

# THE MEGHALAYA HIGH COURT AT SHILLONG.

WP(C) NO.(SH)256/2012

S/356033w Hav/Ciph Abdul Bari,  
CPBO (AR) Headquarters,  
Directorate General Assam Rifles,  
Shillong-11.

:::: Petitioner

-Vs-

1. Union of India,  
Represented by the Home Secretary to the Govt. of India,  
New Delhi.
  2. Secretary to the Ministry,  
Personnel Public Grievances and Pension.
  3. Director General Assam Rifles,  
Shillong, Meghalaya-793011.
  4. Col. (Record) Assam Rifles,  
Shillong-793001.
  5. Chief Signal Officer,  
Headquarter, Shillong.
  6. Central Pay Bill Office, (CPBO),  
Assam Rifles, Old DGAR, Complex,  
Shillong-11.
- :::: Respondents

BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner : Mr N Khan, Adv

For the Respondents : Mr SC Shyam, learned CGC

Date of hearing : **05.04.2013**

Date of Judgment & Order : **10.04.2013**

## JUDGMENT AND ORDER

Heard Mr. N Khan, learned counsel appearing for the petitioner  
and Mr. SC Shyam, learned CGC appearing for the respondents No.1-6.

2. The petitioner has been serving as Havildar/Cipher from 20.11.1991. In this writ petition, he prays for a direction to the respondents to grant him the 2<sup>nd</sup> financial up-gradation by counting his continuous service as Havildar/Cipher from 20.11.1991 under the Modified Assured Career Progression Scheme (for short "MACPS") dated 18.09.2009 and also for a direction to the respondents to grant the first ACP to the petitioner w.e.f. 20.11.2003 and also for quashing the impugned order dated 07.10.2009 for granting the First financial benefits w.e.f. 03.11.2007 and also the impugned letter dated 12.07.2012 that the musteration is a method of appointment in RRs and it would be counted as up-gradation for the purpose of MACPS and the 1<sup>st</sup> ACP granted to the petitioner w.e.f. 03.11.2007 will be treated as 2<sup>nd</sup> financial up-gradation and as for granting of 3<sup>rd</sup> financial up-gradation to the petitioner, it will be considered and granted on completion of 30 years qualifying service and other conditions as required.

3. **Factual backgrounds:-** The petitioner was enrolled in Assam Rifles on 27.11.1986 as Rifleman/ORL (Operator Radio and Line) and had undergone basic training of 6(six) months at Assam Rifles Training Centre, Diphu, Assam. The petitioner had also undergone technical training for further period of 6(six) months for ORL trade. After completion of the basic training and technical training, the petitioner started serving as Rifleman/ORL in Assam Rifles. The petitioner after completing unblemished service of four years as Rifleman/ORL, in response to the Notification of the Department that the Personnel serving as Rifleman/ORL, who had rendered three years of service are eligible to appear in exam for the purpose of changing their trade to Cipher Trade, had volunteered to change his trade and appeared before the Board convened for the said purpose in the year 1989. The petitioner was selected by the Board. Accordingly, he was appointed as Havildar/Cipher on 20.11.1991 through the process of conversion/re-

musteration. The Havildar/Cipher is the lowest rank in the Cipher Trade. There is no promotion to the Havildar/Cipher from the lower ranka, like Rifleman and Naik and there is also no direct recruitment from the fresh to the Havildar/Cipher. The appointment as Havildar/Cipher which is the lowest rank in the trade is only through conversion/re-musteration from the other trades. The petitioner while serving as Rifleman/ORL was eligible for promotion to the post of Naik/ORL but the petitioner in the process of re-musteration had been categorized as Havildar/Cipher. Since 20.11.1991, the petitioner has been working as Havildar/Cipher continuously without any break and promotion till date. The 5<sup>th</sup> Pay Commission recommended for financial up-gradation to all the Central Govt. employees i.e. ACP-I and ACP-II on completion of 12 and 24 years respectively in the category in which they were appointed subject to qualification for promotion to the rank/pay scale to which ACP is granted and the Scheme i.e. Assured Career Progression (for short "ACP") was made effective w.e.f. 09.08.1999 vide Office Memorandum F.No.35034/1/97-Estt.(D (Vol.IV), Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) North Block, New Delhi-110001, February, 2000. In para 2 of the said Memorandum, it is stated that the ACP Scheme should strictly be implemented in keeping with the Department of Personnel and Training Office Memorandum dated August, 1999 and also it has been stated in the Office Memorandum dated August, 1999 a doubt raised by various quarters have been duly examined point-wise and clarifications have already been indicated in the Annexures.

