08 and 04.06.08 respectively in their appropriate scale of pay as granted under ACP by this office order no. 10(26)/GS/ACC-I/2252 dated 22.04.09.

You may also inform Md. Nazir, Fitter about the above stated facts relating to grant of his A.C.P. with reference to his representation dated 13.05.09 addressed to your office (Original copy enclosed).

Encl: 1) Representation of Md. Nazir, Fitter dt. 13.05.09
 2) Office Order No.10(26)/ACCi/GS/1885 dt.10.09.2001
 3) Letter No.9(53) WA/96/SE(C)/Cal/268 dated 01.04.1997
 4) Letter No.9(53) WA/96/SE(C)/KOL/348 dated 05.05.1997
 5) Letter No.10(16)/GS/ACC-I/1454 dated 10.07.01
 6) SE(Coord)Er O.M. dated 16.05.01

(Er. Nand Lal Chauhan)
Executive Engineer (Admin)

Copy to:-

1. Guard file

Executive Engineer (Admin)

No.2(1)/acc/09/1920

Dated - 10/7/09

Copy to:- 1) Md. Nazir, Fitter

2) Shri Kanak Kalita, Beldar } through ACP
} ACC/Off/CPWD/CHY-1
for information

10/7/09
Head Clerk

Guwahati Cent. Division

ATTESTED
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ADVOCATE

GOVERNMENT OF INDIA
CENTRAL PUBLIC WORKS DEPARTMENT

No. 2(7)/GCD/2008/ 2097

Date: 28/07/2009

OFFICE MEMORANDUM

Consequent upon grant of 1st financial upgradation under ACP Scheme (on completion of 12 years service) vide Superintending Engineer, ACC-I, CPWD, Guwahati's O/o No.10(26)/ACC-I/GS/2252 dated: 22/4/2009 and as per subsequent direction issued even No.2626 dated:06/07/09, the pay of Md. Nazir, Fitter is hereby refixed @ Rs.10370.00 in the revised corresponding pay band/scale with applicable corresponding Grade Pay with effect from 01.07.08 as detailed below:

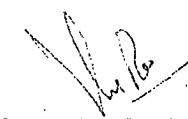
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

1) Existing Pay Band 1 Rs.5200-20200/- as on 1st July/2008	:	Rs. 10010.00											
2) Grade Pay corresponding to Pay Band	:	Rs. 1900.00											
3) Total of Pay and Grade Pay (Sl. No. 1 + Sl. No. 2)	:	Rs. 11910.00											
4) One increment equal to 3% of Sl. No. 3 above will be computed and rounded off to the next multiple of 10 to be added to existing pay in the pay band 1 Rs.5200-20200/-.	:	Rs. 360.00											
5) Pay in the revised Pay Band PBI Rs.5200-20200/-, after adding increment.	:	Rs. 10370.00											
6) Pay re-fixed in the revised Pay Band PBI Rs.5200-20200/-	:	Rs. 10370.00											
7) Grade Pay corresponding to Pay Band (i.e. to the promotion post/ACP)	:	Rs. 2400.00											
8) Date of effect	:	01.07.08											
9) Date of next increment	:	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">Date of Increment</th> <th colspan="2">Pay after Increment</th> </tr> <tr> <th>Pay in the Pay Band/ Scale</th> <th>Grade Pay</th> </tr> </thead> <tbody> <tr> <td>1st July 2009</td> <td>Rs. 10760.00</td> <td>Rs. 2400.00</td> </tr> <tr> <td>1st July 2010</td> <td>Rs. 11160.00</td> <td>Rs. 2400.00</td> </tr> </tbody> </table>	Date of Increment	Pay after Increment		Pay in the Pay Band/ Scale	Grade Pay	1st July 2009	Rs. 10760.00	Rs. 2400.00	1st July 2010	Rs. 11160.00	Rs. 2400.00
Date of Increment	Pay after Increment												
	Pay in the Pay Band/ Scale	Grade Pay											
1st July 2009	Rs. 10760.00	Rs. 2400.00											
1st July 2010	Rs. 11160.00	Rs. 2400.00											
10) Remarks, if any	:	Pay fixed after allowing benefit under FR22(I)(a)(1) on grating of ACP & on exercising of option.											

(Er. V. S. Rao)
Executive Engineer
Guwahati Central Division
CPWD, Guwahati-21

Copy to:

- 1) The Superintending Engineer, Assam Central Circle-I, CPWD, Bamunimaidan, Guwahati-1
- 2) The Assistant Controller of Accounts, Pay and Accounts Officer (NEZ), CPWD, Shillong-01
- 3) The Assistant Engineer, GCSD-I, CPWD, Guwahati for information and necessary action.
- 4) The Asstt. Accounts Officer, Guwahati Central Division, CPWD, Bamunimaidan, Guwahati-1
- 5) Md. Nazir, Fitter, GCSD-I, CPWD, Guwahati for information.
- 6) S/Book & Personal File of Md. Nazir, Fitter


Executive Engineer

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ADVOCATE

GOVERNMENT OF INDIA
CENTRAL PUBLIC WORKS DEPARTMENT

No. 2(7)/GCD/2008/ 2098

Central Administrative Tribunal
Date: 28/07/2009 ग्राहीक स्वायालय

OFFICE MEMORANDUM

- 7 DEC 2009

Consequent upon grant of 1st financial upgradation under ACP Scheme (on completion of 12 years service) vide Superintending Engineer, ACC-I, CPWD, Guwahati's O/o No 10(26)/ACC-I/GS/2252 dated: 22/4/2009 and as per subsequent direction issued vide even No.2626 dated 06/07/09 Guwahati Bench the pay of Shri Kanak Kalita, Beldar is hereby refixed @ Rs.6890.00 in the revised corresponding pay band/ scale with applicable corresponding Grade Pay with effect from 01.07.08 as detailed below:-

1) Existing Pay Band -1S Rs.4440-7440/- as on 1st July/2008 : Rs. 6650.00

2) Grade Pay corresponding to Pay Band : Rs. 1300.00

3) Total of Pay and Grade Pay (Sl. No. 1 + Sl. No. 2) : Rs. 7950.00

4) One increment equal to 3% of Sl. No.3 above will be computed and rounded off to the next multiple of 10 to be added to existing pay in the pay band -1S Rs.4440-7440/- : Rs. 240.00

5) Pay in the revised Pay Band PBI Rs.5200-20200/- after adding increment. : Rs. 6890.00

6) Pay re-fixed in the revised Pay Band PBI Rs.5200-20200/- : Rs. 6890.00

7) Grade Pay corresponding to Pay Band (i.e. to the promotion post/ACP) : Rs. 1900.00

8) Date of effect : 01.07.08

9) Date of next increment :

Date of Increment	Pay after Increment	
	Pay in the Pay Band/ Scale	Grade Pay
1st July 2009	Rs. 7160.00	Rs. 1900.00
1st July 2010	Rs. 7440.00	Rs. 1900.00

10) Remarks, if any : Pay fixed after allowing benefit under FR22(I)(a)(1) on grant of ACP & on exercising of option.

