

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

O.A. NO. 167 of 1994
T.A. NO.

DATE OF DECISION 5.1.1996

Shri Pravin Borthakur

(PETITIONER(S))

Shri B.K. Sharma

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Shri A.K. Choudhury, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN
THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A)

1. Whether Reporters of local papers may be allowed to — yes
see the Judgment ?
2. To be referred to the Reporter or not ? YES
3. Whether their Lordships wish to see the fair copy of — No
the judgment ?
4. Whether the Judgment is to be circulated to the other — No
Benches ?

M.G. Choudhury

Judgment delivered by Hon'ble Vice-Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.167 of 1994

Date of decision: This the 5th day of January 1996

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

Shri Provin Borthakur,
Senior Technical Assistant (Cartographer),
Geological Survey of India,
Bônashree, Shillong.

.....Applicant

By Advocate Shri B.K. Sharma.

-- versus --

1. The Union of India,
Represented by the Secretary,
Ministry of Steel & Mines,
Government fo India,
New Delhi.

2. The Secretary,
Ministry of Steel & Mines,
Government of India,
New Delhi.

3. The Director,
Geological Survey of India,
Calcutta.

4. The Deputy Director,
Geological Survey of India,
Shillong.

.....Respondents

By Advocate Shri A.K. Choudhury, Addl. C.G.S.C.

.....
O R D E R

CHAUDHARI.J. V.C.

/ Mr B.K. Sharma for the applicant.

Mr A.K. Choudhury, Addl. C.G.S.C., for the respondents.

The applicant, Provin Borthakur, joined service with the Ministry of Steels and Mines as Draftsman on 13.6.1974 and was posted under the Deputy Director, Geological Survey of India (GSI), Shillong. He was promoted to the post of Junior Technical Assistant (JTA) on adhoc basis based on local seniority with effect from 20.12.1980. His substantive post, however, continued to be that of Draftsman. While

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he was working on adhoc basis as JTA the order, Annexure-2, dated 4.6.1983 was issued by the PGRS Division, GSI, N.E. Region, bearing No.251/11/Photo/NER/83 which reads as follows:

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'Shri P. Borthakur J.T.A.(D.O.) is hereby requested to look after the functions of S.T.A. (Cartographer) with immediate effect. He is to take charge of the aerial photos and other equipment of the Division, from Shri B. Diengdoh S.T.A. (Cartography) who is to retire from service w.e.f. 30.6.1983.

This order is issued with the approval of the Dy. Director General."

There is no dispute on the point that in pursuance of this order the applicant has been discharging the functions of STA (Cartographer). This order has never been withdrawn or revoked or cancelled and must be deemed to have operated all throughout.

2. The applicant became eligible for regular promotion for the post of JTA in the year 1985. However, he was placed under suspension from 27.7.1984 to 29.1.1986 in a police case at Itanagar. His case was placed before the DPC held in 1985 for consideration of promotion, but owing to the aforesaid case the recommendation was kept in sealed cover. The police case was over on 21.11.1989. However, the applicant was subjected to a disciplinary enquiry under the CCS (CCA) Rules for some misconduct and eventually he was awarded the penalty of reduction by two stages from Rs.1680 to Rs.1600 per month in the time scale of Rs.1400-2300 for a period of one year four months with effect from 1.8.1989. The order stipulated that he will not earn increment of pay during the period of reduction and that on the expiry of the period the reduction will not have the effect of postponing his future increment of pay. He was also debarred from enjoying the next four sets of Leave Travel Concession which were withheld during the proceeding. That order was passed by the Deputy Director General on 14.8.1989. After the penalty was undergone an order was issued on 26.8.1991, Annexure-1, by the office of the Deputy Director General, GSI, N.E. Region, Shillong, in the form of a corrigendum issued in partial modification of the office order dated

5.8.1991.....



5.8.1991 stating that the date of confirmation of the applicant to the post of JTA (D.O.) will be read as 18.2.1985.

