

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./TA/ NO. 275 2015  
R.A./CP/NO. .... 2015  
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P.D.  
09/07/2015  
SECTION OFFICER (JUDL.)

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

1. ORIGINAL APPLICATION No : 275 / 2009
2. Transfer Application No : ----- / 2009 in O.A. No. -----
3. Misc. Petition No : ----- / 2009 in O.A. No. -----
4. Contempt Petition No : ----- / 2009 in O.A. No. -----
5. Review Application No : ----- / 2009 in O.A. No. -----
6. Execution Petition No : ----- / 2009 in O.A. No. -----

Applicant (S) : Shri D. Nait

Respondent (S) : Union of India & ors.

Advocate for the : Dr. J.L. Sarkar  
{Applicant (S)} Mr. S.N. Tamuli

Advocate for the : Mr. D. Mazumdar, Mr. S. Saikia & Mr. R. Sarma } Em R. No  
{Respondent (S)} CGSC. } 2, 3 & 4.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/ C.F. Rs. 50/- deposited with the RD No. <u>399-433370</u> Date <u>19-12-2009</u></p> <p><u>21.12.09</u> 4 (Four) copies of application with envelope received for issue notice to the Respondent. CGSC served.</p> <p><u>21/12/09</u> H. Das Issue notice to the Respondents.</p> <p><u>23/12/09</u></p>	<p>22.12.2009</p> <p>29.01.2010</p>	<p>Issue notice on the Respondents, requiring them to file their reply within four weeks.</p> <p>List the matter on 29.1.2010.</p> <p>(Madan Kumar Chaturvedi) Member (A)</p> <p>Mr.D.Mazumdar, learned counsel appears for Respondent Nos.2, 3 &amp; 4. Respondent No.1 is proforma Respondent.</p> <p>Learned counsel for Respondents seeks and allowed one week time to get instructions.</p> <p>List on 05.02.2010.</p> <p>(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta) Member (A) Member (J)</p>

O.A.275-09

05.02.2010

Mr.D.Mazumdar, learned counsel for the Respondents states that Applicant had attained his age of superannuation and since he was not in the main panel, rather kept in wait list, he has no legal right of promotion. Let detailed reply be filed within four weeks, as prayed for.

List on 08.03.2010.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

/bb/

08.03.2010

Reply has been filed with copy to the applicant. Three weeks time allowed to file rejoinder.

List on 30.3.2010 for hearing.

(Mukesh Kr. Gupta)  
Member (J)

/pg/

30.03.2010

On the request of Dr.J.L.Sarkar, learned counsel for the applicant, case is adjourned to 08.04.2010.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

/bb/

08.04.2010

Mr. R. Sarma, learned counsel for Respondent Nos. 2-4 has appeared and prays for adjournment. Dr. J.L. Sarkar, learned counsel for Applicant has not ~~made~~ objection.

List on 27.04.2010.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

/pb/

Copies of notices  
sent to D/Sec. for  
issuing to the respts  
by regd. A/D post.

D/No-21 to 24

4/11/10 Dt- 4-01-2010

① Service report  
awaited.

28.1.2010

No w/s filed.

4.2.2010

5.3.10

No w/s filed.

8.3.2010

W/S has been  
filed by the Respondent  
No. 2, 3 & 4. Copy  
served.

8.3.2010

No rejoinder filed.

29.3.2010

6.4.2010

Rejoinder has  
been filed by the  
Applicant with  
undertaking to  
serve a copy to  
Mr. D. Mazumdar,  
Adv. for the Respondent.

6/4/2010

The case is ready  
for hearing.

27.4.2010

O.A.275 of 09

27.4.2010

On the request of Mr.D.Mazumdar,  
counsel for Respondents, case is adjourned  
to 10.5.2010.

The case is ready  
for hearing.

7.5.2010

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

Im

10.05.2010

Mr. S. Saikia, learned counsel for  
Respondents appeared and prayed for  
ten days time. No objection was made by  
Mr. S.N. Tamuli, learned counsel for  
Applicant.

List the matter on 21<sup>st</sup> May 2010.

(Madan Kumar Chaturvedi)  
Member (A)

/pb/

21.05.2010

Heard Mr. <sup>J.L. Sarkar along with</sup> S.N. Tamuli, learned  
counsel for the applicant and Mr D.  
Mazumdar, learned counsel for respondent  
Nos.2, 3 & 4. Hearing concluded. Orders  
reserved.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

nkm

03.06.2010

Judgment pronounced in open  
court, kept in separate sheets.

The O.A. is disposed of in terms of  
said order.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

/PB/

Reviewed

Deputy Magistrate

Applicant 09/7/10

7.

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1 let the matter on 31 May 2010

16/07/19

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 275 of 2009

DATE OF DECISION: 3.6.2010.

Shri D. Nath

APPLICANT(S)

Dr J.L. Sarkar & Shri S.N. Tamuli

ADVOCATE(S) FOR THE  
APPLICANT(S)

- versus -

Union of India & Ors.

RESPONDENT(S)

Mr D. Mazumdar for respondent Nos.2,3 & 4

ADVOCATE(S) FOR THE  
RESPONDENT(S)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi Administrative Member

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

Yes/No

Yes/No

Yes/No

Member (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**

Original Application No.275 of 2009

Date of Order: This the 3<sup>rd</sup> day of June 2010

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Shri D. Nath

Ex. Assistant Administrative Officer,  
Indian Council for Agricultural Research,  
ICAR Research Complex for NEH Region,  
Umiam Barapani, Meghalaya,  
Presently residing at Panjabari,  
P.O.- Baghorbari, District- Kamrup (M),  
Assam.

..... Applicant

By Advocate Dr J.L. Sarkar and Shri S.N. Tamuli.

- versus -

1. Union of India, represented by the  
Secretary, Ministry of Agriculture,  
Krishi Bhawan, New Delhi-110001.
2. The Secretary  
Indian Council of Agricultural Research,  
Krishi Bhawan, New Delhi-110001.
3. The Director  
ICAR Research Complex for NEH Region,  
Umiam (Barapani),  
Meghalaya, Pin-793103.
4. Dr S.V. Ngachan, Director,  
ICAR Research Complex for NEH Region,  
Umiam (Barapani),  
Meghalaya, Pin 793103.

..... Respondents

By Advocate Mr D. Mazumdar for respondent Nos.2,3&4.

.....

ORDERMUKESH KUMAR GUPTA, JUDICIAL MEMBER

D. Nath, Assistant Administrative Officer, ICAR Research Complex for NEH Region, Umiam, Barapani, Meghalaya, in this O.A., seeks the following reliefs:

"8.1 The applicant be granted promotion as AAO from the date of submission of joining report i.e. 01.07.08 as per the promotion order dated 27.06.08.

8.2 The applicant be granted are as salary and other consequential benefits in the higher grade with retrospective effect from the date of his promotion i.e. 01.07.08.

8.3 The order dated 20.02.09 be modified to the extent of antedating the promotion order to 01.07.08 quashing the cancellation of order of promotion w.e.f. 01.07.08.

8.3 The pension of the applicant be revised in the higher grade with payment of arrear.

8.4 The any other relief or reliefs as the Hon'ble Tribunal may thing deem fit and proper, including consideration of promotion under MACP Scheme dated 19.5.09 (Annexure 10) of this petition."


2. It is contended that he was initially appointed as LDC, promoted as Senior Clerk (UDC) in 1980 and later promoted as Assistant w.e.f. 17.11.1994. The next promotional post is Assistant Administrative Officer. In the seniority list, his name figured at serial No.6 while Smt B. Mawlong and Smt Nirmala Rai were at serial Nos.4 and 5 respectively. He was promoted to said post vide order dated 27.06.2008, which offer had been accepted and he joined said post on





01.07.2008. He made a representation on 08.07.2008 seeking his retention at Complex Headquarters, ICAR Research Complex for NEH Region. His request was rejected vide communication dated 18.07.2008. Later, on 05.08.2008 he preferred representation to Secretary, ICAR, New Delhi, for his posting at ICAR Complex Headquarters at Umiam. Vide communication dated 12.12.2008 ICAR Headquarters, New Delhi desired Director, ICAR Research Complex for NEH Region to consider his request sympathetically as he was on the verge of retirement.

3. Grievance of applicant is that, without considering the aforesaid aspect, his promotion order dated 27.06.2008 was cancelled and he was promoted to same very post w.e.f. 01.01.2009. He attained age of superannuation on 31.01.2009. Respondents' action in not promoting him to join at ICAR Complex Headquarters is unjust, arbitrary and illegal. Learned counsel vehemently contended that there are instances in past where officers were allowed to join promotional post at the place where they were posted prior to issuing promotion order. Reference was made to one Smt. Nirmala Rai Subbah. Thus, it was emphasized that the respondents' action is arbitrary and discriminatory. His further grievance is that though he was entitled to the benefits of Modified Assured Career Progression (MACP for short) Scheme of the Government of India circulated vide letter dated 19.05.2009, but the respondents have not accorded him such benefit. In the reply affidavit, on this aspect, respondents have not taken any categorical stand and, therefore, he is entitled to said benefit emphasized learned counsel. As he has been treated to be promoted w.e.f. 01.01.2009, instead of 01.07.2008 he has suffered in fixation of his pay and consequential reduction in pension.




4. By filing reply, respondent Nos.2-4 have contested the claim laid stating that DPC was constituted on 15.03.2008 for considering officials for promotion to the post of Assistant Administrative Officer (AAO), which was held on 08.04.2008 for two posts i.e. for Manipur and Tripura centres. Said DPC recommended Smt B. Mawlong and Smt Nirmala Rai Subbah. Applicant as well as Shri K.C. Sarma were kept in waiting list. Pursuant to aforesaid recommendations, Smt B. Mawlong and Smt Nirmala Rai Subbah were promoted on 24.05.2008 and they were required to accept said promotions within fifteen days. Smt B. Mawlong who was working as Assistant, Headquarters, Umiam, was posted at Manipur centre while Smt Nirmala Rai Subbah, Assistant, Sikkim centre was posted at Tripura. Within the aforesaid time limit i.e. on 06.06.2008 and 28.05.2008 respectively, both of them applied for retaining them at ICAR Research Complex, Shillong and Sikkim centre respectively on their personal and health reasons. After holding the aforementioned DPC, a vacancy had fallen vacant in the cadre of AAO at Complex Headquarters, Umiam on 30.04.2008. Accordingly Smt B. Mawlong's request was considered sympathetically and she was accommodated at Headquarters, Umiam. Similarly, one AAO at Sikkim centre, Shri Davis Joseph, was transferred to Tripura Centre and in such circumstances, request of Smt Nirmala Rai Subbah was also accepted vide order dated 16.06.2008. It was also stated that prior to issuing promotional order dated 27.06.2008, the Director had obtained verbal willingness of the applicant to work at Manipur as he had working experience at Imphal earlier also. It was only after verbal consent was obtained, promotion order was issued. As far as the scheme regarding MACP is concerned, the same has not yet been endorsed by ICAR

Headquarters to all its institutes and, therefore, no claim is permissible. Mr D. Mazumder, learned counsel for the respondents, forcefully contended that on promotion of Smt B. Mawlong and Smt Nirmala Rai Subbah, DPC recommendations stood exhausted as the DPC had been held on 08.04.2008 for two vacancies. Vacancies which arose on 30.04.2008 could not have been filled up based on aforementioned DPC. It was emphasized that applicant was wrongly promoted vide order dated 27.06.2008. Order dated 20.01.2009 was issued on sympathetic consideration due to his being on the verge of retirement.

5. We have heard learned counsel for parties, perused the pleadings and other material placed on record. The question which arises for consideration is whether applicant has any legal right of promotion w.e.f. 01.07.2008 in terms of order dated 27.06.2008.

6. At the outset we may note that DPC which was held on 08.04.2008 considered officials for promotion to the post of AAO against two vacancies. It had recommended only Smt B. Mawlong and Smr Nirmala Rai Subbah. It is not in dispute that he was in waiting list. Furthermore, it is not in dispute that both the above noted officials indeed were promoted and had accepted such promotion. Only request they had made was to adjust them in the concerned Institutes where due to developments which had taken thereafter, vacancies had fallen vacant. In such circumstances, we fail to understand when two vacancies which alone were required to be filled up by said DPC, in fact, stood filled on promotion of Smt B. Mawlong and Smt Nirmala Rai Subbah, where was the scope for his promotion? A regular promotion can take place only against a regular vacancy. On



filling up of said vacancy, there remained no other vacancy against which he could have been promoted as he being placed in the waiting list. He, therefore, had no legal indefeasible right of promotion. The language employed in order dated 20.01.2009 itself would reveal that the authorities had taken a considered and sympathetic view particularly when he was on the verge of retirement. Under the rule position and in view of the settled law there remained no scope for issuing promotional order dated 27.06.2008 which in fact, had not been carried out by him. Therefore, the contention raised by the applicant that the respondents were totally indifferent and respondent No.3 had not adhered to the advice and direction of the Council namely, to take a sympathetic consideration, is totally misplaced, unjust and baseless. There is no merit in the contention raised by him that he is entitled to promotion with retrospective effect.