(Er. V. S. Rao)
Executive Engineer
Guwahati Central Division
CPWD, Guwahati-21

Copy to:

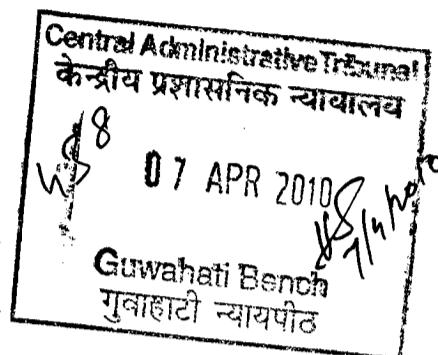
- 1) The Superintending Engineer, Assam Central Circle-I, CPWD, Bamunimaidan, Guwahati
- 2) The Assistant Controller of Accounts, Pay and Accounts Officer (NEZ), CPWD, Shillong-01
- 3) The Assistant Engineer, GCSD-I, CPWD, Guwahati for information and necessary action.
- 4) The Asstt. Accounts Officer, Guwahati Central Division, CPWD, Bamunimaidan, Guwahati
- 5) Sri Kanak Kalita, Beldar, GCSD-I, CPWD, Guwahati for information.
- 6) S/Book & Personal File of Shri Kanak Kalita, Beldar.

Executive Engineer

ATTESTED
M
ADVOCATE

Filed by:
The Respondent
Marianne Dins
Sect. 5-5-C
CAT, 7/4/2010

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



IN THE MATTER OF:

O.A no. 256/09

Md. Nazir & Anr.

...Applicants

-Vs-

Union of India and Ors.

...Responde

nts

-AND-

IN THE MATTER OF:

Written statement on behalf of the
respondent

(WRITTEN STATEMENT ON BEHALF OF RESPONDENTS)

Name of claimant
I, Sri Nand Lal Chawhan S/o Late Shri Husnuk Ram....., aged about ...52... years, presently working as Executive Engineer, Guwahati Central Division, Central Public Works Department, Guwahati - 781021, do hereby solemnly affirm and state as follows:-

1. That, I am the Executive Engineer(Admn), Assam Central Circle-1
Central Public Works Department, Guwahati, and have been impleaded as
party Respondent no. 4 in the instant case. I have gone through the original
application and have understood the contents thereof. I am conversant with
the facts and circumstances of the case. I have been authorized to file this
Written Statement on behalf of the other Respondents.

2. That, I do not admit any of the statements save and except
which are specifically admitted hereinafter and the same are deemed as
denied

Nand Lal Chauhan

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3. That before traversing various paragraphs of the present Original Application, the answering respondent would like to place the brief facts of the case.

BRIEF FACTS:

3.1 That the applicants are regular work-charged employees of the respondent department. Applicant No. 1 was appointed as Fitter (Plumber) (Direct recruitment) on 06.02.75 and applicant no. 2 was appointed as Belder on 06.10.88

3.2 That the applicant no. 1 was entitled for promotion to the post of Work Assistant upon completion of 10 years service in the category of Fitter upon qualifying the Trade Test prescribed for the post of Work Assistant as per Recruitment Rules (RRs) framed by the department for the post of Work Assistant/Road Inspector in the subordinate offices of CPWD. So, the applicant no. 1 was entitled to promotion to the post of Work Assistant w.e.f. February, 1985 subject to the condition that the applicant passed the prescribed test as notified under column 10 and 11 of the RRs.

3.3 That the respondent department issued notification for holding of trade test for the promotions to the post of Work Assistant vide O.M. no. dated 9(53)/WA/96/SE(C)/ Cal/268 dated 01.04.97 requesting to all SEs/SSWs/EEs to send the bio-data of the willing candidates from carpenter, mason, blacksmiths, plumber, painter, etc having 10 years service in the category to appear in the **Trade Test** for promotion to the post of Work Assistant from Work-charged. Similarly, vide order dated 05.05.97 under no. 9(53)/WA/96/SE(C)/ Cal/348, the respondent department also issued the O.M. inviting the willing candidates to appear before the **Trade Test** for the post of Work Assistant. The said O.M. were very much circulated to all the field units for obtaining applications from eligible and willing skilled category of work-charged staff .

3.4 That the said trade test was notified to be conducted for all skilled categories of work-charged staff having 10 years services in the category of carpenter, mason, etc. and in response to the said notification, option was received from the willing and eligible Work charge staff which were forwarded to the competent authority vide letter dated 26.06.97 but the applicant no. 1 had failed to exercise the said option

3.5 That in the meantime in 1999, the ACP Scheme came into existence. The office of respondent no. 2 took up matter of implementing the ACP for the work-charged staff of CPWD.

Mans Lal Chauhan

07 APR 2019

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3.6 That references were subsequently made to the competent authority at the behest of work-charged staff to DOPT through the Ministry of Urban Development for grant of ACP in relaxation of the provision of trade test but the DOPT has rejected this. Consequently the office of the respondent no.2 has issued clarification on aforesaid matter on grant of ACP for work-charged staff vide O.M. dated 29.07.08 which inter alia states that if passing trade test was an essential requirement for promotion, the same will have to be passed before one can be considered for financial upgradation under the ACP Scheme. Therefore the applicant nos.1 and 2 became entitled to grant of ACP only from 29.04.08 and 28.04.08 respectively when they passed their prescribed trade tests. Therefore, they are not entitled to grant of ACP from the date of implementation of ACP Scheme i.e. 09.08.99.

