

No. 11024/14/2006-SSS
Government of India
Ministry of Statistics & Programme Implementation

Sardar Patel Bhavan, Sansad Marg,
New Delhi, Dated 15th September 2011

Office Memorandum

Sub: Reconsideration of financial upgradation under Assured Career Progression Scheme in respect of incumbents holding the posts included in the Subordinate Statistical Service

While disposing of O.A. No. 2770/2003, 351/2003 and 1845/2004 the Hon'ble CAT P.B. New Delhi, vide its order dtd. 27.06.2005 partly allowed the OAs and directed as under:-

"The action of the respondents to treat four tier structure including two non-functional grades as existing hierarchy for ACP and their decision to adopt such a hierarchy vide letter dated 25.06.2004 is set aside and the matter is remanded back to the respondents to reconsider the entire issue in the light of condition no. 13 of the ACP Scheme as well as decision of the High Court of Delhi in F.C. Jain's case (supra). This exercise shall be done, with a speaking order to be passed, within a period of six months from the date of receipt of certified copy of this order."

2. Aggrieved by the above orders, M/o Statistics & P.I. filed a W.P. No. 13855-57/2006 in the High Court of Delhi and after hearing Counsels from both the sides Hon'ble High Court vide order dated 20.01.2009 gave following directions:-

"The matter may be considered by the Anomaly Committee, to which even the respondents have no objection. However at the same time it should be pointed out that directions were given by the Tribunal in June, 2005 for completing the exercise within a period of six months. More than three and a half years have passed because of the pendency of these writ petitions. Therefore it would be appropriate to refer the matter to the Anomaly Committee immediately and the Anomaly Committee shall also decide the issue within six months from today. This Anomaly Committee shall also take into consideration the observations made by the Tribunal in the judgment dated 27.06.2005. We are further informed that even the DOPT had agreed with the observations of the Tribunal in the aforesaid judgment with certain anomalies. We expect that the Anomaly Committee shall take into consideration the observations of the DOPT as well."

3. Accordingly a Special Departmental Anomaly Committee for the consideration of ACP issue in Subordinate Statistical Service was formed (**Annexure A**) and 1st Meeting of the Anomaly Committee was held on 9th July 2009 which made following recommendations (**Annexure B**):-

Items (I) & (II)- Since service was constituted by including the Statistical functional posts of different Ministries/Departments/Organisations in different scales and their RRs were still valid, Committee feels that ACP already

granted to the incumbents in their existing hierarchy prior to notification/formation of SSS may not be withdrawn or revised. Similarly in the cases where ACP have not been granted prior to the period till formation of SSS w.e.f 12.02.2002 the ACP may be granted to them in the existing hierarchy of incumbents at that time.

Item (III)- (i) In respect of cases for the period after formation of SSS and implementation of MACP Scheme (12th February 2002 to August 2008, the Committee considered the orders passed by various Tribunals/Courts in the ACP matters of SSS and also Provisions/Guidelines issued by DOP & T and recommended that ACP in SSS may be considered only in functional grades of hierarchy i.e. inducted in Rs. 5000-8000/-scale, first ACP in 6500-10500/- and second ACP in 8000-13500/-scale.

(ii) Committee also observed that while implementing the above decision another anomaly may arise in respect of persons who have already received ACPs in their existing hierarchy prior to 12.02.2002 as their pay would be less than the persons who will get ACP in functional grades after 12.02.2002. To remove such anomaly, as a onetime measure, it was suggested that pay of those persons who got ACP or deemed to have got ACP prior to 12.02.2002 may be re-fixed in the functional grade of SSS i.e. 1st ACP in the scale of pay of Rs. 6500-10500/- and 2nd ACP in the scale of pay of Rs. 8000-13500/- w.e.f. 12.02.2002 ignoring earlier ACPs. This may be accepted by the Competent Authority in the light of MACP guidelines, where MACP in next grade pay has been allowed irrespective of scales in which incumbents were granted ACP earlier.

4. The recommendation of the Committee was examined in M/o S & P.I. and it was found that there were difficulties in implementing the recommendations of the Anomaly Committee as some juniors may have got higher pay in their cadre due to ACP granted prior to 12.02.2002 and their seniors in the new service may not have got the same scale in the Cadre, after becoming eligible for ACP. Since, there was no provision for stepping up under ACP rules it was decided to seek the approval of DOP & T and M/o Finance as the original ACP guidelines in SSS was made with their consultation. The recommendations of the Anomaly Committee were sent to DOP & T and on their advice, D/o Expenditure was requested to hold a tripartite meeting consisting of Department of Expenditure, DOP & T and M/o S & P.I. to resolve the issue. At this stage Department of Expenditure made following observation:-

"The matter has been considered in this department. In this context, it is intimated that this Department is of the view that at the present stage, instead of holding a tripartite meeting, it would be better if the matter is examined by D/o Expenditure on file and wherever necessary, DOPT's advise would also be obtained by this Department on file. Accordingly, administrative ministry is advised to submit a self-contained note on the matter taking into account this Department's advice rendered vide Joint Secretary (Per)'s D.O. letter dated 21.05.2008 and bringing out

the impact of the recommendations of Sixth CPC on the matter i.e. the introduction of 2 grade structure for SSS w.e.f. 01.01.2006 and the introduction of MACP Scheme w.e.f. 01.09.2008."