7. As far as claim relating to consideration under MACP Scheme dated 19.05.2009 is concerned, as the respondents' unambiguous stand is that said scheme has not been endorsed to the ICAR and, therefore, it cannot be implemented. As and when said scheme is made operational by the ICAR and its Institutes all over the country, he certainly would have right for consideration subject to fulfillment of prescribed conditions.

8. In view of discussion made hereinabove, our conclusions are:

- i) Applicant is not entitled to retrospective promotion i.e. 01.07.2008. There is no illegality in order dated 20.01.2009.



- ii) As and when MACP Scheme notified by DOPF O.M. dated 19.05.2009 is made operational in the ICAR and its Institutes, applicant would have a right of consideration subject to fulfilling of conditions prescribed therein. If he is allowed such benefit, it goes without saying that he would be entitled to further consequential benefits too.

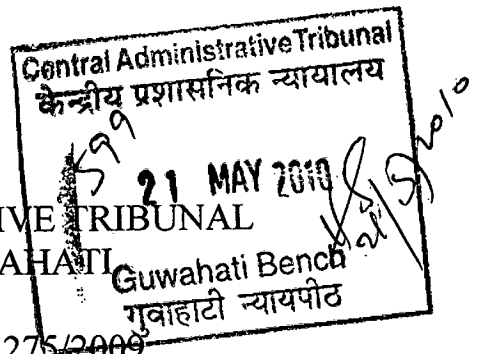
9. Accordingly O.A. is disposed of. No costs.

  
(MADAN KUMAR CHATURVEDI)  
ADMINISTRATIVE MEMBER

  
(MUKESH KUMAR GUPTA)  
JUDICIAL MEMBER

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, AT GUWAHATI

ORIGINAL APPLICATION NO. 275/2009



Shri D. Nath

.....Applicants.

-VS-

Union of India & Ors

..... Respondents.

REPLY OF THE RESPONDENTS NO 2, 3 and 4 TO  
THE REJOINDER FILED BY THE APPLICANT

I, Dr. S. V. Ngachan, s/o. K. S. Shangrai Khai, aged about 54 years, permanent resident of Hungdung, in the district of Ukhrul, Manipur, presently serving as the Director, Indian Council of Agricultural Research for NEH Region, Umiam, Meghalaya do hereby solemnly affirm and state as follows:

1. That I have been served with a copy of the rejoinder through my counsel and I have gone through the same and have understood the contents thereof. I am acquainted with the facts and circumstances of the case and I have duly authorized him to file this counter on my behalf.
2. That with regard to the promotion of Smti. B. Mawlong, the deponent states that promotion order was issued on 24-5-2008. Thereafter, Smti. Mawlong filed representation dated 6-6-2008 before the authority for modification of her transfer order. Accordingly her transfer order was modified vide order dated 12-6-2008 due to humanitarian ground and subsequently she joined on the same date.

Filed by

Through Somenwar Sarker  
Private Secy. 21-5-10

3. That with regard to the allegations of showing favour to Smti. N.R.

Subbah, the deponent states that her promotion order was issued on 24-5-2008. However on 28-5-08, she prayed for modification of the order of promotion and while her representation was under consideration, although she sought to join on 30-5-08, her promotion order was modified with effect from 16-6-08. Accordingly, she requested that her joining report to be accepted from 16-6-08 which was accordingly accepted by the authority and her pay etc. was fixed with effect from 16-6-08. But the fact remains that she prayed for modification of the order within 15 days from the date of promotion.


### VERIFICATION

I, Dr. S. V. Ngachan, s/o. K.S. Shangrai Khai, aged about 54 years, working as the Director, Indian Council of Agricultural Research for NEH Region, Uniam, Meghalaya resident of Hungdung, Ukhrul, Manipur.....  
..... being authorized by respondents No. do hereby verify that the contents in paragraphs ... 2 & 3.....  
.....are true to my personal knowledge and those in paragraphs .....believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this 15<sup>th</sup> day of May' 2009 at Barapani.

Date: 15<sup>th</sup> May.

Place: Barapani, Shillong.



Signature.

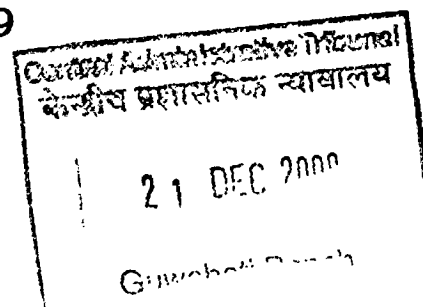
Director  
ICAR RC for NEH Region,  
Uniam, Meghalaya - 793103

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :

O.A. NO. 275 Of 2009

Sri D. Nath  
\_Vs\_  
Union of India & Others

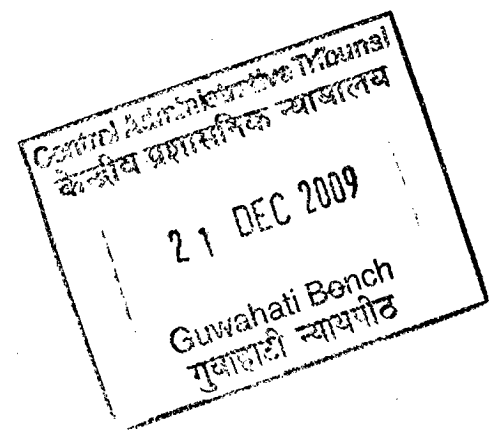
SYNOPSIS



Applicant in the present O.A. was promoted to the post of Assistant Officer on 27.06.08 against a vacancy at ICAR Maipur Centre as per the recommendation of DPC held on 08.04.08. Applicant immediately joined at the promotional post vide joining report dated 01.07.08 as per the prevailing practice in the Department at ICAR for NFH Regions HQ at Barapani, Meghalaya i.e. the place where he was working . After joining as suh Applicant submitted representation dated 08.07.08 to the Director, ICAR, Barapani for his retention at Barapani as he was in fag ends of service and also on the grounds of sickness of his wife. But the Director, ICAR at Barapani rejected his representation in most mechanical manner. Being aggrieved Applicant filed an appeal to the Secretary, ICAR, New Delhi praying for his retention at HQ at Barapani. Secretary vide leter dated 12.12.08 advised the Director ICAR at Barapani to consider the prayer of the Applicant sympathetically. But surprisingly the Director, issued an order dated 20.01.09 whereby earlier promotion order of the Applicant was cancelled and a fresh promotion order was issued promoting the Applicant w.e.f. 20.01.09 and retaining him at Barapani This order was vague and cryptic. No opportunity of hearing was given to the Applicant before cancellation of earlier promotion order i.e. almost six months after the Applicant joined the promotional post. The ground for cancellation was shown as fails to join his place of posting at Manipur, though Applicant as per the prevailing practice joined at institute HQ at Barapani. While doing so Respondents gave differential treatment towards the Applicant. It is stated that many other similarly situated person were allowed to



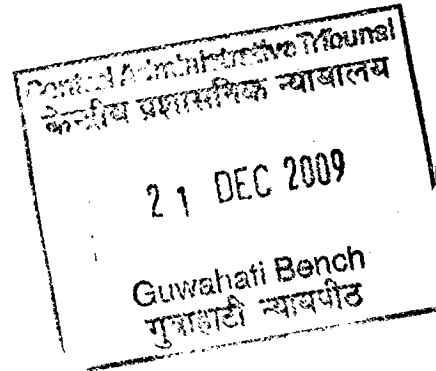
continue in promotional post at their earlier place of working i.e. before promotion though shown as promoted against some other place. But in case of Applicant a different standard was maintained for reasons best known to the Respondents. Being aggrieved Applicant filed this O.A. for the ends of justice.



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

**O.A. NO. 275 Of 2009**

**Sri D. Nath  
\_Vs-  
Union of India & Others**



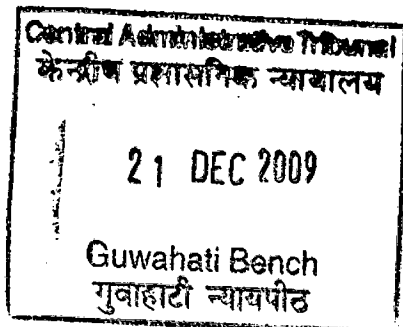
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13. W/S 32-44

14. Reforinder — 45-51

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



O. A. No. 275 / 2009

Shri D.Nath  
Ex. Assistant Administrative Officer  
Indian Council For Agricultural Research  
ICAR Research Complex For NEH Region,  
Umaiium Barapani, Meghalaya.  
Presently residing at  
Panjabari,  
P.O.- Baghorbari  
Dist -Kamrup(M)  
Assam

..... Applicant

Filed by the ...Applicant  
Through S. N. Tumuli  
Advocate Date...

**-VERSUS-**

(i) Union of India  
Represented by the Secretary  
Ministry Of Agriculture  
Krishi Bhawan  
New Delhi  
Pin. 110001

(ii) The Secretary  
Indian Council of Agricultural Research  
Krishi Bhawan  
New Delhi  
Pin. 110001

(iii) The Director  
ICAR Research Complex For NEH Region, Umiam  
(Barapani), Meghalaya Pin 793103

(iv) Dr. S.V. Ngachan, Director  
ICAR Research Complex For NEH Region, Umiam,  
(Barapani), Meghalaya Pin 793103

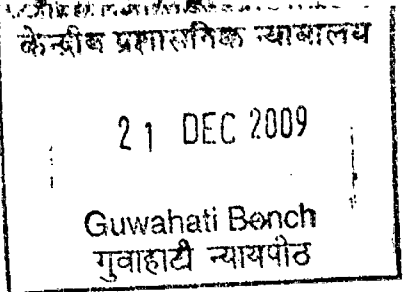
..... Respondents

**DETAILS OF THE APPLICATION:**

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

This application is made for enforcement of next Promotional date and fixation pay as Assistant Administrative Officer [Rs. 6,500-10,500 (pre revised)] for which he is duly empanelled and promoted. And also for the benefit of Modified Assured Career Progression Scheme circulated under circular dated 19.5.09 and against the order dated 20.01.09 issued by Director, ICAR Research Complex For NEH Region, Umiam, Barapani, Meghalaya.

Deben Nath



## **2. JURISDICTION:**

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

## **3. LIMITATIONS:**

The applicant declares that is within the period of limitation prescribed by Section 21 of The Administrative Tribunal Act – 1985.

## **4. FACT OF THE CASE:**

4.1 That the applicant is a citizen of India and as such is entitled to rights and privileges guaranteed by the Constitution of India and laws framed there under.

4.2. That the applicant joined in Indian Council of Agricultural Research ( herein after referred as ICAR in short) at New Delhi on 01/12/1972 as LDC (Lower Division Clerk). Subsequently he was promoted as Sr. Clerk (UDC) on 12/5/1980 and was transferred from New Delhi to ICAR Research Complex for N.E.H. Region , Shillong. Later on he was given another promotion as Assistant w.e.f 17/11/1994 at ICAR Research complex for NEH Region, Umiam, Borapani, Meghalaya . The applicant was working continuously as Assistant (in scale of Rs 5,500- 9,000) w.e.f. 17.11.1994 . His next promotion was to the post of Assistant Administrative Officer for which he is entitled as per the DPC and Modified Assured Career Progression Scheme ( herein after referred as MACP in short) after 6<sup>th</sup> CPC recommendation.

4.3. That Departmental Promotion Committee (herein after referred as DPC in short) for promotion to the post of Assistant Administrative Officer (herein after referred as AAO in short) from Assistant was held on 8/4/2008. In the aforesaid DPC applicant was found suitable and his name was recommended for promotion. As per normal practice applicant was to be promoted in his turn depending upon the availability vacancy. The seniority of three employees i.e. Assistant is as under.

1. Smt B.Mawlong ..... Sl. No 4 of the Seniority List
2. Smt Nirmala Rai..... Sl. No 5 of the Seniority List
3. Shri Deben Nath..... Sl. No 6 of the Seniority List

It is stated that applicant's seniority position was second in the list i.e. approved/recommended panel in the aforesaid DPC for promotion to the post of AAO. On 28/2/08 a post of Assistant Administrative officer ICAR, Manipur Center fell vacant and was lying vacant. As per normal procedure 1<sup>st</sup> man in the panel recommended by the aforesaid DPC Mrs. B . Mawlong was to be accommodated in the aforesaid post.

*Deben Nath*

21 DEC 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

And as such promotion order in respect of Mrs. B. Mawlong was issued. But Mrs. B. Mawlong failed to join the aforesaid post of AAO at Manipur Center of ICAR. It is normal practice that when a promottee fails to join the promotional post within one month of promotion his /her promotion such promotion stands cancelled and next man in the panel is to be promoted to such promotional post. But in case of the applicant i.e. 2<sup>nd</sup> man in the panel recommended by the DPC, was not given promotion as per the normal practice as stated above. This ultimately led to both financial loss and loss of seniority of applicant. Subsequently another post of AAO at ICAR Research Complex at Umiam, Barapani, Meghalaya, fell vacant in the month of April 2008. Surprisingly Mrs B. Mawlong & i.e. the 1<sup>st</sup> nominee in the panel and who refused promotion and did not join at Imphal Center of ICAR was again accommodated in the aforesaid post fallen vacant 4.7.2008. In the humble submission of the applicant, this action of the authority (Respondents) is illegal and against the established producer of law. As per the procedure the applicant was to be accommodated in the post, being the second vacancy arises after the aforesaid DPC. It is stated that the exercise of administrative discretion for keeping the post vacant to do favour to Mrs. B. Mawlong, is not reasonable this is arbitrary and works of against the applicant more so when he was nearing retirement with about 6(six) months of service.