4. Para 3.1 of the Office Memorandum dated August, 1999 reads as follows:-

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

*"3.1. While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form*

*to mitigate hardship in cases of acute stagnation either in a cadre or in an isolation post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial up-gradation as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM) under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B' 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial up-gradation under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-II (attached)."*

5. Para 1, 2, 3, 4, 5.1 and 5.2 of the Annexure-II to the Office Memorandum dated August, 1999 reads as follows:-

"ANNEXURE-II

CONDITIONS FOR GRANT OF BENEFITS UNDER THE  
ACP SCHEME

1. The ACP Scheme envisages merely placement in the higher pay scale/grant of financial benefits (through financial up-gradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;
2. The highest pay-scale upto which the financial up-gradation under the Scheme shall be available will be Rs.14,300-18,300. Beyond this level, there shall be no financial up-gradation and higher posts shall be filled strictly on vacancy based promotions;
3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;
4. The first financial up-gradation under the ACP Scheme shall be allowed after 12 years of regular service and the second up-gradation after 12 years of regular service from the date of the first financial up-gradation subject to fulfillment of prescribed conditions. In other words, if the first up-gradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second up-gradation which would also get deferred accordingly;
- 5.1 Two financial up-gradation under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial up-gradation under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial up-gradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;
- 5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit."

6. Now the questions fall for consideration are:-

*(i) Whether re-musteration to Cipher Trade i.e. Havildar/Cipher is a promotion from the lower post like Rifleman/ORL and*

*(ii) Whether re-musteration to the Havildar/Cipher which is the lowest rank in the trade of Cipher will be taken as a financial up-gradation for the purpose of ACP Scheme.*

7. The above two questions are clearly answered by the manner of re-musteration of the petitioner to the Cipher Trade i.e. Havildar/Cipher. There was no promotion to the lowest post in the process for re-musteration of the trade to the Havildar/Cipher. Over and above, the posts of Rifleman/ORL/Naik are not the feeder posts for the post of Rifleman/Cipher. The Rifleman/ORL, who had rendered three years of services are eligible to appear exam for the purpose of changing their trade to Cipher Trade. Therefore, the changing of trade to Cipher Trade i.e. Havildar/Cipher is not a direct recruitment from the fresh.

8. The questions as to:

*(i) whether changing of trade through re-musteration to Cipher Trade i.e. Havildar/Cipher is a promotion or not and*

*(ii) whether changing of trade to the process of re-musteration to the Havildar/Cipher is a financial up-gradation under the ACP Scheme had already been considered and discussed by the Central Administrative Tribunal (for short "CAT") in Ernakulam Bench (Annexure-A4 to the writ petition) in Sentimon Mathew vs. (i) Union of India represented by the Secretary, Ministry of Home Affairs, North Block, New Delhi (ii) The Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi and (iii) The Director General of Assam Rifles, Mabanideshalaya Assam Rifles, Shillong II, Assam State and make a clear cut findings that changing of trade to Cipher Trade i.e. Havildar/Cipher through re-musteration is not a promotion and also for the financial up-gradation, length of regular service is to be counted from the date of appointment to the post of Havildar/Cipher through re-musteration. Accordingly, 1<sup>st</sup> financial up-gradation is to be made on completion of 12 years by counting from the date of musteration to the trade i.e. Havildar/Cipher.*