5. Again, in view of difficulty expressed by the administrative department in implementing the recommendations of the Anomaly Committee on ACP due to prevailing non-functional grade in service and on the advice of AS & FA (MOSPI) 2nd meeting of the Special Departmental Anomaly Committee was convened on 16.06.2010 to reconsider the recommendations made in its 1st meeting. The Special Departmental Anomaly Committee did not assess the impact of recommendation made in 1st meeting on MACP Scheme after 6th CPC and observed as follows (Annexure C):-

"At the outset, Chairman explained the need of calling meeting for seeking the views of the staff side on the stand taken by the Ministry that in view of prevailing NFG in SSS, ACP Scheme may be treated as withdrawn for the period between 12.02.2002 to 31.08.2008. SSS officials/Ministry explained the difficulties faced in implementing both NFG and ACP simultaneously in the cadre particularly when pay of 1st or 2nd ACP beneficiary may be more than the promotee. Staff side vehemently opposed the stand of the Ministry unanimously and were of the view that staff may not be deprived of the ACP benefits for the said period. Staff side were of the opinion that if provision of NFG is causing hindrance in extending ACP benefits in SSS in that case NFG may be withdrawn and ACP in functional Grades may be granted as considered in the case of JEs of CPWD. After deliberations, it was stressed by the staff side that recommendations made by the Special Departmental Anomaly Committee in its 1st meeting may be accepted by the Government in letter in spirit."

5. After examining the matter, the issue was again referred to D/o Expenditure, M/o Finance who advised as follows:

"The matter regarding settlement of ACP Scheme in SSS in the light of the Delhi High Court's orders dated 20.01.2009 in WP (c) Nos. 13845-46/2006 and 13855-57/2006 has been examined in this department. M/o S & P.I. is requested to consult DOPT on file in the first instance and then refer the matter to this Department. It is also requested that the issues earlier raised in this regard in this Department's U.O. Note No. 7.41/1/2008-IC, dated 05.02.2010 addressed to JS (Admn) may also be examined."

6. On detailed examination it was observed that if ACP's are granted in functional grade of Rs. 6500-10500 and Rs. 8000-13500 then pay of junior person who have just completed only 24 years of service would be more than the senior persons who are already placed in the Non-functional scale of 7450-11500 and have also completed more than 24 years of service. Further, the existence of both ACP scheme and Non Functional grades were found contradictory and required to be reviewed objectively for removing anomaly. At this stage SSS Division (M/o S & P.I.) suggested some modifications and it was decided to call a fresh meeting of Anomaly Committee for considering views of SSS division which were as follows:

In view of orders passed by Hon'ble Tribunal and Hon'ble High Court, the anomaly in ACP of SSS was to be considered keeping in view of the followings:-

- (i) Rule-13 of ACP Scheme
- (ii) Judgment of Delhi High Court in F.C. Jain matter
- (iii) Observations made by DOP & T on the order of Hon'ble CAT dated 27.06.2005

7. **Rule 13:-** It provided that "existing time bound promotion scheme, including in-situ promotion scheme in various Ministries/Departments may as per choice, continue to be operational for the concerned categories of employees. However, these schemes shall not run concurrently with the ACP scheme. The Administrative Ministry/Department not the employees shall have the option in the matter to choose between the two schemes i.e. existing time bound promotion schemes or the ACP scheme, for various categories of employees. However, in case of switch over from the existing time bound promotion schemes to the ACP scheme, all stipulations (viz. For promotion, redistribution of posts, up-gradation involving higher function duties etc.) made under the former (existing) schemes would cease to be operative. The ACP scheme shall have to be adopted in its totality".

The assertion made by the staff side to withdraw non-functional scheme and to give ACP in functional grade was against the spirit of Rule 13. Further, if the ACP scheme was withdrawn from the service or only non-functional scheme was allowed to continue it may have caused hardship to a group of employees or would have created further anomaly and, hence, a solution was to be found so that employees were not put to any financial disadvantage and at the same time it did not cause any further anomaly in MACP Scheme which is more or less settled in SSS.

8. **F.C. Jain Case:-** It has been observed by the Hon'ble High Court that by reason of fitment of pay, the government servant may not be treated at a higher post or higher grade of pay. The non-functional pay which was confined to only 50% of the cadre strength, by reason of ACP Scheme those who are stagnated in a particular post or a particular scale of pay is given higher scale of pay. Further, it was not a case where the government servant could have been asked to opt for one of those schemes as both the scheme operate in two different scheme.

The above judgment was pronounced by the Hon'ble High Court on 18.04.2002 whereas the Tripartite Meeting was held on 13.12.2001 for considering service rules including ACP Scheme in SSS. At that time a broad view was taken in the interest of service as the service was formed by amalgamating two grade structure i.e. Rs. 5000/- and Rs. 6500/- in non-FOD offices and three grade structure in FOD i.e. Rs. 5000/- , Rs. 5500/-and Rs. 6500/-. By introducing four grade structure in SSS i.e. Rs. 5000/- , Rs. 5500/- (NFG), Rs. 6500/- and Rs. 7450/- (NFG), the intention was to mitigate hardship faced by the employee holding statistical function posts. Subsequently, anomaly in implementing ACP scheme in SSS occurred mainly due to different rules applicable for fixation of pay under functional and non-functional grades which needed to be resolved.

