

2/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A/T.A No. 12/95.....

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.5

O.A.No. 12/95

Misc.Petn.

C.P. No.

R.Appl:

.....Sh. P.C. Das.....APPLICANT'S
frs.

.....V.O.I. Das..... RESPONDENT'S

Mr. J.L. Sarkar, Mr. M. Chanda FOR THE APPLICANTS

.....Mr. J. Sarmah.....

.....Addl. case.....FOR THE RESPONDENTS

OFFICE NOTE	DATE	ORDER
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This application is in form and within time.

C.F. of Rs. 50/- deposited vide

IPO/ED No. 8823/3

Dated 26-12-94

20.6.95
20.6.95

Results.

12.5.95

Learned counsel Mr J.L.Sarkar assisted by Mr M.Chanda moves this application on behalf of the applicant. Learned Addl.C.G. S.C Mr G.Sarma is present and served with a copy of this application.

Perused the statements of grievances and reliefs sought for in this application. Heard Mr Sarkar on the question of admission. Application is admitted. Issue notice on the respondents under Registered Post. Six weeks for written statement.

List on 23.6.1995 for written statement and further orders.

No interim relief is prayed for.

60
Member

20.6.93

Copies for notices read only 2 copies instead of 4 copies on 25.5.95.

Awaiting another 2 copies.

Don

18/9

(2) 04 12/95

1) Service reports not ready.

2) W/statement has not been filed.

21/6

23.6.95

Learned counsel Mr J.L.Sarkar submits that steps have been taken by him. ^{Requisite} Written statement be served on the respondents. Learned Addl.C.G.S.C Mr G.Sarma prays for six weeks time to file counter.

List on 28.7.1995 for further orders.

Member

Requisite arose Two

coms are issued on 23.6.95 & issued

no. 2740-43 In 30.6.95

pg

28/6

28.7.95

Learned Addl. C.G.S.C. Mr G. Sarma for the respondents.

Mr M. Chanda for the applicant.

Written statement has not been submitted. List for hearing on 15.9.95 for counter and further orders as prayed for.

Member

Service reports are still awaited.

27/7

Notice served on A. no. 242.

nkm

28/7

15.9.95

Learned counsel Mr M.Chanda for the applicant.

Mr G.Sarma, learned Addl.C.G.S.C for the respondents.

Written statement has not been submitted. List on 27.10.95 for written statement and further orders.

Member

W/statement has not been filed.

26/10

1.11.95

W/s on behalf of respondents submitted.

pg

3.11.95 F/o 1.12.95

By order

(3)

O.A. 12/95

1.12.95

Mr M.Chanda for the applicant.

Mr G.Sarma, Addl.C.G.S.C for the respondents.

Written statement has been submitted by the respondents. Learned counsel Mr Chanda seeks time for filing rejoinder.

List for hearing on 12.1.96. Applicant is allowed to submit rejoinder if any in the meantime, with copy to the counsel of the respondents in advance.

Rejoinder has not been filed

11/1

Member

pg

~~12/12~~

1.12.95

~~Mr S.Ali, r.C.G.S.C is present for the respondents.~~

~~x xxxxx~~

12.1.96

Counsel of the parties are present.

Mr M.Chanda prays for adjournment as he has not received instructions which are required from the applicant. Allowed.

Adjourned to 9.2.96 for hearing.

Rejoinder has not been filed

19/1

respo
a jno
107bs

29.1.96

Member

for hearing on 14.2.96

pg

pg

Res

4
O.A.12/95

9-2-96

None is present. Hearing adjourned
to 22-3-96.


Member


Rejoinder has not
been filed

lm

22.3.96

Counsel of the parties are
present.

Hearing adjourned to 4.4.1996.


Member

pg

4.4.96

Learned counsel Mr M.Chanda is
present for the applicant. However,
learned Addl.C.G.S.C Mr G.Sarma
submitted leave note.


Hearing adjourned to 8.5.96 as
requested by Mr Chanda.


Member

pg

8-5-96

Mr.G.Sarma Addl.C.GS.C. for the
respondents. Mr.M.Chanda for the appli-
cant seeks for adjournment. Hearing
adjourned to 22-5-96.


Member

pg

OA. 12/95

22-5-96

Mr.M.Chanda for the applicant.
Leave note of Mr.G. Sarma Addl.C.G.S.C.
Hearing adjourned to 20-6-96.

lm


Member

20.6.96

Mr M.Chanda for the applicant, Mr G.
Sarma, Addl.C.G.S.C for the respondents.
Hearing adjourned to 21.6.96.


pg


Member

21.6.96

Mr M. Chanda for the applicant. Mr G.
Sarma, learned Addl. C.G.S.C., for the respondents.

The counsel for the parties made
their submissions. Hearing concluded. Judgment
reserved.


Member

nkm

12.7.96

Mr. G.Sarma, Addl. C.G.S.C. for the respondents.
Judgement pronounced. Application is dismissed.
in terms of the order. No order as to costs.


Member

trd



8.8.96

Copy of the judgment
issued to the parties
vide D.N. 2478 to
2482 D. 9.8.96

th
8/8

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

O.A. NO. 12 of 1995
T.A. NO.

DATE OF DECISION 12-7-1996

Sri Paresh Chandra Das

(PETITIONER(S))

Mr. J.L.Sarkar & Mr. M. Chanda.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr. G.Sarma, Addl. C.G.S.C.

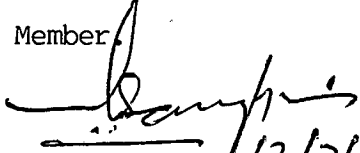
ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE

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

Judgment delivered by Hon'ble Administrative Member.


12/7/96

**CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.**

Original Application No.12 of 1995.

Date of Order : This the 12th Day of July, 1996.

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

Shri Paresh Chandra Das,
Senior Accountant,
Office of the Accountant General (A & E)
Assam, Christian Basti,
Guwahati-5.

. Applicant.

By Advocate M/S J.L.Sarkar & M.Chanda.

- Versus -

1. Union of India,
represented by the Secretary,
Government of India, Ministry of Finance & Accounts,
New Delhi.
2. The Comptroller & Auditor General of India,
Bahadur Shah Zafar Marg,
New Delhi.
3. The Accountant General (A & E)
Assam, Guwahati-5.
4. The Accountant General (A & E)
Assam, Shillong.

. Respondents.

By Advocate Shri G.Sarma, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER,

In this application under Section 19 of the Administrative Tribunals Act 1985, the applicant has assailed the correctness of fixation of his pay vide Admn.Estt.Order No.293 dated 6.10.94 (Annexure-F) issued by the Accountant General (A&E) Assam, Guwahati. I have perused the application and the written statement. Some of the main grievances of the applicant are that the order of pay fixation dated 6.10.94 had not taken into consideration, the Establishment Order No.Estt.I/290 dated 15.10.76 (Annexure-B) issued by the

.....Accountant

12-7-96

Accountant General, Assam, Shillong which fixed his pay at Rs. 485/- under FR 22-C with next date of increment being 1.8.1977; that he should have been brought under the new scale of Rs. 425-700/- from 1979 and not from 1980 in terms of the Order No. 75-N I/31-81-I dated 7.1.1982; that on declaration of the post of Senior Accountant as a functional post with effect from 1.4.1987 the benefit of fixation should be given to him from 1.4.1987 under FR 22-C instead of under FR 22(a)(i) and consequently his increment will fall on 1.4.1987 and not 1.8.1987 and that under FR 22-C read with Government of India Order No. (9) and (10) below FR 22 benefit of pay fixation should be allowed in the higher ex-cadre post consequent to fixation of pay in the cadre post. Annexure F aforesaid fixed the pay of the applicant at Rs. 545/- as on 1.8.80. The respondents have clarified in their written statement that the order dated 15.10.1976 was duly taken into consideration while fixing the pay of the applicant vide order dated 6.10.94 and they have demonstrated how the pay of Rs. 545/- was arrived at as on 1.8.1980 by allowing annual increment of Rs. 15/- in the scale of pay of Rs. 425-15-560-EB-20-640/-. They have also shown that the applicant was brought over into the new scale of Rs. 425-700/-, which is relevant to the non-functional Senior Grade Auditors with effect from 1.8.1980 as this would be most beneficial to the applicant and such action was in keeping ^{with} ~~in~~ para 2 of the aforesaid letter dated 7.1.82. It is also seen that the applicant wrongly claimed that para 4 of the said letter dated 7.1.1982 was applicable in his case. Further the respondents have clarified that on his placement in the functional grade of Senior Accountant ^{as} ~~in~~ scale of pay of Rs. 1400-40-1600-50-2300-EB-60-2600/- on regular basis with effect from 1.4.1987, ~~the~~ applicant had exercised ^{an} ~~an~~ option

..... to fix

12.7.96

to fix his pay with effect from 1.8.1987 as per provision of the Govt. of India's decision No. 15 below FR 22-C, which is found beneficial to him and his pay was fixed initially at Rs. 2000/- under FR 22-(a)(i) with effect from 1.4.1987 and it was refixed at Rs. 2100/- under FR 22-C with effect from 1.8.1987 with date of next increment falling on 1.8.1988 subject to FR 26. This fixation will ensure not only better emoluments to the applicant during his service period but better pension also thereafter. The pay of the applicant was fixed in the revised pay scale with effect from 1.1.1986 and the next increment after fixation of pay was given on 1.8.1986 as per Rule 8 of the Revision of Pay Rules 1986. This date of increment ~~fell~~ earlier than the actual date of increment, ~~was~~ namely, 1.1.1987. As regards the contention that fixation benefit in the higher ex-cadre post ~~was~~ ^{be} granted under F.R. 22-C read with Government of India's decision Nos. (9) and (10) below F.R. 22 the respondents have clarified that the pay of the applicant, who was on deputation since 18.1.1982(A.N), was fixed on 18.1.1982 in the ex-cadre post in the scale of Rs.425-750/-. When revised pay was fixed as on 1.1.1986, at that stage fixation under F.R. 22 C in the ex-cadre post based on pay of the cadre post did not arise. Similar was the case as on 1.4.1987 when the post of Senior Accountant was declared as a functional grade.

2. After careful consideration of the application and ^{the} written statement together with the submissions of the learned counsel of the both sides I have come to the conclusion that there is no sufficient reason to interfere with the correctness of the order of pay fixation dated 6.10.1994 mentioned above. The respondents have fixed the pay of the applicant at various stages according to facts and rules. In fact it is seen that the respondents had done their utmost to give what is more beneficial to the applicant even by allowing him the

...opportunity

12.7.96

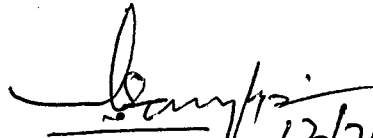
opportunity of exercising option even after a lapse of many years and to reap the benefit thereof in respect of fixation of his pay in the scale of pay of Rs.1400-2600/-. They had also even allowed him the benefit in the scale of pay of Rs.425-700/- without the option having been exercised by the applicant. As already stated earlier the applicant had exercised the option for fixation of his pay in the scale of pay of Rs.1400-2600/- in the functional grade of Senior Accountants. Now Mr M.Chanda, the learned counsel for the applicant, submitted that the option was made by the applicant under misguidance given to him by the officials of the respondents and, as such, the applicant may be allowed to withdraw the option made and to submit fresh option. Such plea cannot be entertained. Mr Chanda also insisted that the applicant should be given the benefit of exercising the option stipulated in the letter No.75-N I/31-81-I dated 7.1.1982 in bringing him over from the scale of Rs.425-640/- to that of Rs.425-700/-. The respondents have already clarified in the written statement that in the circumstances of the applicant's option was not insisted upon but a lenient view was taken in his case without the option mentioned at para 2 of the letter dated 7.1.1982 and the benefit of the Circular was made available to the applicant in the same manner as accorded to the similarly situated employees and in the way that was most beneficial to the applicant. This clarification is in order. Further as already pointed out above the provisions of para 4 of the letter dated 7.1.1982 are not applicable to the applicant as this is applicable only in respect of those staff for whom the retrospective application of the order dated 20.9.1979 mentioned therein have been struck down by the Courts. The applicant was one of such employees. It is also seen that the respondents had already paid some of the amounts due to the applicant and were in the process of paying the balance amount pertaining to the period of his deputation as

12.7.96

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- 5 -

on the date of submission of the written statement. I find no merit in the contentions of the applicant in this application. As a result, the application is dismissed. No order as to costs.