9. Para 7 & 8 of the judgment of the CAT in **Sentimon Mathew**

(Supra) reads as follows:-

*"7. The question that is to be decided is whether remustering of the applicant as Havildar/Cypher in 1986 from Rifleman was a financial upgradation disentitling the applicant for the grant of first upgradation under the ACP Scheme which is the stand taken by the respondents. The respondents have relied on the instructions issued at point No.8 in the DOPT letter dated 10.2.2000 providing clarifications on the points of doubt raised by the Departments. According to this clarification, no.8, if the relevant Recruitment Rules provide for filling up of vacancies by direct recruitment, induction through limited departmental competitive examination may be treated as direct recruitment for the purpose of benefit under the ACP Scheme. The example given pertains to the cases of Grade-D employees appointed as LDCs or Stenographers Grade-D/Junior Stenographers inducted as LDCs. If the Recruitment rules, on the other hand provide for filling up of the vacancies on the basis of departmental examination, only such appointments shall be treated as promotion. Therefore the respondents contended that in the instant case, as per the Recruitment Rules at Annexure R-4, the post of Havildar is to be filled up by considering members of the Assam Rifles holding the rank of Rifleman in the trade of Operator Radio Line with 8 years service in the grade and not by direct recruitment. As such, the applicant's appointment as Havildar/Cypher has to be treated as promotion. These contentions are not acceptable for the reasons that in the first instance, no departmental examination has been prescribed under the Recruitment Rules and under column 13 thereof regarding constitution of DPC in the case of promotions, it has been clearly indicated that it is 'not applicable' making it clear that the consideration of the members of the Assam Rifles for conversion to Cypher category is not to be considered as 'promotion. Secondly, these Recruitment Rules as averred by the respondents have been issued in the year 2000 only. The applicant had been remustered into Cypher category in 1986. It is therefore evident that these rules were not also applicable at that point of time. It is also noticed that the applicant was remustered to the post of Havildar/Cypher before he had completed even four years of service. Therefore going by all these special circumstances, it has to be concluded that his appointment in the Cypher category can only be termed as 'conversion' and not as 'promotion' as contended by the respondents. This view is buttressed further by the clarification on the ACP Scheme at Annexure A4 communicated by the Ministry of Home Affairs regarding personnel of the Border Security Force (BSF) wherein at points (c) and (d) thereof it has been clearly stated that appointment of Constable (General Duty) after qualifying in the conversion test and appointment into Cypher category will be treated as conversion and promotion. Though the respondents contended that these clarifications were relevant only for BSF personnel, we are not convinced why the same cannot hold good for the personnel in Assam Rifles when the categories being similar and duties and functions are more or less similar though technically they belong to two different organisations. Further as already stated above even the clarification of DOPT dated 10.2.2000 relied on by the respondents and the Recruitment Rules to the post of Havildar do not lend any support to the stand taken by the respondents.*

*8. In these circumstances we are inclined to subscribe to the view the applicant who was remustered into Cypher category after 4 years of service in 1986, has to be treated as a direct recruit to that category and he would be eligible for the first ACP on completion of 12 years of service the grade. With such a declaration as above we allow the O.A. The respondents are directed to grant the first financial upgradation in accordance with the ACP Scheme to the applicant together with the consequential benefits. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs."*

10. The DGP, Assam Rifles filed an appeal against the said judgment of the CAT in **Sentimon Mathew (Supra)** before the Kerela, High Court (Division Bench). The Kerela High Court again up-held the judgment of the CAT with findings that:-

*"6. The above clarification would show that if a person in the lower grade comes to the higher grade through limited departmental competitive examination, the same will be treated as direct recruitment for the purpose of ACP scheme. But, if a person clears the departmental examination and gets appointment in the promotion quota as per the recruitment rules, the same shall be treated as promotion for the purpose of said scheme. In this case, we are of the view that the case of the applicant almost falls under the 1st part of the above clarification issued as per Ext.P5. At any rate, it cannot be treated as promotion. Only a promotion will deny him the benefits under the ACP Scheme. Ext.P2 is the rule, as per which the applicant was appointed to the Cipher category. Rule 5 of Ext.P2 shows the method of selection. The said rule reads as follows:*

*"Procedure for selection*

*The preliminary assessment of suitability of volunteers for transfer to cipher category will be made by a board of officers (including one cipher officer /JCO). The board will be convened under the arrangements of this Headquarters (CSO's Branch). The Board will ensure a satisfactory standard of volunteers in respect of the following:-*

- a) Knowledge of English.*
- b) Aptitude for figure work.*
- c) General Knowledge of military matters*
- d) Simple mathematics".*