9. **Observations of DOP & T:-** The submission made by staff side before the Hon'ble High Court was perhaps based on the internal noting of DOP & T made on one of the files of SSS division of M/o S & P.I. However, the observations were referred to D/o Expenditure, and it was advised that the recommendation of the 6th Pay Commission may be awaited and Administrative Ministry could refer such anomalies to the 6th CPC.

M/o S & P.I. requested 6th CPC for reconstitution of service into three functional grades i.e. Rs. 5000/- , Rs. 6500/- and Rs. 7450/- so that anomaly could be removed. However, 6th CPC considered the four grade structure as separate grade and merged the post of Statistical Investigator Gr. II (6500-10500) in the higher scale of 7450-11500 (SI Gr.I) that existed in service corresponding to PB-2 Grade Pay-4600. Posts of SI Gr. III and SI Gr. IV have been merged in SI Gr. II (new) in PB-2 Gr. Pay 4200 corresponding to pre-revised scale of Rs. 6500-10500. In view of this, service has been reconstituted into two grades w.e.f. 01.01.2006. It is stated that existence of ACP scheme as well as non-functional grades in the service prior to 01.01.2006 were contradictory resulting in anomaly and procedurally it was not feasible to withdraw any of the two Schemes from the service retrospectively.

10. With effect from 01.09.2008 MACP scheme has been successfully implemented in SSS and incumbents on completion of 10,20 and 30 years of service have been granted financial up-gradation in the grade pay of Rs. 4600/-, 4800/- and 5400/- in PB-2 respectively. Therefore, anomalies in ACP were to be sorted out in a manner that no further anomalies arise in MACP scheme which has been implemented successfully in SSS. At the same time, financial interest of all grades of employees required to be protected in such a manner so that juniors do not get higher pay than seniors due to any decision. Although there is a provision in ACP rules that junior may get higher pay than senior but spirit of this rule is based on variation in date of increment etc. and not on any decision of the Government. At this stage need for holding a fresh meeting of Special Departmental Anomaly Committee was felt.

11. Final meeting of SDAC was held on 22nd March 2011 and after examining the issue raised by staff side and SSS Cadre the committee felt that cadre may examine the decision of 1st meeting of the committee in consultation with DOP & T and M/o Finance (**Annexure D**). Again the recommendations of the committee were lacking in resolving the issue in larger interest of cadre particularly for bringing harmony in scales granted under ACP Scheme and Grade Pay allowed under MACP Scheme. Their acceptance would lead to further anomalies while trying to remove the existing anomaly.

12. Accordingly, consultations were held with DOP & T and D/o Expenditure. After consultation and on the advice of D/o Expenditure it was decided to address the issue in two parts, i.e. (A) Prior to formation of service i.e. before 12.02.2002 and (B) After formation of service and before the implementation of 6th CPC i.e. 12.02.2002 to 31.12.2005.

13. Keeping in view the reconstitution of SSS w.e.f. 01.01.2006, abolishment of Non- Functional structure from the service and also MACP guidelines, the following

decisions have been made to resolve the ACP issue of SSS with the advice of D/o Expenditure (M/o Finance):-

(A) Prior to formation of service:-

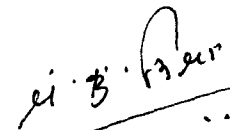
- (i) Pay already granted under ACP Scheme before the formation of the service is to be retained. The persons who got the scale under ACP, which is not available in SSS cadre is to be adjusted in nearest lower scale of SSS w.e.f. 12.02.2002 and difference of pay, due to revised entitlement, is to be safeguarded as personal pay to be absorbed in future increments.
- (ii) Quantum of drop, if any, in pay drawn while holding the scale under ACP and re-fixation of pay in same scale for it being non-functional scale in service would be allowed to continue as personal pay and would be taken into account for fixation of pay in new pay structure on the implementation of 6th CPC recommendation.
- (iii) All those who were entitled for ACP benefits before the formation of service w.e.f. 12.02.2002, but could not be granted ACP for any reason are also to be considered for ACP benefit if, otherwise eligible, subject to the fixation and adjustment of their pay as mentioned in para (i) & (ii) above.

(B) After formation of service:-

- (i) ACPS/Promotions between the period 12.02.2002 and 31.12.2005 will be regulated in four tier structure of the service.
- (ii) On attaining ACP in non-functional grade the pay will be fixed under FR 22(1)(a)(i). This pay will not be reduced by re-fixing the same under FR 22(1)(a)(ii) when the employee is actually promoted to this grade. On such a promotion he would continue to get the normal increment due to him in the years that follow the one when ACP was granted and when the pay was fixed under FR 22(1)(a)(i).

14. By making the above provisions M/o Finance has relaxed rules for fixation of pay so that there may not be any reduction in pay and allowance of SSS incumbents on implementing the ACP Scheme and will also bring uniformity in MACP Scheme. As such the order dated 13.05.2011 and 15.07.2011 have been issued the regularisation of Assured Career Progression Scheme in Subordinate Statistical Service are in compliance of direction passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi.

This issues with the approval of Respondent No. 1 i.e Secretary, Ministry of Statistics & Programme Implementation.