3.7 That trade tests for financial upgradation under ACP Scheme under O.M. No. 8/1/99-EC.X dated 21.05.01 issued by the respondent no. 2 were also conducted 2001 but the applicant no. 1 did not avail himself of the above noted opportunity as well as other past opportunities although passing trade test was mandatory for earning promotion or getting financial upgradation. He finally appeared in the trade test conducted by the respondent no. 4 on 29.04.08 in response to the trade test notified by the latter vide his letter no. 10(77)/WC/GDC/2008/568 dated 11.03.08. The result of the trade test was declared by the respondent no. 3 vide his letter no. 10(26)/ACC1/GS/08/862 dated 12.06.08 and the applicant no. 1 was declared successful in the trade test. Accordingly the 1st financial upgradation was granted to the applicant no. 1 in the scale of Rs.4000-6000 as mentioned in Annexure 5 of the O.A. as per the rules framed by the government for grant of first financial upgradation to work charged staff vide O.M. issued by the respondent no. 2 vide his letter dated 21.05.01 read with subsequent clarifications issued by their O.M.s dated 08.04.02, 28.08.02, 19.05.06 and 29.07.08

3.8 That as regards the applicant no. 2, the applicant who was appointed as Belder on 06.10.88 became eligible for grant of 1st financial upgradation w.e.f. 09.08.99 subject to the condition that he qualified the trade test prescribed for the post of Mason, Plumber, etc. in terms of policy framed for grant of ACP scheme to work-charged staff vide the aforementioned O.M.s. The applicant no. 2 also did not appear for the trade test conducted and meant for promotion to the post of carpenters, mason, etc which was notified by the respondent no.4 vide his letter no. 10(TT)/GDC/94/2814 dated 08.10.94 as the applicant no. 2 was under suspension due to his arrest by the state police in a criminal case. Another trade test was also conducted on 15.06.01 by the respondent no. 4 for the

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promotion to the post of plumber & Mason etc. from the post of Belder. However, the applicant no. 2 did not appear for the said trade test for the reasons best known to him.

3.9 That finally after submission of his willingness to appear in the trade test conducted by the respondent department on 28.04.08 through a notification vide the respondent no. 4 office letter dated 11.03.08. The said test was passed by the applicant no. 2 and accordingly as per the policy framed for grant of financial upgradation to the Belders in terms of DGW O.M. No. 8/1/99/EC.X dated 21.05.01 read with clarifications issued vide respondent no. 2's O.M. of even no. dated 21.05.01, 08.04.02, 28.08.02, 19.05.06 and 29.07.08, the applicant no. 2 was granted financial upgradation w.e.f. 01.07.08 which was quite judicious and in accordance with the extant laws and rules framed by the government.

3.10 That it is also submitted that the applicant nos. 1 and 2 have misinterpreted the O.M. No. 8/1/99-EC.X dated 28.08.02 issued by the respondent no. 2, the relevant extract of which is produced hereunder:

S. No.	Point of Doubt	Clarification
	"The date from which the benefit of ACP may be allowed to the Work-charged staff of CPWD."	The work-charged staff who have completed 12/24 years of service as on 09.08.99 may be allowed the benefit of the ACP Scheme, subject to the condition that he qualifies the prescribed <u>Trade test</u> where-ever required <u>at the first chance</u> . In the case, such worker could not qualify the prescribed Trade Test at the first chance, he/she will be entitled to get the benefit on subsequent date i.e. from the date of qualifying the prescribed Trade test.

However, the applicants have misinterpreted the words "first chance" with regard to the trade test as notified in the said O.M. dated 28.08.02 of the respondent no. 2 and wrongly termed it as "first attempt" or "first time" as emphasized by applicants in their O.A. and in their annexures.

3.11 That the word "first chance" conveys that if the trade test is held immediately after issuance of the ACP Scheme by the government on 21.05.01 and the work-charged staff participating in the trade test then held happened to qualify the same in "first chance", they would be granted

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financial upgradation from the original date of implementation of ACP w.e.f. 09.08.99. And the work-charged staff not qualifying the said trade test in "first chance" would be granted ACP from the subsequent date on which he shall qualify the prescribed trade test. In the instant case, both the applicants did not participate in the trade tests conducted by the respondent department prior to 28.04.08/29.04.08 nor the applicant even expressed willingness to appear in the trade test earlier held by the department prior to 28.08.08/29.08.08. Finally, the applicants could exercise their willingness to appear in the trade test which was accordingly held on 29.04.08 and 28.04.08 respectively and both the applicants passed the said tests respectively. Under such aforesaid situation, the applicants were eligible for 1st financial upgradation from the date they actually passed in the trade test held by the respondent department on 28.04.08/29.04.08.

3.12 That the applicants wrongly believed that whenever they passed the trade test in their first attempt, they are entitled for grant of ACP Scheme w.e.f. from the date from which the ACP was implemented by the government i.e. from 09.08.99 although number of trade tests were conducted prior to 28.04.08/29.04.08. In other words, although the applicants passed in their first attempt but they avail the chance to appear a long time after the ACP Scheme was implemented and also after many previous trade tests were already conducted by the department. If the applicants contentions are accepted, it shall mean that any person who is not proficient in his skill can wait for as long as he likes till he attains his proficiency by not appearing in any trade test conducted in between, then finally appear in the trade test at his own sweet will, pass the trade test and get the benefit of ACP Scheme from as early as 09.08.99, which would lead to an absurd scenario.

4. REPLY TO THE FACTS OF THE CASE:

4.1 That with regard to the statement made in paragraph 4.1 of the application the humble answering respondent has nothing to comment on it.

4.2 That with regard to the statements made in paragraphs 4.2 to 4.5 of the application the humble answering respondent begs to offer no comment on it as being matters of records. He, however, does not admit any of the statements which are contrary to records.