*7. The above quoted rule would show that the method of appointment is by transfer from volunteers. The selection is W.P.(C) No.32624/2008 8 made by a Board convened for the said purpose. So, it cannot be said to be a promotion as per the above quoted clarification. Though this is not direct recruitment, it should be treated as direct recruitment for the purpose of ACP Scheme, as it is an appointment by transfer from among the volunteers, who clear the selection process. Further, Ext.P3 would show that the minimum rank of Operator Cipher will be Havildar. The relevant rule is Rule 5 of Ext.P3, which reads as follows:*

*"5. To Hav (Cipher). The minimum rank of operator Chipher will be Havildar. There will be no direct recruitment to this trade. Candidates to undergo Cipher conversation training will be drawn from all trades of Signal personnel after a selection examination to be conducted by CSO Assam Rifles. On successful completion of the Cipher conversion training they will promoted to the rank of Hav under orders from HQ IGAR."*

*8. So, the volunteers who come on transfer from other categories have to occupy the post of Havildar, which is the lowest post. Though the above quoted rule speaks of promotion to that post, in effect, it is not promotion as contemplated under Ext.P5, but, only an appointment after undergoing*

*Limited Competitive Departmental Examination. So, we are of the view that the order of the C.A.T, which treated his appointment as Cipher/Havildar as direct recruitment for the purpose of ACP scheme, cannot be said to be illegal or irrational. We agree with the reasons and conclusions of the Tribunal”.*

11. The above findings of the CAT in Ernakulam Bench in **Sentimon Mathew (Supra)** which had been up-held by the Kerela High Court (Division Bench) had already been implemented. The case of **Sentimon Mathew’s (Supra)** is similar with that of the present petitioner. This Court has also given anxious consideration of the decision of the CAT in Ernakulam Bench in the case of **Sentimon Mathew’s (Supra)** and the said judgment of the Kerela High Court (Division Bench) which are available in Annexure-A4 and A5 respectively in the present writ petition and is in agreement with the said findings.

12. This Court for the reasons in above paras had already been made a clear findings that the changing of trade in Cipher category i.e. Havildar/Cipher through re-musteration is not a promotion and also not a financial up-gradation and, therefore, counting of continuous service for the financial up-gradation under the ACP Scheme should be from the date of re-musteration to the lowest rank of the Cipher category i.e. Havildar/Cipher on 20.11.1991, for the petitioner.

13. Therefore, the impugned order dated 07.10.2009 for granting 1<sup>st</sup> financial up-gradation under the ACP Scheme to the petitioner w.e.f. 03.11.2007 is modified to the extent that the 1<sup>st</sup> financial up-gradation under the ACP Scheme to the petitioner would be w.e.f. 03.11.2003. The MACPS is implemented vide order dated 18.09.2009. The conditions governing the grant of MACPS mentioned in para 10, 11, 12 & 13 which read as follows:-

**“Conditions Governing the Grant of MACPS:**

**10. Service:** No MACPS shall be granted to PBOR/Civ emp beyond grade pay of Rs.5400/- in pay band two. There shall be three financial upgradations under the MACPS including promotion, if any, in between from the date of enrolment of an employee on completion of 10, 20 and 30 yrs of continuous service. In case of remustering cats pers from one trade to other will upward change in their pay, the 10, 20 and 30 yrs period shall



commence from the date of remustering. Any interruption in service/non-qualifying service for grant of pension or gratuity shall be excel for commuting 10, 20 and 30 yrs of continuous service. It is further clarified that 10, 20 and 30 yrs period for grant of MACPS shall reckon w.e.f. the date of last upgradation in the grade pay of an employee; it may be by way of erstwhile ACP or promotion/remustering.

**11. Performance:** The financial upgradation will be on non functional basis subject to fitness in the hierarchy of grade pay within the PB-I, which means that grant of financial upgradation to Rifleman of all cat shall be on the basis of their fitness. The screening committee will presume Rfn of all cat as fit for grant of MACPS to them unless it is otherwise certified by the Commanding Officer as per Appx. 'C' attached to these instructions.

**12. Discp:** The discp criteria for grant of MACPS shall be applicable at par with the discp criteria applicable for promotion to the next higher rank. Detailed discp criteria is attached as Appx 'D' to these instructions.