(G.L.SANGLYINE) 12/7/96
ADMINISTRATIVE MEMBER

PG

Application fee of Rs. 50/-
Paid vide bank Draft.....
Postal Order No.....
Dated 26-12-94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

An application under section of the Central
Administrative Tribunals Act, 1985.

O. A. No. 12/95

Shri Paresh Chandra Das

-versus-

Union of India & Ors.

I N D E X

Sl.No.	Annexure	Particulars	Page No.
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2	-	Verification	16
3	A	Estt. Order dated 9.8.76	17
4	B	Estt. Order dated 15.10.76	18
5	C	Admn. & Estt. Order dated 5.7.94	19
6	D	Applicant's letter dt. 11.7.94	20
7	E	CAG's letter order dt. 7.1.82	21
8	F	Admn. & Estt. order dt. 6.10.94	22-23
9	G	Applicant's letter dt. 17.10.94	24-25
10	H	Applicant's letter dt. 18.10.94	26-27
11	I	CAG's letter dt. 27.10.94	28
12	J	Applicant's letter dt. 25.11.94	29

Copy served on
Sr. C.A.S.C.
@file
dt. 9-5-95.

Filed by :

(MANIK CHANDA)
Advocate

Filed by the applicant-
through M. Chandra
20.1.95. Adv. Chandra

1. Particulars of the applicant

Shri Paresh Chandra Das
Senior Accountant
Office of the Accountant General (A & E)
Assam, Christian Basti,
Guwahati-5.

2. Particulars of the Respondents

1. Union of India

Represented by the Secretary
Govt. of India, Ministry of Finance & Accounts,
New Delhi.

2. The Comptroller & Auditor General of India,

~~XXXXXXShahXXZafarXXMX~~
Bahadur Shah Zafar Marg,
New Delhi-110 002

3. The Accountant General (A & B)

Assam,
Guwahati-5.

4. The Accountant General (A & E),

Assam, Shillong.

3. Particulars for which this application is made

This application is made for implementation of fixation benefit given under office order dated 15.10.76 and for fixation of pay scale in the revised pay scale of Rs. 425/- to 700/- and also for fixation benefit in the post of Senior Accountant Functional Grade with effect from 1.4.1987 and increment benefit with effect from 1.4.1987 and also for arrear pay and allowances accrued due to the fixation benefit as stated above.

4. Limitation

The applicant declares that this application is made within the time period prescribed in the Central Administrative Act.

5. Jurisdiction

The applicant further begs to state that the cause of the application is within the jurisdiction of this Hon'ble Tribunal.

6. Facts of the case

That the applicant is a citizen of india, as such he is entitled to all the protection and privileges guaranteed by the Constitution of India. The applicant is presently serving as Selection Grade Senior Accountant in the office of the Accountant General (A & E), Assam Shillong. The applicant was earlier posted at Shillong in the office of Accountant General (A & E) Assam, Shillong.

6.1 That the applicant was promoted as Selection Grade Auditor vide Estt. order No. 227 dated 9.8.1976 and his pay was fixed at Rs. 485/- on 14.8.1976 under F.R. 22 (C) vide Estt. order no. 1/290 dated 15.10.1976 but unfortunately the effect of the fixation benefit order dated 9.8.76 was not given in the case of applicant whereas benefit of the order was extended to other similarly situated colleagues of the applicant namely S/Shri Bijoy Bhusan Das, Debabrata Sukla Baidya, Sanat Kumar Roy, Chandi Biswas. Be it stated that the benefit of the order dated 15.10.76 was given under FR-^{22C} in the scale of Rs. 425/- -15-560-EB-20-640/- subject to fulfilment of conditions of F.R. 26. The applicant fulfilled all the requirements even then the same was not extended to him and also fulfilled all the requirements laid down in FR 26 at the relevant time even the benefit under order dated 15.10.76 not extended to the applicant. The pay of the applicant was fixed at Rs. 464/- + Rs. 15/- (Personal Pay) + Rs. 6/- on 14.8.76 under F.R. 22 (a)(i) due to the reasons best known to the respondents. Thereafter the applicant made a series of representations before the competent authorities claiming the fixation benefit granted under officer's order dated 15.10.76 whereas the respondents replied that in terms of Comptroller and Auditor General of India Order No. 75-N-1/31-81-I dated 7.1.1982, the ~~Comptroller~~ Accountant General is pleased to permit the retention of old scale upto 31.7.80. This reply of the respondents given under letter dated 17.10.94 is not at all relevant as regard the claims of the applicant for fixation benefit given under officer order dated 15.10.76.

Therefor the applicant is entitled to all monetary benefit including arrears accrued under office order dated 15.10.1976 and the letter dated 6.10.94 is liable to be set aside and quashed. The applicant further beg to state that the applicant was on deputation with effect from 1.1.82 in the state of Nagaland ~~xxx~~ in the ex-cadre post as regard the fixation benefit given under office order dated 15.10.76 and therefore he could not claim the said benefit at the relevant time. The matter of this fixation benefit came into the knowledge of the applicant after his repatriation from the borrowing department on 16.9.92 to his parent department. As soon as the same came into the knowledge of the applicant he submitted representation before the competent authorities but to no result. The denial of pay and allowances is a continuous wrong and therefor the claim of the applicant is still valid and respondents are duty bound to give effect of the fixation benefit given under office order dated 15.10.76.

A copy of the office order dated 9.8.76 and 15-10-76 are annexed as Annexure A & B.

6.2 That the applicant was further deprived as regard the benefit of revised pay scale in the selection grade auditor wherein the pay scale of Rs. 425/- to 640/- was revised to Rs. 425/- to 700/- vide Govt. of India's Notification ~~xxx75-NxI/31-21-Ix0xxxxx7-x1x82~~ No. A 11014/1 /81-EGI dated 30.12.81 and the Comptroller and Auditor

6 19

General of India in his letter no. 75-N I/41-81 dated 7.1.82 directed to invite option for fixation of revised pay scale but unfortunately this revision in the pay scale in the grade of Selection Grade Auditor was neither intimated to the applicant nor any option was called for from the applicant in terms of CAG's Order cited above. The applicant was on deputation in the State of Nagaland at the relevant time when the fixation benefit was given to other similarly situated colleagues of the parent department following the Order of the Comptroller and Auditor General of India dated 7.1.82. But the respondents did not take any action as regard the fixation of pay of the applicant which was revised vide order no. A.11014/1/81-EGI dated 30.12.81 . The applicant also came to learn regarding the changes of the pay scale in the Selection Grade Auditor after his repatriation to his parent department on completion of his deputation period on ^{15.9.92}~~5.7.94~~ vide letter No. ADMN-ESTT/GHY/PC/P-19/94-95/994 dated 5.7.94.

6.2 That the post of Senior Accountant made functional ⁸⁷ with effect from 1.4.1987 vide Govt. of India's Notification No. 935-N-2197-87 dt. 17.8.87/and therefore the pay of the applicant required to be refixed under FR. 22-C. The pay of the applicant has been fixed under ~~22-A~~ 22(a)(i) with effect from 1.4.87 vide office order no. 293 dated 6.10.94 in contravention of Govt. Order. Moreover the applicant was not intimated as

Quoted in the
pay fixation order
dt. 6.10.94

7 19

regard in status of the Senior Accountant in the parent department and also he was not informed as regard the fixation benefit given to him with effect from 1.4.87. Therefore the applicant is entitled to the fixation benefit with effect from 1.4.87 under F.R. 22-C and the Hon'ble Tribunal be pleased to direct the respondents to grant the above fixation benefit with immediate effect to the applicant.

6.3 That the applicant after revised pay scale granted by the Govt. of India on the recommendation of the IVth Pay Commission with effect from 1.1.86. The applicant exercised his option with effect from 1.1.86. Therefore he was entitled increment on 1.1.87 but the respondents under Estt. order No. 293 dated 6.10.94 allowed increment with effect from 1.8.87 against option of the applicant. Therefore respondents are liable to refix the increment in terms of the applicant's option exercised in respect of revised pay scale granted with effect from 1.1.86. The applicant was unnecessarily harrassed by the respondents without any fault or lapse of the applicant. The fixation made under office order dated 6.10.94 is in total violation of Govt. of India's order No. (9)(10) below FR 22 clarified the provision contained in FR 22-C will be applicable even in the case of promotion/appointment in the higher ex-cadre post provided that the Govt. servant is entitled to draw the pay attached to the higher ex-cadre post but the above provision is not taken into consideration in the ^{made} fixation of pay with effect from 1.1.86 and/on 1.4.87 vide office order dated 6.10.94. This has resulted loss in emoluments in the higher ex cadre post. It is also surprisingly noticed that in total violation of Govt. order

pay was fixed on 1.4.87 under F.R. 22(a) (i) in the cadre post instead of F.R. 22-C where as he is entitled the fixation under FR 22-C with effect from 1.4.87

Therefore fixation of pay of the applicant under FR 22(a)(i) is liable to be cancelled and the applicant is entitled to fixation benefit under Fr 22 (C). Be it stated that the applicant was misguided and option of the applicant was taken with effect from 1.8.87 which was not beneficial to the applicant. However he has represented for correction of the same and to grant of benefit with effect from 1.4.1987 as the junior of the applicant getting more pay than the applicant because his increment was allowed on 1.8.87. But the respondents did not take any steps to rectify the same.

6.4 That the applicant was on deputation in the ~~ex~~-cadre post of Divisional Accountant in the State of Nagaland with effect from 1.1.82 to 15.9.92 and he was repatriated to his parent department that is in the office of the Accountant General (A&E) Assam, Shillong. During his stay on deputation at Nagaland the Estt. of the respondents did not take proper care as regard the fixation of pay and allowances of the applicant granted from time to time by the Govt. of India, as a result of the applicant now ~~XXXX~~ incurring financial loss and also did not receive the arrear pay and allowances which was due to the applicant is a result of Estt. of Estt. Order dated 15.10.76, revision of pay scale in the cadre of Selection Grade Auditor from Rs. 425/- to 640/- to Rs. 425/- to 700/- and the fixation of pay with effect from 1.4.87 under

F.R. 22-C on account of Senior Accountant made functional and for grant of annual increment with effect from 1.4.87 in-stead of 1.8.87 whereas aforesaid benefits were duly granted to other colleagues of the applicant but the same was not extended in the case of the applicant. This is highly discriminatory, arbitrary, unfair and illegal and same is violative of article 14 and 16 of the Constitution.

6.5 That the applicant beg to state that after his repatriation in the parent department from the ex-cadre post of Divisional Accountant this anomaly came to the notice of the applicant when he came to learn ^① that the pay of the other colleagues are much more higher than his pay then the applicant made an enquiry and came to know that ^② the fixation benefit granted under office order dated 15.10.76 was not implemented in the case of the applicant and also came to know that ^③ the benefit of revised pay scale in the cadre of Selection Grade Auditor also not granted to him and he is also ^④ deprived of as regard to the fixation benefit given under F R 22-C with effect from 1.4.87, then the applicant immediately submitted representations addressed to the Accountant General (A E) Assam, Guwahati vide dated 4.2.94 and 14.6.94. The applicant was asked vide letter dated 5.7.94 to intimate whether he had exercised any option regarding coming over to the scale of Rs. 425/- to 700/- (as Selection Grade Auditor) in terms of Headquarters letter dated 7.1.82. It is further stated in the said

letter dated 5.7.94. That the matter has also taken up with Shillong Office as well as ^{with} D A ~~Shillong~~ and his fixation case will be decided on receipt of the above information. The applicant thereafter submitted another letter dated 11.7.94 addressed to the Accountant General (A E) Assam Guwahati that he was not communicated as regard the option stated in letter dated 5.7.94 while he was on deputation in the ex-cadre post of Divisional Accountant. Thereafter the Estt. of the Accountant General was silent. However, on 21.10.94 the applicant submitted a letter addressed to the Accountant General (AE) Assam, Guwahati wherein it is stated by the applicant ~~as~~ per verbal advise of the Assistant Accounts Officer and dealing Assistant ^{at} ~~and~~ Administration and Estt. Section the applicant submitted option for his pay with effect from 1.8.87 onwards in regard to fixation of pay which is ~~not~~ beneficial to the applicant and ^{there} ~~also~~ for a review and re-fixation of his pay with effect from 1.4.87.

