

From

C.Dileep Kumar,
Staff No.4393,
Senior Accountant,
Works Section
Cochin Port Authority.

13 NOV 2024

To
The Chief Information Officer ,
Cochin Port Authority.

Sub: - Request for information under RTI ACT 2005.


1. Kindly provide copy of documents containing entire note sheets initiated by section clerk and comments/remarks/approval of all the higher authorities of CoPA in considering the representation dated 12.04.2024 submitted by Shri. C Dileep Kumar, Staff No.4393, Senior Accountant, Works Section, Cochin Port Authority for granting fixation of pay on promotion in line with Judgment in WPC 19081/2014 of Hon'ble High Court of Kerala.

2. Copy of legal opinion obtained by CoPA in connection with representation dated 12.04.2024 submitted by . C Dileep Kumar, Staff No.4393, Senior Accountant, Works Section, Cochin Port Authority for granting fixation of pay on promotion.

3. Kindly provide copy of documents containing entire note sheets initiated by Traffic Department containing proposal submitted by section clerk and comments/remarks/approval of all the higher authorities of CoPA for granting fixation of pay and arrears to Shri. K P Rajendran staff No.4493 and others in line with Judgment in WPC 19081/2014 of Hon'ble High Court of Kerala.

Thanking you

Yours sincerely


C.Dileep Kumar,
Staff No.4393,
Senior Accountant,
Works Section

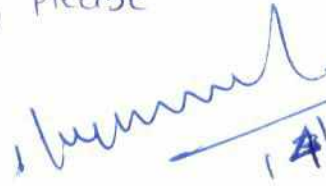
Willing ton Island
13.11.2024

Attached : Postal order for Rs 10
P.O No 61F 781182

(9-9-0)

Endt. No. RTI Cell/CDK/1752/2024-5 DE. 13/11/2024

Copy of RTI Request is forwarded to CPIO's/Traffic Manager / FA & CAO, Co PA, for furnishing the details sought for by the applicant subject to the provision under RTI Act, 2005 to the RTI Cell on or before 20/11/2024, Please


14/11/24

APIO (GAD)

MS
13/11/24



ADMINISTRATIVE OFFICE,
COCHIN – 682009

संख्या /No.RTI Cell/P/1782/2024-S

दिनांक: 03.12.2024

सेवा में/To

Shri. C. Dileep Kumar
Staff No. 4393
Senior Accountant
Works Section
Cochin Port Authority

Sir,

विषय /Sub : Information under the RTI Act, 2005- reg.
संदर्भ /Ref : Your application dated 13.11.2024

With reference to the above, the information is given below.

- Sl. No.1 - Attached (9 pages)
- Sl. No.2 - Attached (2 pages)
- Sl. No. 3 - Attached (20 pages)

If you are not satisfied with this reply, you may appeal to Deputy Chairperson, Cochin Port Authority, Cochin - 682009 being Appellate Authority against the same. The period within which an appeal could be preferred is 30 days from the date of this communication.

Yours faithfully,

CPIO/Sr. Welfare Officer
General Administration Department
Cochin Port Authority

Received
C. Dileep Kumar
12/11/2024

कोचिन पत्तन प्राधिकरण | विलिंगडन आईलेण्ड | कोचिन - 682 009 | भारत
Cochin Port Authority | Willingdon Island | Cochin - 682 009 | India
www.cochinport.gov.in | trainingcell@cochinport.gov.in | 04842585119 Fax: +91484 2668163

File No:
FD/MACP/Saudamini/2020

Cochin Port Trust

NOTE

Sub:- Finance - - 2nd MACP granted to Smt.C.B.Saudamini reg

Note #32

Note to the FA&CAO, CoPA

Sub:- Request from Sri.C.Dileep Kumar,S.No.4393,Sr.Acctt - reg:-

Paper under consideration is the request received from Sri.C.Dileep Kumar,Staff.No.4393, Sr.Acctt regarding fixation of pay on promotion to the post having in same scale (Ref.1)

He is informing that, the Hon'ble High Court of Kerala in its judgement dated 03.11.2022 in WPC 19081/2024 had directed to restore the benefit granted to the petitioner Sri.K.P.Rajendran & others as per Secretary's Note No.A8/Fixation/2012/S dated 25.03.2013 and to refix their pay accordingly with in a period of three months from the date of receipt of copy of the judgement. The appeal filed by the CoPA in WA 477/2023 was dismissed by the Hon'ble High court of Kerala and upheld the judgement of the single judge. According to this judgement, Sri.K.P.Rajendran and 3 others who are the beneficiaries to this was got fixation and arrears.