**13. ACR Criteria:** Last two CRs (where applicable) shall be considered for grant of first financial upgradation under the MACPS and last three Crs for grant of second and third financial upgradation. All these reports should not be not less than 'Average' grading with recommendation for promotion to the next higher rank."

**14.** The respondents had misread the said judgment of the CAT in Ernakulam Bench and the judgment of the Kerela High Court (Division Bench) in the case of **Sentimon Mathew's (Supra)** and passed the impugned order dated 12.07.2012; that the petitioner had already enjoyed his 1<sup>st</sup> financial up-gradation subsequent to re-musteration as Havildar/Cipher on 20.11.1991 and the 1<sup>st</sup> ACP granted to the petitioner w.e.f. 03.11.2007 shall be treated as 2<sup>nd</sup> financial up-gradation and as for grant of 3<sup>rd</sup> financial up-gradation to the petitioner, it will be granted on completion of 30 years qualifying service and other conditions as required.

**15.** The respondents filed their affidavit-in-opposition justifying their stance by relying on the note of the File of Govt. of India, Department of Personnel and Training/Establishment (D) which reads as follows:-

"Government of India,  
Department of Personnel & Training  
Establishment (D).

68239/2011.

Reference notes at pre-pages.

2. It is not clear from the proposal as to whether the appointment given to a Government servant as remustered basis in a higher pay scale of grade pay is fallen under the hierarchy of promotion post or otherwise. If so, it would be counted as an upgradation under the MACPS. If not, the issue may be examined and considered in terms

of clarification given on point of doubt no.5(ii) of DOPT's O.M. dated 09.09.2010.

Sd/- (illegible)  
16/08/2011

3. Re-musteration is a method of appointment in p.ps and it would be counter as upgradation for the purpose of MACPS.

Sd/- (illegible)  
16/8"

16. The internal communication and the office note cannot be the order issued by the competent authority. Regarding this settled position of law, we may refer to the decision of the Apex Court in the case of **Union of India & Anr vs. Kartick Chandra Mondal & Anr** reported in **(2010) 2 SCC 422**. The Apex Court in the case of **Union of India & Anr (Supra)** held:-

*"17. The next issue that we are required to consider pertains to internal communications which are relied upon by the respondents and which were also referred to by the Tribunal as well as by the High Court. Ex facie, the aforesaid communications were exchanged between the officers at the level of board hierarchy only.*

*18. An order would be deemed to be a Government order as and when it is issued and publicized. Internal communications while processing a matter cannot be said to be orders issued by the competent authority unless they are issued in accordance with law. In this regard, reliance may be placed on the decision of this Court in **State of Bihar and Others v. Kripalu Shankar and Others** reported in **(1987) 3 SCC 34** wherein this Court observed, in paragraphs 16 and 17, as follows: - (SCC pp.44-45)*

*"16. Viewed in this light, can it be said that what is contained in a notes file can ever be made the basis of an action either in contempt or in defamation. The notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the concerned officer on the subject under review. To examine whether contempt is committed or not, what has to be looked into is the ultimate order. A mere expression of a view in notes file cannot be the sole basis for action in contempt. Business of a State is not done by a single officer. It involves a complicated process. In a democratic set up, it is conducted through the agency of a large number of officers. That being so, the noting by one officer, will not afford a valid ground to initiate action in contempt. We have thus no hesitation to hold that the expression of opinion in notes file at different levels by concerned officers will not constitute criminal contempt. It would not, in our view, constitute civil contempt either for the same reason as above since mere expression of a view or suggestion will not bring it within the vice of sub- section (c) of Section 2 of the Contempt of Courts Act, 1971, which defines civil contempt. Expression of a view is only a part of the thinking process preceding Government action".*

*17. In **Bachhittar Singh v. State of Punjab** reported in **AIR 1963 SC 395** a Constitution Bench of this Court had to consider the effect of an order passed by a Minister on a file, which order was not communicated. This Court, relying upon Article 166(1) of the Constitution, held that the order of the Revenue Minister, PEPSU could not amount to an order by the State Government unless it was expressed in the name of Rajpramukh as required by the said article and was then communicated to the party concerned. This is how*

*this Court dealt with the effect of the noting by a Minister on the file: (AIR p.398, para 9).*