General

6.6. That the Accountant ^(AE) Guwahati under office Estt. order no. 293 dated 6.10.94 in terms of CAG's letter No. 75 N I/31-81-I dated 7.1.82 the Accountant General was pleased to permit the applicant to retain the old scale of Selection Grade Auditor that Rs. 425/- to 640/- until 31.7.80 and from 1.8.80 he has been brought over to the pay scale of Rs. 425/- to 700/- that is in the revised pay scale. However the same is also did not redress the grievance of the applicant even as regard

revision of pay scale. The applicant is still deprived of actual fixation benefit as because the fixation benefit granted, office order dated 15.10.76 was not at all reflected in the office order dated 6.10.94. In other words fixation grant under office order dated 15.10.76 was not taken into consideration while passing office order dated 6.10.94. The respondents also did not furnish him the order of revision of pay scale so as to enable the applicant to exercise his option rightly although a copy of the revision of pay scale supplied to the applicant which was struck down by the court as it appear from the CAG's order dated 7.1.82 paragraph 4. Therefore the respondents to be directed to furnish the office order as regard the revision of pay scale in the Selection Grade Auditor.

6.7 That the benefit of the office order dated 15.10.76 although not granted to the applicant under F.R. 22-C but the applicant could not gather it immediately as there was no loss of emoluments resulted but in fact, the fixation is made by granting personal pay in contravention of office order dated 15.10.76 which actually resulted loss of emoluments effective from 1.8.80 whereas in case of other similarly situated employees the benefit was granted without granting any personal pay. This has resulted the actual discrimination and the same could be gathered by the applicant only after his reversion in the parent department after 15.9.92. Has this application.

~~Copy of letters dated 5.7.94, 11.7.94 and orders dated~~

Copy of letters dated 5.7.94, 11.7.94 and orders dated 7.1.82, letter dated 6.10.94 ~~xxx~~ are annexed as Annexure C, D, E, F.

6.8 That the applicant thereafter submitted his representation dated 7.10.94, 18.10.94, addressed to the Accountant General (AE) Assam. However, the office of the Accountant General, Assam vide his letter No. Admn/Estt./GHY/PC/P-19/94-95/2779 dated 27.10.94 given the applicant the copy of the Circulars CAG's letter dated 20.9.79. However the applicant vide his letter dated 25.11.94 addressed to the Accountant General (AE), Assam, Guwahati and further requested to furnish detail particulars to the applicant in terms of his request made in paragraph 2 of his representation dated 18.10.94 in order to enable him to exercise his option as required vide CAG's Circular dated 7.1.82. But the same is not yet furnished to the applicant till date. The applicant was all along deprived of his legitimate claim of his fixation benefit due to the negligence of the authorities and it is appeared that even now after pointing out all the anomalies and loss faced by the applicant due to the non-action of the respondents in implementing the CAG's Circular/Order granting fixation benefit from time to time.

Copies of letter dated 17.10.94, 18.10.94, 27.10.94, and 25.11.94 are annexed as Annexure G, H.I, and J respectively.

7. Reliefs Prayed for

Under the facts and circumstances stated, above, the applicant prays for the following reliefs :

1. That the respondents be directed to grant fixation benefit by refixing the pay of the applicant in terms of Estt. Order No. Estt. 1/290 dated 15.10.76 and to incorporate the said fixation benefit in the office order No. 293 dated 6.10.94, by nessary modification.

- ii. Fixation benefit of revised pay scale from Rs. 425-640 to Rs. 425-700 with effect from 1979 in the cadre of Selection Grade Auditor in terms of CAG's Order No. 75-N/1/31-81-I dated 7.1.82 by rectifying the office order No. 293 dated 6.10.94.
- iii. Fixation benefit under F.R. 22-C with effect from 1.4.87 on account of declaration of Senior Accountant as Functional post instead of fixing the pay under F.R. 22 (a) (i) with effect from 1.4.87 vide order dated 6.10.94.
- iv. That the increment of the applicant to be allowed with effect from 1.4.87 instead of 1.8.87 in terms of prayer No. (iii).
- v. That the officer order No. 293 dated 6.10.94 be modified in terms of above prayers.
- vi. Payment of arrear pay and allowance due to the applicant after fixing of pay made in terms of prayers Nos. i, ii, iii, iv and v with 18% interest per annum.
- vii. That fixation benefit in the higher ex-cadre post was under FR 22-C read with G.I. Order No. (9) and (10) below FR 22 should be granted with changes of the pay in the cadre post in the analogy of the fixation of pay in the cadre post.
- viii. Cost of the case

The above reliefs are prayed on the following other grounds.

G R O U N D S

- i. For that the applicant is entitled to the fixation benefit under Estt. Order No. I/290 dated 15.10.76.

- 26
- ii. For that the office order dated 15.10.76 ✓
implemented in the case of other employees
similarly situated in this department.
 - iii. For that the applicant is entitled to the
revised pay scale in the cadre of Selection
Grade Auditor in terms of CAG's office order
dated 7.1.82. ✓
 - iv. For that option was not asked from the applicant
by the respondents/authorities during his stay
on ex-cadre post on deputation.
 - v. For that the fixation given under Estt. Order
dated 6.10.94 is incorrect and the same is
liable to be rectified, immediately.
 - vi. For that applicant is entitled to the fixation
benefit under F R 22-C with effect from 1.4.87
in respect of fixation under FR 22(a)(i)-
 - vii. For that the applicant is entitled to the date
of increment with effect from 1.4.87 instead of
1.8.87.
 - viii. For that the applicant was not communicated
regarding fixation benefit granted by the CAG
from time to time during his stay on deputation
in the ex-cadre post.
 - ix. For that non-extension of fixation benefit in
the case of applicant is highly discriminatory
illegal and the same is violative of Article 14
and 16 of the Constitution.

8. Interim reliefs are prayed for

The applicant does not pray for any interim relief. However desire for expeditious disposal of the case.

9. The other remedies has been exhausted. There is no any other remedy save and except filing this application before your Lordships for appropriate relief.

10. That the matter is not pending in any other Court/Tribunal.

11. Particulars of the Postal Order

Postal Order No.	:-	803 882363
Date of Issue	:-	26-12-94
Issued from	:-	G.P.O., Guwahati
Payable at	:-	G.P.O., Guwahati

12. Details of Index

An index showing the particulars of documents is enclosed.

13. List of enclosures

As per Index

V E R I F I C A T I O N

I, Shri Paresh Chandra Das, Senior Accountant, working in the office of the Accountant General (A & E) Assam, Guwahati, the applicant in this application do hereby verify that the statements made in this application are true to my knowledge and belief and I have not suppressed any material fact of the case.

Date :

Place : Guwahati

Paresh Ch Das
Signature

ANNEXURE - A

OFFICE OF THE ACCOUNTANT GENERAL
 ASSAM : MEGHALAYA : ARUNACHAL PRADESH AND MIZORAM
 SHILLONG-& () %

Establishment Order No. 227

Dated 9.8.1976

The following Auditors are promoted to officiate as Selection Grade Auditor with effect from 9.8.1976. The promotion of those on leave will take effect from the date of resumption of duties on the expiry of leave.

Their promotion is purely temporary and subject to the existence of vacancies which may vary depending on circumstances.

Sl. No.	Name S/Shri	Place of posting
1.	Bijoy Bhusan Das	Shillong
2	Paresh Chandra Das (I)	Shillong
3	Debabrata Suklabaidya	Shillong
4	Sanat Kumar Das	Guwahati Office
5	Sanat Kumar Roy	Shillong Office
6	Chandi Das Biswas	Shillong Office
7	Gayaram Das	Guwahati Office
8	Dhanendra Mohan Das	Agartala Office

Sd/- Illigible
 Deputy Accountant General
 (Administration)

Memo No. Estt. I/37-1/73-74/Vol.I/4972-74 dated 9.8.1976

Copy forwarded to :-

1. The Accountant General, West Bengal, Treasury Building Calcutta-700001.
2. The Accountant General, Tripura, Agartala (With ref. to promotion in respect of Sl. No. 8 of the list)
3. The Accounts Officer in Charge, Office of the Accountant General, Assam etc., 'Singh Nivas', 11-A Upendra Bezbarua Road, Gauhati-3 in respect of Sl. No. 4 and 7 of the list.

TESTED
 07

Sd/- Illigible
 Establishment Officer

ANNEXURE-B

OFFICE OF THE ACCOUNTANT GENERAL
 ASSAM: MEGHALAYA : ARUNACHAL PRADESH : MIZORAM
 SHILLONG-793001

Estt. Order No. Estt. I/290 Dated Shillong, the 15.10.76.

Consequent to their having been promoted as Selection Grade Auditor, the pay of the following officials are fixed under FR 22-C with effect from the dates noted against their names in the Selection Grade Auditor's scale of pay of Rs. 425-15-560-EB-20-640/-. The dates of next increment shown against their names are subject to fulfilment of conditions of FR-26.

Sl. No.	Name	Stage at which pay fixed	Date of effect	Date of next increment
1	Shri Bijoy Bhusan Das	Rs. 485/-	9.8.1976	1.8.1977
2	Shri Paresh Ch. Das ✓	Rs. 485/-	14.8.1976	1.8.1977
3	Shri Debabrata Suklabaidya	Rs. 485/-	9.8.1976	1.8.1977
4	Shri Chandidas Biswas	Rs. 470/-	9.8.1976	1.8.1977

(Authority :- D.A.G. (A)'s Orders dated 15.10.1976 at P/97 of File No. Estt. I/14-7/72-73).

Sd/- P K Sen Mazumder
 Establishment Officer

Memo No. Estt. I/14-7/72-73/8533 Dated Shillong the 15.10.76

Copy forwarded for information & necessary action to :

The Chief Auditor, N.F. Railway, Maligaon, Gauhati-11

Sd/- P K Sen Mazumder
 Establishment Officer.

Memo No. Estt. I/14-7/72-73/8534-39 Dated the 15.10.1976
 Copy for information & necessary action to :

1. The Section Officer/Establishment 2 Section.
2. The Section Officer/Establishment 3 (Service Book Group) Section.
3. The Gradation List Group (Estt. I Section)
4. The Budget Group (Estt. I Section).
5. The Estt. I Order Book.
6. The persons concerned.

Sd/- Illigible
 Section Officer
 Estt. Section I,

TESTED

Advocate.

ANNEXURE - C

No. Admn & Estt./Ghy/PC/P-19/94-95/994 Dt. 5.7.94

With reference to his representation dated 14.6.94, Shri Paresh Chandra Das, Sr. Accountant is requested to intimate that whether he had exercised any option regarding coming over to the scale of Rs.425 -700/- (as S.G. Auditor) in terms of H.Qrs. Office Letter No. 75-N-I/31-81-I dated 7.1.1982 (Copy enclosed).

The above matter has also been taken up with our Shillong office as well as D.A. Cell, Shillong and his fixation case will be decided on receipt of the above information.

Sd/- Illigible
Accounts Officer
O/O the Accountant General (A&E)
Assam, Guwahati

To :

Shri P.C. Das,
Sr. Accountant,
W M -3 Section
O/O the A.G. (A & E), Assam,
Bhangagarh, Guwahati-5

TESTED
9
Advocate.

ANNEXURE - D

Dated Guwahati, the 11.7.1994

To :

The Accountant General (A/E)
Assam, Guwahati

Sir,

With reference to your letter No. Admn. & Estt./ GHY/PC/P-19/94-95/994 dated 5.7.94, I have the honour to state that during the period I was posted in the Division outside the parent cadre i.e. in 1982 and the option as required to be exercised was not communicated to me by the D.A Cell. As such in the absence of any knowledge about the provision of option, I could not exercise any option.

TESTED
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Yours faithfully,

Sd/- P. C. Das
Senior Accountant
Pension-5 Section

ANNEXURE-E

No. 75-N I/31-81-I

OFFICE OF THE COMPTROLLER & AUDITOR GENERAL
OF INDIA, NEW DELHI-110002

Dated : 7.1.1982

Copy of Government of India, Ministry of Finance
(Department of Expenditure) letter No. A.11014/1/81-EGI,
dated 30.12.81 is endorsed to :-

- I. All field office of I.A. & A.D.
- II. J.D.(P) (Local)
- III. Audit Section, Accounts Section, G I, GELL, Railway
Audit Wing, Commercial Wing, NGEII, NGEIII, NGEIV
Sections of this office.
- IV. Director of Inspection (Local)
- V. Audit Bulletin (Local)

2. Any person appointed as Selection Grade Auditors
from 1.8.76 to 19.9.79 may now be given option under
FR-23 for retaining the old scale viz Rs. 425-640 until
the date on which he has earned next or any subsequent
increment or until he vacates his post or to draw pay
on that time scale in terms of SR-23.