In this regard, he is stating that, he was not at all a party in this case, but he shall be entitled for this judgement, wherein he was submitted a representation to the FA&CAO at the time of his joining as LDC from the post as Fireman, his representation was rejected by the FA&CAO (Ref.2). Hence he was not get the benefits which is ordered by the Hon'ble court to Sri.K.P. Rajendran and 3 others.

In this regard, FA&CAO's kind attention is invited to the enclosure attached by Sri.C.Dileep Kumar along with his request. Which is the note dated 16.11.2013, was forwarded by the FA&CAO to the Dy.Conservator, CoPA and the same was not been endorsed to the concerned employee. (ref)

In this regard, it may kindly be noted that, this is an administrative matter and which needs a legal opinion from Legal section of CoPA.

Hence, if approved, we may forward the file to the Law Officer, CoPA for necessary further action in the above matter please.

Submitted for approval please.

Note #33



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57
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FA & CAO may please see Note Para #32 . PUC is a request for Pay parity submitted by Sri.C.Dileep Kumar,Staff.No.4393, Sr.Acctt , Finance Dept. It has been stated that Sri. K.P Rajendran,Staff No.4493, Tally Supervisor, Sri. K.J. John, Staff No.4498 Tally Supervisor and Sri. K.G.Babu, Staff No.4399, Shed Writer, 1 to 3 Petitioners of WP (C) No.19081 of 214 have been granted additional increment in connection with their promotion to Shed Clerk from the post of Leading Fireman, which was denied to them based on a Note dated 23-08-2013 of FA & CAO (Note) after granting the benefit to them at the time of their promotion and the same has been restored to them vide Judgement dated 03-11-2022 set asiding the WA 477/2023 filed by CoPA against the judgement of WP(C)No.19081/2014. Sri. Dileep has stated that though he had not a party to the above Writ petition, his case is identically placed as the petitioners mentioned in the case, therefore he is also entitled for the benefit as per the judgement above for which he had submitted a representation previously but the same was rejected.

Now he has requested to grant him one additional increment with retrospective effect for which he is entitled on his promotion as LDC in 2007 and refix his pay as per the above judgement. The service records of Sri. Dileep has not verified, the same will be done after geting approval of the competent authority. Since the incumbent is not a party in the above Writ petition, a legal opinion from our Legal cell may be sought as to whether the above judgement can applicable for another person of same prayer ?. If approved pl.

Note #34

As discussed, please submit the arrear payable if pay is re-fixed as per the representation given by Shri Dileep.

Note #35

Kindly refer Note Para #34 in this regard the arrear calculation statement (worked out from HR Division) (refer) (refer) for the period from 14.09.2007 to 30.06.2024. It is noted that the calculation for the period from 14.09.2007 to 30.04.2010 has been worked out manually amounting to Rs.18,480/- (refer) .and the remaining period from 01.05.2010 to 30.06.2024 amounting to Rs.3,47,130/- (refer) will be system generated . Hence the total financial implication comes to Rs.3,65,610/- (Rupees Three lakh sixtyfive thousand six hundred and ten only) in r/o Sri.Dileepkumar C, Sr,Acctt. is submitted for perusal please

Note #36

This has reference to Note Para #32 which is submitted based on the request received from Sri.C.Dileep Kumar,Staff.No.4393, Sr.Acctt regarding fixation of pay on promotion to the post having same scale as per the extension of benefit allowed by Hon'ble High Court of Kerala in WPC19018/2014.



In his request it is stated that by judgement dated 03.11.2022 in WPC 19018/2014 the Hon'ble High Court of Kerala had directed restoration of benefit granted to the petitioners as per Secretary's note no A8/Fixation/2012/S dated 25.03.2013 and re fix their pay accordingly within a period of three months from the date of receipt of copy of judgement.

It has been learnt that directions in the judgement has since been complied with and the pay fixation in respect of the parties to the Writ petition have been carried out and the arrears due have been released.