4.3. That with regard to the statements made in paragraph 4.6 of the application the humble answering respondent has admitted which are being matters of records. He, however, further stated that the Trade test were also notified by the Respondent Department from time to time prior to

Nand Lal Choudhury

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its notification for holding of trade test for work-charged staff vide its office order no.10 (Trade Test)/WC/GCD/2008/568 dated 11.03.08 for promotion/financial upgradation of the work charged staff .

4.4. That with regard to the statements made in paragraph 4.7 of the application the humble answering respondent begs to state that the applicants infact earlier have been abstaining themselves from appearing in the Trade Test notified and/or conducted by the Respondent Department from time to time. However, in pursuance of the Office Order dated 11.03.08 (Annexure-3 to the O.A.) conducted by the humble answering respondents they appeared in the Trade Test on 28.04.08 and 29.04.08 for the Grade of Carpenter/Mason/Plumber/Fitter/Work Assistant and they were found successful and declared passed vide Office Order dated 12.06.08 (Annexure-4 to O.A.) for the Grade of Work Assistant and Plumber respectively.

4.5. That with regard to the statements made in paragraph 4.8 of the application the humble answering respondent begs to state that the First Financial Upgradation under ACP Scheme 1999 was granted to the applicant no.1 w.e.f. 29.04.08 and applicant no.2 w.e.f 04.06.08, as fulfilling the eligibility norms of passing the Trade Test.

4.6. That with regard to the statements made in paragraph 4.9 of the application the humble answering respondent begs to state that the claim of the applicants for grant of Financial Upgradation w.e.f. 09.08.99 without having passed the prescribed Trade Test for their respective post prior to 28.04.08 and 29.04.08 respectively is not maintainable as the prescribed Trade Test were also conducted by the Respondent Department from time to time prior to 28.04.08 and 29.04.08 as mentioned above.

Further, it is categorically stated that the applicants were always free to appear in the Trade Test at any time they wish to get the promotion and/or to get their Financial Upgradation under ACP Scheme implemented by the Govt. w.e.f. 09.08.99. However, the applicants always abstained from appearing in the Trade Test conducted by the Department from time to time as referred to above.

Further, it is stated that the O.M. dated 28.08.02 referred to the letter dated 12.05.09 (Annexure-6 to the O.A.) infact was misconstrued and misrepresented by the applicant. In this connection it is stated that the Office Memorandum dated 21.05.01 issued by the Directorate General of Works, CPWD, Nirman Bhawan, New Delhi, cited some clarification regarding ACP Scheme. As per the said clarification appeared in Sl.No.4 it is clarified that the requirement of Trade Test, where prescribed, has to be met before grant of financial upgradation. Only a person, who is fully eligible for promotion under Recruitment Rules but fails to secure a promotion within

Nanaklal Chauhan

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12/24 years, is eligible for grant of financial upgradation under ACP. As such the proposal for demanding by union Trade Test for assessing the scheme should be conducted for granting ACP and Trade Test and need not be insisted upon for grant of ACP. Thus, the proposal cannot be accepted.

Further the Office Memorandum dated 28.08.02 also made some clarifications regarding ACP Scheme where it is also clarified that the Work Charged Staff who have completed 12/24 years of service as on 09.08.99 may be allowed the benefit of ACP Scheme, subject to the condition that he qualifies the prescribed Trade Test where-ever required at the first chance. In case such worker could not qualify the prescribed Trade Test at the first chance, he/she will be entitled to get the benefit on subsequent date i.e. from the date of qualifying the prescribed Trade Test.

It is stated here that in the instant case the applicants infact did not avail the first chance for being appeared before the Trade Test held prior to 28.04.08 and 29.04.08.

Copies of the Office Memorandum dated 21.05.01 and 28.08.02 are annexed herewith and marked as **ANNEXURES- A & B** respectively.

4.7. That with regard to the statements made in paragraph 4.10 of the application the humble answering ^{respondent} has nothing to make comment on it as they are matters of record of the case. He however states that the letter dated 06.07.09 annexed as Annexure 7 to the O.A. is self-explanatory which is just in accordance with the policy framed by the government of India in terms of their O.M. dated 21.05.01 (Annexure A to this Written Statement) read with clarifications issued vide O.M. dated 08.04.02 and 28.08.02 (Annexure 2 to the O.A.) for implementation of the financial upgradation under ACP Scheme to the work-charged staff.

4.8. That with regard to the statements made in paragraph 4.11 of the application the humble answering respondent has nothing to make comment on it as they are being matters of record of the case.

4.9. That the humble answering respondent denies the correctness of the statements made in paragraph 4.12 of the O.A. It is stated that the respondent department issued notification for holding of trade test for the promotions to the post of Work Assistant vide O.M. no. dated 9(53)/WA/96/SE(C)/ Cal/268 dated 01.04.97 requesting to all SEs/SSWs/EEs to send the bio-data of the willing candidates from carpenter, mason, blacksmiths, plumber, painter, etc having 10 years service in the category to appear in the **Trade Test** for promotion to the post of Work Assistant from Work-charged. Similarly, vide order dated 05.05.97 under no.

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9(53)/WA/96/SE(C)/ Cal/348 , the respondent department also issued the O.M. inviting the willing candidates to appear before the **Trade Test** for the post of Work Assistant. The said O.M. were very much circulated to all the field units for obtaining applications from eligible and willing skilled category of work-charged staff .

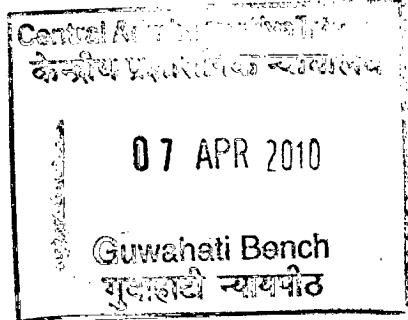
Copies of the O.M. dated 01.04.97 and 05.05.97 are annexed herewith and marked as **ANNEXURES C & D.**

4.10. That with regard to the statements made in paragraph 4.13 of the application the humble answering respondent begs to state that the respondent no. 4, The Executive Engineer, Guwahati Central Division, CPWD, Guwahati in fact misinterpreted the O.M. dated 28.08.02 (Annexure B to the Written Statement) and dated 19.05.06 issued the said latter dated 12.05.09 (Annexure 6 to the O.A.) wrongly. Thereafter in reference to the said letter dated 12.05.09, the respondent no. 6 vide letter dated 06.07.09 (Annexure 7 to the O.A.) clarified the matter on the subject of grant of first financial upgradation under ACP Scheme and requested the respondent no. 4 to implement the ACP granted to the applicants w.e.f. 29.04.08 and 04.06.08 respectively in their appropriate scale of pay as granted under ACP Scheme.