A copy of the panel approved by the DPC is enclosed herewith as Annexure 1

4.4 That vacancy position of the various ICAR offices under the control of the Director ICAR Umiam was as under.

1. Manipur Centre.....w.e.f. 28.2.08
2. Tripura Center .....Person on Deputation.
3. ICAR HQ Umiam.....w.e.f. 30.04.2008

The practice and procedure in office is that with the promotion of the AAO the promote are allowed to assume the charge of promotional post in the station they were working and physical transfer is not administratively enforced.

4.5. That vide officer order dated 27/6/2008, No RC(R)15/94 applicant was promoted as AAO and was transferred to ICAR Research Center, Imphal, Manipur which was vacant from 28/2/2008 after superannuation of Mr K. Jangou. It is stated that initially in the aforesaid post Mrs. B. Mawlong i.e. 1<sup>st</sup> person in the panel approved by the D.P.C. was promoted and posted. But she did not join the aforesaid promotional post within one month. As per normal practice if a promote fails to join the new promotional post within the time frame of one month without any valid reason next man in the panel i.e. applicant in this case was to be accommodated in the post. But initially respondents

Debarshi

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Guwahati Bench

deliberately kept the post vacant in order to deprive the applicant of this legitimate promotion in time and accommodated to Mrs. B. Mawlong in Shillong arbitrarily and illegally.

A copy of the promotion order dated 27/6/08 is enclosed herewith as Annexure 2

4.6. That it is stated that the Respondents particularly the Respondent No 4 was making endeavor to do favour to Smt B.Mawlong against the applicant knowing well that the applicant's retirement is on 31.1.09 (AN). The vacancy occurred on Tripura center and Manipur center were kept vacant in order to accommodate Smt. B. Mawlong at HQ the above vacancies were not filled up till Mrs. B.Mawlong was appointed in the vacancy of the HQ. Thereafter as an eye wash transfer order dated 24.5.08 was passed where Smt. B.Mawlong and Smt N.R.Subba were shown as transferred against Manipur and Tripura Center Respectively. Subsequently order dated 12.6.08 has been issued indicating that place of posting in respect of Smt. B.Mawlong on promotion as AAO may be read as legal Cell HQ in place of Manipur center other terms and condition of the promotion order shall remain unchanged. It is stated that the applicant under RTI Act 2005 came to know that on 30.04.08 vacancy of AAO at HQ occurred and in turn and sequence of promotion the post should have been filled up by the applicant. Moreso when applicant's retirement was on 31.1.09 i.e. after 9 months. After accommodating Smt. B.Mawlong order dated 27.6.08 was issued promoting the applicant.

4.7 The Applicant on 01/07/2008 (FN) submitted his joining report to the Administrative Officer, ICAR Research complex for NEH Region at Umiam, Barapani, Meghalaya i.e. the regional head quarter and joined in the promotional post. In the aforesaid joining report also prayed for allowing him to continue him at Umiam on humanitarian ground and also to complete his pension formalities as he was in the verge of retirement. It is stated that it is a normal practice in ICAR that on promotional transfer people use to submit their joining report at the regional head quarter against the promotional post and subsequently proceeded to the place of posting.

A copy of the joining report is enclosed herewith as Annexure 3

4.8. That after joining the promotional post on 01/07/2008 Applicant submitted a representation to the Director, ICAR Research Complex for NEH Region at Umiam, Barapani, Meghalaya, on 08/07/08 praying for his retention at ICAR Research Complex for NEH Region at Umiam, Barapani, Meghalaya on the ground of his wife's sickness

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as she had undergone surgical operation for LS Spine and unable to walk properly without physical support and also on the ground that applicant was having less than 6 month service left before his superannuation. Applicant was under the bonafide belief that his prayer for retention at ICAR Research Complex for NEH Region at Umiam, Barapani, Meghalaya, will receive sympathetic consideration of the Respondent no 3 as there is recommendation of the 5<sup>th</sup> CPC regarding retention of staff in verge of retirement in his original place of posting. In other words it can be stated that staff should not be transferred in fag end of their service. But the Director, ICAR Research complex for NEH Region at Umiam, Barapani, Meghalaya without giving any sympathetic/humanitarian consideration rejected the representation of the applicant vide order dated 18/7/2008 (order No RC9P0 49/77). It is stated that while rejecting the representation of the applicant The Respondent No 3 did not give any reason for such rejection. This demonstrates that the Applicants case was dealt with in total non application of mind in most mechanical manner. This is against the principles of administrative fair play. It is also stated that while rejecting the genuine claim of the applicant respondents totally neglected the humanitarian consideration and standing circulars of the Govt. of India. It is stated that some staff promoted against promotional posts laying vacant in different parts of N.E.Region under the control of Director, ICAR Research Complex for NEH Region at Umiam were retained in the institutes HQ at Umiam. For example Sri S.N. Baitha was promoted against the promotional post of Mizoram Center but was retained at institute H.Q. at Barapani. Similarly Sri K.B.Y.Kanwar promoted as Assistant against a post in Krishi Vigyan Kendra at Tura was retained at Umiam. But case of the applicant was given a different treatment by the Respondents especially by the Respondent No 3. The practice in vogue in the Department was not allowed to the applicant denying equality. This was done not for any administrative interest. Respondents without any valid reason rejected the prayer of the applicant who was at the fag end of his service. As stated in para 4.3 Mrs. B.Mawlong was accommodated in ICAR HQ at Umiam violating practice and procedures of the Department and depriving the applicant from his promotion in term and place, Respondent No 3 in order to suppress the mischief rejected the genuine prayer of the applicant treating him as if he has not joined the promotional post. Malice in fact and law is explicit in this case.

A copy of the representation dated 08/07/08 is enclosed herewith as Annexure 4

A copy of the rejection letter dated 18/7/08 is enclosed herewith as Annexure 5

Deben Nath

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4.9. That applicant being a disciplined employee immediately applied for TTA Advance (Transfer Travelling Allowance) as due and admissible to him and also requested for his release vide letter dated 23/7/2008 so that he can join the new place of posting i.e. ICAR, Manipur Center (Imphal) vide his letter dated 23/07/08 addressed to the Administrative Officer, ICAR Research Complex For NEH Region, Umiam. It is stated that applicant is entitled to transfer T.A. as per the service benefits entitled to him under the Rules. But the respondents neither paid any such advance to the applicant as due and admissible under the Rules (for carrying out his transfer) nor released him from the H.Q. where he had joined the promotional post on 01/07/08(FN) to enable him to join at ICAR, Manipur Center ( Imphal). As stated in the

A copy of the letter dated 23/07/08 is enclosed herewith as Annexure 6

4.10. That being aggrieved by such arbitrary and illegal action of the Respondent No 3 applicant submitted an appeal dated 5/8/2008 to the Secretary, ICAR, New Delhi stating his grievances. Applicant in his appeal stated about the representation submitted to the Director i.e. Respondent No 3 and also for nonpayment of TTA advance etc. Applicant also stated about differential treatment towards him with a prayer to consider his joining report w.e.f. 01/07/08 as AAO and choice posting at complex HQ at Umiam and also to consider a physical inquiry on the matter to reveal truth.

A copy of the appeal dated 05/08/08 is enclosed herewith as Annexure 7

4.11. That in response to the aforesaid appeal of Applicant Respondent No2 Vide letter No F.No 21-22/08-IA.II dated 12.12.08 addressed to Respondent No 3 on the subject, "representation of Shri Deben Nath, AAO posted at Manipur Center on promotion for retaining at Institutes HQ at Barapani" advised the respondent No 3 to consider the case of retention at Institutes HQ at Barapani of the applicant sympathetically. The relevant portion of the aforesaid letter is quoted below:

*" The matter has been examined by the council . It is advised that the matter of Shri Deben Nath AAO for retaining at Institute HQ at Barapani may please be considered sympathetically as he is in the verge of retirement"*

A copy of the letter No F.No 21-22/08-IA.II dated 12.12.08 is enclosed herewith as Annexure 8.

4.12 That on receipt of the above communication (Annexure 8 of this application), Respondent No 3 issued Order No R.C.(P) 49/77/Pt dated 20.01.09 cancelling the

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earlier promotion order of the applicant i.e. Order No RC(R) 15/94 dated 27/06/08 (Annexure 2 of this application) by which applicant was promoted to the post of AAO, Manipur (Imphal) Center. While cancelling the above order applicant was not given any opportunity of hearing. In the humble submission of the applicant the above order dated 20.01.09 is vague and cryptic. In the humble submission of the applicant the above order was passed in pursuance to the order dated 12.12.08 of the Respondent No 2. But Respondent No 3 in order to suppress the mischief done with the applicant did not mention about the aforesaid order. Moreover in order dated 12.12.09 there was no advice of the council regarding issue of any fresh appointment order only advise was given for consideration of the prayer for retention of the applicant in ICAR HQ at Umiam as stated in his representation dated 05.08.08. But Respondent No 3 in most arbitrary manner issued a fresh appointment order cancelling the earlier promotion order of the applicant that too without any notice. It is stated that applicant submitted his joining report on 1.7.08 as per the practice and procedure applicable to others, as stated in para 4.5 of this application and as such failure to join does not arise. This order clearly demonstrates arbitrary exercise of power by Respondent no 3 and as such is illegal and bad in law. Respondent No 3 issued the above order dated 20.1.09 only to deprive the applicant of his promotion from due date i.e. 27.06.08. Moreover copy of the compliance report of the action taken on the advice of the council was not given to the council at New Delhi. It is stated that this was done to cover-up the illegality and favour done to others.

A copy of the Order No R.C.(P) 49/77/Pt dated 20.01.09 is enclosed herewith as Annexure 9.

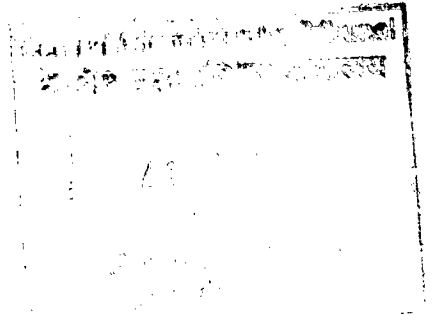
4.13. That as per the MACP Scheme circulated by the Govt. of India , Ministry of Personnel, Public Grievances and Pension vide letter dated 19.05.09 MACP scheme for the Central Government Employees was circulated. This scheme was made as per the recommendations of the 6<sup>th</sup> CPC. As per this scheme the employees are entitled to financial up gradation on completion of 10, 20, 30 years of service. It is stated that the applicant completed 30 years of service in the year 2002 and as such he is entitled to third MACP up gradation as per the scheme.

But no such financial benefit has yet been granted to the applicant till now.

A copy of the MACP Scheme is enclosed herewith as Annexure 10.

4.14 That the applicant files this application bonafide and in the interest of justice.

*Deben*



## 5. GROUNDS WITH LEGAL PROVISIONS:

- 5.1 For that applicant is entitled to get promotion from the date of submission of the joining report dated 01.07.08 as per the promotion order dated 27.06.08.
- 5.2. For that no cancellation of the promotion order of the applicant dated 27.06.08 by order dated 20.01.09 is illegal and arbitrary.
- 5.3. For that non consideration of applicant prayer for retention at the institutes HQ at Umiam knowing full well that applicant was having less than one year service left before superannuation is illegal and arbitrary and against the Govt. of India's Standing orders.
- 5.4 For that cancellation of the promotion order dated 27.06.08 of the applicant without giving any opportunity of hearing is against the principles of natural justice and is against the administrative fair play.
- 5.5 For that the applicant is entitled to promotion from the date of submission of the joining report i.e. 01.07.08 as AAO.
- 5.6 For that the applicant joined as AAO at institutes HQ at Umiam i.e. his last place of working before promotion as per the normal practice like others question of non joining the promotional post does not arise and as such cancelation of the promotion order on the ground of not joining new place of posting is illegal and arbitrary.
- 5.6 For that when other employees are allowed to join promotional posts at the place where they were working before promotion applicant cannot be deprived of the same giving differential treatment.

Applicants crave for the liberty of this Hon'ble Tribunal to give additional grounds at the time of hearing.

## 6. DETAILS OF THE REMIDIES EXHAVSTED:

There is no remedy under any Rule and this Hon'ble Tribunal is the only forum for redressal of the grievances.

*Deben Sin*

21 DEC 2009

7. MATTER NOT PREVIOUSLY PENDING BEFORE ANY OTHER COURT. Guwahati Bench  
The applicant declares that they have not filed any original application or petition in any Tribunal or Court

8. RELIEF SOUGHT FOR;

Under the facts and circumstances mentioned above applicants pray for following reliefs:

8.1. The applicant be granted promotion as AAO from the date of submission of joining report i.e. 01.07.08 as per the promotion order dated 27.06.08.