He has further stated that though he is not a party to the above Writ Petition he was also identically placed as per the petitioner's in the above Writ Petition and therefore he is entitled for the benefit as per judgement in WPC19018/2014.

In the absence of any specific common order from GAD for considering the pay fixation of such similarly situated cases for giving additional one increment by virtue of the above judgement, the views of legal section is being sought that whether the request of Shri Dileep Kumar can be taken for consideration by virtue of judgement dated 03.11.2022 in WPC 19018/2014.

Note #37

May kindly clarify if the service particulars of Shri. Dileep would be same as that of the petitioners in the WP.

Note #38

Please submit as required under Note Para #37

Note #39

With reference to the ~~law 37/e~~ ~~Case's~~ query on pre- page Note Para #37 that 'to clarify the service particulars of Shri. C. Dileepkumar would be the same as that of the petitioners.

In this regard is informed that the service records of the petitioners of WPC 19018/2014 are not available in Finance Department. However, it is seen in file records, the copies of TM's Note to Secretary vide No. A6/WP31400/2013/T dtd. 14.02.2014 pursuant to Judgement on WP No.31400 of 2013 filed by Sri.K.P.Rajendran, Tally Supervisor and 2 others before High Court of Kerala. (Attached click). It is understood that the petitioners and Shri. C. Dileepkumar were working as Fireman in the Marine Dept. On the ground of filling up of 20% quota the petitioners were appointed as Shed Clerk in Traffic Department while holding Fireman ACP with the scale of pay Rs.4300-8120. In the case of Shri. C. Dileepkumar, who was appointed as LDC under 20% quota in Marine Dept. on 14.09.2007 (Attached click) while holding Fireman ACP Scale of pay Rs.4300-8120 (Attached click).



Based on the representation from Shri. C. Dileepkumar, Dy.C was forwarded a Note to FA&CAO (Attached click). In this regard FA&CAO was replied vide Note No.FD/Estt./Pay Fixation/2013 dtd.16.11.2013 (Attached click) that, the posting of LDC in the Scale of Pay Rs.4300-8120 while holding ACP Scale of Leading Fireman, (Class III) of Rs.4300-8120. But the feeder post of LDC is Fireman with Pay Scale of Rs.3900-6860 (i.e. below the rank of LDC). Therefore the Scale of Pay of Feeder and Promotion is not same Pay Scale. It is also pointed out that the Leading Fireman with Pay Scale of Rs.4300-8120 is not for feeder category for the selection post of LDC. Hence, he is not eligible for two increments as per Secretary's Note No.A8/Fixation/2012/S dtd.25.03.2013 (Attached click).

Now, Shri. C. Dileepkumar has requested again that the Hon'ble High court of Kerala in its Judgement dated 03.11.2022 in WPC 19018/2014 was related to petition on his similar case. However he was not at all a party in this case, but he shall be entitled for this Judgement. (Attached click).

In this circumstances, it is kindly noted that as the Cochin Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 2010 "in case of Promotion/Absorption/Deputation, grades from which it should be made" that

1. LDC: "From Cl. III employees holding scale of pay below LDC scale and Cl. IV employees through a written competitive examination" (Attached click)
2. Shed clerk: By Direct Recruitment- (Attached click)

In view of the above, Finance dept. has already informed to Dy.C vide FA&CAO's Note No.FD/Estt./Pay Fixation/2013 dtd.16.11.2013 that 'the case of Shri. Dileepkumar was appointed as LDC in the Scale of Pay Rs.4300-8120 while holding ACP Scale of Leading Fireman, (i.e Fireman ACP) in the scale of Rs.4300-8120 which a Class III scale. The feeder post of LDC is Fireman with Pay Scale of Rs.3900-6860 (i.e. below the rank of LDC). He has been considered for selection to LDC, as he was Firemen (ACP). Therefore, in this scale of pay of feeder and promotion is not coming in the same scale of pay. It is also pointed out that the Leading Fireman with Pay Scale of Rs.4300-8120 is not for feeder category for LDC/Shed Clerk. Hence, he is not eligible for two increments as per Secretary's Note No.A8/Fixation/2012/S dtd.25.03.2013'. It is informed that, the same stand is continuing in this subject matter.