4.11. That the humble answering respondent begs to deny the statements made in paragraphs 4.14 to 4.18 of the O.A. as being incorrect, illegal and arbitrary as seen from the aforementioned paragraphs of the instant Written Statement.

4.12. That the humble answering respondent begs to state that the applicants approached before this Hon'ble Tribunal without exhausting alternative remedy i.e. by representing their cases before the competent authority. However, in paragraph 6 of the O.A., the applicants have declared that there is no other alternative efficacious remedy available to them. Thus the applicants misrepresented the facts and on this sole ground itself the application is liable to be dismissed.

Nand Lal Choudhury



VERIFICATION

I, Sri Nand Lal Chawhan S/o

.....Lati Shri. Hemanta Ram....., aged about52..... years, presently working as Executive Engineer(Admin.), Assam Central Circle-I, Central Public Works Department, Guwahati - 781021, do hereby verify that the statements made in paragraphs 2.1, 4.1, 4.11 and 4.12..... are true to my knowledge and belief, those made in paragraphs 1.3.1 to 3.12, 4.2 to 4.10..... being matters of records of the case are true to my information derived therefrom which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact before the Hon'ble Tribunal,

And I sign this verification on the 1st day of April, 2010 at Guwahati.

Nand Lal Chawhan
SIGNATURE 01-04-10

Executive Engineer (Admin.)
Assam Central Circle No. 1
Guwahati - 781021

ANNEXURE A

267

4585
30-5-01

No. 84799-EC.X

GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF WORKS
CENTRAL PUBLIC WORKS DEPARTMENT*****
Nirman Bhawan, New Delhi, dated : 21-5-2001 [बाहरी चायपीठ II]

IMMEDIATE

07 APR 2001

Guwahati Bench

Sub: Assured Career Progression Scheme for the Regular Work-charged
Establishment Staff - Clarification regarding.

The undersigned is directed to invite reference to this Directorate's letter of even number dated 8.1.2001 conveying the sanction of the Government to the implementation of the Assured Career Progression Scheme for the Central Government Civilian Employees introduced by the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions vide O.M.No.35034/1/97-Estt(D) dated 9th August, 1999 to the eligible Work-charged staff of CPWD and to say that consequent upon introduction of the scheme to the Work-charged staff of CPWD, clarifications have been sought by the various Field Units of CPWD about certain issues in connection with the implementation of the ACP Scheme. The doubts raised by various quarters have been duly examined by this Directorate in consultation with the Ministry of Urban Development & Poverty Alleviation and Department of Personnel & Training and point-wise clarifications have accordingly been indicated in the Annexure.

2. The ACP Scheme should strictly be implemented keeping in view the provisions of DOPT's O.M. dated 9.8.99 and subsequent clarificatory communication dated 10.2.2000.

B.P. Agrawal
(B.P. Agrawal)
Director Works (PM)

Encls: 3

*Important
copy to be sent to all
Ses/ Sengt. & to all Work Staff*

TO:
All ADGs(Regions) CES/SES/ SES(Coord.)/EES/ Directors of Horticulture/
Addl. Director of Horticulture/ Dy. Director of Horticulture.
All Sr. Labour Welfare Commissioners/Asstt. Labour Welfare
Commissioners/Labour Commissioners.

Copy to:

*for G.S.C
Dmms*

- (1) All Recognised Unions of Work-charged Staff in CPWD.
- (2) Ministry of UD & PA (EW-2 Section).
- (3) PPS to DG(W)/ADG(S&P), PS to ADG(TD), PA to DA.
- (4) All Estt. Section in Central Office of CPWD.
- (5) Hindi Section for Hindi Translation.
- (6) Guard File/Stock File/Circular File.

Det/MS
Nandlal Chakrabarty
Executive Engineer (Admn.)
Assam Central Circle No-I
CPWD, Guwahati-781021

Meetali Ghosh
(Meetali Ghosh)
Deputy Director (EC.X)

being fully conversant with the facts of the case based on records of the department do hereby solemnly affirm and declare as under:

Reference Office Memo. No. 8/1/99-EC.X dated 21-5-2001

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ANNEXURE

S.No.	Point of Issue/Doubt	Clarification
1.	To which authority the cases relating to application of the ACP Scheme to the eligible Work-charged staff should be sent for disposal.	Respective Circle Office would deal with such cases. Guwahati Bench গুৱাহাটী ন্যায়পাঠ
2.	How to constitute a Screening Committee for the purpose of processing ACP Scheme in respect of the Work-charged Staff.	Screening Committee for the purpose of processing ACP Scheme are to be constituted in the same manner as it is being constituted for regular promotion cases.
3.	What should be the first financial upgradation and second financial upgradation under the ACP Scheme for the eligible Work-charged staff of CPWD.	ACP Scales in respect of direct recruit Work-charged employees as also in respect of the employees who have already availed one promotion are enclosed in the Annexure II & III.
4.	Fulfillment of normal norms on Promotion (Bench Mark, Departmental Examination, Seniority-cum-Fitness etc.) have to be observed for grant of benefit under ACP Scheme. In CPWD, the workers have to pass Trade Test for being promoted. Since the designation is not changed but only higher scales are given under the Scheme, the Unions representing the workers have been demanding that no Trade Test for assessing the skill should be conducted for granting ACP. Thus, Trade Test need not be insisted upon for grant of ACP.	Requirement of Trade Test, where prescribed, has to be met before grant of financial upgradation. Only a person, who is fully eligible for promotion under Recruitment Rules but fails to secure a promotion within 12/24 years is eligible for grant of financial upgradation under ACP. As such, the proposal cannot be accepted.
5.	Vide O.M.No.22/9/93-EC.X dt. 7.5.97, 16 Assistant categories have been merged with their respective main categories. How the benefit under the ACP Scheme are to be allowed to such workers? What should be the date of their seniority, whether it should be from the date from which the category was merged or it should be the date of their respective employment.	Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay-scales by ignoring the promotion. An employee who got promoted from lower pay-scale to higher pay-scale as a result of promotion before merger of pay-scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade. The workers who were earlier in Asstt. categories are placed in main category enbloc on 7.5.97. For the purpose of ACPs, this will be the bench mark date.