8.2. The applicant be granted as salary and other consequential benefits in the higher grade with retrospective effect from the date of his promotion i.e. 01.07.08.

8.3. The order dated 20.02.09 be modified to the extent of antedating the promotion order to 01.07.08 quashing the cancellation of order of promotion w.e.f. 01.07.08.

8.3 The pension of the applicants be revised in the higher grade with payment of arrear.

8.4. The any other relief or relief's as the Hon'ble Tribunal may think deem fit and proper, including consideration of promotion under MACP Scheme, dated 19/5/09 (Annexure 10) of this petition.  
The above relief (5) are prayed on the grounds stated in para 5 above.

9. This application is filed through on advocate

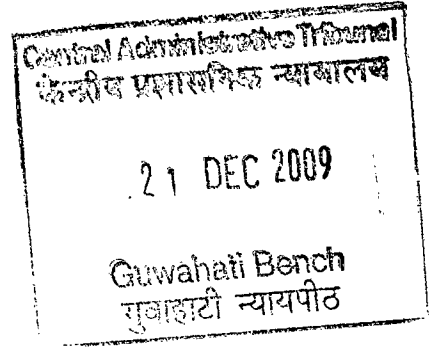
10. Particulars of the IPO

- (i) IPO No. 39 G 433370
- (ii) Date of issue 19.12.09
- (iii) Issued from Ulubari SPO
- (iv) Payable at GPO Guwahati

11. Enclosures : As stated in the index.

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VERIFICATION



I, Sri Deben Nath ,son of Late Bhubaneswar Nath aged about 61 years , a resident of Panjabari, P.O. Baghorbori, Guwahati-37 District :Kamrup (M) Assam and Ex Assistant Administrative Officer, ICAR Research Complex solemnly affirm and verify that the statements made in para .... to.... of this O.A. and those made in para.... To .... Are true as per the legal adviseI have not suppressed any material facts.

AND I sign this verification on this 18<sup>th</sup> day of Dec. 2009 at Guwahati.

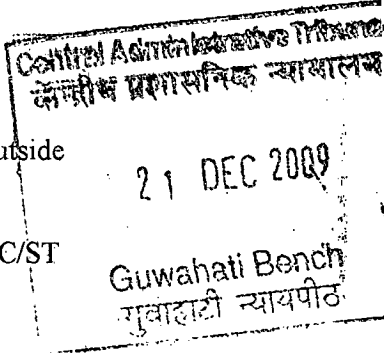
Date 18/12/09

*Deben Nath*  
Signature

The Departmental Promotion Committee for promotion of Administrative & Supporting Staff of the Institute which was constituted vide Director's order No. RC(R)19/99 dt. 15.3.2008 met on the 8<sup>th</sup> April, 2008 at 10.30 a.m. in the Committee Room of the Complex Hqs. at Umiam

The DPC comprised of the following members :-

- |   |   |                |
|---|---|----------------|
| 1. Dr. N. S. Azad Thakur,<br>Principal Scientist & Head,<br>Division of Agril. Entomology | - | Chairman       |
| 2. Dr. D. K. Hore,<br>Principal Scientist & In-charge,<br>NBPGR Regional Stn, Umiam..     | - | Member outside |
| 3. Smt. M. J. Kharmawphlang,<br>Sr. Administrative Officer,                               | - | Member SC/ST   |
| 4. Shri S.K. Jindal<br>Administrative Officer   | - | Member         |
| 5. Shri S.R. Baruah,<br>Asstt. Administrative Officer (RC)                                | - | Member Secy.   |



The DPC after careful scrutiny of ACRs and service records of the candidates for the relevant period recommends the following Assistants for promotion to the next higher grade i.e. Assistant Administrative Officer.

- i) Smt. B. Mowlong
- ii) Smt. Nirmala Rai

The DPC also recommends the following staff in the panel

- i) Sh. D. Nath

Sd/-  
( M. J. Kharmawphlang )  
Member

Sd/-  
( S.R. Baruah )  
Member Secretary

Sd/-  
( D.K. Hore )  
Member

Sd/-  
( N. S. Azad Thakur )  
Chairman

Approved  
Sd/-  
( S.V. Ngachan )  
Director

*Attested*  
Assstt. Administrative Officer (Rectt)  
ICAR Research Complex for N.E.H. Region,  
Umiam-793 103.

Attested  
*[Signature]*  
Advocate

INDIAN COUNCIL OF AGRICULTURAL RESEARCH  
ICAR RESEARCH COMPLEX FOR N.E.H. REGION.  
UMROI ROAD, UMIAM-793 103, MEGHALAYA

Control Administrative Officer  
केन्द्रीय प्रशासनिक न्यायाल  
21 DEC 2009  
Dt. The 27<sup>th</sup> June, 2008  
गुवाहाटी न्यायपीठ

No. RC(R)15/94

Dt. The 27<sup>th</sup> June, 2008

O R D E R

On recommendation of Departmental Promotion Committee of the Institute, Director, ICAR Research Complex for NEH Region, Umiam is pleased to promote the following Administrative staff to the next higher grade with effect from the date of joining the post:-

Sl. No.	Names of incumbent with Grade/Section	Grade of promotion	Scale of pay	Place of posting
1 ✓	Shri Deben Nath Assistant, Estate Cell	A.A.O.	6500-200-10500	Manipur Centre, Lamphelpat

The offer is subject to the condition that he/she will intimate acceptance of the promotion within 15(fifteen) days and accordingly join the post within one month of issue of this order failing which the offer shall stand automatically cancelled.

He/she will be eligible for TTA and joining time as per rules and option for fixation of pay etc. if any, should also be submitted within 1(one) month from the date of issue of this order.

( S. K. Jindal )  
Administrative Officer

Copy to:-

1. The Joint Director, Manipur Centre, Lamphelpat, Imphal
2. The Finance & Accounts Officer, ICAR Res. Complex, Umiam.
3. The Asstt. Admn. Officer (Admn.), ICAR Res. Complex, Umiam, alongwith copy for Service Book.
4. The Asstt. Admn. Officer (Estt.), ICAR Res. Complex, Umiam.
5. The Estate Officer, ICAR Res. Complex, Umiam.
6. Person concerned by name

Attested  
Advocate

To  
The Administrative Officer,  
ICAR Research Complex for N.E.H. Region,  
Umiam

*Through proper channel*

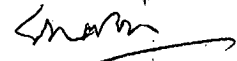
Sub: Acceptance the post of AAO & joining report reg.

Sir,


In compliance of your Order No. RC@15/94 dated 27<sup>th</sup> June, 2008, I have accepted the post of AAO as offered and joined the same in the forenoon of 1<sup>st</sup> July, 2008. In this connection, I would like to request you to kindly allow me to continue at the Complex Hqrs. on humanitarian ground by giving me an opportunity to complete the formalities of pension papers etc. for which I shall be highly obliged as only a few months of service have left to my retirement.

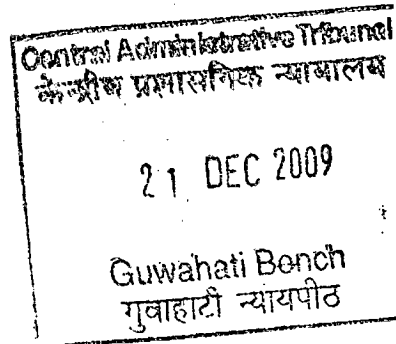
Dated 1<sup>st</sup> July, 2008

Yours faithfully,



( D. Nath )  
Asstt.

Attested  
  
Advocate



To  
The Director,  
ICAR Research Complex for N.E.H Region,  
Umiam.

*Through proper channel*

Sub: Request for retention at the Complex H/Q reg.


Sir,

In compliance to the Order No. RC@15/97 dated 27<sup>th</sup> June, 2008, I have joined the post AAO in the forenoon of 1<sup>st</sup> July, 2008 as offered against Manipur Centre. In this connection, I would like to state the following few lines for favour of your kind perusal and sympathetic consideration please on humanitarian ground.

1. That Sir, I am in the verge of retirement and only few months of my service are remained to my retirement.
2. That Sir, as per Govt. of India's instruction as far as practicable, govt. servants are to be posted nearest to his home town before the retirement so as to complete certain formalities of family liabilities along with up-dating of Service Book/pension papers etc. so that all payments are made in time.
3. This Sir, my wife is a patient of LS Spine and was operated in 2006 at the Down Town Hospital, Guwahati, is unable to move without physical support and restricted her traveling, hence I have shifted her nearest to Down Town Hospital to get immediate medical aid with shortest approach (Xerox copies are enclosed). I am also planning to take her to CMC, Vellore for further investigation before my retirement. In addition to that she is also a chronic patient of hypertension since 2000 last and being survived on regular medication. Apart from this, there is no any male member to look after my ailing wife and aged mother in case of any emergent situation except my two daughters of marriageable age for whom negotiations are going on. It is also not practicable to settle certain family problems staying at Imphal at the fag end of my service period.

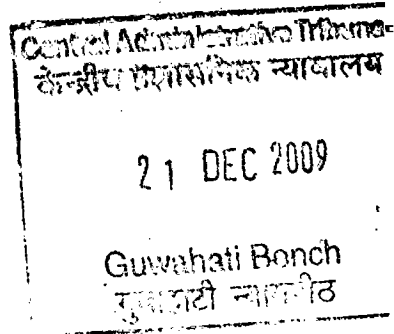
In view of the facts explained above, it is my humble request that I may kindly be retained at the complex Hqrs for the remaining few months by giving me an opportunity to complete the remaining formalities of pension papers etc. for which I shall be ever grateful to you.

Yours faithfully,

  
(D. Nath) 08/11/08  
(Estate Cell)

Attested

  
**Advocate**





INDIAN COUNCIL OF AGRICULTURAL RESEARCH  
ICAR RESEARCH COMPLEX FOR N.E.H. REGION,  
UMROI ROAD, UMIAM 793 103 (MEGHALAYA)

RC(P)49/77

Dated Umiam, the 18<sup>th</sup> July, 2008.

To,

✓ Shri. Deban Nath, AAO,  
ICAR Research Complex  
For NEH Region, Umiam.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय  
21 DEC 2009  
Guwahati Bench  
गुवाहाटी न्यायपीठ

Sub:- Request for retention at the Complex Hqrs., Umiam-reg.

Ref:- Your letter dated 08-7-2008

With reference to the above, this is to inform you that your request for retention at the complex Hqrs., Umiam could not been considered this time. The Director has desired/adviced you to join at the Manipur Centre itself.

This issues under orders of the Director.

*S. K. Jindal*  
18/7/08  
(S.K. Jindal)  
Administrative Officer

Copy for information & necessary action :-

The Estate Officer, ICAR Research Complex for NEH Region,  
Umiam.

Attested  
*[Signature]*  
Advocate

To  
The Administrative Officer,  
ICAR Research Complex for N.E.H. Region,  
Umiam.

Through proper channel

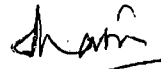
Sub: Fixation of pay/grant of TIA & LPC reg.


Sir,

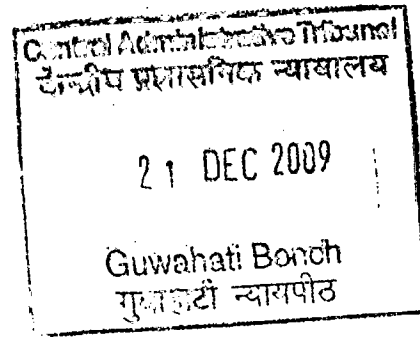
Consequent upon my joining as AAO on 01/7/08(FN), my pay may kindly be fixed keeping in view my DNI i.e. November/08 so as to apply for TTA advance for joining at ICAR, Imphal. After fixing my pay and payment of TTA advance etc. I may please be released from duty and LPC be issued accordingly. Advance TTA bill is being submitted after fixation of pay.

Dated 23<sup>rd</sup> July/08

Yours faithfully,

  
(D. Nath) 23/7/08  
AAO

Attested  
  
Advocate



To  
The Secretary,  
Indian Council of Agricultural Research,  
Krishi Bhavan, New Delhi-110 001

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

21 DEC 2009

Through proper channel

Guwahati Bench  
गुवाहाटी न्यायपीठ

Sub: Appeal for justice against differential treatment with harassment reg.

Respected Sir,

With due respect and humble submission, I would like to bring to your kind notice the following facts for favour of your kind perusal and sympathetic orders please.

1. That Sir, I have been promoted as Asstt. Adm. Officer and posted at ICAR Manipur Centre vide order No. RC@15/94 dated 27/6/08 (copy enclosed as Annexure-A). In compliance of the said order, I accepted the post as offered and joined accordingly at the ICAR Complex Hqrs, Umiam in the forenoon of 01/07/08 (copy of joining report enclosed as Annexure-B).

2. That Sir, I requested the Director for my retention at the Complex H/Q, Umiam vide letter dated 08/7/08 (copy enclosed as Annexure-C) due to my family problems along with all the medical reports etc explaining that my wife is a patient of L/S Spine and had undergone surgical operation in 2006 at Guwahati. Since then she is unable to walk properly without any physical support due to lack of strength in her spine and needs frequent consultation with the attending physician as and when problem arises. It is quite impossible for my wife to travel 24 hours road journey from Shillong to Imphal in this condition. In addition to that she is also a patient of chronic hypertension since 2000 and being survived on regular medication only. Apart from this, I have less than 6 months of service to my retirement on superannuation and negotiation of marriage of my eldest daughter is also going on.