(S.K. Mishra)

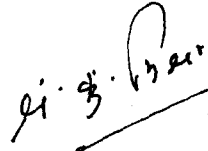
Under Secretary to Govt. of India

Copy to:

1. All participating Ministries/Departments/Organizations
2. Applicants of OA No. 2770/2003
3. General Secretary, AIASI
4. General Secretary, SSOA
5. ✓ Computer Centre
6. Master data

Copy for information to:

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2. PPS to Addl. Secretary (S&PI)
3. PPS to DG, CSO
4. PPS to DG & CEO, NSSO
5. PS to JS (Admn.), (S&PI)

**(S.K. Mishra)****Under Secretary to Govt. of India**

No. 11024/ 14 /2006 - SSS
Government of India
Ministry of Statistics & Programme Implementation

Annex A

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Sardar Patel Bhavan,
Sansad Marg, New Delhi-110001

Dated: 11th June , 2009

Office Memorandum

Sub: Special Departmental Anomaly Committee for considering ACP matters in SSS- Regarding.

In compliance of Hon'ble High Court of Delhi's order dated 20.1.2009 a Special Departmental Anomaly Committee is constituted, as detailed below, for considering ACP matters in SSS:

<u>Sl. No</u>	<u>Official Side</u>	<u>Staff side</u>
1.	Sh.T.K. Dutta DDG (Admin) NSSO (FOD), Chairman	Sh. C. M. Tiwari President, SSOA
2.	Smt. J. Kurian Director (IFD), Member	Sh. K.B.V.K. Murthy General Secretary, SSOA
3.	Dr. Anil Kumar DS (SSS), Member	Sh. Gopal Singh President, AIASI
4.	S. K. Mishra US (SSS), Secretary	Sh. Ajay Singh General Secretary, AIASI.

2. The terms of reference of Special Departmental Anomaly Committee would be as under:

- 12/12/09
- (i) Cases where ACP was already granted in existing hierarchy prior to Notification / formation of SSS.
 - (ii) Cases related to the period prior to formation of SSS i.e. 12th February 2002, where ACP has not been granted.
 - (iii) ACP cases for the period after formation of SSS and before implementation of MACPs scheme i.e. 12th February 2002 to 31st August 2008, particularly considering the existence of functional and non-functional Grades.

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3. As ordered by Hon'ble High Court of Delhi the matter is to be considered on or before 20.7.2009.

This issues with the approval of Secretary (S&PI)

(S.K.)
S. K. Mishra

(S. K. Mishra)

Under Secretary to the Govt. of India (SSS)

Tel. No. 23340888

1. Sh. T. K. Dutta, DDG (Admin), FOD Hqr. New Delhi.
2. Smt. J. Kurian, Director IFD, S.P Bhawan New Delhi.
3. Dr. Anil Kumar, Deputy Secretary (SSS) New Delhi.
4. Sh. C.M. Tiwari, SI Grade – I NSSO (FOD) Delhi Region.
5. Sh. K.V.B.K Murthy, SI Grade – I NSSO (FOD) Vijaywada.
6. Sh. Gopal Singh, SI Grade – II, NSSO (FOD) Navi Mumbai.
7. Sh. Ajay Saxena, SI Grade – I (Ah-hoc) NSSO (FOD) Agra.

Annex B

Minutes of the meeting of Special Departmental Advisory Committee held on 9th July 2009
considering ACP matter in SSS

Meeting of Special Departmental Advisory Committee for considering ACP matter in SSS on 9th July 2009 at 11.00 A.M. in the Conference Hall of MOS&PI, Sardar Patel Bhawan, New Delhi, wherein following Members were present:-

Sl. No.	Official Side	Sl. No.	Staff Side
1.	Sh. T.K.Dutta DDG(Adm.) NSSO(FOD), Chairman	5.	Sh. C.M.Tiwari President, SSOA
2.	Smt. J.Kurian Director (IFD), Member	6.	Sh. K.V.B.K. Murthy General Secretary, SSOA
3.	Dr. Anil Kumar DS (SSS), Member	7.	Sh. Gopal Singh President, AIASI
4.	S.K.Mishra US (SSS) Secretary	8.	Sh. Ajay Saxena General Secretary, AIASI

2. At the outset, SSS officials briefed the Committee about prevailing anomalies which were cropped up due to implementation of ACP Scheme and existence of non-functional posts side by side. In order to understand the structure of SSS and ACP problems followings were observed by the Members of the Committee.

3. On the recommendations of Vth CPC vide para 81.17, the MOS&PI constituted the Subordinate Statistical Service (SSS) vide OM dated 30.1.2002. The Gazette Notification to this effect was issued on 12.2.2002 and subsequently its amendment was issued on 4.4.2003. The SSS was operationalised w.e.f. 1.4.2004 and consisted the following four grades.

Sl. No.	Post/Grades	Pay Scale	Status
1.	Statistical Investigator Grade-I	7450-11500	Non Functional
2.	Statistical Investigator Grade-II	6500-10500	Functional
3.	Statistical Investigator Grade-III	5500-9000	Non Functional
4.	Statistical Investigator Grade-IV	5000-8000	Functional

This Ministry decided to implement ACP in SSS structure vide OM dated 25.6.2004 and parameters for grant of financial up-gradation under the ACP Scheme to the eligible incumbents holding posts included in the SSS were as under:-

- (i) Financial up gradation under ACP scheme will be as per four grade structure of the SSS right from the inception of the ACP Scheme i.e. 9.8.99 as per DOP&T OM No.35034/1/97-Est.(D) dated 9.8.99.
- (ii) Each of the Four grades of the SSS would count as a specific grade in the hierarchy for the purpose of grant of financial upgradation under ACP scheme on completion of 12 and 24 years of regular service.
- (iii) Pay scales already granted under ACP scheme to some of the incumbents as per the earlier two/three tier structure would have to be adjusted with reference to the four grade structure of the SSS. The pay of

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such incumbents would, therefore, have to be re-fixed in the appropriate pay scale with reference to the four grade structure of the SSS, wherever necessary.