Attest
Narend Chakrabarti
Executive Engineer (Admn.)
Assam Central Circle No-I
CPWD, Guwahati-781021

: 2 :

6.	<p>Motor Lorry Drivers borne on the Work-charged establishment of CPWD is either Direct Recruit or Promoted from Khallasi, holding Heavy Vehicle Driving Licence. In so far as Direct Recruits are concerned they are initially appointed in the Scale of Pay of Rs.3050-4590/- and some of them had already been allowed In-situ Promotion in the Scale of Pay of Rs.4000-6000/- Can they be allowed ACP corresponding to the Staff Car Drivers treating their initial appointment in the Grade of Rs.3050-4590/- with first ACP of 12 years at Rs.4000-6000/- and second ACP after 12 years at Rs.4500-7000/-.</p>	<p>The post of Motor Lorry Driver is not covered under Staff Car Driver Scheme notified by DOPT. They may, therefore, be allowed benefit under ACP Scheme. It may be clarified that Staff Car Driver Scheme is not a scheme for financial upgradation of Staff Car Drivers. It only involves distribution of posts of Staff Car Drivers in different grades in a specified ratio.</p> <p>If any selection grade/in-situ promotion has been allowed to employees, which is not a part of the hierarchy, it shall not be counted as promotion for the purpose of ACPs.</p>
7.	<p>Due to implementation of the modified Arbitration Award, the Pay Scale of Mali was revised from Rs.2550-3200/- to Rs.2650-4000/- and the Pay Scale of Senior Mali was revised from Rs.2650-4000/- to Rs.3050-4590/- At present, the Scale of Pay of Senior Mali and the Promotional Grade of Choudhary is the same. It may be clarified whether in implementation of the ACP Scheme a Mali can be allowed the Scale of Pay of Rs.3050-4590/- as first upgradation and Rs.4000-6000/- as second upgradation, since the hierarchy has been disturbed due to both Feeder Grade and Promotional Grade being placed in the same Scale of Pay.</p>	<p>So long as the two hierachial posts are in same Scale, it may not be possible to grant ACP benefit in a Scale higher than the prescribed Scale.</p>

Affidavit

Nand Lal Choudhary
Executive Engineer (Admn.)
Assam Central Circle No-I
CPWD, Guwahati-781021

ANNEXURE II

POSITION IN RESPECT OF DIRECT RECRUIT WORK-CHARGED EMPLOYEES TO THE INITIAL POST INDICATED IN COLUMN-2

S.No.	Designation	Existing Scale of Pay	1st Promotion Scale	ACP Scale if promotion not available	1st 12 th Year ACP Scale	2 nd Promotion Scale	2 nd ACP Scale if promotion not available	24 th Year 2 nd ACP
1.	Beldar (DR)	2550-55-2660- 60-3200	3050-75-3950- 80-4590	—	3050-75-3950- 80-4590	—	4000-100-6000	4000-100-6000
2.	Khali (Elect.) (DR)	-do-	-do-	—	-do-	4000-100-6000	—	-do-
3.	Chairman (DR)	-do-	—	2610-60-3150- 65-3540	2610-60-3150- 65-3540	—	2650-65-3300- 70-4000	2650-65-3300- 70-4000
4.	Bhisty (DR)	-do-	—	-do-	2610-60-3150- 65-3540	—	-do-	-do-
5.	Bullockman (DR)	2650-65-3300- 70-4000	3050-75-3950- 80-4590	—	3050-75-3950- 80-4590	3050-75-3950- 80-4590	—	3050-75-3950- 80-4590
6.	Mall (DR)	-do-	-do-	—	-do-	-do-	—	-do-
7.	Packer (DR)	-do-	—	2750-70-3800- 75-4400	2750-70-3800- 75-4400	—	3050-75-3950- 80-4590	3050-75-3950- 80-4590
8.	Syce (DR)	-do-	—	-do-	-do-	—	-do-	-do-
9.	Stocker (DR)	-do-	—	-do-	-do-	—	-do-	-do-
10.	Bandhani (DR)	-do-	—	-do-	-do-	—	-do-	-do-
11.	Gharami (DR)	-do-	—	-do-	-do-	—	-do-	-do-
12.	Caneman (LR)	3050-75-3950- 80-4590	—	3200-85-4900	3200-85-4900	—	4000-100-6000	4000-100-6000
13.	Carpenter (DR)	-do-	4000-100-6000	—	4000-100-6000	—	4500-125-7000	4500-125-7000
14.	Mason (DR)	-do-	-do-	—	-do-	—	-do-	-do-
15.	Plumber (DR)	-do-	-do-	—	-do-	—	-do-	-do-
16.	Tailor (DR)	-do-	—	3200-85-4900	3200-85-4900	—	4000-100-6000	4000-100-6000
17.	Upholsterer (DR)	-do-	—	-do-	-do-	—	-do-	-do-
18.	Stone-cutter (DR)	-do-	—	-do-	-do-	—	-do-	-do-

Attorney
Nowshad J. Dabir

Executive Engineer (Admn.)
Assam Central Circle No-I
CPWD, Guwahati-781021

S.No.	Designation	Existing Scale of Pay	1st Promotion Scale	ACP Scale if promotion not available	1st 12 th Year ACP Scale	2 nd Promotion Scale	2 nd ACP Scale if promotion not available	24 th Year 2 nd ACP
38.	Head Gardner (DR)	4000-100-6000	—	4500-125-7000	4500-125-7000	—	5000-150-8000	5000-150-8000
39.	Sr. Mechanic (DR)	4000-100-6000	4500-125-7000	—	4500-125-7000	—	-do-	5000-150-8000
40.	Pattern Maker (DR)	4000-100-6000	—	4500-125-7000	4500-125-7000	—	-do-	5000-150-8000
41.	Mate (DR)	3050-75-3950-80-4590	—	3200-85-4900	3200-85-4900	—	4000-100-6000	4000-100-6000