3. Their pay on coming to the new scale of Rs. 425-700
will be fixed under audit instruction (i) below FR 22
read with FR-23.

4. In respect of staff for whom the retrospective
application of the orders circulated in this office
Circular No. 1067-NGEIV/54-77, dated 20th September,
1979 has been struckdown by the courts, the benefit
of retaining the old scale of Rs. 425/- to 640/- will
be available and they need not exercise any option.
However for allowing them the pay in the new scale of
Rs. 425-700 i.e. beyond Rs. 640/- specific option may have
to be exercised by them as above treating the court order
as option for the old scale under FR-23.

Sd/- N VISWANATHAN
ADMINISTRATIVE OFFICER (N)

ANNEXURE - F

ADMN. ESTT. ORDER NO. 293

OFFICE OF THE ACCOUNTANT
GENERAL (A & E) ASSAM, GUWAHATI

Date : 6.10.94.

In terms of CAG's Letter No. 75-N I/31-81-I dtd. 7.1.82, the Accountant General has been pleased to permit Shri Paresh Ch. Das, Sr. Accountant to retain the old scale of S.G. Auditor viz. Rs. 425-640/- until 31.7.80 and from 1.8.80 he has been brought over in the scale of 425-700 (in the new scale of S.G. Auditor pre-revised).

In view of the above his pay has been regulated as follows :

Period	Regulation of pay in SGA SGA's scale	Regulation of pay in D.A.G's scale
	S.G.A's scale Rs. 425-700	Scale 425-750 (Ex-cadre post)
1.8.80	Rs. 545/-	-
1.8.81	Rs. 560/-	-
1.8.1.82	(Rs. 560/-)	Rs. 600/- fixed under FR 22-C on 1.1.83
1.8.82	(Rs. 580/-)	Rs. 600/-
1.1.83	(Rs. 580/-)	Rs. 620/-
1.8.83	(Rs. 600/-)	Rs. 620/-
1.1.84	(Rs. 600/-)	Rs. 640/-
1.8.84	(Rs. 620/-)	Rs. 640/-
1.1.85	(Rs. 620/-)	Rs. 660/-
1.8.85	(Rs. 640/-)	Rs. 660/-
(Revision of pay w.e.f. 1.1.86) Scale 1400-2600		
1.1.86	(Rs. 1900/-)	Rs. 2000/-
1.8.86	(Rs. 1950/-)	Rs. 2000/-
1.1.87	(Rs. 1950)	Rs. 2060/- (Rs. 2050/-)

On his placement in the functional grade of Sr. Accountant (Scale Rs. 1400-40-1800-50-2300-EB-20-2600 p.m) on regular basis vide Hqrs. Circular No. NGE/68/1987

issued under Letter No. 935-N-2197-87 dtd. 17.8.87 and circular No. NGE /95/1988 issued under letter No. 1030-N.2 /10-88 dated 1.11.88.

1.4.87	(Rs. 2000/-) fixed under F.R. 22(a)(i)	Rs. 2050/-
1.8.87	(Rs. 2100/-) fixed under FR-22C with on 1.8.88	Rs. 2050/-
1.2.88	(Rs. 2100/-)	Rs. 2100/-
1.8.88	(Rs. 2150/-)	Rs. 2100/-
1.1.89	(Rs. 2150/-)	Rs. 2150/-
1.8.89	(Rs. 2200/-)	Rs. 2150/-
1.1.90	(Rs. 2200/-)	Rs. 2200/-
1.8.90	(Rs. 2250/-)	Rs. 2200/-
1.1.91	(Rs. 2250/-)	Rs. 2250/-
1.8.91	(Rs. 2300/-)	Rs. 2250/-
1.1.92	(Rs. 2300/-)	Rs. 2300/- E.B. st
1.8.92	(Rs. 2360/-)	Rs. 2300/-
16.9.92	Rs. 2360/- on his reversion to parent cadre i.e. Sr. Acctt.	-

(Authority :- AG's order dt. 6.10.94 at P/ of P/C
of Shri Paresh Ch. Das, Sr. Acctt).

Sd/- Accounts Officer
Admn. & Estt.

Memo No. Admn. & Estt./Ghy/PC/P-19/94-95/2529-2539

Dated : 6.10.94

Copy forwarded to :

- 1.-----
- 2.-----
- 3.-----
- 4.-----
- 5.-----
6. Shri Paresh Ch. Das, Sr. Acctt. Pen-5 Section, O/O the
A.G. (AGE) Assam, Bhangagarh, Guwahati-5.
- 7.-----
- 8.-----
- 9.-----
- 10.-----
- 11.-----

Sd/- Accounts Officer (Adm
Estt.)

ANNEXURE-G

Dated Guwahati the 17th Oct. '94

To :
The Accountant General (A/E)
Assam, Guwahati

Sub : Anomaly in the fixation of pay.

Sir,

In inviting a ref. to Admn. & Estt. Order No. 293, dt. 6.10.94, I am to state that I was promoted to S.G. Auditor along with my other colleagues on 1.8.76 vide Estt. Order No. 227 dated 9.8.76 and my pay was fixed at 485/- on 14.8.76 under FR-22(C) vide Estt. Order No. Estt. I/290 dated 15.10.76. But unfortunately deviation was made only in my case and pay was actually fixed at Rs. 464/- + Rs. 6/- + Rs. 15/- on 14.8.76 under FR 22(a) (i) due to the reason best known to the Estt. Section. Now after series of correspondences it is stated in Admn. & Estt. order under reference that in terms of Comptroller & Auditor General of India's Order No. 75-N-1/31-81-1 dated 7.1.82 the Accountant General is pleased to permit the retention of my old scale upto 31.7.80. For your information I like to mention here that the Comptroller & Auditor General letter as cited above is relating to the revision of pay scale of S.G. Auditor from 425-640 to Rs. 425-700. Thus it appears from the above that unnecessary harrassment is being made to a mute official who is retiring from service on 31.12.94 after rendering more than 33 years of sincere services without any black spot in the carrier.

On my reversion from ex-cadre post on 16.9.92 I came to know that the Govt. of India revised the scale of pay of the S.G. Auditor from Rs. 425-640 to Rs. 425-700 and the Comptroller & Auditor General of India in his letter No. 75-N-I/31-81-I dated 7.1.82 directed to call for option for fixation of pay. But as ill luck would have it the changes of scale of S.G. Auditor was neither intimated to me nor any option was called for from me in terms of C & A G's order cited above. While I was in ex-cadre post under the Govt. of Nagaland, I therefore, request you kindly to fix my pay with effect from the date of introduction of the scale under FR 22(C) immediately.

On my reversion from ex-cadre post it is also came to my knowledge that the post of Sr.Accountant made functional and allowed the re-fixation of pay on 1.4.87 under FR -22(C). But injustice was made to me by keeping me in dark while I was in ex-cadre post. Now the fixation of my pay is made from 1.8.87 vide Admn. & Estt. Order No. 293 dated 6.10.94 it not beneficial to me, I therefore, request you kindly to fix my pay with effect from 1.4.87 immediately & arrange disbursement of my arrear pay & allowances from 1.4.87 which is not due to my any fault.

TESTED
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In this connection I like to mention here that on my appointment in the ex-cadre post as Divisional Accountant vide E.O. No. WM-1/117, dt. 3.12.81 my pay was fixed at Rs. 580/- Vide E.O. order No. WM-1/42 dated 8.7.82 which is also not correct. I, therefore, request you kindly to rectify the anomaly in the fixation of pay and arrange disbursement of my arrear pay and allowances early.

I hope that your honour will do the needful early and arrange disbursement of my arrear pay and allowances immediately latest by 31.10.94 without obliging me to seek justice in the court of law.

Yours faithfully,

Sd/- P.C. Das
Sr. Accountant

Copy alongwith the copies of Admn's orders referred to pre-page is forwarded to :

1. The General Secretary, N.G.A. & A. Association, Guwahati for favour of early necessary action.
2. The Secretary, General, All India Audit & Accounts Association, New Delhi. He is requested to take ~~xxx~~ up the matter with Comptroller & Auditor General of India, New Delhi for expeditious fixation of my pay in different states.

Sd/ P.C. Das

Senior Accountant
O/O the Accountant General (A/E)
Assam, Guwahati

TESTED
8
Advocate.

ANNEXURE - H

Dated Guwahati, the 18th Oct. '94

To :

The Accountant General (A/E),
Assam, Guwahati

Sub : Fixation of Pay.

Sir,

In continuation of my representation dated 17.10.94 I am to state that my pay fixed at Rs. 545/- on 1.8.80 vide Admn. & Estt. Order No. 293 dated 6.10.94 with ref. to E.O. order No. Estt. I/290 dated 15.10.76 is correct. It may also kindly be intimated the reason for which my pay was fixed earlier at Rs. 464/- + P.P. Rs. 15/- + PP Rs. 6/- on 14.8.76 and Rs. 515/- + P.P. Rs. 15/- on 1.8.80 in violation of E.O. order No. Estt. I/290 dated 15.10.76.

A copy of Govt. order regarding revision of pay scale in 1979 and procedure for fixation of pay thereof consequent to the revision of pay scale from Rs. 425-640 to Rs. 425-700 may kindly be furnished so as to enable me to exercise option as required vide C & A.G's order No. 75-N-1-31-81-I dated 7.1.82. As already stated earlier that the change of scale of pay was neither communicated to me nor any option was called for while I was in ex-cadre post under the Govt. of Nagaland.

Fixation of pay made on 1.8.87 instead of on 1.4.87 consequent to the declaration of the post of Sr. Accountant as functional cadre appears to be not beneficial to me. The fixation kindly be made in ex-cadre post on 1.4.87 as the declaration of the post of Sr. Acctt. as functional cadre was not communicated to me while I was in ex-cadre post in violation of Govt. standing orders. Had I been intimated in time in compliance with the Govt. standing orders I would have come back to my parent Deptt. As such in view of the fact narrated above I should not suffer any loss in fixation of my pay on 1.4.87 which is not due to any fault of mine.

On a scrutiny of the Admn. & Estt. Order No. 293 dated 6.10.94 it is revealed that my pay in the ex-cadre post has been fixed at a lower stage on 1.8.87, 1.8.88, 1.8.89, 1.8.90, 1.8.91 and 1.8.92 that the substantive pay in the parent deptt. although the ex-cadre post involving higher responsibilities than the substantive post. This aspect may kindly be reviewed and correct position intimated.

In view of the circumstances I fervently request you kindly to do the needful early and intimate the action taken in the light of the fact narrated above.

Yours faithfully,

Sd/- P.C.Das
Sr. AccountantTESTED
9
Advocate.

Copy with the copies of Admn.& Estt. Orders refd. to above is forwarded for favour of early necessary action to :

1. The General Secretary, Audit & Accountants Association, Guwahati.
2. The Secretary General, All India Audit & Accounts Association, New Delhi.

Sd/- P.C. Das
Sr. Accountant

TESTED
9

Advocate

ANNEXURE-I

OFFICE OF THE ACCOUNTANT GENERAL (A&E) : ASSAM : GUWAHATI

No. ____/Admn.& Estt./Ghy/PC/P-19/94-95 Date 27.10.94

To :

Shri Paresh Ch. Das, Sr. Acctt.
Pen-5 Section
O/O the A.G. (A&E), Assam
Bhangagarh, Guwahati-5

With reference to his representation dtd. 17.10.94
& 18.10.94, a copy of the CAG's circular Letter No. 1067-
NGE-IV/54-77 dated 20.9.79 incorporated in the Audit
Bulletin of Sept. '79 issue is enclosed as sought by
hi.

Enclo : As stated above

Accounts Officer (Admn&Estt)

ATTESTED
9
Admn&Estt

ANNEXURE - J

To :

The Accountant General (A/E)
Assam
Guwahati

Sir,

I am to state that it appears from Para 4 of the Comptroller & Auditor General letter No. 75-N-1/31-81 dated 7.1.82 that C & A.G's Office circular No. 1067/NGEIV/54-77 dated 20.9.79 as enclosed with your letter no. Admn & Estt./GHY/PC/P-19/94-95/2779 dated 27.10.94 has been struck down by the Courts. In this connection I am to invite your kind attention to para 2 of my representation dated 18.10.94 and to request you kindly to furnish the particulars as requested vide my above representation so as to enable me to exercise option as required vide C & A.G's circular letter No. 75-N-1/31-81-1 dated 7.1.82.