3. Since my representation dated 08/7/08 for retention has been declined in addressing me by designation as AAO vide letter No. RC(P)49/77 dated 18/7/08 (copy enclosed as Annexure-D) is obvious that my joining as AAO is accepted. On receipt of the above letter and consequent upon my joining as AAO on 01/07/08, I requested the authority vide my letter dated 23/7/08 to release me after fixing my pay and payment of TTA advance etc for joining at the new place of posting at ICAR Manipur Centre (copy enclosed as Annexure-E).

4. That Sir, instead of doing so, after one month I have been directed vide letter No. RC(P)49/77 dated 31/7/08 (copy enclosed as Annexure-F) to join at Manipur Centre without any speaking order of my joining is nothing but harassment to a retiring person with malafide intention wherein the question of career/financial loss to govt. servant is involved.

Contd. at page 2/

Attested

Advocate

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Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

5. That Sir, There is evidents that three numbers of staff promoted against the post of centres have retained, two at the complex H/Q, Umiam and one at Sikkim Centre. Apart from this, the promoted post of AAO, Mizoram and Assistant against KVK, Tura also allowed to join in the promoted post at the Complex H/Q and released later accordingly. The promoted post of AAO against Mizoram was retained for six months at the Complex H/Q indicates favoritism to a certain section and monopoly of administration.

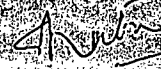
6. It is regretted to say that instead of giving me pension papers etc. before eight months and choice posting at the verge of my retirement, I have been harassed by giving differential treatment which has badly disturbed my family mental piece. In spite of carrying out five times transfer during my service period being a lower grade employee, I have not been spared by the authority up to the last moment of my service. Transfer/posting at the verge of retirement and repeated change of designation is also shocking of hampering in filling up the pension papers etc.

#### PRAYER FOR CONSIDERATION.

1. To consider my joining report w.e.f. 01/07/08 as AAO and choice posting at Complex H/Q, Umiam so that my pension papers are processed in time without any hindrance.
2. A physical enquiry to be conducted on the matter to reveal the truth.

This appeal is submitted before you for favour of your kind consideration, being the **Administrative Head** of this organization. For this act of your kindness, I shall remain ever grateful to your magnanimity.

Yours faithfully,



(D. Nath)

AAO/Asstt.

ICAR Research Complex for NEH Region,  
Umiam, Meghalaya

Copy in advance to Secy, ICAR, Krishi Bhavan, New Delhi-110 001 for favour of his kind information and immediate necessary action please.

Attested

  
Advocate

- 19 -

ANNEXURE 8

0364-2570386

INDIAN COUNCIL OF AGRICULTURAL RESEARCH  
KRISHI ANUSANDHAN BHAVAN-II  
PUSA, New Delhi-12

F.No.21-22/08-IA.II  
To

Dated the 12<sup>th</sup> Dec.'08

The Director,  
ICAR Research Complex for NEH Region,  
Barapani.

Sub: Representation of Shri Deben Nath, AAO posted Manipur Centre on promotion for retaining at Institute Hqrs. at Barapani.

Sir,

Reference is invited to Institute's letter No.RC(P)49/77 dated 19.9.08 on the above cited subject and to say that the matter has been examined in the Council. It is advised that the matter of Shri Deben Nath, AAO for retaining at Institute Hqrs. at Barapani may please be consider sympathetically as he is on the verge of retirement.

Yours faithfully,

  
(K.C. Joshi)  
Under Secretary (NRM)

an.Letter-W

Attested

  
Advocate

INDIAN COUNCIL OF AGRICULTURAL RESEARCH  
ICAR RESEARCH COMPLEX FOR N.E.H. REGION  
UMROI ROAD, UMIAM-793 103 (MEGHALAYA)

21 DEC 2009

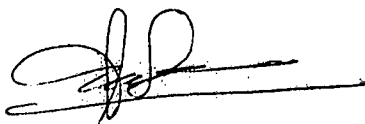
Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

No.RC(P)49/77/Pt.

Dated Umiam, the 20<sup>th</sup> January, 2009

ORDER

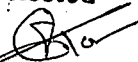
Since, Shri. D. Nath, Asstt. has failed to join at Manipur Centre as A.A.O., vide Office order No.RC(R)15/94 dtd. 27<sup>th</sup> June, 2008 within one month, hence the said order stands cancelled. However, as advised by the Council and as a sympathetic consideration, due to his being on the verge of retirement, Shri. D. Nath, Asstt., Estate Cell is hereby promoted to the post of A.A.O. in the pay scale of Rs.6500-200-10500 (pre-revised) w.e.f. January 1<sup>st</sup>, 2009.

  
( S.V. Ngachan )  
Director.

Copy to :-

1. ✓ Shri. Deben Nath, Asstt., Estate Cell, ICAR Research Complex, Umiam.
2. Joint Director I/C, Manipur Centre, ICAR.
3. The AAO(RC), ICAR Research Complex, Umiam.
4. The AAO(E), ICAR Research Complex, Umiam.
5. The Estate Officer, ICAR Research Complex, Umiam.
6. S/B.

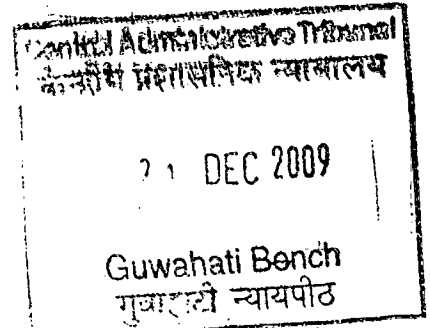
Attested

  
Advocate

**ANNEXURE 48**

To  
The Secretary,  
Indian Council of Agricultural Research,  
Krishi Bhavan,  
New Delhi-110 001.

Sub: Defiance of DPC's recommendation & Council's advice - reg.  
Ref: Council's letter F. No. 21-22/08-IA-II dated 12/12/08



Respected Sir,

In continuation of my representation dated 05/8/08 and 22/01/09, I would like to bring to your kind notice the following few lines for favour of your sympathetic consideration and suitable orders please:

That, the DPC for promotion of Assistant to the post of Asstt. Admn. Officer was held on 08/4/08 (Annexure-I) through which I was promoted vide order No. RC@15/94 dated 27/6/08 (Annexure-II) against the post of Manipur Centre lying vacant since 28/2/08. In compliance of the said order, I accepted and joined the post as offered on 01/7/08 (Annexure-III) at the Instt. Hqrs, Barapani as per prevailing practice.

That Sir, my representation dtd. 08/7/08 (Annexure-IV) for retention at the Instt. Hqrs was rejected conveying vide letter No. RC(P)49/77 dated 18/7/08 (Annexure-V) and on receipt of the same, I applied for TTA advance & requested for release vide letter dated 23/7/08 (Annexure-VI) which has also not been granted for joining the post at Manipur.

That Sir, I had no option but to represent you vide my representation dated 05/8/08 (Annexure-VII) for my retention at the Instt. Hqrs and you were kind enough to consider the same conveyed vide letter F. No. 21-22/08-IA-II dtd. 12/12/08 (Annexure-VIII) wherein no specific effective date of promotion was mentioned. On receipt of the said letter, the Director of this Instt. issued Order No. RC(P)49/77/Pt dated 20/1/09 (Annexure-IX) giving me the effect of promotion w.e.f. 01/01/09 stating that the order is issued as per Council's advice which is totally false & misleading. The Director of this Instt. is never been empowered to make or amend rules. In this circumstances, the question of failing to join the post does not arise. The decision of giving effective date i.e. 01/01/09 is unilateral and abrupt that too without joining post or conveyed by the Council. In the DPC proceeding held on 08/04/08, the effective date was also not mentioned.

That Sir, the Director of this Instt may be asked to substantiate the case with supporting documents i.e. i) DPC's recommendation held on 08/4/08, ii) Joining report of 01/01/09 and iii) Council's advice as stated.

In view of the fact and circumstances explained above, I request you to kindly consider the date of promotion from the date of DPC held on 08/4/08 to mitigate the financial loss in my pension for which act of your kindness I shall remain grateful to you

Yours faithfully,

(D. Nath)

AAO (Retd.)

ICAR Research Complex for N.E.H. Region  
Umroi Road, Umiam.

Copy to the Director, ICAR Research Complex for NEH Region, Umiam for information.

Attested

Advocate



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

Government of India

Ministry of Personnel, Public Grievances and Pensions  
(Department of Personnel and Training)Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायाधीश

21 DEC 2009

North Block, New Delhi, the 19<sup>th</sup> May, 2009Guwahati Bench  
गुवाहाटी न्यायाधीश**MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE  
CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.**

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

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

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

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

Contd. P-21

Attested -

  
Advocate



5. The recommendations of the Screening Committee shall be placed before the Secretary in cases where the Committee is constituted in the Ministry/Department or before the Head of the organisation/competent authority in other cases for approval.

6. In order to prevent 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 first week of July of a year for advance processing of the cases maturing in that half. Accordingly, cases maturing during the first-half (April-September) of a particular financial year shall be taken up for consideration by the Screening Committee meeting in the first week of January. 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.

7. However, to make the MACP Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee within a month from the date of issue of these instructions to consider the cases maturing upto 30<sup>th</sup> June, 2009 for grant of benefits under the MACPS.

8. 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.

9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008. ✓

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

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

12. Hindi version will follow.

(S.Jainendra Kumar)

Deputy Secretary to the Govt. Of India

21 DEC 2009

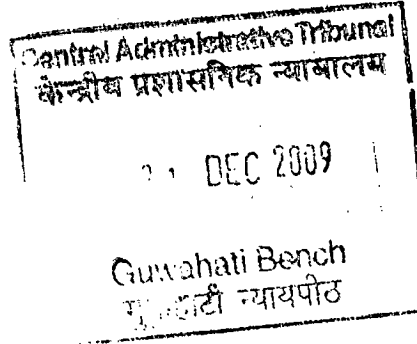
Guvahati Bench  
गुवाहाटी न्यायालय

All Ministries/Departments of the Government of India

Attested

Advocate

Contd..P-31-



-3-

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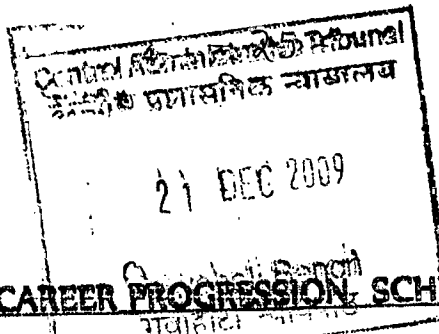
1. President's Secretariat/Vice President's Secretariat/Prime Minister's Office/Supreme Court/Rajya Sabha Secretariat/Lok Sabha Secretariat/Cabinet Secretariat/UPSC/CVC/C&AG/Central Administrative Tribunal (Principal Bench), New Delhi.
2. All attached/subordinate offices of the Ministry of Personnel,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

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Contd. P-4-

Attested

Advocate



ANNEXURE-I

**MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS)**

1. There shall be three financial upgradation s under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.
2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion.
3. The financial upgradation s under the MACPS would be admissible up-to the highest grade pay of Rs. 12000/ in the PB-4.
4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage.
5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay bands/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACP.

Contd...P-5/-

Attested  
  
Advocate

**Illustration-I**

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

21 DEC 2009

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

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

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

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

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

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

Attested

Comd-P-61

Advocate

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

21 DEC 2009

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

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

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

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

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

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

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

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

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

Comd./P-7/-

Attested

Advocate

15. If a financial upgradation under the MACPS is deferred and not allowed after 10 years in a grade pay, due to the reason of the employees being unfit or due to departmental proceedings, etc., this would have consequential effect on the subsequent financial upgradation which would also get deferred to the extent of delay in grant of first financial upgradation.

16. On grant of financial upgradation under the Scheme, there shall be no change in the designation, classification or higher status. However, financial and certain other benefits which are linked to the pay drawn by an employee such as HBA, allotment of Government accommodation shall be permitted.

17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs. 7600 and above.

18. In the matter of disciplinary/ penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder.

19. The MACPS contemplates merely placement on personal basis in the immediate higher Grade pay /grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Therefore, no reservation orders/roster shall apply to the MACPS, which shall extend its benefits uniformly to all eligible SC/ST employees also. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme.

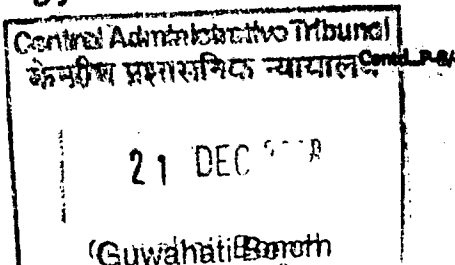
20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS.

21. Pay drawn in the pay band and the grade pay allowed under the MACPS shall be taken as the basis for determining the terminal benefits in respect of the retiring employee.