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
07 APR
Guwahati Bench
गुवाहाटी न्यायालय

Attaches

Nand Lal Choudhury
Executive Engineer (Admn.)
Assam Central Circle No-I
CPWD, Guwahati-781021

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ANNEXURE-III

POSITION IN RESPECT OF WORK-CHARGED
EMPLOYEES WHO HAVE AVAILED ALREADY ONE PROMOTION

S.No	Category	Existing Pay-scale	ACP scheme after 12 years	Scale of Pay in Promotional Grade where Promotion is available, otherwise ACP Scale to be given after 24 Years
1.	Sr. Mall – (Promoted from Malls and Bullockman)	3050-75-3950-80-4590	NO ACP	3050-75-3950-80-4590
2.	Electrician (Promoted from DR Wireman)	4000-100-6000	NO ACP	4500-125-7000
3.	Sr. Mech. (AC&R) – (Promoted from DR Mechanic)	4000-100-6000	NO ACP	4500-125-7000
4.	Sr. Operator – (Promoted from DR Operator)	4000-100-6000	NO ACP	4500-125-7000
5.	Sr. Mechanic – (Promoted from DR Mechanic)	4000-100-6000	NO ACP	4500-125-7000
6.	Pattern Maker – (Promoted from DR Carpenter)	4000-100-6000	NO ACP	4500-125-7000
7.	Syce – (Promoted from Beldars)	2650-65-3300-70-4000	NO ACP	3050-75-3950-80-4590
8.	Carpenter – (Promoted from Beldar)	3050-75-3950-80-4590	NO ACP	4000-100-6000
9.	Mason – (Promoted from Beldar)	3050-75-3950-80-4590	NO ACP	4000-100-6000
10.	Plumber – (Promoted from Beldar)	3050-75-3950-80-4590	NO ACP	4000-100-6000
11.	Upholsterer – (Promoted from Beldar)	3050-75-3950-80-4590	NO ACP	3200-85-4900
12.	Bollerman – (Promoted from Khallasi)	3050-75-3950-80-4590	NO ACP	4500-125-7000

Attest

Executive Engineer (Admn.)
Assam Central Circle No. I
CPWD, Guwahati-781021

07 APR 2010

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গুৱাহাটী ন্যায়পৌঁঠ

S.No	Category	Existing Pay-scale	ACP scheme after 12 years	Scale of Pay in Promotional Grade where Promotion is available, otherwise ACP Scale is given after 24 Years
13.	Lift Mechanic – (Promoted from Khallas)	3050-75-3950-80-4590	NO ACP	3200-85-4900
14.	Mechanic – (Promoted from Khallas)	3050-75-3950-80-4590	NO ACP	4000-100-6000
15.	Mechanic (AC&R) – (Promoted from Khallas)	3050-75-3950-80-4590	NO ACP	4000-100-6000
16.	Operator (E&M) – (Promoted from Khallas)	3050-75-3950-80-4590	NO ACP	4000-100-6000
17.	Turner(promoted from Khallas)	3050-75-3950-80-4590	NO ACP	3200-85-4900
18.	Wireman – (Promoted from Khallas)	3050-75-3950-80-4590	NO ACP	4000-100-6000
19.	MLD – (Promoted from Khallas)	3050-75-3950-80-4590	NO ACP	3200-85-4900
20.	Painter – (Promoted from Beldar)	3050-75-3950-80-4590	NO ACP	4000-100-6000
21.	Mate – (Promoted from Beldar)	3050-75-3950-80-4590	NO ACP	3200-85-4900

Attest

Nursul Choudhury
Executive Engineer (Admn.)
Assam Central Circle No-I
CPWD, Guwahati-781021

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ANNEXURE

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Annexure - 'B'
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MOST IMMEDIATE

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GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF WORKS
CENTRAL PUBLIC WORKS DEPARTMENT

07 APR 2010

No. 8/1/99-EC.X

Nirman Bhawan, New Delhi, dated : 28.8.2002

Guwahati Bench

कानूनी दस्तावेज़ का व्यापार लाय

OFFICE MEMORANDUM

Subject :- Implementation of Assured Career Progression Scheme for the Work-charged staff - Clarification regarding.

In continuation of this Directorate's O.M. of even number dated 21.5.2001 and 8.4.2002 on the above mentioned subject, wherein clarifications were given on various points of doubts, following further clarifications are given on the Points of Doubt raised by the various field units :-

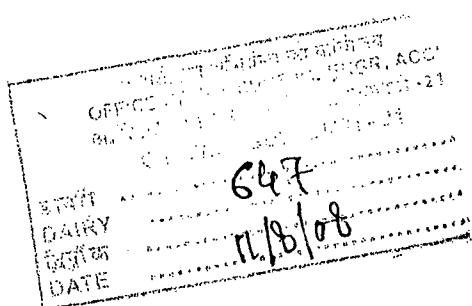
S.No.	Point of Doubt	Clarification
1.	The date from which the benefit of ACP may be allowed to the Work-charged staff of CPWD.	The work-charged staff who have completed 12/24 years of service as on 9.8.99 may be allowed the benefit of ACP Scheme, subject to the condition that he qualifies the prescribed Trade test where-ever required at the <u>first chance</u> . In case, such worker could not qualify the prescribed Trade test at the first chance, he/she will be entitled to get the benefit on subsequent date i.e from the date of qualifying the prescribed Trade test.
2.	Whether the CPWD unit is supposed to take a Trade test for the category of Foreman/Senior Operator even if, these categories do not exist in their Unit.	The concerned unit is supposed to take the Trade test of the eligible workers in the feeder category even if the promotional grades do not exist in their unit for the purpose of ACP, as these categories exist in the Work-charged Establishment of CPWD.
3.	Whether Operators on completion of 12/24 years of service can be allowed the scale of pay of Senior Operator under the provisions of ACP Scheme even though the category of Senior Operator has been declared as a dying category.	Yes. However, the Operators on completion of 12/24 years of service could be allowed the promotional grade of Senior Operator subject to the condition that he qualifies the prescribed Trade test of Senior Operator and otherwise eligible.