(iv) In case any drop in emoluments occurs, while there will be no recovery of the excess payment already made, the loss in emoluments would not be protected for future. This will be effective from the date of issue of OM.

(v) If at the stage of operationalisation of the SSS, an incumbent is adjusted in a grade higher than one held by him on regular basis, the same shall be treated as that with promotion and would offset against claim for first/second ACP.

(vi) Pay in the higher pay scale to be granted under the ACP scheme will be fixed as per FR 22(1) (a) (1) with reference to DOP&T OM No.35034/1/97-Est.(I) dated 9.8.00.

4. Aggrieved by the decision of the government to grant ACP also in non-functional grades of SSS i.e. Statistical Investigator Grade-I and Statistical Investigator Grade-III, SSS incumbents and their Association approached different Courts/Tribunals challenging the proposal of MOS&PI's O.M. dated 25.6.2004 which has been set aside subsequently.

5. In the matter related to fixation of pay in non-functional grade and consideration of ACP in same scale, MOS&PI approached the Hon'ble High Court of Delhi and High Court vide its order dated 20.1.09 directed that the matter related to ACP may be referred to the Anomaly Committee immediately. The Court further directed that the Anomaly Committee shall decide the issue within six months after taking into consideration the observations made by the Tribunal in the judgement with certain anomalies and also after considering the observations of the DOP&T as well. The Tribunal in OA No.2770/2003 and OA No.1843/2004 observed that "the action of the respondents to treat four tier structure including two non-functional grades as existing hierarchy for ACP and their decision to adopt such a hierarchy vide letter dated 25.6.2004 is set aside and the matter is remanded back to the respondents to reconsider the entire issue in the light of Condition No.13 of the ACP Scheme as well as decision of the High Court of Delhi in F.C.Jain's case (supra). In this background SSS Cadre has constituted a Special Departmental Anomaly Committee to consider the ACP matters.

6. As directed by the Hon'ble High Court of Delhi the Committee first of all looked into the provisions of Condition No.13 of ACP Scheme which inter-alia stipulates that existing time bound promotion scheme including in-situ promotion and ACP Scheme shall not run concurrently. In F.C.Jain's case upgraded scales given to 50% of incumbents could not be considered as promotion to a higher post. Government has finally withdrew non-functional posts/scales and allowed ACP to the Assistant Engineers of CPWD in functional grades. The Committee also looked into the decision taken by the Govt. in the case of Junior Engineers of CPWD, where non-functional scale was withdrawn and ACP was granted in functional hierarchy in view of Condition No.13 of ACP Scheme.

7. After considering various aspects of ACP problem in SSS in detail, members were of the opinion that problem in implementing the ACP scheme in SSS has arisen largely due to decision of the authority to consider non-functional grade for ACP purposes. The Committee considered the issues referred to it and recommended as under:-

Item No.	Issues referred to the Special Departmental Anomaly Committee	Recommendation made by the Special Departmental Committee
(I) & (II)	Cases where ACP was already granted in existing hierarchy prior to Notification/formation of SSS and cases related to the period prior to formation of SSS i.e. 12 th February, 2002, where ACP has not been granted.	Since Service was constituted by including the Statistical functional posts of different Ministries/Departments/ Organizations in different scales and their PRs were still valid, Committee feels that ACP already granted to the incumbents in their existing hierarchy prior to notification/formation of SSS may not be withdrawn or revised. Similarly in the cases where ACP have not been granted prior to the period of formation of SSS w.e.f. 12.2.2002 the ACP may be granted to them in the existing hierarchy of incumbents at that time.

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<p>(iii) ACP cases for the period after formation of SSS and before implementation of MACPs scheme i.e. 12th February 2002 to 31st August 2004, particularly considering the existence of functional and non-functional Grades.</p>	<p>(i) In respect of cases for the period after formation of SSS and implementation of MACPs Scheme (12th February 2002 to August 2004), the Committee considered the Orders passed by various Tribunals/Courts in the ACP matters of SSS and also proposals/guidelines issued by DOP&T and recommended that ACP in SSS may be considered only in functional grades of hierarchy i.e. included in Rs.5000-8000/- scale, first ACP in 6500-10500/- and second ACP in 8000-13500/- scale.</p> <p>(ii) Committee also observed that while implementing the above decision another anomaly may arise in respect of persons who have already received ACPs in their existing hierarchy prior to 12.2.2002 as their pay would be less than the persons who will get ACP in functional grades after 12.2.2002. To remove such anomaly, as a one time measure, it is suggested that pay of those persons who got ACP or deemed to have got ACP prior to 12.2.2002 may be re-fixed in the functional grade of SSS i.e. 1st ACP in the scale of pay of Rs.6500-10500/- and 2nd ACP in the scale of pay of Rs.8000-13500/- w.e.f. 12.2.2002 ignoring earlier ACPs. This may be accepted by the Competent Authority in the light of MACP guidelines, where MACP in next grade pay has been allowed irrespective of scales in which appointments were granted ACP earlier.</p>
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(C.M. Tiwari) 9/7/09
 President, SSOA

(K.V.B.K. Murthy) 9/7/09
 General Secretary, SSOA

(Rajat Singh)
 President, AIASI

(Anil Saxena) 9.7.09
 General Secretary, AIASI

(Smt. J. Kurian)
 Member

(Dr. Anil Kumar)
 Member

(S.K. Mishra) 9/7/09
 Secretary

(T.K. Datta)
 Chairman

Annex C
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Minutes of the 2nd meeting of Special Departmental Anomaly Committee (SDAC) held on 15.06.2010 at 11.00 AM.