22. If Group "A" Government employee, who was not covered under the ACP Scheme has now become entitled to say third financial upgradation directly, having completed 30 year's regular service, his pay shall be fixed successively in next three immediate higher grade pays in the hierarchy of revised pay-bands and grade pays allowing the benefit of 3% pay fixation at every stage. Pay of persons becoming eligible for second financial upgradation may also be fixed accordingly.

Attested

Advocate



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

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

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

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

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

## 28. Illustrations

A (i)

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

(ii)

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

(iii)

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

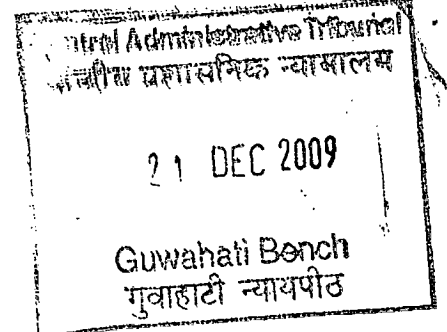
Attested

Advocate

Contd. P-21

21 DEC 2009

Gurpreet Singh  
Gurpreet Singh



-9-

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

B.

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

C.

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

(S.Jainendra Kumar)

Deputy Secretary to the Govt. Of India.

Attested

Advocate

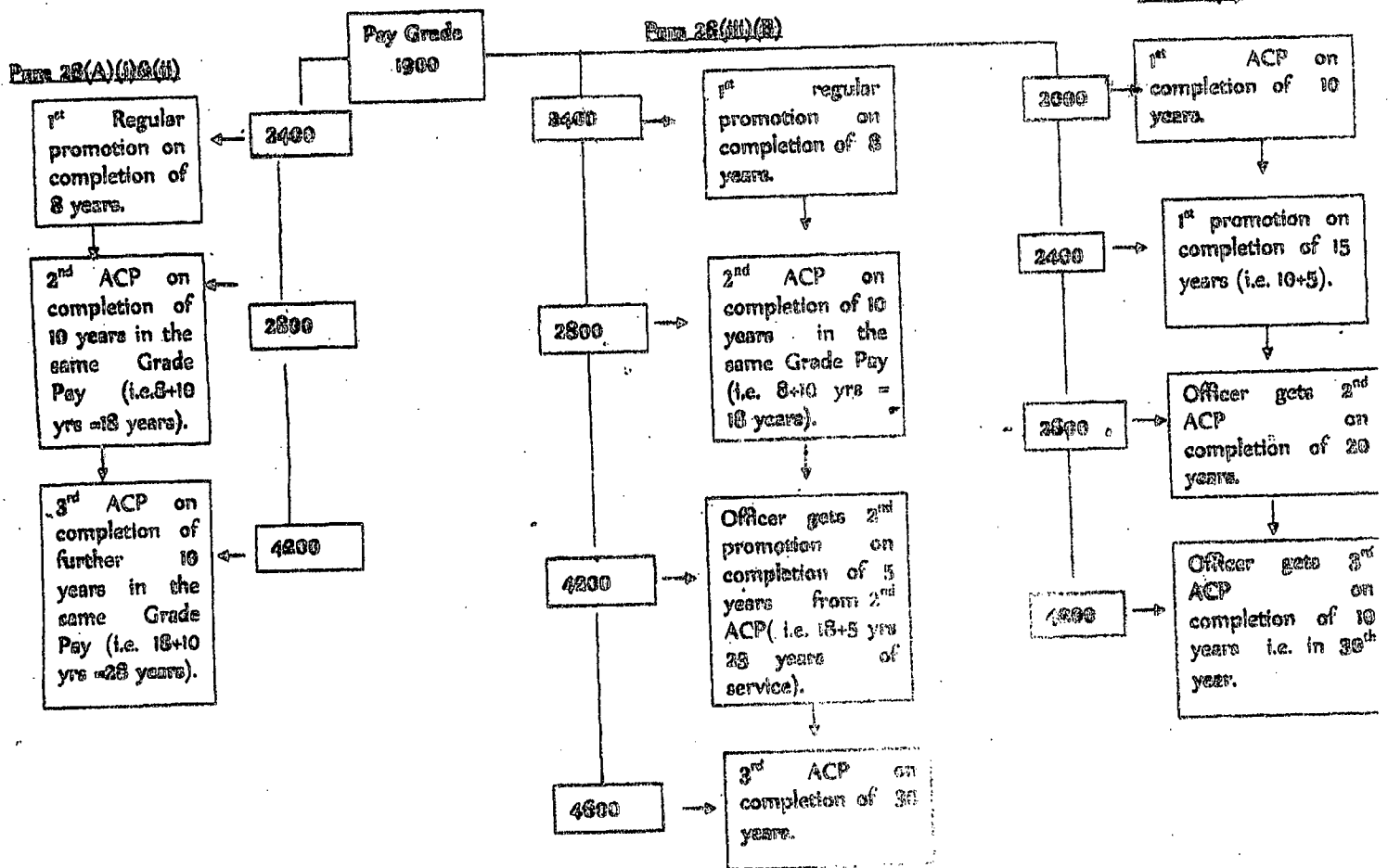


21 DEC 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

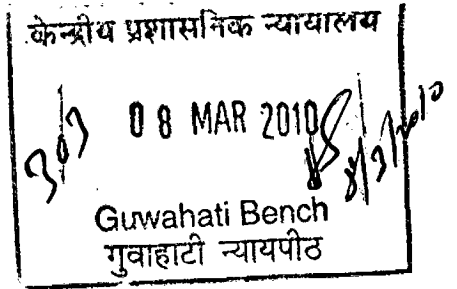
-10-

ILLUSTRATIONS



Attested

Advocate



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, AT GUWAHATI

ORIGINAL APPLICATION NO. 275/2009

Shri D. Nath.

.....Applicants.

-VS-

Union of India & Ors

..... Respondents.

WRITTEN STATEMENT FILED ON BEHALF OF  
RESPONDENT NO 2, 3 and 4.

I, Dr. S. V. Ngachan, s/o. K,S, Shangrai Khai, aged about 54 years permanent resident of Hungdung, in the district of Ukhrul, Manipur presently serving as Director, Indian Council of Agricultural Research for NEH Region, Uniam, Meghalaya do hereby solemnly affirm and state as follows:

1. That I have been impleaded as respondent No. 3 in the instant case and a copy of the application has been served upon me. I have gone through the same and have understood the contents thereof. I am acquainted with the facts and circumstances of the case and I am competent and authorized to file this written statement on behalf of respondent No.2 as well.
2. That the answering respondents deny all statements made in the original application save and except those which have been specifically admitted in this written statement and those which are borne out by the records of the case.

Filed by the  
Deputy Secy.  
N-2

*[Signature]*

Shri D. Nath.  
Sunder  
Advocate,  
8-3-2010

3. That with regard to the statements made in paragraph 4.2 of the application the answering respondents state that the statement that the applicant was promoted as Senior Clerk (UDC) on 1-12-1980 and was transferred from New Delhi to ICAR Research Complex for NEH, Shillong is factually not correct. The applicant has deliberately made an incorrect statement. In fact when the ICAR Research Complex, Shillong invited applications for the post of Senior Clerk in 1979 the applicant applied for this post. Subsequently by an order dated 26-3-1980 he was appointed ICAR Research Complex, Shillong temporarily to the post of senior clerk on lien basis initially for a period of 2 years which was further extended for a period of 1 year up to 30<sup>th</sup> April 1983 and not on promotion and transfer as stated by the applicant. The applicant was permanently absorbed as Senior Clerk in ICAR Research Complex, Shillong with effect from 1-5-82 and ranked junior most amongst the existing Clerks vide order dated 12-9-83. The applicant thereafter prayed for his permanent absorption from 1980 challenging the order dated 12-9-83 in O.A. No. 81 (G) / 1989 which was dismissed by this Hon'ble Tribunal vide judgment and order dated 15-12-1989. The applicant has suppressed the above facts and claimed to have been promoted as Senior Clerk (UDC) on 12-5-1980 which is factually not correct.

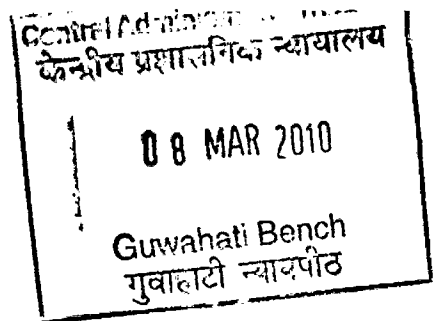
4. That with regard to the statements made in paragraph 4.3 of the application the answering respondents state that the D.P.C. was constituted on 15-3-2008 for promotion to the post of Assistant Administrative Officer (AAO) from the post of Assistant, which was held on 8-4-2008 for two posts of Assistant Administrative Officer i.e. for Manipur and Tripura Centres. The Departmental Promotion Committee recommended the names of Smti. B. Mawlong and Smti. Nirmala Rai Subbah. The DPC kept the names of two more persons in the panel i.e. the waiting list. These names are Sri D. Nath and Sri K.C. Sarma.

Pursuant to the above recommendation of DPC, the promotion order was issued on 24-5-08 whereby Smti. B. Mawlong was promoted to the grade of Assistant Administrative Officer and posted at Manipur centre, Smti. Nirmala Rai Subbah was also promoted and posted at Tripura. They were asked to join the post within one month.

A copy of the promotion order dated 24-5-08 is annexed as annexure 'R-1' to this written statement.

✓ 5. That within the permissible period of one month i.e. on 6-6-08 and on 28-5-08 both of them applied for retaining them at ICAR Research Complex, Shillong and Sikkim Centre on their personal and health reasons. Considering their case on humanitarian ground and also considering the fact that one post of Assistant Administrative Officer fell vacant on 30-4-08 at the Umiam Headquarters, Shillong and one Assistant Administrative Officer at Sikkim centre i.e. Shri Davis Joseph was transferred to Tripura Centre, the retention of Smti. B. Mawlong as Assistant Administrative Officer at Umiam Headquarters, Shillong and Smti. Nirmala Rai Subbah at Sikkim was permitted. Smti. B. Mawlong was retained at Head Quarter, Umiam in partial modification of her promotion order dated 24-5-08, vide order dated 12-6-08.

✓ 6. That with the promotion of aforesaid two persons so recommended by DPC the select list prepared by the DPC got exhausted. The third post of Assistant Administrative Officer falling vacant at Manipur Centre was supposed to be filled up by constituting a fresh DPC. However since the constitution and holding of DPC would have consumed some time and one Assistant Administrative Officer was urgently required to assist the Joint Director at Manipur Centre due to increasing workload at Manipur Centre,



particularly with the establishment of new KVKs it was decided to approve the name of the applicant was recommended/ approved for the Manipur post from the panel list itself and accordingly vide order No. RC (R) 15/94 dated 27-6-08 the applicant was promoted to the post of Assistant Administrative Officer at Manipur Centre.

However, prior to the issue of the promotion order dated 27-6-08, the Director obtained verbal consent from the applicant about his willingness to work at Manipur as he had the working experience at Imphal earlier also. It is only after verbal consent was given by the applicant that the promotion order was issued.

A copy of the promotion order dated 27-6-08 is annexed as annexure 'R-2' to this petition

7. That the respondents beg to state that assertion of the applicant that his position was 2<sup>nd</sup> in the list recommended by DPC is not correct. The allegation that Smti. B. Mawlong failed to join at Manipur Centre is not correct and the same is denied. Further the allegation that the action of the respondents has been illegal, arbitrary and to do favour to Smti. B. Mawlong is denied by the respondents. As a matter of fact, Smti. B. Mawlong applied for her retention at Barapani Centre on 6-6-08 and as the same was under consideration of the respondents which ultimately led to modification of the promotion order vide order dated 12-6-08, it can not be said that she failed to join pursuant to the order of promotion. As such the allegation that the promotion order of Smti. B. Mawlong stands cancelled for her failure to join the promotional post is unfounded.

A copy of the order dated 12-6-08 is annexed as annexure 'R-3' to this written statement.

8. That with regard to the statements made in paragraph 4.4 that is 'the practice and procedure in the ICAR is that with the promotion of Assistant Administrative Officer the promotees are allowed to assume charge of promotional post in the station they were working and physical transfer is not administratively enforced' is not correct and therefore denied.

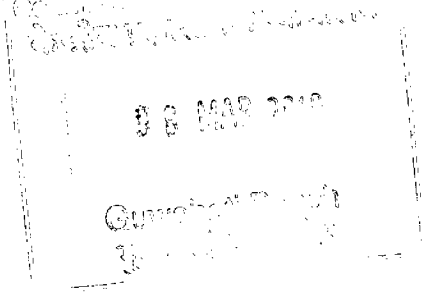
9. That with regard to the statements made in paragraph 4.5, the allegation that Smti. B. Mawlong did not join in the promotional post within a month and for that reason the applicant being the next man in the panel ought to have been promoted is not correct and therefore denied. It is also denied that the post at Manipur Centre was deliberately kept vacant in order to deprive the applicant of his legitimate promotion and accommodate Smti. B. Mawlong in Shillong arbitrarily and illegally. In fact as stated above within a period of one month of the joining period, Smti. B. Mawlong applied for modification of the transfer order for her retention at Head Quarter, Umiam on the ground of the education of her 5 (five) school going children and her health condition and since subsequently a post of Assistant Administrative Officer fell vacant at Umiam Head Quarter on 30-4-08, her case was sympathetically considered and she was accommodated at Umiam Head Quarter. The position of the applicant in the recommendation of DPC was only in the waiting list. Such selection of the applicant does not confer any right on him much less to challenge the discretion of the respondent to consider the representation of Smti. B. Mawlong for her retention at Barapani Centre.