Attest

Subash Chakay
Executive Engineer (Admn.)
Assam Central Circle No-I
CPWD, Guwahati-781021

A. Madhukumar Reddy
Director of Administration

Contd.....2/-



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Annexure - 'B1'

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
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गुवाहाटी न्यायपीठ

GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF WORKS
CENTRAL P.W.D., NIRMAN BHAWAN

New Delhi, dated :-

29-07-2008.

No. 8/1/2007-NR/EC.X

To

1. All ADGs (Region)/CEs/SEs/SEs (Coord.)/EEs/DDG (Hort.)/DOH/ADOH.
2. All Deputy Labour Welfare Commissioners/Assistant Labour Welfare Commissioners.

Subject :- Grant of ACP to Wireman - Clarification regarding.

This Directorate have been receiving references from various Circle/Division/Union offices of CPWD regarding grant of financial upgradation under the ACP Scheme to Wireman in CPWD by relaxing the provisions of trade test, educational qualification and supervisory Licence etc. prescribed in the Recruitment Rules. Accordingly, the matter has been considered in this Directorate and a detailed proposal was made to the DoPT through M/o Urban Development for grant of financial upgradation to Wireman in relaxation of the provisions of Trade test, Educational qualification and Supervisory Licence prescribed in the Recruitment Rules under ACP Scheme.

DoPT, after considering our proposal, have opined that

"In terms of ACP Scheme, if passing/qualifying of trade test (skill test) in a Departmental examination is an essential requirement for grant of promotion, the same will also have to be passed before one can be considered for financial upgradation under the ACP Scheme. The benefit of ACP Scheme can be allowed from a prospective effect i.e. after passing/qualifying of such test and not either from the date of implementation of the ACP Scheme i.e. 09.8.1999 or completion of 12/24 years of regular service.

In view of the above, the proposal for grant of financial upgradation under the ACP Scheme to Wireman in CPWD by relaxing the provisions of trade-test, educational qualification and Supervisory Licence in the recruitment rules cannot be agreed to."

All offices of CPWD are therefore, requested to adhere to the conditions laid down by the DoPT and deal with the representations etc. received by them on the above lines at their level.

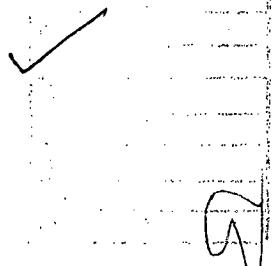
This issues with the approval of DG(W).

D K S H

(D.K. SHARMA)
Director of Administration.

Copy for information to :-

1. PPS to DG(W)/ADG (S&P)/PS to ADG(TD)/DDG(W).
2. PA to DA/DDAs/DS (Admn.)/S.O (EC.V) Section.
3. Ministry of U.D (EW-2 Section)/Finance Division.
4. All Unions of Work-charged staff in CPWD.
5. Hindi Shakha for Hindi version.
6. Stock file/Guard file/Circular file.



Subhash Chander
(Subhash Chander)
Section Officer, EC.X

Attested
Nandu Chander
Executive Engineer (Admn.)
Assam Central Circle No-I
CPWD, Guwahati-781021

Int. Dr. Chander all
BES 1/2008

GOVERNMENT OF INDIA.
CENTRAL PUBLIC WORKS DEPARTMENT.
COORDINATION CIRCLE (EZ), CALCUTTA.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

07 APR 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

No. 9(53)/WA/96/SE(C)/Cal/ 268

Dated: 01-4-97.

OFFICE MEMORANDUM.

Trade Test for the post of Work Assistant from W/C ~~category~~ category will be conducted soon. All SEs/SSWs/EEs are requested to send the Bio-data of the willing candidates from Carpenter, Mason, Blacksmiths, Plumber, Painter etc. having 10 years service in the category as some post of Work Assistant will be filled up from promotional quota. Please treat this as MOST URGENT.

Superintending Engineer
Coordination Circle (EZ)
C.P.W.D., Calcutta-20.

Copy to:-

All SEs/SSWs/EEs under Region 'B'.

SUPERINTENDING ENGINEER (COORD).

C. P. W. D.
No 10(16)/Accd/As/672

27/4/97.

Copy to - The Ex.Engineer, Central Ctr. Divn.
cpwd. Garhbeta-21 & Ex.Engineer, Meghpara Ctr.
Dmn. cpwd. Shillong for necessary action.

Attested

Nawal Chawdhury
Executive Engineer (Admn.)
Assam Central Circle No-1
CPWD, Guwahati-781021

Executive Engineer (Admn.)
Assam Central Circle
C.P.W.D., Guwahati-781021

2(5)WA/96/SE(C)/Cal/ 34

Dated: 5/5/97.

OFFICE MEMORANDUM

Trade Test for the post of Work Assistant from Work Charge category viz, Carpenter, Mason, Blacksmiths, Plumber, Painter etc having 10 years service in the category will be conducted on 27-5-97 at 11 A.M. in the office of the Superintending Engineer, Coordination Circle(EZ), CPWD, Calcutta. The Test will comprise of two parts i.e., Practical and Oral. Options from the willing candidates should reach to this office on or before 12-5-97 through their respective offices. No application will be entertained after expiring of the above date.

Superintending Engineer
Coordination Circle(EZ)
C.P.W.D., Calcutta-20.

Copy to:-

1. All SEs/SSWs/EEs under Region 'E'.

2. Associations.

SUPERINTENDING ENGINEER(COORD).

Govt. of India
Central Public Works Department

F.No: 10(16)/KCC/1/GS/ / / / /

Dt. 11/5/97

Copy to all the Executive Engineers under this Circle for information and necessary action. Please confirm that the options from all willing & eligible W.C. Staff have been obtained and sent to the Superintending Engineer (Co-Ord), Co-ordination Circle (EZ), CPWD, Calcutta-20.

This may please be treated as MOST URGENT.

Executive Engineer (HQ)
Assam Central Circle-I,
CPWD, Guwahati-21.

(1)
14/5

Detested

Hemal Chakrabarti

Executive Engineer (Admn.)
Assam Central Circle No-I
CPWD, Guwahati-781021