Yours faithfully,

Leave Address :-

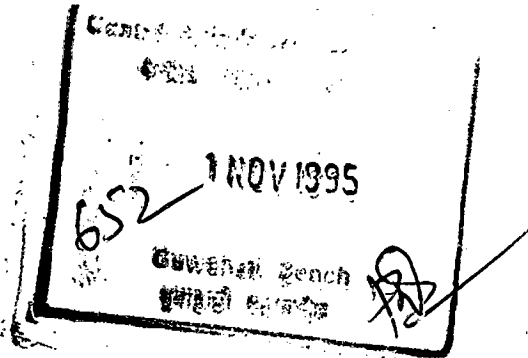
C/o K. Das
Central Excise,
Noonmati Refinery
Guwahati-20

Sd/- P.C. Das
Sr. Acctt. (on leave)

TESTED

8

Advocate.



30

File by Gopal Janna
42
Additional Central
Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench

1/11/95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

In the matter of :

O.A.No.12/95

Shri P.Das

... Applicant.

-Vs-

Union of India & Ors. ... Respondents.

AND

In the matter of :

Written Statement on behalf of
the official respondents.

I, Shri JOHN KENNEDY

Deputy Accountant General (Admn), in the office of the Accountant
General (A&E), Assam, Guwahati do hereby solemnly affirm
and declare as follows :-

1. That a copy of application alongwith an
order passed by this Hon'ble Tribunal has been served
upon the respondents and being called upon to file
written Statement, I do hereby file it and say categori-
cally that save and except what is specifically admitted
in this.....

in this written statement, rest may be treated as total denial by all the respondents. And before I go for para-wise comments in the case, a back ground history of the case is incorporated in this written statement which will constitute part and parcel of this written statement.

Back Ground History of the case

The applicant, an Ex.Sr.Accountant of the office of the Accountant General(A&E), Assam, Guwahati retired from service with effect from 31-12-94(AN) on his attaining the age of superannuation on that date. The applicant has joined Govt. service on 26.7.1958.

As per office record, the applicant was released from this office with effect from 4-1-82(AN) on his appointment as Emergency(Unqualified) Junior Grade Divisional Accountant and the applicant joined in the office of the Executive Engineer, T.C. Division No.1 at Manipur on 18-1-1982 and was reverted to the parent office on 16-09-1992(FN).

The Applicant was appointed as 'Selection Grade Auditor' with effect from 14-08-1976 in the scale of pay of Rs.425-15-560-EB-20-640 and his pay was fixed under R.R.22(C) at Rs.485/- with effect from 14-08-1976 with D.N.I. on 01-08-1977 subject to F.R.26 vide Establishment Order No.Estt/290 dtd.15-10-1976. Subsequently, vide C & AG's letter No.1067-NGE-IV/54-77 dtd.20-09-1979 the functional Selection Grade post of Auditor was converted into Non-functional Selection Grade Auditor retrospectively with effect from 01-08-1976 and the existing.....

and the existing scale of Rs.425-15-560-EB-20-640 was also revised to Rs.425-15-500-EB-15-560-20-700. The mode of fixation was as follows :-

a) The pay on appointment to the Selection Grade shall be fixed at the same stage at which the pay is drawn in the ordinary grade if there is such a stage in the scale of pay of the Selection Grade or at the next higher stage if there is no such stage(as para-2(iii) of C&AG's letter dtd.20-09-1979).

b) In respect of persons who have been promoted to 'Selection Grade Auditor' on or after 01-08-1976 and whose cases pay fixation have been done with reference to F.R.22(c), their pay will be re-fixed and regulated in the manner indicated in para-2(iii) of C&AG's letter dated 20-09-1979, the difference in pay so fixed and pay already drawn being treated as Personal Pay to be absorbed in future increase in pay.

The applicant's case fell under the category at (b) above.

Thereafter, vide C&AG's letter No.75-N-1/31-81-1 dated 07-01-1982 it was stated that any person appointed as 'Selection Grade Auditor' from 01-08-1976 to 19-09.1979 may now be given option under F.R.23 for retaining the old scale viz 425-640/- until the date on which he had earned next or any subsequent increment and until he vacates his post or ceases to draw pay on that time scale in terms of F.R.23. Their pay on coming to the new scale in terms of Rs.425-700/- will be fixed under Audit instruction(i) below F.R.22 read with F.R.23. Also, it was clarified vide C&AG's Circular dated 25-02-1982, that the fixation benefit under.....

under F.R.22(c) will be admissible to the persons appointed as 'Selection Grade Auditor' during the period from 01-08-1976 to 19-09-1979 only in the scale of pay of Rs.425-640/- on exercising option by them to that effect. Accordingly, the pay of the similarly placed persons was regulated as per C&AG's letter dated 07-01.1982 and circular dtd.25-02-1982 on the basis of their exercising of option. But in case of the applicant the same was initially not done as ~~he~~ he was revie out of the cadre during the period. On receipt of his representation dated 24-08-1993, his fixation case was reviewed as it could not be ascertained, whether the contents of C&AG's letter dtd.07-01-1982 had been intimated to the applicant, the Accountant General was pleased to allow him the benefit of doubt and his pay was fixed in the same manner as was done in case of the other similarly placed employees, i.e. he was allowed the benefit of F.R. 22(C) fixation on the date of promotion to 'Selection Grade Auditor' on 14-08-1976 in the scale of Rs.425-640/- and brought over to the revised scale of pay Rs.425-700/- on 01-08-1980.

The fixation done at the time of appointment as 'Selection Grade Auditor' with effect from 14-08.1976 vide Establishment Order No.Estt-1/290 dtd.15.10.1976 was restored in case of the applicant though not shown in the Admn & Estt Order No.293 dtd.6-10-1994. Pay of the applicant was refixed at Rs.485/- with effect from 14-08.1976 with D.N.I. on 01-08-1977 under F.R.22(c) as per C&AG's Circular dated 25-02-1982 and raised to Rs.545/- with effect from 01-08-80 on his coming over to the revised scale of Rs.425-700/-.

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The mode of this fixation was as per para-3 of C&AG's letter dated 07-01-1982 which stipulated that fixation was to be made as per Audit instruction(i) below F.R.22 read with F.R.23. There is no provision for fixation at this stage of coming over to the scale of Rs.425-700/- under F.R.22(c) as claimed by the applicant. Due to fixation of his pay with effect from 01-08-1980 in the cadre post, the pay of Divisional Accountant post was also refixed as shown in the Admn & Estt Order No.293 dated 06-10-1994.

During revision of pay with effect from 01-01-1986, the applicant opted to fix his pay with effect from 01-01-1986 in the revised scale. Accordingly, his pay was fixed at Rs.1900/- (in the parent cadre) with D.N.I. on 01-08-1986 (as per Rule 8 of R.O.P'1986) i.e. the date of normal increment.

On his placement in the functional grade of Sr.Accountants scale of pay of Rs.1400-40-1600-50-2300-EB-60-2600 on regular basis with effect from 01-04-1987, the applicant had exercised an option to fix his pay with effect from 01-08-1987 as per provision of the Government of India's decision No.15 below F.R.22(c), which is found beneficial to him and his pay was fixed initially at Rs.2000/- under F.R.22(a)(1) with effect from 01-04-1987 and refixed his pay at Rs.2100/- under F.R.22(c) with effect from 01-08-1987 with D.N.I. on 01-08-1988 subject to F.R.26. If his pay is fixed directly under F.R.22(c) with effect from 01-04-1987, there would have been a loss of emoluments in his service period as well as in pension also.

Contd.....

It may be seen that his pay is fixed directly under F.R.22(c) on 01-04-1987 his pay on 01-04-1988 comes to Rs.2100/- ~~from 01-08-1987~~ But if pay fixed under option, he will get Rs.2100/- from 01-08-1987 i.e. 8(eight) months earlier. The comparative statement is shown below :-

Direct fixation under F.R.22(c) in the scale of Rs.1400-2600/- i.e. fixation without exercising option.

Fixation after exercising option in the scale of Rs.1400-2600.

pay as on 01-04-1987

Rs.1950/- pay fixed at Rs.2050 N.I.50/- w.e.f.01-04-1987 under F.R.22(c) with Rs.2000/- D.N.I. on 01-04-1988 subject to F.R.26.

Pay as on 01-04-1987

Rs.1950/- pay fixed initially at Rs.2000/- w.e.f. 01-04-1987 under R.R.22(a)(1). Pay as on 01-08-1987 Rs.2000/- pay refixed at Rs.2100/- N.I. 50/- w.e.f. 01-08-1987 under F.R.22(c) with 2050/- D.N.I. on 01-08-88 Rs.2050/-subject to F.R.26.

WITHOUT OPTION

Pay raised as under

01-04-1988 : Rs.2100/-
01-04-1989 : Rs.2150/-
01-04-1990 : Rs.2200/-
01-04-1991 : Rs.2250/-
01-04-1992 : Rs.2300/-(EB)
01-04-1993 : Rs.2360/-
01-04-1994 : Rs.2420/-
01-08-1994 : Rs.2420/-✓

AFTER EXERCISING OPTION

Pay raised as under

01-08-1988 : Rs.2150/-
01-08-1989 : Rs.2200/-
01-08-1990 : Rs.2250/-
01-08-1991 : Rs.2300/-(EB)
01-08-1992 : Rs.2360/-
01-08-1993 : Rs.2420/-
01-08-1994 : Rs.2480/-✓

Calculation of average emoluments for pension

01-03-1994 to 1 month @ Rs.2360/- = Rs.2360/-
31-03-1994
01-04-1994 to 9months @ Rs.2420/- = Rs.21780/-
31-12-1994

01-03-1994 to 5months @ 2420 = Rs.12100/-
31-07-1994
01-08-1994 to 5months @ 2480/-
31-12-1994 = Rs.12400

TOTAL

Rs.24140/-

TOTAL

Rs.24500/-

Average Emoluments : Rs.2414/-
Pension Admissible : Rs.1207/-pm

Average Emoluments:Rs.2450/-
Pension Admissible:Rs.1225/-pm

Contd.....

* Consequent upon re-fixation of pay in respect of the applicant in the parent cadre with effect from 14-08-1976, the regulation in Divisional Accountant's cadre has also been highlighted in the Admn.& Estt. Order No.293 dtd.06-01-1994.

The arrear pay and allowances consequent upon the re-fixation of pay with effect from 14-08-1976 has already been paid to the applicant vide Bill No.1011 dated 04-01-1995 pertaining to the period during which he served this office and for payment of the arrear pay and allowances during his service outside office, the D.A. Cell, Shillong has already moved from their end vide letter No. D.A. Cell/PC/PSD/(I)/94-95/4062-4067, dated 16-01-1995 in pursuance of this office Admn. and Estt. Order No.293 dtd.06-10-1994. After receiving the pay fixation order dt.06-10-1994, the applicant had represented on several occasions urging the review of the Admn. & Estt. Order No.293, dt. 06-10-1994 and to permit him to withdraw his option submitted by him at the time of fixation of his pay Sr.Accountant's scale with effect from 01-04-1987.

His fixation case was re-examined and found that the fixation done vide Admn. & Estt. Order No.293 dtd.06-10-1994 was correct. Regarding withdrawal of option, it was already informed to the applicant, that the exercising of option in terms of Government of India's Decision No.15 below F.R.22(c) while fixing his pay in the functional grade of Sr.Accountant with effect from 01-04-1987 was beneficial to the applicant vide this office letter No.A&E/Ghy/PC/P-19/94-95/3303 dt.07-12-1994.

2. That with regards to the contents made in paragraphs 1 to 5 of the application, I beg to state that I have nothing to comment.

Contd.....

3. That with regards to the contents made in paragraph-6, I beg to state that the applicant is retired Sr.Accountant of the office of the Accountant General(A&E), Assam, Guwahati, Assam. He retired on 31-12-1994(AN). The applicant was released on his appointment as Emergency (Unqualified) Junior Grade Divisional Accountant with effect from 04-01-1982. He was subsequently returned to the office of the Accountant General(A&E), Assam on 16-09-1992 where he worked till retirement on 31-12-1994.