10. That with regard to the statements made in paragraph 4.6 the allegations made therein are denied by the respondents. The allegation that the post of Assistant Administrative Officer that fell vacant in Umiam Head Quarters on 30-4-08 should have been filled up by the applicant is hereby denied. The DPC which met on 8-4-08 did not consider the said post which fell vacant subsequently on 30-4-08. As such the question of considering the case of the applicant for the said post whose name was in the waiting list of DPC that met on 8-4-08 does not arise as he has no right to such post.

11. That with regard to the statements made in paragraph 4.7 it is stated that the joining report of the applicant submitted on 1-7-08 before the Administrative Officer, Umiam Head Quarter was not accepted. Such acceptance of joining report at the HQ for a post at Manipur or elsewhere, where the applicant is reluctant to go and join, is not the normal practice and procedure in the ICAR as alleged by the applicant and therefore not permissible under normal circumstances.

12. That with regard to the statements made in paragraph 4.8 of he application it is stated that ignoring the importance of the official duties at Manipur and contrary to his verbal consent given earlier, the applicant requested for retaining him at Umiam Headquarters vide application dated 8-7-08. But such accommodation being not feasible considering the exigencies of the administration arising from the urgent requirement of helping the Joint Director at Manipur Centre, his request was not entertained and therefore he was again asked to join at Manipur centre.

The allegation that earlier S.N. Baitha and Shri K. B. Y. Kunwar who were promoted against promotional post at Mizoram and Tura respectively were retained at institute Head Quarter at Barapani, but such accommodation



was not granted to the applicant is not correct and therefore denied. In fact Shri S.N. Baitha who was promoted to the post of Assistant Administrative Officer vide order dated 29-8-07 was retained at Umiam Head Quarter as a special case upto December, 2007 and relieved on 8<sup>th</sup> February, 2008 to enable him to join at Mizoram centre because of the enormous workload at Umiam Head Quarter. Similarly Shri K. B. Y. Kunwar promoted to the post of Assistant on 25- 4-08 and posted at Tura was retained at Umiam Head Quarter for the purpose of utilizing his experience and knowledge in recruitment matters. As regards the applicant no such administrative reason was available for his retention at Umiam Head Quarter. As such there is no question of any discrimination or malice against the applicant.

13. That with regard to the statements made in paragraph 4.9 the allegation made therein are denied. Since as per the office order the applicant did not join at Manipur Centre, fixation of his pay in the post of Assistant Administrative Officer does not arise. In reply to his application dated 23-7-08 he was asked again to join at Manipur centre on 31-7-08.

A copy of the letter dated 31-7-2008  
is annexed as annexure 'R-4' to this  
written statement.

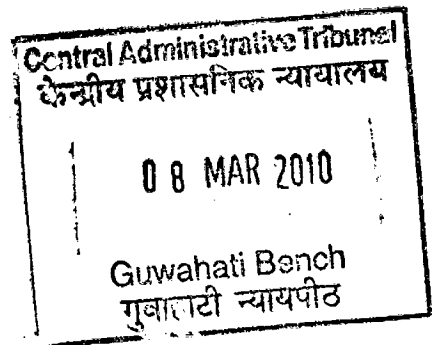
14. That with regard to the statements made in paragraph 4.10 of the original application it is stated that instead of complying with the official orders and helping the Joint Director, Manipur Centre, the applicant wrote to the Secretary, ICAR, New Delhi to intervene. The Umiam Head Quarter vide its letter dated 19-9-08 intimated the actual state of affairs to the Secretary, ICAR vide its letter dated 19-9-08. The statements made in paragraph 4.11 of the original application are matters of record.



15. That with regard to the statements made in paragraph 4.12 the original application it is stated that for the failure of the applicant to join his promotional post even after a lapse of 6 months of his promotion, has in fact stood automatically cancelled in terms of the condition mentioned in the promotion order itself. However considering the request of the ICAR, New Delhi and the humanitarian approach adopted in the matter, the respondents have issued fresh order of promotion on 20-1-2009 canceling the earlier promotion order dated 27-6-08. As a matter of fact no post of Assistant Administrative Officer could be identified at Umiam for the applicant since there is no such vacant post at Umiam Head Quarter. Only on the sympathetic condition such promotion has been granted with effect from 1-1-09 but the applicant has not submitted his joining report pursuant to such order of promotion till date even after reminder was given to him on 30-9-09. This only shows the recalcitrant attitude of the applicant towards his superiors.

✓ 16. That with regard to the statements made in paragraph 4.13 of the original application the answering respondents state that the Modified Assured Career Progression Scheme (MACPS) was circulated by the Government of India vide letter dated 19<sup>th</sup> May, 2009. The same has not yet been endorsed by the ICAR Headquarter to all its institutes and the ICAR Headquarter has referred the matter to the Ministry of Finance for their financial concurrence and on receipt of such concurrence, the scheme can be implemented by the respondents.

17. That in view of the facts and circumstances stated above and the documents produced by the respondents, this Hon'ble Tribunal may be pleased to dismiss the application with cost.




### VERIFICATION

I, Dr. S. V. Ngachan, s/o. K.S, Shangrai Khai, aged about 54 years, working as Director, Indian Council of Agricultural Research for NEH Region, Umiam, Meghalaya resident of Village - Hungdung, Ukhrul, Manipur.....  
..... being authorized by respondents No. 2 do hereby verify that the contents of paragraphs 1, 2, 3, 5, 8, 9, 10, 11, 12, 14, 15, 16 are true to my knowledge and those made in paragraphs 4, 6, 7 and 13 true to my information based on the records and those made in .....believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this 6<sup>th</sup> day of March' 2010 at Shillong.

Date: 6-3-2010

Place: Shillong.

  
Signature.  
Director  
ICAR RC for NEH Region,  
Umiam, Meghalaya - 793103

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-41- ANNE  
R-1

INDIAN COUNCIL OF AGRICULTURAL RESEARCH  
ICAR RESEARCH COMPLEX FOR N.E.H. REGION  
UMROI ROAD, UMIAM-793 103, MEGHALAYA

No. RC(R)15/94

Dt. The 24<sup>th</sup> May, 2008

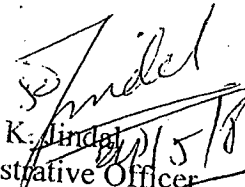
O R D E R

On recommendation of Departmental Promotion Committee of the Institute Director, ICAR Research Complex for NEH Region, Umiam is pleased to promote the following Administrative staff of the Institute to their next higher grades as shown against each with effect from the date of their joining the post:-

Sl. No.	Names of incumbent with Grade/Section	Promoted to the grade	Scale of pay	Place of posting
1	Smt. B.Mowlong, Assistant, Hqs. Umiam	A.A.O.	6500-200-10500	Manipur Centre, Lumphelpat
2	Smt. Nirmala Rai Subbah Assistant, Sikkim Centre	-do-	- do -	Tripura Centre, Lembucherra

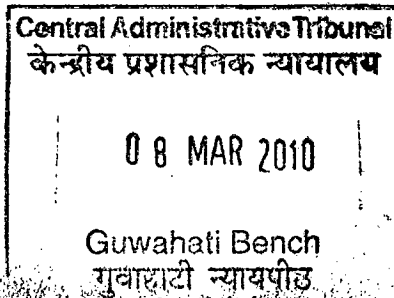
The offer is subject to the condition that he/she will intimate acceptance of the promotion within 15(fifteen) days and accordingly join the post within one month of issue of this order failing which the offer shall stand automatically cancelled.

He/she will be eligible for TTA and joining time as per rules and option for fixation of pay etc. if any, should also be submitted within 1(one) month from the date of issue of this order.

  
( S. K. Jindal )  
Administrative Officer

Copy to:-

1. The Joint Director, Tripura Centre, Lembucherra
2. The Joint Director, Manipur Centre, Lamphelpat, Imphal
3. The Joint Director, Sikkim Centre, Tadong.
4. The Finance & Accounts Officer, ICAR Res. Complex, Umiam.
5. The Asstt. Admn. Officer (Admn.), ICAR Res. Complex, Umiam, alongwith copy for Service Book.
6. The Asstt. Admn. Officer (Estt.), ICAR Res. Complex, Umiam.
7. Person concerned by name



# ANNEXURE-- 2

INDIAN COUNCIL OF AGRICULTURAL RESEARCH  
ICAR RESEARCH COMPLEX FOR N.E.H. REGION.  
UMROI ROAD . UMIAM-793 103. MEGHALAYA

No. RC( R)15 94

Dt. The 27<sup>th</sup> June. 2008.

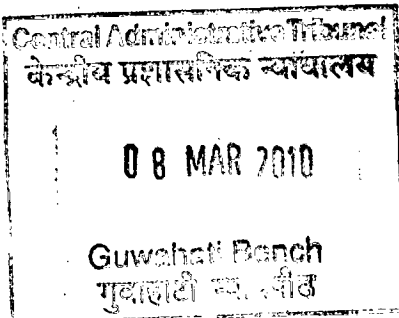
## O R D E R

On recommendation of Departmental Promotion Committee of the Institute. Director. ICAR Research Complex for NEH Region, Umiam is pleased to promote the following Administrative staff to the next higher grade with effect from the date of joining the post:-

Sl. No.	Names of incumbent with Grade/Section	Grade of promotion	Scale of pay	Place of posting
1	Shri Deben Nath Assistant. Estate Cell	A.A.O.	6500-200-10500	Manipur Centre. Lamphelpat

The offer is subject to the condition that he/she will intimate acceptance of the promotion within 15(fifteen) days and accordingly join the post within one month of issue of this order failing which the offer shall stand automatically cancelled.

He/she will be eligible for TTA and joining time as per rules and option for fixation of pay etc. if any, should also be submitted within 1(one) month from the date of issue of this order.



460  
30/6/08

*(Signature)*  
( S. K. Jindal )  
Administrative Officer

Copy to:-

1. The Joint Director, Manipur Centre, Lamphelpat, Imphal
2. The Finance & Accounts Officer, ICAR Res. Complex, Umiam.
3. The Asstt. Admn. Officer (Admn.), ICAR Res. Complex, Umiam, alongwith copy for Service Book.
4. The Asstt. Admn. Officer (Estt.), ICAR Res. Complex, Umiam.
5. The Estate Officer, ICAR Res. Complex, Umiam.
6. Person concerned by name

TP No 8800/1108

-12-  
43- ANNEXURE-13-3

INDIAN COUNCIL OF AGRICULTURAL RESEARCH  
ICAR RESEARCH COMPLEX FOR N.E.H. REGION.  
UMIAM-793 103

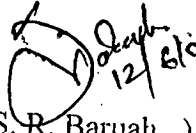
No. RC(R)15/94

dated Umiam the 12<sup>th</sup> June, 2008.

O R D E R

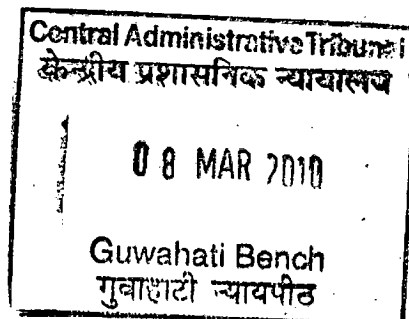
In partial modification to this office order of even number dated 12.4.2008, the place of posting in respect of Smt. B.Mowlong on her promotion to the grade of AAO may be read as Legal Cell of Hqs. Umiam in place of Manipur Centre, Lamphelpat. Other terms and condition of the aforesaid order shall remain unchanged.

This is issued with the approval of the Director.

  
( S. R. Baruah )  
Asstt. Administrative Officer(RC)

Copy to,

1. The Joint Director, Manipur Centre
2. The Finance & Accounts Officer, ICAR Res .Complex, Umiam.
3. The Asstt. Admn. Officer(Admn.), ICAR Res. Complex for NEH Region, Umiam, alongwith copies for Service Book.
4. The Asstt. Admn. Officer(Estt.), ICAR Res .Complex, Umiam.
- ✓ 5. Person concerned by name



13-44  
**ANNEXURE**  
INDIAN COUNCIL OF CULTURAL RESEARCH  
ICAR RESEARCH COMPLEX FOR N.E.H. REGION  
UMROI ROAD, UMIAM, MEGHALAYA - 793 103. (62)  
R-4

No.RC(P)49/77

Dated Umiam, the 31<sup>st</sup> July, 2008.

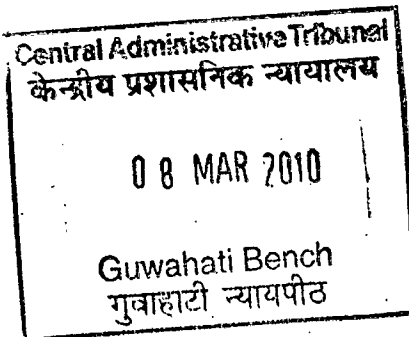
To

Shri. D. Nath,  
Asstt.,  
ICAR Research Complex,  
Umiam.