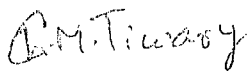
The meeting of the Special Departmental Anomaly Committee comprising both official and staff side was held in the conference hall, S.P.Bhawan, New Delhi on 15.06.2010 at 11.00AM to consider the modified proposal of the Ministry on the implementation of recommendations made by the Special Departmental Anomaly Committee in its first meeting held on 09.07.2009.


2. The following were present:

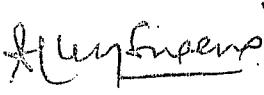
Official Side	Staff Side
1. Shri T.K.Dutta, DDG (FOD) -Chairman	1. Shri C.M.Tiwary, Gen. Secretary . (SSOA)-Member
2. Shri T.S.Jawahar, Director (ISS) -Member	2. Shri S.K.Gan, President . (SSOA)-Member
3. Shri B.S.Chhabra, Director (IFD) -Member	3. Shri Ajay Saxena, Gen.Secretary (AIASI) -Member
4. Shri S.K.Mishra, US (SSS) -Member	4. Shri Sushil Kohli -Member

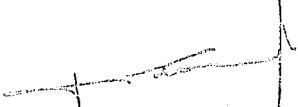
3. At the outset Shri T.K.Dutta, Chairman explained the need of calling meeting for seeking the views of the staff side on the stand taken by the Ministry that in view of prevailing NFG in SSS, ACP Scheme may be treated as withdrawn for the period between 12.02.2002 to 31.8.2008. SSS Officials explained the difficulties faced in implementing both NFG and ACP simultaneously in the cadre particularly when pay of 1st or 2nd ACP beneficiary may be more than the promotee. Staff side vehemently opposed the stand of the Ministry unanimously and were of the view that staff may not be deprived of the ACP benefits for the said period. Staff side were of the opinion that if provision of NFG is causing hindrance in extending ACP benefit in SSS in that case NFG may be withdrawn and ACP in functional grades may be granted as considered in the case of JEs of CPWD.


4. After deliberations, it was stressed by the staff side that recommendations made by the Special Departmental Anomaly Committee in its 1st meeting may be accepted by the Government in letter and spirit.

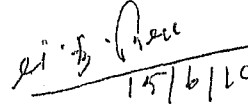

(C.M.Tiwari),
Gen. Secretary, (SSOA)

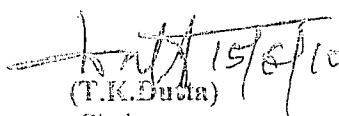

(S.K.Gan)
President, (SSOA)


(Ajay Saxena) . (Sushil Kohli)
Gen.Secretary (AIASI) Member


(B.S.Chhabra)
Member


(T.S.Jawahar)
Member


(S.K.Mishra)
Member


(T.K.Dutta)
Chairman

Annex D

Minutes of the 4th and final meeting of Special Departmental Anomaly Committee held on 22.3.2011 for considering ACP matters in SSS.

Meeting of Special Departmental Anomaly Committee for considering ACP matters in SSS was held on 22nd March, 2011 at Sardar Patel Bhavan, wherein following Members were present:-

- 1) Shri T.K. Dutta,
DDG, NSSO (FOD), Chairman

Official Side

- 2) Sh. B.S. Chhabra,
Director (IFD), Member
3) Sh. R.S. Yadav,
Deputy Secretary (SSS), Member
4) Sh. S.K. Mishra,
US (SSS), Under Secretary, Member

Staff Side

- 5) Sh. Virender Kumar,
President, SSOA, Member
6) Sh. C.M. Tiwari,
General Secretary, SSOA, Member
7) Sh. Ajay Saxena,
General Secretary, AIASI, Member

2. In pursuance of the direction of the Hon'ble High Court of Delhi, a Special Departmental Anomaly Committee was constituted by the MOS&PI to consider anomalies related to ACP in SSS. In its first meeting held on 9.7.2009, the committee had given specific recommendations to remove anomalies in implementation of ACP for the members of SSS. As the recommendation did not find favour with cadre, a revised proposal of withdrawal of ACP in view of prevailing Non-Functional Grade (NFG) in SSS was placed before the committee by the cadre in the 2nd meeting.

3. The committee, in its 2nd meeting held on 15.6.2010, discussed the matter and the staff side vehemently opposed the proposal of withdrawal of ACP and opined that if provision of NFG is causing hindrance in extending ACP benefit in SSS, NFG may be withdrawn and ACP in functional grade may be granted. It was also stressed by the staff side that the recommendations made by the committee in its first meeting should be accepted by the Government in letter and spirit.