4. That with regards to the contents made in paragraph-6.1., I beg to state that the applicant was appointed as 'Selection Grade Auditor' with effect from 14-08-1976 in the scale of pay of Rs.425-15-560-EB-20-640/- and his pay was fixed under F.R.28(c) at Rs.485/- with effect from 14-08-1976 with D.N.I. on 01-08-1977 subject to F.R.26 vide Establishment order No.Estt/290 dtd.15-10-1976. Subsequently, vide C&AG's letter No.1067-NGE-IV/54-77 dtd.20-09-1979, the functional selection grade post of Auditor was converted into Non-functional selection grade Auditor retrospectively with effect from 01-08-1976 and the existing scale of Rs.425-15-560-EB-20-640/- was also revised to Rs.425-15-500-EB-15-560-20-700/-. Copies of order dated 15.10.76 and C&AG's letter dtd.20-09-79 are annexed herewith and marked as Annexure-R.1 and R.2. The mode of fixation was as follows :-

a) The pay on appointment to the Selection grade shall be fixed at the same stage at which the pay is drawn.....

drawn in the ordinary grade if there is such a stage in the scale of pay of the Selection Grade or at the next higher stage if there is no such stage (as per para-2(iii) of C&AG's letter dated 20-09-1979 (Annexure-R.2)).

b) In respect of persons who have been promoted to Selection Grade Auditor on or after 01-08-1976 and whose cases pay fixation have been done with reference to F.R.22(c), their pay will be re-fixed and regulated in the manner indicated in para-2(iii) of the C&AG's letter dated 20-09-1979, the difference in pay so fixed and pay already drawn being treated as personal pay to be absorbed in future increase in pay. The applicant's case fell under the Category (b) above. Thereafter, vide C&AG's letter No.75-N-1/31-81-1 dtd.07-01-1982 and Circular Nos NGE/18/1982 and No.728-N-1/31-81-1 dtd. 25-02-1982 it was stated that any person appointed as 'Selection Grade Auditor' from 01-08-1976 to 19-09-1979 may now be given option under F.R. 23 for retaining the old scale, viz. 425-640/- until the date on which he has earned next or any subsequent increment or until he vacate his post or ceases to draw pay on that time scale in terms of F.R.23. The above letters/circulars dated 7-01-1982 and 25-02-1982 are annexed herewith and marked as Annexure-R.3 and Annexure R.4. Their pay on coming to the new scale of Rs.425-700/- will be fixed under Audit instruction(1) below F.R. 22 read with F.R.23. Also, it was clarified vide C & AG's Circular dated 25-02-1982, that the fixation benefit under F.R.22(c) will be admissible to the persons appointed as 'Selection Grade Auditor' during the period from 01-08-1976 to 19-9-79

only.....

only in the scale of pay of Rs.425-640/- on exercising option by them to that effect. Accordingly, the pay of the similarly placed persons was regulated as per C&AG's letter dated 07-01-1982 and Circular dated 25-02-1982 on the basis of their exercising option. But, in case of the applicant the same was initially not done as he was out of the cadre during the period. On receipt of his representation dated 24-08-1993, his fixation case was reviewed as it could not be ascertained, whether the contents of C&AG's letter dated 07-01-1982 had been intimated to the applicant, the Accountant General was pleased to allow him the benefit of doubt and his pay was fixed in the same manner as was done in case of the other similarly placed employees i.e. he was allowed the benefit of F.R. 22(c) fixation on the date of promotion to 'Selection Grade Auditor' on 14-08-1976 in the scale of Rs.425-640/- and brought over^{to} the revised scale of pay of Rs.425-700/- on 01-08-1980.

The fixation done at the time of appointment as 'Selection Grade Auditor' with effect from 14-08-1976 vide Establishment Order No.Estt-1/290 dtd.15-10-1976(Annexure-R.1) was restored in case of the applicant though not shown in the Administrative & Establishment Order No.293 dated 06-10-1994. Pay of the applicant, was refixed at Rs.485/- with effect from 14-08-1976 with D.N.I. on 01-08-1977 under F.R.22(c) as per C&AG's Circular dated 25-02-1982(Annexure-R.4) and raised to Rs.545/- with effect from 01-08-1980 on his coming over to the revised scale of Rs.425-700/-. The mode of the fixation was as per para-3 of C&AG's letter dated 7-1-82 which stipulated that fixation was to be made as per Audit instruction(1)

below.....

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below F.R.22 read with F.R.23. There is no provision for fixation at this stage of coming over to the scale of Rs.425-700/- under F.R.22(c) as claimed by the applicant. Due to fixation of his pay with effect from 01-08-1980 in the cadre post, the pay of Divisional Accountant was also refixed as shown in the Admn.& Estt. Order No.293 dated 06-10-1994, copy of which is annexed herewith and marked as Annexure-R.5. It is clarified that the fixation done vide Establishment Order No.Estt-1/290 dated 15-10-1976 was subsequently changed in the light of C&AG's letter dated 20-09-1979 as the functional 'Selection Grade Auditor' was converted to non-functional 'Selection Grade Auditor' with effect from 01-08-1976. This was also done in case of other similarly placed employees. The pay of the applicant was fixed as (Rs.464/-/+ ^{+Rs.6/-} Rs.15/-) Rs.464 ⁴⁶⁴ being the substantive pay of Auditor, Rs.6/- for officiating as 'Selection Grade Auditor' and Rs.15/- as protection of pay for loss of pay resulting in the refixation of pay as per para-2(iv) of C&AG's letter dated 20-09-1979. It is clarified once again that the fixation benefit granted vide Establishment Order No.Estt-1/290 dtd.15-10-76 was restored to the applicant vide our Administration and Establishment Order dated 06-10-1994 though the fixation from 14-08-1976 to 31-07-1980 was not exhibited in the same order, had the same be exhibited from 14-08-1976, the same would have been as shown below :-

464
15/-
485

Period

Pay

Pay fixed under FR.22(c) with D.N.I. on 01-08-77.

14-08-1976
01-08-1977
01-08-1978
01-08-1979
01-08-1980

Rs.485/-
Rs.500/-
Rs.515/-
Rs.530/-
Rs.545/-

Contd.....

It would be evident that the benefit on account of fixation under F.R.22(c) on 14-08-1976 was availed by the applicant on his promotion as 'Selection Grade Auditor'. It was only on 01-08-1980, that he was brought over to the non-functional 'Selection Grade Auditor's cadre at the scale of Rs.425-700/- as his pay^{was} static on 1-8-80 due to fixation done earlier in terms of CAG's letter dated 20-9-79 and also due to non-availability of option as per C&AG's letter dated 07-01-1982. There is no denial of any benefit due to the applicant as claimed by him. It may be stated that the fact of non-intimation of certain circular received from the Comptroller and Auditor General of India Office is not verifiable at this later stage. Hence, a lenient view was taken in his case and the benefit stipulated in the C&AG's letter dated 07-01-1982 was made available to the applicant in the same manner as accorded to the similarly situated employees and in a way that would benefit the applicant to the most even after a period of more than 10(ten) years.

5. That with regards to the contents made in paragraph-6.2 of the application, it is stated that it is true, that the C&AG's letter dated 07-01-1982 stipulated that the option was to be given to any person appointed as 'Selection Grade Auditor' from 01-08-1976 to 19-09-1979 under F.R.23(As per para 2 of C&AG's letter dtd.07-01-82). As stated above, it cannot be verified that if the contents of this letter was made known to the applicant nor can it be ascertained if any option was called for from.....

from him. Hence it was decided to apply the instruction of the letter dated 07-01-1982 in the manner that would be most beneficial to the applicant without making further enquiry regarding the issue of exercising option etc., as the applicant was on the verge of retirement.

The above letter permit employees like the applicant to retain the old scale of Rs.425-640/- until the date on which he has earned next or any subsequent increment or until he vacates his post or ceases to draw pay on that time scale in terms of F.R.23(Letter dtd.07-01-1982 of para-1). From scrutiny of his case it was found that the retention in old scale beyond 01-08-1980 was not seen to give any added benefit to him. This would be evident from fixation of pay as shown in the Annexure-R.6 where different possible date of coming over to the new scale have been shown, On being brought over to the new scale with effect from 01-08-1980, his pay was fixed in terms of C&AG's letter dated 07-01-1982.

6. That with regards to the contents made in paragraph-6.2(A), I beg to state that the pay fixation vide order dated 06-10-1994(Annexure-R.5) with effect from 01-04-1987 was done as per CAG's letter dated 17-08-1987 based on the option furnished by the applicant in terms of the Government of India Decision No.15 below F.R.22(c) which laid down as follows :-
- "Employees may be given an option for fixation of his pay on promotion as under :-

Contd.....

- a) Either his initial pay may be fixed in the higher post on the basis of F.R.22(c) straightway without any further review on accrual of increment in the pay scale of the lower post, or
- b) His pay on promotion, may be fixed initially in the manner as provided under F.R.22(a)(1) which may be refixed on the basis of provisions of F.R.22(c) on the date of accrual of next increment in the scale of pay of the lower post.

The applicant had exercised option for fixation of his pay on his placement in the functional grade of Sr. Accountant (scale Rs. 1400-2600/-) under Clause (b) above, i.e. the applicant ^{sought} ~~seek~~ fixation of his pay with effect from 01-08-1987 (the date of his next increment in the ordinary grade).

Hence the contentions of the applicant are denied.

7. That with regards to the contents made in paragraph-6.3, I beg to state that it is agreed that the pay of the applicant was fixed in the revised pay scale (following the R.O.P'1986) with effect from 01-01-1986. The next increment after fixation was given to him on 01-08-1986 (As per Rule-8 of R.O.P'1986) which is 5 (five) months ahead of the date on which the applicant has claimed his increment i.e. 01-01-1987. Subsequently increment was fallen in the anniversary of 01-08-1986. The question of refixation of the date of increment as ~~claimed~~ by the applicant, therefore does not arise.

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It would appear from the above, that action was taken as per Rules and the allegation of harrassment of the applicant is denied. Whereas, it is not clear as to the context in which the applicant has sought the application of the Government of India Decision No.9 and 10 below F.R.22, it may be that, he has sought F.R.22(c) fixation benefit in the scale of Ex-cadre post consequent to increases in his pay in the cadre post which came about on 01-01-86 (i.e. R.O.P's 1986, consequent to introduction of revised pay scale with effect from 01-01-1986) and 01-04-1987 consequent on the date from which his grade in the parent cadre treated as functional. In terms of the Government of India Order-9 the benefits of F.R.22(c) is allowed only in case of promotion/appointment to the Ex-Cadre post provided that the Govt. servant is entitled to draw pay in the scale of pay attached to the higher Ex-cadre post in accordance with the terms of deputation or transfer sanctioned to him. The applicant's pay was fixed under F.R.22(c) in the Ex-Cadre post on 18-~~02~~⁰¹-82. On 01-01-1986 his pay in the Ex-cadre post was revised after introduction of new pay (Rs.1400-2600) as per Revisádn of Pay, 1986. In this state fixation under F.R.22(c) in the ex-cadre post based on pay of the cadre post cannot be claimed. On 01-04-1987 consequent to his placement in the functional grade of Sr.Accountants (earstwhile Selection Grade Accountant) pay in the cadre post was refixed under F.R.22(c) based on the option of the applicant. In this stage as well fixation under F.R.22(c) in the ex-cadre post cannot be claimed. For the above reason,.....

reason, no loss in emolument in the ex-cadre post has occurred. Further, the fixation on 01-04-1987 in terms of C&AG's Circular Nos NGE/68/1987 and No.935-N-2/97-87, dated 17-08-1987 has also been done correctly under F.R.22(c) as per option of the applicant. This point has been covered in the comments against para-6.2(A) i.e. in paragraph-6 of this written statement.

The applicant being an official having more than 33(thirty three) years of service cannot claim he was mis-guided by any person in the office. Further, his claim of getting less pay than his juniors on 01-04-1987 cannot be examined until he cites any specific case of junior getting more pay than him. It may be noted that the fixation as done by us with effect from 01-04-1987 is more beneficial to the applicant and the fixation as claimed by the applicant will lead to loss in emolument during his service career and also to a reduction in pension etc., due to him. This will be evident by comparing the fixation done by us and the fixation claimed by him which has been shown in ~~Annexure R.6~~ *background of the case in page 6.*

8. That with regards to the contents made in paragraph-6.4 of the application, I beg to state that vide our fixation No.293, dated 06-10-1994 (Annexure R.5), the ^①fixation of 15-10-1976 was restored though it was not explicitly shown in the Order itself.