Ref :- (i) Office letter No.RC(P)49/77 dtd. 18-7-08  
(ii) Your letters dtd. 1-7-08 & 23-7-08.

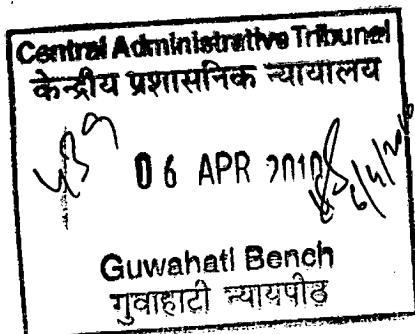
With reference to the above, you are once again advised to join the Post at Manipur Centre itself as per the order.

This issues under the orders of the Director.



(S.K. Jindal)  
Administrative Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH, GUWAHATI



O. A. No. 275 / 2009

Shri D.Nath

..... Applicant.

**-VERSUS-**

Union of India & Others

..... Respondents.

Filed by the ... Appd cont  
Through S. N. Tumuli  
Advocate Date... 6/4/10

Rejoinder to the Written Statement filed by the No 2, 3 & 4:

1. That the Applicant has gone through the Written Statement filed by the Respondent No 2, 3 & 4 and understood the contents thereof.

2. That in reply to the statements made in para 3 of the Written Statement the applicant reiterated the statements "...that the applicant was promoted to the post of senior clerk (UDC) on 12-5-1980 and was transferred from New Delhi to ICAR Research Complex for NEH Region, Shillong". The statement that the aforesaid statement is not correct is categorically denied. It is stated that the above date of promotion to the post of senior clerk is not relevant for the purpose of the present case but applicant made the above statement only to show the history of his posting. Applicant did not suppressed any material facts as alleged.

3. That in reply to the statements made in para 4 of the Written Statement the applicant reiterated the statements in the O.A. and also begs to state that the validity of the panel is for one year. The promotion order dated 24.05.08 (Annexure R-1 of the O.A.) clearly stated that

' The offer is subject to the condition that he/she will intimate acceptance of the promotion within 15 (fifteen) days and accordingly join the post within one month of issue of this order failing which the offer shall stand automatically cancelled."

Smt Mowlong failed to join the promotional post within one month and as such as per the above condition her promotion stand automatically cancelled and as such next man in the panel i.e.

Deben Nath

I undertake  
to serve  
a copy of  
this order  
Rejoinder  
to Shri D  
Majorumdar  
Advocate for  
respondents.

06 APR 2010

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

the applicant was to be promoted to the post. The statement that the "... the select list prepared by the DPC got exhausted" is denied. It is also stated that though the post of AAO at ICAR Research complex, Umiam was also lying vacant since 30.04.02 the applicant should have been promoted against the aforesaid promotional post but the respondent deliberately kept the post vacant only to deprive the applicant and also to do favour to Smt B. Mowlong.

4. That in reply to the statements in para 5 of the Written Statement the applicant reiterated the statements in the O.A. and also begs to state that the respondent gave differential treatment to the applicant and Smt B.Mowlong. The respondents did extra favour to Smt B.Mowlong. Smt Mowlong was retained in the H.Q. against a post fallen vacant on 4.07.08. This action of the respondent is arbitrary. It is further stated that the modified promotion order in respect of Smt N.R.Subbah was issued only on 16.06.08 but she joined in her promotional post at ICAR Sikkim on 30.05.08 i.e. prior to modification of the promotion order.

Copies of the order dated 16.06.08 & Letter dated 23.09.08 showing the date of joining the promotional post by Smt N.R.Subbah are enclosed as Annexure 12 & 13 respectively.

5. That the in reply to the statements in para 6 of the Written Statement the applicant begs to state that, the statement that the select list prepared by the DPC got exhausted, is denied. Smt Mowlong was accommodated against the vacant post of the AAO at ICAR Research complex, Umiam which was lying vacant since 30.04.08 depriving the applicant with her seniority in the promotional grade w.e.f. 24.05.08 though her promotion stand automatically cancelled as she did not join the promotional post within one month as per the promotion order as stated above. The statement that "... Prior to the issue of the promotion order dated 27.06.08, the Director obtained verbal consent from the applicant about his willingness to work at Manipur as he had experience at Imphal earlier also. It is only after verbal consent was given by the applicant the promotion order was issued." is categorically denied. It is stated that no such consent was obtained from the applicant. The respondent made

Deben Datta



false and misleading statement only to cover up their arbitrary action.

6. That in reply to the statements in para 7,8 and 9 of the Written Statement the applicant reiterated the statements in the O.A.

7. That in reply to the statements in para 10 of the Written Statement the applicant reiterated the statements in the O.A. and also begs to state that the procedure for holding DPC is twice in a year i.e. in the month of January and in the month of July for filling up the resultant vacanice so that the eligible candidates may not suffer from any kind of financial loss and seniority. Since the DPC held on 8.04.08 the applicant should have been promoted against the anticipated vacancy of Umiam keeping in view of his retirement on 31.01.09.

8. That in reply to the statements in para 11 of the Written Statement the applicant reiterated the statements in para 4.7 of the O.A. and also begs to state that he submitted the joining report as per the normal practice in the institute. This fact is proved from the fact that the modified promotion order in respect of Smt N.R.Subbah was issued only on 16.06.08 but she joined in her promotional post at ICAR Sikkim on 30.05.08 i.e. prior to modification of the promotion order. This proves that it the normal practice in the institute that the persons joined their promotional post in their original place and as such applicant joined his promotional post at Umiam.

9. That in reply to the statements in para 12 of the Written Statement the applicant reiterated the statements in the O.A. and also begs to state that the applicant never gave any verbal consent to join at Manipur as stated by the respondents. It is further stated that the respondents gave differential treatment in the case of the applicant though in other cases the promote were retained in their original places. For Example:

Sl.no	Name	Promotional place	Place of working prior to such promotion
1.	Shri S.N.Baitha	ICAR Mizoram	ICAR Umiam,
2.	Smt B.Mowlong	ICAR Minipur	ICAR, Umiam,

*Suben Nair*

3. Smt N.R.Subbah ICAR Tripura  
4. Smt K.B.Konwar K.V.K,Tura

ICAR Sikim, Guwahati Bench  
ICAR, Umiam. गुवाहाटी न्यायपीठ

But though applicant was in fag end of his service and also applied for his retention at Umiam his prayer was not considered in most arbitrary and illegal manner. Subsequently the council examined the case of the applicant and as the case of the applicant was found genuine and fit for consideration, The Council advised the Director for his retention at the Institutes H.Q at Umiam. Accordingly as per the advice of the council the applicant was retained in the institute H.Q. at Umiam. From the above fact it is clear that, though the case of the applicant was genuine, the respondent No 3 arbitrarily would have not been considered his case for retention at Umiam unless there was intervention from the Council. This fact proves that the respondents gave differential treatment to the applicant by arbitrary exercise of power.

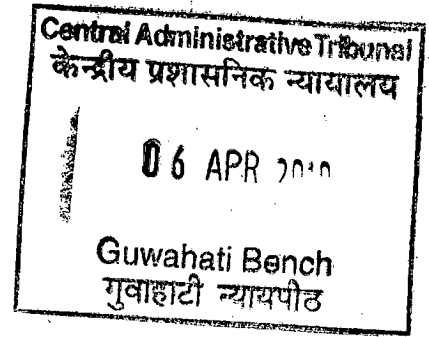
10 That in reply to the statements in para 13 of the Written Statement the applicant reiterated the statements in para 4.7 of the O.A. It is further stated that the applicant was not paid with TTA advance to enable him to join at ICAR as due and admissible under the Rules.

11. That in reply to the statements in para 14 & 15 of the Written Statement the applicant reiterated the statements in para 4.10, 4.11, and 4.12 of the O.A. There was no direction from the Respondent No 2 to issue a fresh promotion order, by giving a specific fresh date of promotion, but only to consider the prayer of the applicant for his retention at Umiam H.Q. Respondent no 3 issued a fresh appointment order only to deprive the applicant from his legitimate claim of promotion from 1.07.08 i.e. the date of submission of his joining report. As applicant submitted his joining report on 1.07.08, there is no question of submission of fresh joining report as alleged. More over the promotion order categorically stated a date of effect of promotion and as such submission of a fresh joining report is irrelevant.

12. As regards MACP the applicant reiterated the statements made in the O.A. and also begs to state that he is entitled to get the benefit of the same.

Under the circumstances the O.A. deserves to be allowed with cost.

*Deben Nath*



VERIFICATION

I, Shri Deben Nath, S/o Late Bhubenaswar Nath, aged about 61 years, presently residing at Panjabari, P.O. Khanapara, P.S. Satgaon do hereby verify that I am the applicant in the O.A. and as such I am fully conversant with the facts and circumstances of the case. I do hereby verify that the statements made in Para 1 to 12 of this rejoinder are true to my knowledge and I have not suppressed any material facts.

And I sign this verification on this 5th day of April, 2010 at Guwahati.

Date: 05.04.2010

Place: Guwahati

*Deben Nath*  
Signature

06 APR 2010

Guwahati Bench  
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ANNEXURE 12

(127)

(6)

INDIAN COUNCIL OF AGRICULTURAL RESEARCH  
ICAR RESEARCH COMPLEX FOR N.E.H. REGION.  
UMIAM-793 103

No. RC/ R/15 94

dated Umiam the 16<sup>th</sup> June .2008.

O R D E R

In partial modification to this office order of even number dated 14.5.2008. the place of posting in respect of Smt. Nirmala Rai Subba on her promotion to the grade of AAO may be read as Sikkim Centre. Tadong in place of Tripura Centre, Lembucherra. Other terms and condition of the aforesaid order shall remain unchanged.

This is issued with the approval of the Director.

( S. R. Barman )  
Asstt. Administrative Officer(RC)

Copy to.

1. The Joint Directors of Sikkim/Tripura Centre
2. The Finance & Accounts Officer, ICAR Res. Complex, Umiam.
3. The Asstt. Admn. Officer(Admn.), ICAR Res. Complex for NEH Region, Umiam, alongwith copies for Service Book.
4. Person concerned by name

Attested  
(Advocate)

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- 7 -

**ANNEXURE 13** (18)  
**REFUSAL LETTER**

INDIAN COUNCIL OF AGRICULTURAL RESEARCH · ICAR RESEARCH COMPLEX FOR N. E H. REGION  
UMROI ROAD, UMIAM- 791 103 (MEGHALAYA)

NO.RC(G)113/2008

Dated the <sup>th</sup> September, 2008.

Sub: Request to provide information under RTI Act.

Ref.: Appeal dated 21.8.2008 from Shri D. Nath, Assistant, Estate Cell, ICAR Res. Complex, Umiam.

With reference to his appeal dated 21.8.2008 from Shri D. Nath, Assistant, Estate Cell is hereby informed that:-

1. In respect of vacancies filled through DPC, the Institute follows guidelines issued by the Council/Govt. of India from time to time. However, in the matter of deciding place of posting, it is the responsibility of competent authority of the Institute who has to take decision considering all factors like availability/suitability of a person for a particular posting and other administrative reasons.
2. Copies of joining report of AAOs through last DPC are enclosed.
3. Action on proceedings of DPC for AAOs held last is not yet complete. Therefore, it can not be disclosed under the RTI Act-2005.
4. Copies of promotion order of AAOs through last DPC are enclosed.

Regarding the request to provide information in the proforma devised by him, it is also furnished below as desired.

Date from which the post of AAO fall vacant		Name of incumbent & date of joining as AAO			Original promotion order No. & date along with place of posting			Modified order No.& date with place of posting		
Name of centres	Date	Name of incumbent	Present pl. of posting	Date of joining	Name of incumbent	Order No. & date	Place of posting	Name of incumbent	Order No. & date	Place of posting
Hqs. Umiam	30.4.2008	Smt. B. Mowlong	Hqs. Umiam	12.6.2008	Smt. B. Mowlong	No.RC@15/94 dt.24.5.2008	Manipur Centre	Smt. B. Mowlong	No.RC@15/94 dt.12.6.08	Hqs. Umiam
Manipur Centre	28.2.2008	vacant till date	-	-	Shri D.Nath	No.RC@15/94 dt.27.6.2008	Manipur Centre	nil	nil	nil
Tripura Centre	Person on deputation*	Smt. Nirmala Rai Subbah	Sikkim Centre	30.5.2008	Smt. Nirmala Rai Subbah	No.RC@15/94 dt.24.5.2008	30.5.2008	Smt. Nirmala Rai Subbah	No.RC@15/94 dt.16.6.08	

Encl: As above.

To

Shri Deben Nath,  
Assistant(Estate Cell)  
ICAR Res. Complex, Umiam.

Attested  
(Advocate)

(M. J. Kharmawphlang)  
Sr. Administrative Officer & I/O, RTI

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय  
06 APR 2010  
Guwahati Bench  
गुवाहाटी न्यायपीठ