3. The next avenue of promotion from the cadre of JTA is to the post of STA (Cartography). A five years length of service in the cadre of JTA is required to confer eligibility for consideration for promotion to that post. According to the applicant taking the date of his confirmation as JTA as 18.2.1985 he became eligible for being considered for promotion to the post of STA (Cartography) on 1.12.1990. A DPC meeting was held for considering promotion to the post of STA in May 1990. The name of the applicant, however, was not placed for consideration of the DPC as on that date the applicant had not become eligible to be considered.

4. Subsequently, the applicant was considered by the DPC and was selected and was appointed on promotion on regular basis to the post of STA (Cartography) on 20.3.1992. The applicant, however, ever since the order dated 4.6.1983, Annexure-2, till he was regularly appointed as STA on 20.3.1992 had continued to look after the functions of STA (Cartography) in pursuance of the order, Annexure-2.

5. In the above background of events the applicant claims following relief's which have been denied to him by the respondents:

- i) Special pay for the period from 4.6.1983 to 17.2.1985 for discharging the functions of STA (Cartography).
- ii) Adhoc promotion as STA from 18.2.1995 to 1.12.1990, the latter date being chosen as his penalty was over on that date.
- iii) The pay in the scale of Rs.1640-2900 for the aforesaid period from 18.2.1995 to 1.12.1990 on the basis that he was given adhoc promotion as STA during that period.
- iv) The benefit of regular promotion as Senior Technical Assistant with effect from 1.12.1990 for which purpose, if necessary, a review DPC may be directed to be constituted.
- v) Arrears of special pay and pay after refixation in different stages according to the status occupied by him.



6. The respondents resist the application. They deny the claim of the applicant for special pay for the period from 4.6.1983 to 17.2.1985 on the ground that no additional pay is admissible under F.R.49(v). They deny the eligibility of the applicant for promotion to the post of STA with effect from 1.12.1990 on the ground that he had not rendered requisite qualifying service and had not completed the minimum eligibility period prescribed in the recruitment rules till then to be considered for promotion as STA. They contend that the punishment awarded to the applicant in the disciplinary proceeding was in operation till 30.11.1990 and thus although retrospective benefit of promotion was given with effect from 18.2.1985 that was done by order issued on 19.12.1990 and that is how the applicant had not fulfilled the eligibility criteria of requisite qualifying service. They, therefore, contend that there does not arise any question of convening a review DPC to consider the promotion of the applicant with effect from 1.12.1990. The respondents, therefore, contend that the applicant is not entitled to seek refixation of pay of any period prior to his regular promotion as STA with effect from 20.3.1992. The respondents, thus therefore, contend that the application is liable to be dismissed as the applicant is not entitled to claim the reliefs sought by him.

7. Heard submissions of Mr B.K. Sharma, the learned counsel for the applicant, at length. He relied on two decisions in support of his submissions, namely, the decision of the Supreme Court in P.B. Roy -vs- Union of India, AIR 1972 SC 908 and a decision of the Principal Bench of the Central Administrative Tribunal in Shri Tota Ram Sharma -vs- Union of India and others, SLJ 1990(3) (CAT) 181. We shall deal with them in due course. Mr A.K. Choudhury, the learned counsel for the respondents, reiterated the submissions made in the written statement. We shall proceed to examine the different heads of the claim separately.

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8. The first head of the claim is for special pay for the period from 4.6.1983 to 17.2.1985. As already noted the substantive post of the applicant during the period was as Draftsman, but he was holding the post of JTA on adhoc basis since 1980. By order dated 4.6.1983, Annexure-2, he was asked to look after the functions of STA (Cartographer). The said order does not indicate as to in what capacity and for what duration the applicant was supposed to look after the functions of STA. Whereas, the applicant contends that that amounted to giving him adhoc promotion to the post of STA and, therefore, he has become entitled to claim special pay as he would not be entitled to regular pay being an instance of double adhoc promotion, the respondents contend that by virtue of F.R.49 (v) he is not entitled to be paid any additional remuneration. We find that the contention of the respondents is wholly misconceived. F.R.49 (v) reads as follows:

"No additional pay shall be admissible to a Government Servant who is appointed to hold current charge of the routine duties of another post or posts ~~in addition~~ irrespective of the duration of additional charge."