4. The SSS cadre again put forward another proposal for consideration of the committee in its 3rd meeting held on 7.3.2011. The new proposal suggested that during the period between 12.2.2002 to 31.12.2005 when NFG were in existence, the persons who completed 12 or 24 years of service may be given option to exercise their preference either to avail benefit of four grade structure existed in SSS or to have financial upgradation under ACP in the hierarchal scale existed in their parent organization at the time of introduction of ACP scheme in 1999. No decision could be taken in the 3rd meeting as three of the members were absent. However, the SSS cadre was requested to circulate their proposal to all members, so that it may be discussed in the 4th meeting.

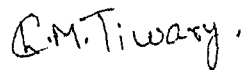
5. The proposal was discussed in the 4th meeting and the staff side informed that the cadre proposal was beyond the rules and was not acceptable to them. The representative of the SSS Cadre also did not insist on this proposal and placed another proposal before the committee. (Annex).

6. The main point in the new proposal is as below:

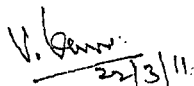
"For considering ACPs between the period 12.2.2002 and 31.12.2005, one non-functional scale i.e. Rs. 5500-9000/- may be ignored and other non-functional scale i.e. Rs. 7450-11500/- may be treated as functional for all purposes. Thus, there will be only three grades for ACP purposes i.e. 5000-8000, 6500-10500 & 7450-11500"

7. The staff side objected to introduction of a new functional grade, i.e. Rs. 7450-11500/- and insisted on the existing functional grade, i.e. Rs. 8000-13500/- for ACP purpose. Chairman and the representative of IFD also felt that introduction of a new functional grade at this stage is not desirable. Moreover, the grade of Rs. 8000-13500/- is actually the next functional grade in the hierarchy existing at that time. Introduction of a new scale retrospectively is also not permissible under the rules. The SSS cadre expressed their apprehension that if 2nd ACP is granted in the grade of Rs. 8000-13500/-, persons eligible between the period 1.1.2006 to 31.8.2008 will be eligible for replacement scale under 2nd ACP in PB3 with grade pay of Rs. 5400/-, which will enable them to claim 3rd MACP in the grade pay of Rs. 6600/- and this may arise another anomaly. The committee was set up to remove anomalies arising out of ACP scheme, not of MACP. Therefore, such anomaly, if any, may be taken up by the cadre separately.

8. After the deliberations, it has been decided that the recommendations of the first meeting should be followed, as it would remove all anomalies related to ACP in SSS. The Committee felt that cadre may examine the decision of the first meeting of the committee in consultation with DOP&T and Ministry of Finance.



(C.M. Tiwari)
General Secretary, SSOA


22/3/11

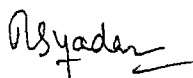
(Virender Kumar)
President, SSOA


22.3.11

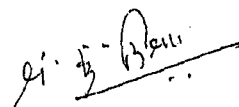
(Ajay Saxena)
General Secretary, AIASI



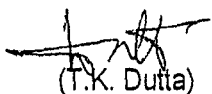
(B.S. Chhabra)
Director(IFD), Member



(R.S. Yadav)
Dy. Secy(SSS), Member



(S.K. Mishra)
US (SSS), Member



(T.K. Dutta)
DDG, NSSO(FOD), Chairman

Subordinate Statistical Service Division

Service Rules of SSS were finalized in a Tripartite Meeting held on 13.12.2001 where representative of Department of Expenditure, Department of Personnel and Training and Ministry of Statistics and P.I. were present. The impact of ACP scheme in the proposed four grade structure of SSS was also discussed. It was decided that each of the four grades in the proposed structure would count as specific grade in the hierarchy for the purpose of ACP on completion of 12 & 24 years service. After operationalization of SSS, guideline for considering ACP were issued on 25.06.2004 and its provisions were challenged in CAT PB, New Delhi and the Hon'ble CAT quashed the guidelines and ordered review of same in the background of Rule-13 and decision of Delhi High Court in F.C. Jain matter. In consultation with DOP&T and Ministry of Law the order of Hon'ble CAT were challenged before Hon'ble High Court of Delhi and Hon'ble High Court disposed of the matter with the direction that ACP issue should be considered by the Anomaly Committee, to which even the respondents have no objection. It was further directed that the Anomaly Committee shall also take into consideration observation made by the Tribunal in the judgment dated 27.6.2006. Hon'ble High Court also mentioned that they have been informed that even the DOPT have agreed with observation of the Tribunal in the said judgment with certain anomaly.

Recommendations made by the Special Departmental Anomaly Committee in its 1st & 2nd meeting was examined in the Ministry of Statistics and P.I. and were sent to DOP&T & D/o Expenditure but decision could not be taken for various reasons. On last occasion D/o Expenditure has advised that matter may be examined on file in consultation with DOP&T and then proposal may be sent to them for further consideration. Since some modifications were suggested in earlier recommendation of the Anomaly Committee, AS&FA (MOSPI) advised that a fresh meeting of the Committee may be held. Accordingly, 3rd meeting was convened on 7.3.2011 which was adjourned due to absence of some representatives from staff side.

