

**GOVERNMENT OF ASSAM**  
**HOME (A) DEPARTMENT**  
Dispur, Guwahati

No. HMA.423/09/268

Dated Dispur, the 23<sup>rd</sup> September, 2011

**ORDERS BY THE GOVERNOR**

Whereas the Hon'ble Supreme Court of India in Civil Appeal No. 7922/2002 (arising out of SLP (C) No 17226 of 2000 titled Md. Abdul Kadir & Another -vs- Director General of Police, Assam & Others) passed the following order dated April 22, 2009:

- A. *The circular dated 17/03/1995 is quashed. The appellants shall not be subjected to annual terminations and re-appointments (subject to observations in para 8 above)*
- B. *The benefit of this Order will be available to other similarly situated ad hoc border staff, even if they have not approached the court for relief. In view of the above, the interlocutory applications for impleading are disposed of as having become infructuous.*
- C. *This Order will not however come in the way of ad hoc employees working as Border Staff, being subjected to any periodical medical examination or service review to assess their fitness and suitability for continuation*

Whereas the impugned Circular dated 17/03/1995 issued by the Inspector General of Police (Border) directed that all additional PIF personnel would be subject to annual termination and re-employment every year.

Whereas the implementation of the directions passed by the Hon'ble Supreme Court will have far reaching financial and policy implications, the views of Judicial, Pension and Public Grievances and Finance (Establishment-A) Departments were sought for on the issue. The views of all the three Departments are quoted below:

Judicial Department vide their endorsement dated 30/06/2010 advised that:

*".....in view of the above, those who were appointed on time scale of pay should be granted the benefit of increment from the date of initial appointment while those appointed on fixed pay may also be conferred with the benefit of time scale of pay as well as incremental benefits from the date of initial appointment.."*

Pension and Public Grievances Department vide their endorsement dated 14/09/2011 advised that:

*“Home (A) Department may consider fixation of the pay of re-employed ex-service men on their appointment in Civil Department as they will be appointed after getting military pension at the initial stage of the pay scale / pay band proposed to allow them.*

*As they will be appointed at the minimum of the relevant pay scale/pay band there may not arise the question of deduction of the military pension from the minimum of the pay scale/pay band.*

*If the pensioner concerned acquire qualifying service in civil appointment for pensionary benefits, their case shall be governed under Rule 176 of the Assam Services (Pension) Rules 1969 and not under the provision of Rule 173 of the said Rules.*

*However, those who are appointed on or after 01.02.2005 their cases shall not be governed by the Assam Services (Pension) Rules 1969 but they will be governed by the New Defined Contribution Pension Scheme, 2009*

*In view of above, Home (A) Department may take appropriate decision considering financial and other implications”.*

The Finance (Establishment-A) Department vide their endorsement dated 15/09/2011 advised that:

*“Considering the views of Judicial Department at P.38N and P & P.G. Department’s views above as well as minutes of the meeting at Flag’U’, Finance (Estt-A) Department have no objection to the proposal for extending relevant time scale benefits along with regular increments to ex-servicemen appointed under the additional PIF Scheme from the date of their initial appointment.*

*Further, as the incumbents are/were already in service the relaxation of Rule 17(1) of the F.R. is not necessary in this regard.*

*As regards payment of arrear of Rs. 22.46 crores (approx) through allocation of additional budget provision, the Department may move to concerned Control Branch i.e. Finance (EC.II) Department and Finance (Budget) Department, indicating appropriate Head of Account etc. with details”.*

Whereas the State Government has already granted an annual increment to all additional PIF personnel w.e.f. April 2009 vide Letter No. HMA.423/09/216 dated 19/02/2010. The State Government has also passed on the benefits of the revised scale of pay under the Revision of Pay Rules, 2010 to all ex-servicemen with concurrence of Finance Department.

Whereas the following issues require the consideration of the State Government and decision:

1. Whether ex-servicemen would be entitled to the benefit of time scale of pay with effect from the date of initial appointment.
2. Whether the ex-servicemen are entitled to their military pension during their civil employ;
3. Whether the ex-servicemen shall be entitled to a second pension for services rendered during civil employ on attaining superannuation;

Therefore, considering the facts and circumstances and after due consultation with various departments, the Governor of Assam is pleased to order as follows:

1. The Circular dated 17/03/1995 issued by the Inspector General of Police (Border) is quashed *ab initio*;
2. All the ex-servicemen appointed under the additional PIF scheme will get the benefit of time scale of pay w.e.f. the date of their initial appointment. Their pay shall be fixed at the minimum of the pay scale on the date of initial appointment. Thereafter annual increments shall be granted, as admissible. They shall be treated as employees against temporary posts co-terminus with the additional PIF Scheme of Government of India;
3. The ex-servicemen will continue to draw their military pension subject to Note 1(i) and 1(ii) below rule 173 (b) of Assam Services (Pension) Rules, 1969 as amended;
4. The arrear dues of the ex-servicemen shall be released to them expeditiously, subject to availability of budget. DGP, Assam will submit a proposal for additional budget through Supplementary demand;
5. Ex-servicemen would also be entitled to pension against their services in civil employment, subject to completion of qualifying service, as per Rule 176 of the Assam Services (Pension) Rules, 1969. However, those who are appointed on or after 01.02.2005 their cases shall not be

governed by the Assam Services (Pension) Rules 1969 but they will be governed by the New Defined Contribution Pension Scheme, 2009.

6. The arrear dues of the contempt petitioner namely Shri Dharmeswar Baishya and of the other petitioner in the CA No. 7922/2002 namely Shri Abdul Kadir shall be paid immediately out of the budget provision in the appropriate head of account of 2011 – 12 to avoid the Contempt of Hon'ble Supreme Court of India;

This Order is passed in compliance of the Judgement and order dated 22/04/2009 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 7922/2002.

The DGP, Assam and Additional DGP (Border), Assam Police Border Organization are directed to take immediate steps to comply with this Order.

By Order and in the name of the Governor of Assam.

**Sd/- Jishnu Barua**  
Commissioner & Secretary  
to the Government of Assam  
Home Department

Memo No HMA. 423/09/268-A

Dated Dispur, the 23<sup>rd</sup> September, 2011

Copy to:-

1. The Director General of Police, Assam, Ulubari, Guwahati with a request to implement the order and host a copy of this order on the website of Assam Police.
2. The Principal Secretary to the Government of Assam, Finance Department, Dispur, Guwahati
3. The Secretary to the Government of Assam, Pension and Public Grievances Department, Dispur, Guwahati
4. The Additional Director General of Police (Border), Assam, Srimantpur, Guwahati for immediate implementation of the order.

By order etc.

**Sd/- Partha P. Majumdar)**  
Deputy Secretary to the Government of Assam  
Home (A) Department