As mentioned earlier Annexure-2 does not employ the words "current charge". There is nothing in the order to indicate that the applicant was required to discharge only routine duties of the post of STA. On the other hand the order directed him to take charge of the aerial photos and other equipments of the Division, but the respondents have stated that the order at Annexure-2 had directed the applicant to look after the functions of STA (Cartographer) in addition to normal duties and that was an internal arrangement of the office and it did not confer any right for additional pay. The respondents have, however, not elaborated as to what was exactly the extent of extra duties and functions the applicant was to perform. That apart, the explanation in the written statement is different from the contents of the order itself. The order at Annexure-2 does not state that the applicant was to look after the functions of the STA "in addition to normal duties." The background in which the said order came to be passed has been provided by the applicant in para 4.4 of the O.A. He has

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stated as follows:

"There are 10 sanctioned posts of Senior Technical Assistant in scale of Rs.1640-2900/- under the Deputy Director, Geological Survey of India, Shillong. Out of 10 regular incumbents, 9 were on deputation outside the department, leaving only one Senior Technical Assistant working at Shillong. The said incumbent was also due to retire from service with effect from 30.6.83. The said Senior Technical Assistant was a Cartographer. The job of cartographer is a very important job without which the Geological Survey become stand still. In order to continue the Geological survey work, the applicant was asked on his local seniority basis to look after the duties of Senior Technical Assistant (Cartography) in addition to applicant's own duties by an Office Order No.251/11/ Photo/NER/83 dated 4.6.1983. As per order the applicant took charge of Cartographer from the retiring Senior Technical Assistant (Cartography)."

The order, Annexure-2, itself had directed the applicant to take charge of the aerial photos and other equipments of the Division from Shri B. Diengdoh, STA (Cartography) who was to retire from service with effect from 30.6.1983. That probables, the statement of the applicant that he had actually taken charge of the office of the Cartographer from the retiring officer and that was thus a full-fledged charge of the post of STA (Cartographer). This has not been denied by the respondents in the written statement. The factual background given by the applicant shows that there was serious dearth of STAs at that time in the GSI at Shillong. Hence in the exigencies of the service the applicant who was substantially only a Draftsman was placed in charge of the office of the STA (Cartographer). There is, therefore, strong reason to take the view that although theoretically the applicant may have been discharging the duties of JTA he was in fact discharging the full-fledged duties of STA (Cartographer). From the nature of this appointment we find it difficult to accept the contention of the respondents that clause (v) of F.R.49 was applicable to the applicant.

9. That brings us to the question of special pay. Special pay has been defined in F.R.9(25) as follows:

"Special Pay means an addition, of the nature of pay, to the emoluments of a post of a Government servant, granted in consideration of -

(a) the specially arduous nature of the duties;

or

(b) a specific addition to the work or responsibility."

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The work which the applicant was required to discharge in the background noted above, doubtless, involved both the elements, namely, arduous nature of the duties as well as specific addition to the work and responsibility, particularly when the applicant who was a Draftsman was required to discharge duties as STA (Cartographer). The expression "Cartography" is defined to mean 'science or practice of map drawing' (see Concised Oxford Dictionary, 1990 Edition). The order at Annexure-2 since directed the applicant to take charge of the aerial photos and other equipments of the Division shows that the work involved was of a Cartographer. As stated by the applicant, that work related to the important segment of the function of the Geological Survey and thus involves arduous nature and skill and would be a work of responsibility. It is pertinent to note that the officer who had retired and in whose place the applicant was asked to look after the job was a Cartographer. That would imply that he was a technical man. The applicant on the other hand was a Draftsman in his substantive capacity where his duty obviously was of a lighter nature than the duty of a Cartographer. We are, therefore, satisfied that the applicant was entitled to get special pay under F.R.9(25).