*“9.The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.”*

17. The Apex Court in the case of **State of W.B. & Anr vs. M.R. Mondal & Anr** reported in **(2001) 8 SCC 443**: held that un-communicated Government order cannot be acted upon for the purpose of acquiring the rights whatsoever. Para 16 of **(2001) 8 SCC 443** in the case of **State of W.B. & Anr’s (Supra)** reads as follows:-

*“16. .... An order passed but retained in file without being communicated to the plaintiff can have no force or authority whatsoever and the same has no valid existence in the eye of the law or claim to have come into operation and effect. No reliance can be placed on the same to even assert a claim based on its contents. If its utility depended upon a decision to be taken on the performance of the plaintiff by the competent authority, neither the authority could be compelled to take a decision nor any concrete rights could be said to have been acquired by the plaintiff, to warrant the grant of the type of directions given in this case. It is really surprising that the discretionary power to grant injunction be it or prohibitory or mandatory nature, has been availed of to bring into existence and force upon the State a new contract, which could never have been the intention of the State itself.”*

18. The Apex Court in a case from Gauhati High Court in **Tagin Litin vs. State of Arunachal Pradesh & Ors** reported in **(1996) 5 SCC 83** held that:-

*“11. It is a settled law that, in order to be effective, an order passed by the State or its functionaries must be communicated to the person who would be affected by that order and until the order is so communicated the said order is only provisional in character and it would be open to the authority concerned to reconsider the matter and alter or rescind the order. (See: **Bachhittar Singh v. State of Punjab** reported in **1962 Supp (3) SCR 713: AIR 1963 SC 395, SCR at p.721**).*

19. From the ratio decidendi in (i) **Union of India & Anr’s (Supra)**, (ii) **State of W.B. & Anr’s (Supra)** and (iii) **Tagin Litin’s (Supra)**, it is clear

that un-communicated office notes, which do not convert to order, cannot be acted upon for deciding the rights of any individuals. Therefore, the respondents cannot decide the right of the petitioner basing on the said un-communicated office note.

**20.** As to how the judgment and order is to be read and when can it be taken as a precedent for a point had already been discussed and answered by the Apex Court in a catena of cases. The Apex Court in the case of **Natural Resources Allocation, In RE, Special Reference No.1 of 2012** reported in **(2012) 10 SCC 1** held that:-

*“71. With reference to the precedential value of decisions, in **State of Orrisa v. Mohd. Illiyas reported in 24(2006) 1 SCC 275:2006 SCC (L&S)122**, the Apex Court observed: (SCC p.282, para 12).*

*“12. .... According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the fact; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment.”*

*72. Recently, in **Union of India v. Amrit Lal Manchanda reported in (2004) 3 SCC 75:2004 SCC (Cri) 662**, the Apex Court has observed as follows:- (SCC p.83, para 15)*

*“15. .... Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.”*

*73. It is also important to read a judgment as a whole keeping in mind that it is not an abstract academic discourse with universal applicability, but heavily grounded in the facts and circumstances of the case. Every part of a judgment is intricately linked to others constituting a larger whole and thus, must be read keeping the logical thread intact. In this regard, in **Islamic Academy of Education v. State of Karnataka reported in (2003) 6 SCC 697**, the Apex Court made the following observations: (SCC p.719, para 2).*

*“2. .... The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the*

*judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment.”*

The respondents are completely unaware of the settled principle as to how the judgment and order is to be read while reading the said judgment and order of the CAT and the said judgment and order of the Kerela High Court in **Sentimon Mathew's (Supra)**.

**21.** For the foregoing reasons, the respondents are directed to grant the 2<sup>nd</sup> financial up-gradation under the MACPS on the completion of 20 years in service as Havildar/Cipher w.e.f. 20.11.2011 and the first financial up-gradation should be from 20.11.2003 with consequential benefits and the impugned order dated 12.07.2012 is hereby quashed and the impugned order dated 07.10.2009 is modified to the extent that the 1<sup>st</sup> financial up-gradation should be w.e.f. 20.11.2003. It is further directed that the respondents should complete the whole exercise within a period of three months from the date of receipt of a certified copy of this judgment and order.

**22.** The writ petition is allowed to the extent indicated above.

**JUDGE**

LAM