Even though the fixation of pay with effect from 14-08-1976 under F.R.22(c) was restored for the period upto 01-08-1980, there was no change in emolument as even when his pay had been fixed under Audit~~o~~ instruction(1) below F.R.22, he was granted.....

(2) granted protection of pay that he would have drawn had his pay been fixed under F.R.22(c). No arrears, therefore, becomes payable upto 01-08-1980. The refixation done on 01-08-1980 raised his pay to Rs.545/- as on 01-08-1980 (which was earlier Rs.530/-). Arrear on account of this, till date for the period he held the cadre post have been drawn and paid to the applicant. As regards period for which he held ex-cadre post, the concerned authorities have been asked to draw and disburse arrear pay based on refixation order dated 06-10-1994 vide the Accountant General(A&E), Meghalaya Memo No.DA Cell/PC/PCD(1)/94-95/4062-4067 dtd. 11-01-1995. It is reiterated that the benefit of the Order of 15-10-1976 was given to the applicant till 01-08-1980. Further, the pay in the cadre post on 01-04-1987 following conversion of Sr.Accountant Grade into functional grade was also done correctly in terms of relevant orders and as per option of the applicant. It has been shown above that our action of both cases have been to the maximum benefit of the applicant.

9. That with regards to the contents made in paragraph-6.5, I beg to state that reply has already been made in above paragraph and in addition to that it is reiterated that it is not tenable that the applicant with such long years of service should ~~be~~ now claimed that he was wrongly influenced by some persons in the concerned section of this office in giving option electing to get his pay fixed with effect from 01-04-1987. Without prejudice to above, it has already been shown that the fixation done by us is much more beneficial to the applicant than the fixation claimed by him.

Contd.....

10. That with regards to the contents made in paragraph-6.6, I beg to state that the circumstances and the rule position governing fixation of the pay in terms of C&AG's letter dated 07-01-1982 have been given in details in ~~in~~ reply to para-6.2 i.e. in paragraph-5 of this Written Statement. It is repeated that the fixation order of 15-10-1976 was in effect restored and benefit was allowed to the applicant upto 01-08-1980. Consequent to this, his pay on 01-08-1980 was revised to Rs.545/- against the existing pay of Rs.530/- on the date. As regards calling for option as stipulated in C & AG's letter of 07-01-1982(Annexure R.3) the detailed position has been given in the statement made in paragraph-5 of this Written Statement.

A.E It may be clarified that, as would appear from C & AG's letter of 07-01-1982, that only the retrospective application of the order of 20-09-1979 was struck down by the Hon'ble Court in case of persons who approached the Hon'ble Court. The letter dated 07-01-1982 gave instructions as how to regulate cases where the order of 20-09-1979 (Annexure R.2) was to be retrospectively applied ~~but~~ ~~but~~ where the Hon'ble Court had not specifically struck down retrospective application(as in the case of the applicant).

12. That with regards to the contents made in paragraph-6.7, I beg to state that as stated, above fixation under F.R.22(c) was restored with effect from 14-08-1976. And the applicant's pay was on 01-08-1980 i.e. the date on which he was brought over to the new non-functional Selection Grade Auditor's scale as per C&AG's letter of 07-01-1982...

07-01-1982 refixed at Rs.545/- against Rs.530/- earlier. The action was the same as in the case of similarly situated employees. His pay has been from 14-08-1976 shown as a Composite Pay without any element of personal pay. No discrimination, therefore, exists now in the applicant's case.

13. That with regards to the contents made in paragraph-6.8, I beg to state that while the fact regarding non-receipt of intimation of change brought in the applicant's pay and status as stated above, not verifiable at the late stage. It is clarified that on his representation a very lenient view was taken and all benefits as admissible under the various orders of 20-09-1979, 07-01-1982 and 17-08-1987 were given to him vide our refixation order dated 06-10-1994. As regards his claim that the Respondents did not furnish information as asked by him in his letter dated 18-10-1994, it may be stated that we had vide our letter No.Admn & Estt/Ghy/PC/P-19/94-95/2779 dtd.27-10-1994 given to the applicant a copy of C & AG's letter of 20-09-1979 which in para-2(iv) gives procedure and mode of fixation to be adopted. Hence his claim in this para is not tenable.

14. That with regards to the contents made in paragraph-7, I beg to state that it may be stated that consequent to our order dated 06-10-1994 all anomalies and gaps in the pay fixation of the applicant that may have occurred due to his being away in the ex-cadre post were covered. It is reiterated that action has been taken in his case

case that would be most beneficial to him and in terms of relevant Govt. rules and orders and is felt that nothing more is due to the applicant and the contents made in this paragraph are not tenable.

15. That the present application is ill-conceived of law and mis-conceived of fact.

16. That the present application is not maintainable in the present form and as such is liable to be dismissed.

17. That the present application is without any merit and hence liable to be dismissed.

18. That the case of the applicant is not at all supported by any rule and same is liable to be dismissed.

19. That the respondents crave leave of filing additional written statement if this Hon'ble Tribunal so directs.

20. That this Written Statement is filed bonafide and in the interest of justice.

VERIFICATION.....

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VERIFICATION

I, Shri JOHN KENNEDY

Deputy Accountant General (Admn.) , in the office of the
Accountant General (A&E), Assam, Guwahati do hereby
solemnly affirm and declare that the contents made
in paragraph-1 of this Written Statement are true
to my knowledge and those made from paragraphs 2 to 14
including the back ground history of the case are
derived from records which I believe to be true and
rest are humble submissions before this Hon'ble
Tribunal.

I sign this Verification on this 1st day
of May, 1995 at Guwahati.

John Kennedy

OFFICE OF THE ACCOUNTANT GENERAL
ASSAM: MEGHALAYA: ARUNACHAL PRADESH AND MIZORAM
SHILLONG-793001.

Annexure - R.1

19 51

Establishment Order No. Estt.I/290 Dated Shillong, the 15.10.1976.

Consequent to their having been promoted as Selection Grade Auditor, the pay of the following officials are fixed under Pt. 22-C with effect from the dates noted against their names in the Selection Grade Auditor's scale of pay of Rs. 425-15-560-RB-20-640/-. The dates of next increment shown against their names are subject to fulfilment of conditions of PR.26.

Sl. No.	N a m e	Stage at which pay fixed	Date of effect	Date of Next Increment
(1)	Shri Bijoy Bhushan Das	Rs. 485/-	9.8.1976	1.8.1977
(2)	Shri Paresh Chandra Das ✓	Rs. 485/-	14.8.1976	1.8.1977
(3)	Shri Debabrata Suklabaidya	Rs. 485/-	9.8.1976	1.8.1977
(4)	Shri Sanat Kumar Roy	Rs. 485/-	9.8.1976	1.8.1977
(5)	Shri Chandidas Biswas	Rs. 470/-	9.8.1976	1.8.1977

(Authority :- D.A.G.(A)'s orders dated 15.10.1976 at P/97 of file No. Estt.I/14-7/72-73).

Sd/- P.K. Sen Mazumdar
Establishment Officer.

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Memo. No. Estt.I/14-7/72-73/8533 Dated Shillong, the 15.10.1976.

Copy forwarded for information & necessary action to the Chief Auditor, N.F. Railway, Maligaon, Gauhati-11.

Sd/- P.Y. Sen Mazumdar
Establishment Officer.

....

Memo. No. Estt.I/14-7/72-73/8534-39 Dated Shillong, the 15.10.1976.

Copy for information & necessary action to :-

- (1) The Section Officer/Establishment 2 Section.
- (2) The Section Officer/Establishment 3 (Service Book Group) Section.
- (3) The Gradation List Group (Establishment I Section).
- (4) The Budget Group (Establishment I Section).
- (5) The Establishment I Order Book.
- (6) The persons concerned.

Auditor
Section Officer
Establishment I Section.

19/10/76

having reached 3/4th span of the revised scale in the ordinary grade, while a person senior to him does not become eligible the junior will not get any overriding priority in the matter of consideration for appointment to Selection Grade.

- (iii) Promotion to Selection Grade in Section Officers cadre will be on the principle of seniority subject to rejection of unfit as laid down in Department of Personnel and Administrative Reforms O.M. No. 22011/5/77-Estt. (D), dated 30-12-77, circulated with C.A.G.'s office letter No. 441-NGE III/7-77, dated 14-3-78.
- (iv) The pay on appointment to the Selection Grade shall be fixed at the same stage, at which the pay is drawn in the ordinary grade, if there is such a stage in the scale of pay of the Selection Grade, or at the next higher stage, if there is no such stage. If the pay in the Selection Grade is fixed at the same stage, the next increment should be granted from the same date on which it would have accrued in the ordinary grade. If, however, the pay is fixed at the next higher stage, the next increment should be granted after completion of normal incremental period of twelve months in the Selection Grade.
- (v) The scheme of reservations for candidates belonging to Scheduled Castes and Scheduled Tribes will apply in making appointments to the Selection Grade as enunciated above.

3. Proposals for the creation of posts in the Selection Grade of Section Officers cadre on the lines indicated above be submitted separately to B.R.S. Section of C. & A.G.'s office for scrutiny and issue of sanction.

[C. & A.G.'s circular letter No. 1063-NGE. IV/55-77, dated 19-9-79].

VIII, II-596 :—Revision of scale of pay of Selection Grade Auditors in the I.A. & A.D.

The matter regarding revision of the pay scale of Selection Grade Auditors in our Department has been under consideration in consultation with the Government of India for some time past and Ministry of Finance have now conveyed the sanction of the President to the revision of the existing scale of Rs. 425-15-550-EB-20 640 for Selection Grade Auditors to Rs. 425-15-500-EB-15-560-20-760 and to the conversion of the present functional Selection Grade posts of Auditors into non-functional Selection Grade Auditors with effect from 1-8-1976.

2. The following terms and conditions govern the operation of Selection Grade in the Scale of Rs. 425-700 :—

- (i) The strength of Selection Grade will be 20 per cent of the posts in the ordinary grade which have been in existence for 3 years, irrespective of whether they were functional or non-functional.

(ii) For becoming eligible, to be considered for appointment to the selection grade an employee should have either completed 14 years of service in the ordinary grade or crossed 3/4th span of the revised scale of pay of the ordinary grade. In this process if a junior becomes eligible for consideration by virtue of his having crossed 3/4th of the span of the scale in the ordinary grade while a person senior to him is not so eligible, the junior will not get any over-riding priority in the matter of consideration for appointment to selection grade.

(iii) The pay on appointment to the selection grade shall be fixed at the same stage at which the pay is drawn in the ordinary grade if there is such a stage in the scale of pay of the selection grade or at the next higher stage if there is no such stage. If the pay in the selection grade is fixed at the same stage, the next increment should be granted from the same date on which it would have accrued in the ordinary grade. If, however, the pay is fixed at the next higher stage, the next increment should be granted after completion of normal incremental period of 12 months in the selection grade.

(iv) In respect of persons who have been promoted to selection grade on or after 1-8-1976 and in whose cases pay fixation has been done with reference to F.R. 22-C, their pay will be re-fixed and regulated in the manner indicated earlier the difference in pay so fixed and the pay already drawn being treated as personal pay to be absorbed in future increases in pay. In other words no recoveries of overpayments made, if any, in the earlier scale of Rs. 425-640 will be effected as a consequence to the revised mode of fixation with effect from 1-8-1976.

(v) Promotions to Selection Grade will be on the principle of seniority subject to reparation of unfixes as laid down in Department of Personnel and Administrative Reforms O.M. No. 22011/5/77-Estt. (D), dated 30-12-77 circulated with C. & A.G.'s office letter No. 441 NGE. III/7-77, dated 14-3-1978.

(vi) The scheme of reservations for candidates belonging to Scheduled Castes and Scheduled Tribes will apply in making appointments to the selection grade as enumerated above.

[C. & A.G.'s circular letter No. 1067-NGE-IV, 54-77, dated 20-9-79].

ORDERS ISSUED BY THE GOVERNMENT OF INDIA F.Rs. & S.Rs.

VIII/II-507:—Reimbursement of tuition fees in respect of Children of Central Government employees.

A reference is invited to the Ministry of Finance O.M. No. 18011/1/E-II(B)/76, dated 28-8-1976 (printed as para VII/II-A/37 in Audit Bulletin for March, 1977) on the above subject. The following shall be inserted immediately below para 2(A)(1) thereof.