10. It is true that the applicant has made the claim for the special pay for the period from 4.6.1983 to 17.2.1985. That claim has been made in the year 1994. It is thus a belated claim. However, Mr B.K. Sharma submitted that the applicant had a recurring cause of action and, therefore, bar of limitation would not arise. Secondly, he submits that the application has been admitted and as it has been found that the applicant had established his claim the delay may not be allowed to defeat his rights and if it is construed that delay has occurred the same is fit to be relaxed and condoned. Although we find that the decision of the Hon'ble Supreme Court in P.B. Roy's case (Supra) has no application to this case we notice that the Principal Bench of the Tribunal in Tota Ram Sharma (Supra) has taken the view that where there is a continuing wrong so long as

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the applicant's grievance has not been redressed and where the claim is based on discrimination of pay and allowances the cause of action can be said to arise every month and bar of limitation would not apply. That to some extent supports the submission of Mr B.K. Sharma. With respect we follow the principle enunciated in the decision and in our view since this is a case of wrongful refusal to remunerate the applicant for the work done by him as required by the respondents and he is entitled to be paid the special pay, the claim may not be rejected on the ground that it was made belatedly. In essence the claim can be described as a recurring claim and, therefore, we are inclined to allow the same notwithstanding the lapse of time. That cannot cause any prejudice to the respondents either as the applicant has actually discharged the functions of the STA and there should be no objection on their part of pay him fair emoluments for the same. This head of the claim will, therefore, be allowed.

11. The next head of claim relates to ad hoc promotion as STA for the period from 18.2.1985 to 1.12.1990. The position in this respect is somewhat vexed. After the penalty period was over the applicant was retrospectively promoted on regular basis to the post of JTA (D.O.) and he has also been paid the arrears of pay in the scale of that post with effect from 18.2.1985. The applicant thus will have to be deemed to have been JTA with effect from 18.2.1985 and unlike until then he continued to hold the charge as STA in pursuance of Annexure-2 which no longer was ^{on double ad-hoc basis}. It is submitted by the learned counsel for the applicant that the functioning of the applicant as STA (Cartographer) from 18.2.1985 on the basis of his deemed promotion should be treated as adhoc promotion to the post of STA and, therefore, the applicant is entitled to the difference of emoluments as STA and JTA. The learned counsel submits that this is a case where the applicant had actually discharged the functions of the office of STA and, therefore, there should be no reason to deprive him of the fair emoluments in that post. The

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submission appears to us well taken and it cannot be brushed aside as it has considerable substance in it. The difficulty which we encounter, however, is that there has been no formal order of adhoc promotion passed at any stage. The order at Annexure-2 cannot by itself be read as an order of adhoc promotion particularly as that was issued when the applicant was still a Draftsman with reference to his substantive post although he was working on adhoc basis as JTA. Secondly, the benefit of the promotion came his way in 1990 and not during the time between 1985 and 1990. At the same time one cannot lose sight of the fact that the applicant had been functioning as STA during this period. We regard it unfair to deprive him of the reasonable emoluments. He cannot be compensated by placing him on the scale of STA for want of adhoc promotion. He cannot also be given benefit of additional pay in view of F.R.49(v). We, therefore, think that he can be given relief only in the shape of special pay.