In this circumstances, since this matter falls under the purview of Administration and is being dealt by GAD. Legal Cell may clarify whether he is eligible to get two increments as per Hon'ble High court of Kerala in its Judgement dated 03.11.2022 in WPC 19018/2014 in consultation with Secretary, CoPA.

Submitted please

Note #40 /



Kindly refer to Note Para #39 the Finance dept. has already informed to Dy.C vide letter dt..16.11.2013 that, **he is not eligible for two increments as per Secretary's Note No.A8/Fixation/2012/S dtd.25.03.2013'**. Therefore the same stand is continuing in this subject matter. Since this is a policy matter which is dealt with GAD. Legal Cell may clarify whether Sri Dileepkumar is eligible to get two increments as per Hon'ble High court of Kerala in its Judgement dated 03.11.2022 in WPC 19018/2014 in consultation with Secretary, CoPA.

Submitted for approval please.

Note #41

With reference to Note Para #37 the submissions at Note Para #39 may please seen.

Note #42

1. The benefit of 2 increments was made as per an administrative order issued by the Secretary in cases where the scale of pay of the feeder and promotion posts fall in the same revised pay scale with effect from 01.01.2007.
2. Scale of Pay of Firemen in 2007 was 3900-6860. Scale of pay of Leading Firemen was 4300-8120. As per the Assured Career Progression Scheme, the Firemen with 12 years of service without obtaining promotion will be placed in the higher pay scale of 4300-8120. Such Firemen receiving ACP benefits is named as Firemen (ACP) in CoPA.
3. W.P.(c) 19081/2014 was filed by KP Rajendran and 2 others claiming benefit of 2 increments stating that their feeder post being Firemen (ACP) and promotion post being shed clerk is having same pay scale. The Single Bench vide judgment dated 03.11.2022 allowed the Writ Petition stating that the pay scale of pay held by them of Leading Firemen was equivalent to the scale of pay of the post of Shed Clerk. The Court also set aside Ext. P5 communication issued by FA&CAO to all Heads of the Departments denying such entitlement citing reference to the case of C. Dileepkumar. The Writ Appeal filed by Cochin Port also was dismissed vide judgment dated 18.12.2023 citing that the finding of the Single Bench do not suffer infirmity or illegality.
4. Pursuant thereto, the management decided to accept the judgment and accordingly the payment was released to the petitioner.
5. The case of Dileep Kumar is similar to above, with only difference that he was promoted to the post of LDC instead of Shed Clerk. Hence, the request of Dileep Kumar can be considered on the same ground and being similarly situated.
6. However, of late, it has been noticed that in an earlier Writ Appeal being W.A.No. 2211 of 2004 the challenge was that Firemen ACP cannot be given promotion as LDC as they hold scale of pay of Class III and not that of Class IV. The RR for 20% quota under LDC then provided that the feeder post should be Class IV category. The Division Bench in that case found that the classification is with respect to posts and every post will have one or another scale of pay. That one incumbent holding such post for long time is given, as a



concession, a higher scale, does not mean that post is having that scale. Only the incumbent is given a higher grade. (Judgment in WA 2211 of 2004)

7. Adapting above observation, as the pay scale of feeder post of Firemen held by Dileep Kumar was not same that of the promotional post of LDC, he is not entitled for receiving 2 increments as per the administrative order mentioned above. If this view is taken, it is suggested to reply as follows: *"The benefit of granting two increments arises if the scale of pay of the feeder and promotion posts fall in the same revised pay scale. The above classification is with respect to posts and every post will have one or another scale of pay. Giving a higher scale, as a concession, does not mean that post is having that scale. Only the incumbent is given a higher grade. Since the scale of pay of the feeder post of Fireman was not the same of that of promotion post of Lower Division Clerk, you are not entitled for the benefit of two increments as stated in the administrative order dated 25.03.2013. Your representation dated 12.04.2024 is accordingly disposed of as above."*
8. Both being judgments of Division Bench of High Court of Kerala, any view can be taken. However it is suggested that the view based on Judgment in W.A. 2211/2004 would align with the stand of CoPA in the matter.