In view of the above, anomaly in ACP of SSS is to be considered keeping in view of the followings:-

- i) Rule-13 of ACP Scheme
- ii) Judgment of Delhi High Court in F. C. Jain matter
- iii) Observations made by DOPT on the Order dated 27.6.2006

Rule 13:- It provides that "Existing time bound promotion scheme, including in-situ promotion scheme in various Ministries/Departments may as per choice, continue to be operational for the concerned categories of employees. However, these schemes shall not run concurrently with the ACP scheme. The Administrative Ministry/Department not the employees shall have the option in the matter to choose between the two schemes i.e. existing time bound promotion schemes or the ACP scheme, for various categories of employees. However, in case of switch over from the existing time bound promotion schemes to the ACP scheme, all stipulations (viz. For promotion, redistribution of posts, up-gradation involving higher function duties etc.) made under the former (Existing) schemes would cease to be operative. The ACP scheme shall have to be adopted in its totality".

At this point of time if the ACP scheme is withdrawn from the service or the non-functional grades is remained it may cause hardship to a group of employee or create anomaly and, hence, a middle path is to be adopted so that employees are not put to any financial dis-advantage and as the same time it do not cause any further anomaly in MACP Scheme which is more or less settled in SSS.

F.C.Jain case :- It has been observed by the Hon'ble High Court that by reason of fitment of pay, the government servant may not be treated at a higher post or higher grade of pay. The non-functional pay which was confined to only 50% of the cadre strength: by reason of the ACP scheme those who are stagnated in a particular post or a particular scale of pay is given higher scale of pay. Further, it was not a case where with the government servant could have been asked to opt for one of those schemes as both the scheme operate in two different scheme.

In this regard, it is pointed out that the above judgment was pronounced by the Hon'ble High Court on 18.4.2002 whereas the Tripartite Meeting was held on 13.12.2001 for considering service rules including ACP scheme in SSS. At that time a broad view was taken in the interest of service as the service was formed by amalgamating two grade structure i.e. Rs.5000/- and Rs.6500/- in non-FOD Offices and three grade structure in FOD i.e. Rs.5000/-, Rs.5500/- and Rs.6500/-. By introducing four grade structure in SSS i.e. Rs.5000/-, Rs.5500/-, Rs.6500/- & Rs.7450/-, the intension was, perhaps, to mitigate hardship faced by the employee holding statistical function posts. Subsequently, anomaly in implementing ACP scheme in SSS occurred which needs to be resolved in right earnest by ignoring one non-functional scale and treating other non-functional as functional for ACP purposes.

Observations of DOP&T:- It is understood that submission made by staff side before the Hon'ble High Court is perhaps based on the internal noting of DOP&T made on one of the files of SSS division of MOS&PI. However, the matter was referred to D/o Expenditure, and it was advised that the recommendation of the 6th Pay Commission may be awaited and Administrative Ministry could refer such anomalies to the 6th CPC.


Ministry of Statistics & P.I. requested 6th CPC for reconstitution of service into three functional grades i.e. Rs.5000/-, Rs.6500/- & Rs.7450/- so that anomaly could be removed. With reference to Anomaly in ACP matter of SSS it is stated that 6th CPC has considered the four Grade structure as separate grade and has merged post of Statistical Investigator Gr.II (6500-10500) in the higher scale of 7450-11500 (SI Gr.I) that existed in service corresponding to PB-2 Grade Pay - 4600. Posts of SI Gr.III and SI Gr.II have been merged in SI Gr.II (new) in PB-2 Gr.Pay 4200 corresponding to pre-revised scale of Rs.6500-10500. In view of this, service has been reconstituted into two grades w.e.f. 01.01.2006. It is stated that existence of ACP scheme as well as non-functional grades in the service prior to 01.01.2006 were contradictory resulting in anomaly.

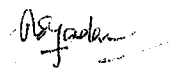
With effect from 1.9.2008 MACP scheme has been successfully implemented in SSS and incumbents who have completed 10, 20, and 30 years of service have been granted financial up-gradation in the grade pay of Rs.4600/- 4800/- & 5400/- in PB-2 respectively. Therefore, anomalies in ACP may be considered and removed so that no further anomalies are caused in MACP scheme which is almost settled in SSS. At the same time, financial interest of all grades of employee may be protected in such a manner so that juniors do not get higher pay than seniors as a policy decision although there is provision in ACP rules that junior may get higher pay than senior but spirit of this rules is for considering increment from date of joining and not as decision taken by the Government.

In view of above position as well as directions passed by the Hon'ble Tribunal and Courts, SSS division feels that following may be considered for resolving pending ACP cases of SSS. This will, however, be subject to approval of DOP&T and Ministry of Finance.

- i) The higher pay scales already granted under ACP scheme before the formation of SSS cadre in 2002 may be allowed to stay and there would no adjustment/recovery.
- ii) Similarly persons entitled for grant of ACP in their hierarchy prior to formation of service and whose cases could not be considered due to court cases/administrative reasons may also be considered.
- iii) For considering ACPs between the period 12.2.2002 and 31.12.2005, one non-functional scale i.e. Rs.5500-9000/- may be ignored and other non-functional scale i.e. Rs.7450-11500/- may be treated as functional for all purposes. Thus, there will be only three grades for ACP purposes i.e. 5000-8000, 6500-10500, & 7450-11500.

- iv) Irrespective of the scale of pay granted due to absorption/promotion in SSS or ACP granted, MACP will stand granted in hierarchal grade pay w.e.f. 1.9.2008.
- v) During the period 01.01.2006 to 31.8.2008, ACP, if any will be considered as per DOP&T guidelines.


(S.K. Mishra)
Under Secretary (SSS)


(R.S. Yadav)
Dy. Secretary (SSS)