12. In this connection we would like to reflect upon the provisions of F.R.49(v) since we feel that this cannot be applied mechanically, but its purpose has to be clearly understood. The crucial words are "appointed to hold current charge of the routine duties of another post." The word "current" carries the meaning "belonging to the present time" (see Concised Oxford Dictionary 1990 Edition). The notification issued by the Government of India, Department of Personnel and Training, O.M.No.4/2/89-Est.(Pay-II) dated 11.8.1989 is useful to be noticed in this context. It was noted that no additional pay is admissible to a Government servant who is appointed to hold current charge of the routine duties of another post irrespective of the duration of the additional charge, but in practice it is observed that in a number of cases, officers are appointed to hold additional charge of current duties of another post but the duties are not defined in the order and therefore, the officer performs all the functions of the other post including even some statutory functions. However, he is not paid any additional remuneration in view of the specific language of the order of his appointment. Further it was noted that in certain other

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cases, an officer is asked to hold additional charge of another post (which implies full charge of the other post), but he is not formally appointed to that post, and therefore, no additional remuneration is paid to him under F.R.49 and that these situations have led to representations and litigations. With a view to avoiding recurrence of such situations guidelines have been issued to the effect that when an officer is required to discharge all the duties of the other post including the statutory functions then steps should be taken to process the case for getting the approval of the competent authority and formal orders appointing the officer to the additional post should be issued and that on appointment he should be allowed the additional remuneration as indicated in F.R.49. However, where an officer is required only to attend to the usual routine day-to-day work of non-statutory nature attached to the post, an office order may be issued clearly stating that the officer will be performing only the routine day-to-day duties of non-statutory nature and that he would not be entitled to any additional remuneration. The order should also specify what duties he would be discharging or what duties he would not be discharging. (The contents of the notification are summarised above).

13. In the light of the above guidelines let us scrutinise the order at Annexure-2. The order does not mention that the applicant was to discharge only the routine day-to-day duties of non-statutory nature. It also does not state that he will not be entitled to any additional remuneration. On the plain language of the order, therefore, it has to be construed as placing the applicant in full charge of the post of STA (Cartographer). That required a proposal to be forwarded within a reasonable time for his formal appointment if that was necessary. Clause (iii) of F.R.49 provides that where a Government servant is formally appointed to hold charge of another post though in the same office, but is not in the same cadre/line of promotion the officer may be allowed the pay of the higher post in addition to 10% of the presumptive pay of the additional post if the additional charge is held for a period exceeding 39 days but not exceeding 3 months and where it is considered necessary in a particular case that he

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should hold the charge for a period exceeding 3 months, the concurrence of the Ministry of Finance shall be obtained for the payment of additional pay beyond the period of 3 months. The applicant would not fall within the ambit of this clause as he was not asked to hold charge of a post which was not in the same cadre/line of promotion. We are referring to this provision only to highlight that only a period of 3 months is regarded as a reasonable period to have such temporary arrangement. Reasonably speaking, even for the purpose of Clause (v) if the period of 3 months of the temporary arrangement is regarded as reasonable that would in our opinion stand consistently with Clause (iii) as well as the guidelines contained in O.M. dated 11.8.1989. The rationale behind taking this view is that if a temporary arrangement is permissible to be continued indefinitely for a long duration and the officer concerned is to be told that irrespective of the duration of the additional charge he is not to get any additional remuneration that clearly would be ~~such a~~ unfair to him. ~~That is,~~ the situation would be prone to the mischief of not filling up the vacancy in the higher post and manage the same through a lower grade officer because his services would be available free although placing him under higher responsibility and burden. Such a situation which can lead to exploitation of a lower grade officer cannot be regarded to be wholesome. The remuneration paid to a Government servant has to be commensurate with the duties he is required to perform and work he is supposed to do. The least that can be done in such cases is ^{to} compensate such person where the temporary arrangement has been continued for a long duration of time.