EXPLANATION

In the case of re-employed Military/Civil Pensioners the service rendered prior to retirement/discharge from the Armed Forces/Central Govt. service may be taken into account for computing the qualifying service of one year provided the retirement or discharge was not on disciplinary grounds or at their own request. Any period falling between the date of discharge/retirement and the date of re-employment shall, however, be ignored.

[G.I. M.H.A., Deptt. of P. & A.R.; O.M. No. 18011/1/79-Allowances Unit, dated 12-6-79 and C. & A.G.'s Endst. No. 466-A/F 106-78/1-79 (68), dated 6-7-79].

VIII/II-508:—Overtime Allowance to Central Govt. Employees.

A reference is invited to item (iii) of sub-para (b) of para 3 of the Ministry of Finance O.M. No. 15011/2/E. II(B)/76, dated 11-8-1976 (printed as para VII/II-A/32 in Audit Bulletin for December, 1976) which lays down that the total overtime allowances payable to a Govern-

ment servant in terms of those orders should not exceed 1/3 of their monthly emoluments payable during the month as defined in rule 4(b) thereof and that this ceiling would normally apply to 'Personal Staff' also and in special cases such as may be paid O.T.A. in excess of that ceiling under certain conditions upto a ceiling of 50% of their emoluments.

2. It was brought to the notice of the Ministry of Home Affairs (Deptt. of P. & A.R.) by the Staff side of the Departmental Council of the Department that some offices had issued internal instructions, regulating grant of O.T.A. and had lowered the ceiling limit for the payment of O.T.A. to their employees.

3. It is hereby clarified that the various economy instructions issued from time to time emphasise the need for organising the work of an office in such a way that there is the minimum incidence of overtime allowance payment. The ceiling of 1/3 of emoluments is the maximum limit and there is no objection for fixing a lower limit by the various offices if they can arrange the work in their office in such a way that the overtime allowance payable for that month does not exceed that ceiling fixed by them. However, if an employee has actually been authorised to work overtime during a particular month he is entitled to the payment of overtime allowance upto 1/3 of his emoluments during that month.

(1) Annexure - R.3

No. 75-N I/31-81-I

OFFICE OF THE COMPTROLLER &
AUDITOR GENERAL OF INDIA
NEW DELHI-110002.

Dated: 7-1-82

Copy of Government of India, Ministry of Finance
(Department of Expenditure) letter No. A.11014/1/81-EGI,
dated 30.12.81 is endorsed to :-

- I. All field offices of I.A. & A.D.
- II. J.D.(P) (Local)
- III. Audit Section, Accounts Section, GEI, GEII, Railway
Audit Wing, Commercial Wing, NGEII, NGEIII, NGEIV
Sections of this office.
- IV. Director of Inspection (Local)
- V. Audit Bulletin (Local)

2. Any person appointed as Selection Grade Auditors
from 1.3.76 to 19.9.79 may now be given option under FR-23
for retaining the old scale viz Rs. 425-640 until the date on
which he has earned next or any subsequent increment or
until he vacates his post or ceases to draw pay on that
time scale in terms of FR-23.

3. Their pay on coming to the new scale of Rs. 425-700
will be fixed under audit instruction (i) below FR-22,
read with FR-23.

4. In respect of staff for whom the retrospective
application of the orders circulated in this office circular
No. 1067-NGEIV/54-77, dated 20th September, 1979 has been
struck down by the courts, the benefit of retaining the old
scale of Rs. 425-640 will be available and they need not
exercise any option. However for allowing them the pay
in the new scale of Rs. 425-700 beyond Rs. 640/- specific
option may have to be exercised by them as above treating
the court order as option for the old scale under FR-23.

(N. VISWANATHAN)
ADMINISTRATIVE OFFICER (N)

NA NDA

S.D.

22/1/82

27/10/1982
Circular No. NGP/18/1982

No. 728-N.I/31-81-I

OFFICE OF THE COMPTROLLER &
AUDITOR GENERAL OF INDIA
NEW DELHI - 110002.

Dated: 25-2-1982

To

All the field offices of I.A. & A.D.
(as per mailing list)

Subject: Revision of scale of pay of Selection Grade Auditors.
Sir,

I am directed to refer to Government of India, Ministry of Finance (Department of Expenditure) letter No. A-11014/1/81-EGI, dated 30.12.1981 on the subject mentioned above, circulated to all the field offices under this office endorsement No. 75-NI/31-81-I, dated 7.1.82 and to state that certain points of doubt have been raised by some of the field offices in regard to the implementation of the afore-said orders. These are clarified below :-

Points raised

Clarifications

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Whether any time limit should be prescribed for exercise of option under F.R.23 ? | Administrative authority is competent to fix the reasonable time limit. This may be done taking into account the number of cases. |
| 2. Whether any form should be prescribed for exercise of option ? | To assist the staff, Admn. section of the A.G.'s office may cyclostyle an option form depending on the number of staff affected. The wordings are prescribed in FR.23. |
| 3. Whether any person promoted as Selection Grade Auditor on or after 1.8.76 but vacated the post (SGA) or has ceased to draw pay in that time scale or promoted as Section Officer on any date subsequent to 1.8.76 will be allowed to exercise option under F.R.23 ? | All persons appointed as S.G. Auditors from 1.8.76 to 19.9.79 irrespective of the subsequent events in their career are entitled to this option. |
| 4. Whether in respect of persons appointed as Selection Grade Auditors during 1.8.76 to 19.9.79 and who opt for the old | |

contd.....

4(continued)

scale of pay Rs.425-640
pay in the old scale
will be fixed under
F.R.22-C.

Yes. The intention of Ministry of Finance letter dated 30.12.81 is to allow this benefit in the scale of Rs.425-640 to the persons appointed as S.G.Auditors from 1.8.76 to 19.9.79.

5. Whether persons appointed as selection Grade Auditors between 1.8.76 and 19.9.79 but since retired from service can be permitted to exercise option under F.R.23 ?

Yes.

6. Whether persons in whose case the Courts had struck down the retrospective application of the orders issued in H.Ors. circular letter No.1067-NCEIV/54-77, dated 20.9.79, and where no option need be exercised in terms of the clarification issued in para-4 of the H.Ors. endorsement No.75-NI/31-81-I, dated 7.1.82, would be allowed the benefit of fixation of pay under F.R.22-C in the revised scale of pay of Rs.425-700.?

No. The scale of Rs.425-640 was revised to Rs.425-700 by circular dated 20.9.79 which has been struck down for retrospective application. It may be seen from para-2(iv) of circular dated 20.9.79 that for persons appointed during 1.8.76 to 19.9.79, the fixation was done only in the previous scale of Rs.425-640. Thus even in cases referred to in para-4 of Endorsement dated 7.1.82 benefit of fixation under F.R.22-C is available only in the scale of Rs.425-640.

7. Whether the instructions issued in H.Ors.circular endorsement No.75-NI/31-81-I, dated 7.1.82 are in modification of the orders contained in para-2(iv) of the Circular letter No.1067-NCEIV/54-77, dated 20.9.79 ?

Yes as the earlier orders in para-2(iv) of the Circular dated 20.9.79 are for persons appointed as S.G.Auditors from 1.8.76 to 19.9.79.

Hindi version will issue separately.

Yours faithfully,

(N.VISWANATHAN)
ADMINISTRATIVE OFFICER (N)

No.729-NI/31-81-I

Copy to:- 1.The Secretary General, All India Non-gazetted Audit & Accounts Association, No.4-B/6, Ganga Ram Hospital Marg, New Delhi-110060.
2. J.D.(P), OESA Adm., Audit Section, NCEII to V, CEI and II, Inspection Wing, CA Wing, Railway Audit Wing, TAI and II(local)
3.Complaint. Section for Audit Bulletin(local).

(N.VISWANATHAN)
ADMINISTRATIVE OFFICER (N)

/NANDA/

ADNH,ASST,ORDER NO.293

OFFICE OF THE
ACCOUNTANT GENERAL (AGC) ASANAR
GUMMATI

Date:- 6.10.94.

In terms of CAG's Letter No. 71-N I/31-81-1 dtd. 7.1.82, the Accountant General has been pleased to permit Shri Parash Ch. Das, Sr. Asstt. to retain the old scale of S.G.Auditor vis. Rs.425-640/- until 31.7.80 and from 1.8.80 he has been brought over in the scale of 425-700 (in the new scale of S.G.Auditor-pw revised).

In view of the above his pay has been regulated as follows:-

Period	Regulation of pay in SGA's scale S.G.A's scale Rs.425-700	Regulation of pay in O.S.G's scale Scale 425-790 (Ex-cadre post)
1.8.80	Rs. 545/-	-
1.8.81	Rs. 560/-	-
18.1.82	(Rs.560/-)	Rs. 600/-
		fixed under FR-22a D.N.I. on. 1.1.83.
1.8.83	(Rs. 580/-)	Rs. 600/-
1.1.83	(Rs. 580/-)	Rs. 620/-
1.8.83	(Rs. 600/-)	Rs. 620/-
1.1.84	(Rs. 600/-)	Rs. 640/-
1.8.84	(Rs.620/-)	Rs. 640/-
1.1.85	(Rs. 620/-)	Rs. 640/-
1.8.85	(Rs. 640/-)	Rs. 640/-
(Revision of pay(w.e.f.1.1.86) Scale 1400-2600)		
1.1.86	(Rs. 1900/-)	Rs. 2000/-
1.8.86	(Rs. 1950/-)	Rs. -2000/-
1.1.87	(Rs. 1950/-)	Rs. 2050/-(Rs. 2050/-)
1.4.87	(Rs. 2000/-) fixed under FR 22(a)1	Rs. 2050/-
1.8.87	(Rs. 2100/-) fixed under FR 22a with DMI on 1.8.88	Rs. 2050/-
1.1.88	(Rs. 2100/-)	Rs. 2100/-
1.8.88	(Rs. 2150/-)	Rs. 2100/-
1.1.89	(Rs. 2150/-)	Rs. 2150/-
1.8.89	(Rs. 2200/-)	Rs. 2150/-

Contd.....P/2.

70 1.1.90	(Rs. 2200/-)	Rs. 2200/-
1.2.90	(Rs. 2250/-)	Rs. 2250/-
1.1.91	(Rs. 2250/-)	Rs. 2250/-
1.2.91	(Rs. 2300/-)	Rs. 2300/-
1.1.92	(Rs. 2300/-)	Rs. 2300/-
1.2.92	(Rs. 2300/-)	Rs. 2300/-
16.9.92	(Rs. 2360/-)	Rs. 2360/-

EP crossed vide Adminl order No. 108 dtd 19.8.94

on his reversion to Sr. parent cadre i.e. Sr. Acctt.

(Authority:- AG's order dtd. 2.10.94 at p/19 of p/c. of Shri Parash Ch. Das, Sr. Acctt.)

Accounts Officer (Adm. & Estt.)

Memo No. Adm. & Estt./Ghy/PC/p-19/94-95/2529-2539

Dated:- 6.10.94.

Copy forwarded to:-

1. The Principal Director of Audit, M.F.Rly., Maligaon, Guwahati-11.
2. The Sr. DAG(Adm.), O/O the A.C. (AG), Assam, Shillong.
3. The DAG, O/O the A.C. (AG), Meghalaya, etc. Shillong.
4. The Establishment Officer, O/O the A.C. (AG), Assam, Shillong.
5. The A.O., I/c D.A. Coll, O/O the A.C. (AG), Meghalaya, etc. Shillong.
6. Shri Parash Ch. Das, Sr. Acctt. Pen-3 Section, O/O the A.C. (AG), Assam, Shillong.
7. The Steno to the DAG(Adm.), Guwahati.
8. The Pay Bill Group
9. The S.S. Group
10. The G.L. Group
11. The Budget Group.

Accounts Officer (Adm. & Estt.)

लेखा अधिकारी,

Accounts Officer

महालेखाकार का कार्यालय (वे.ए.ए.ह.)

O/O the Accountant General (A.E)

असम, गुवाहाटी

Assam, Guwahati

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ANNEXURE (-) R-6

Possible dates of coming over to the revised scale of Rs.425-700/- from the existing scale of Rs.425-640/- and pay on possible dates.

Possible date(s)	Stages at which pay would have been fixed in the scale of Rs. 425-700/-
01-08-1977	Rs.500/-
01-08-1978	Rs.515/-
01-08-1979	Rs.530/-
01-08-1980	Rs.545/-
01-08-1981	Rs.560/-
01-08-1982	Rs.580/-
01-08-1983	Rs.600/-
01-08-1984	Rs.620/-
01-08-1985	Rs.640/-

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