14. In the instant case the applicant was holding the substantive post. of Draftsman. He was placed on adhoc basis in the cadre of JTA (D.O.). And even while he was thus functioning only on adhoc basis as JTA the order dated 4.6.1983, Annexure-2, directed him to look after the functions of STA (Cartographer). As already stated the post of STA (Cartographer) would by its very nature involve much higher responsibility than as a Draftsman and certainly higher responsibility

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than JTA (D.O.). The order was issued on 4.6.1983 and has continued till the applicant was appointed regularly as STA in March 1992. The period from 1983 to 1992 cannot be regarded a small period contemplated for arrangement of holding current charge within the ambit of Clause (v) of F.R.49. In this connection it has to be borne in mind that a person in the position of the applicant when asked to hold additional charge would not ordinarily be in a position to refuse, ^{because} firstly, that would amount to disobedience to the direction of the superior and secondly, he may be impelled with the feeling that even though temporarily he would be enjoying the status and exercise the powers and authority of a higher post. Such attitude on the part of the officer concerned which is the product of the situation should not be stretched by the department to an unreasonable extent making him to carry out the functions of the higher post for years together and then turn round and say that by virtue of literal language of F.R.49(v) he cannot expect any additional remuneration. We would, therefore, construe the nature of the functions performed by the applicant between 1985 and 1990 as justifying additional remuneration and that we are inclined to grant in the circumstances in the shape of special pay.

15. The next item of claim is the benefit of regular promotion as Sr. Technical Assistant claimed from 1.12.1990. To recapitulate, the applicant who was holding the substantive post of Draftsman was promoted on adhoc basis as JTA on 20.12.1980. He was given regular promotion to the post of JTA (D.O.) with retrospective effect from 18.2.1985 by order issued on 19.12.1990. He was thereafter given regular promotion to the post of STA (Cartographer) on 20.3.1992 for which he had been selected by the DPC held on 3.3.1992. The period of penalty that had been imposed upon the applicant was over on 30.11.1990. Between that date and 3.3.1992 a DPC meeting had been held on 3.5.1990. As on that date the retrospective promotion of the applicant as JTA (D.O.) with effect from 18.2.1985 had not become effective as that order was passed on 19.12.1990. Hence as on 3.5.1990 the

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applicant was undergoing the punishment and was not considered for promotion to the post of STA. The question raised is that since his promotion as JTA has become effective from 18.2.1985 and as he completed the requisite length of service in the grade, namely, 5 years from 18.2.1985 the applicant was eligible for being considered by the DPC held on 3.5.1990 and that benefit should be restored to him. The whole complication has arisen by reason of retrospective promotion given to the applicant after that date as JTA. Such notional promotion would not amount to eligibility per-se. Under the guidelines issued by the Government where increments of an officer had been withheld or he has been reduced to a lower stage in time scale he may not be given actual promotion during currency of penalty. However, the guidelines also make it clear that such a person is not considered to be ineligible for promotion to the higher grade and that the suitability of the officer for promotion must be assessed by the DPC as and when occasion arises for such assessment. While assessing the suitability the DPC has to take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of the imposition of the penalty he should be considered suitable for promotion. Thus where a penalty of reduction to a lower stage in a time scale is current as in the instant case that does not render the officer ineligible for promotion and if found suitable the only constraint will be that he will be actually promoted after the penalty is undergone. The clarification issued by the Comptroller and Auditor General of India vide circular No.NGE/38/1990(497-N.2/89) dated 30.8.1990 states that a Government servant who is found fit for promotion by the DPC held after the imposition of the penalty, need not be considered again for promotion by the subsequent DPCs merely because he could not be promoted during the life of panel due to currency of the penalty and that after expiry of the period of penalty the officer concerned will be promoted from the same panel in which

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he was originally empanelled and that on his promotion, his pay and seniority in the higher post will be fixed according to his position in the panel from which he is promoted, but the monetary benefit in the higher post will be admissible only from the date of actual promotion.

16. Had there been no penalty imposed upon the applicant and had his promotion as JTA (D.O.) been given to him on 18.2.1985 he would have been eligible to be considered for promotion as STA by the DPC held on 3.5.1990. No question would have arisen since the applicant was selected and promoted subsequently by sticking to this date because all that happened was that he had become eligible to be considered and even though proforma benefit of promotion could be considered he would not have been eligible to be given the benefit of that promotion actually if he had not worked in that post. The situation relating to the applicant, however, is peculiar. During the period between 3.5.1990 and 20.3.1992 he has actually continued to hold the charge of the post of STA (Cartographer) and that was even after the penalty period was over on 30.11.1990. The circumstance that he actually worked in the post is very material. The position, therefore, that emerges is that the applicant who earned his promotion as JTA with effect from 18.2.1985, who had /become eligible for being considered by the DPC held on 3.5.1990 for promotion and who has continued to discharge the functions of that post till he was regularly promoted in 1992, ~~had~~ he had not ~~extxall~~ been considered by the DPC held on 3.5.1990. The fault does not lie with the department or the DPC because till the order of retrospective promotion was passed the applicant could not be within the zone of consideration for want of eligibility. The situation, however, has to be brought in tune with the subsequent events. That in our opinion requires a review DPC to be held to consider the case of the applicant for promotion to the post of STA as on 3.5.1990 and if found suitable then ^{the} his promotion given to him actually in 1992 is to be regarded as promotion from

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the panel of 1990. If the applicant is not found suitable then his actual promotion with effect from 20.3.1992 would remain unaffected and on the other hand if he is found suitable by the review DPC as on 3.5.1990 the respondents will have to take consequential steps consistently with that position.

17. Once it is held that the applicant is eligible to be considered by a review DPC on 3.5.1990 the question of fixation of his appropriate pay will depend upon his selection or otherwise. If he is selected then there would arise no difficulty and he would be entitled to get the scale of the post of STA because he has actually discharged the functions of that office. However, if he does not happen to be selected then the question remains as to whether he is entitled to any additional remuneration for the period between 3.5.1990 and 20.3.1992. We are of the view that since he has already discharged the functions of the office of STA during that period for the same reasons as are indicated earlier he should also be eligible to be paid special pay for that period.

18. In the result following order is passed:

- i) The respondents are directed to pay to the applicant special pay for discharging the functions of STA (Cartographer) in pursuance of the order dated 4.6.1983, Annexure-2, for the period from 4.6.1983 to 17.2.1985 under F.R.9(25) at the prescribed rate applicable at that time.
- ii) The respondents are directed to pay special pay to the applicant as above for the period from 18.2.1985 to 30.11.1990.
- iii) The respondents are directed to convene a review DPC to consider the case of the applicant as on 3.5.1990 for promotion to the post of STA (Cartographer) on the basis that he was promoted to the post of JTA (D.O.) with effect from 18.2.1985.

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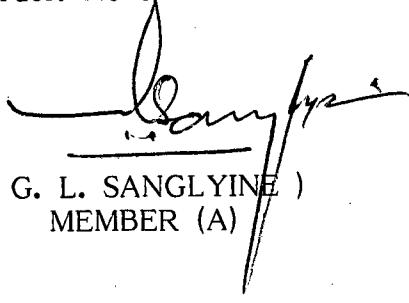
iv) In the event of the applicant being found suitable for promotion by the review DPC he shall be deemed to have been promoted from the panel originally prepared by the DPC held on 3.5.1990 and he shall be given consequential benefits as regards pay with effect from 1.12.1990 till 20.3.1992 and such other benefits as he may be entitled to get.

v) In the event of the review DPC not finding the applicant suitable for promotion as on 3.5.1990 then the respondents shall pay special pay as indicated in clause (i) hereinabove for the period from 1.12.1990 to 20.3.1992. It is made clear that if the applicant is not found suitable for selection by the review DPC as on 3.5.1990 even so the regular promotion of the applicant given to him with effect from 20.3.1992 shall not be affected in any manner whatsoever by this order.

vi) The Review DPC shall be convened within two months from the date of receipt of copy of this order.

vii) The respondents are directed to calculate the arrears as per this order and pay the same to the applicant within a period of two months from the date of the decision of the Review DPC.

19. The original application is allowed in terms of the aforesaid order. No order as to costs.


(G. L. SANGLYINE)
MEMBER (A)


(M. G. CHAUDHARI)
VICE-CHAIRMAN