Note #43

Note #44

Note #45

Please see the ~~Para #42~~ Note Para #42 in connection with the request submitted by Sri.C. Dileep Kumar, Staff.No.4393, Sr. Accountant, Finance Dept, regarding fixation of pay on promotion to the post having same scale as per the extension of benefit allowed by Hon'ble High Court of Kerala in WPC19018/2014.

He has informed that, the Hon'ble High Court of Kerala in its judgement dated 03.11.2022 in WPC 19081/2024 had directed to restore the benefit granted to the petitioner Sri. K.P. Rajendran & others as per Secretary's Note No.A8/Fixation/2012/S dated 25.03.2013 and to refix their pay accordingly within a period of three months from the date of receipt of copy of the judgement. The appeal filed by the CoPA in WA 477/2023 was dismissed by the Hon'ble High court of Kerala and upheld the judgement of the single judge. According to this judgement, Sri. K.P. Rajendran and 3 others who are the beneficiaries to this was got fixation and arrears.

In this regard, he is stating that, he was not at all a party in this case, but he shall be entitled for this judgement, wherein he was submitted a representation to the FA&CAO at the time of his joining as LDC from the post as Fireman, the same was rejected by the FA&CAO. Hence he was not get the benefits, the similar case is ordered by the Hon'ble court to Sri.K.P. Rajendran and 3 others.



In this regard, FA&CAO's kind attention is invited views of the Legal section. The benefit of 2 increments was made as per an administrative order issued by the Secretary in cases where the scale of pay of the feeder and promotion posts fall in the same revised pay scale with effect from 01.01.2007.

Scale of Pay of Firemen in 2007 was 3900-6860. Scale of pay of Leading Firemen was 4300-8120. As per the ACP, the Firemen with 12 years of service without obtaining promotion will be placed in the higher pay scale of 4300-8120. Such Firemen receiving ACP benefits is named as Firemen (ACP) in CoPA.

WP(C) 19081/2014 was filed by Sri.KP. Rajendran and 2 others claiming benefit of 2 increments stating that their feeder post being Firemen (ACP) and promotion post being Shed Clerk is having same pay scale. The Single Bench vide judgment dated 03.11.2022 allowed the Writ Petition stating that the pay scale of pay held by them of Leading Firemen was equivalent to the scale of pay of the post of Shed Clerk. The Court also set aside Ext. P5 communication issued by FA&CAO to all Heads of the Departments denying such entitlement citing reference to the case of C. Dileepkumar. The Writ Appeal filed by Cochin Port also was dismissed vide judgment dated 18.12.2023 citing that the finding of the Single Bench do not suffer infirmity or illegality. The management decided to accept the judgment and accordingly the payment was released to the petitioner.

The Legal cell's Note paragraph 5, 6 and 7 are mentioned that:

Para: 5 The case of Dileep Kumar is similar to above, with only difference that he was promoted to the post of LDC instead of Shed Clerk. Hence, the request of Dileep Kumar can be considered on the same ground and being similarly situated.

Para 6: However, of late, it has been noticed that in an earlier Writ Appeal being **W. A. No. 2211 of 2004** the challenge was that Firemen ACP cannot be given promotion as LDC as they hold scale of pay of Class III and not that of Class IV. The RR for 20% quota under LDC then provided that the feeder post should be Class IV category. The Division Bench in that case found that the classification is with respect to posts and every post will have one or another scale of pay. That one incumbent holding such post for long time is given, as a concession, a higher scale, does not mean that post is having that scale. Only the incumbent is given a higher grade. (Judgment in WA 2211 of 2004)

Para 7: Adapting above observation, as the pay scale of feeder post of Firemen held by C. Dileep Kumar was not same that of the promotional post of LDC, he is not entitled for receiving 2 increments as per the administrative order mentioned above. If this view is taken, it is suggested to reply as follows: *"The benefit of granting two increments arises if the scale of pay of the feeder and promotion posts fall in the same revised pay scale. The above classification is with respect to posts and every post will have one or another scale of pay. Giving a higher scale, as a concession, does not mean that post is having that scale. Only the incumbent is given a higher grade. Since the scale of pay of the feeder post of Fireman was not*



the same of that of promotion post of Lower Division Clerk, you are not entitled for the benefit of two increments as stated in the administrative order dated 25.03.2013. Your representation dated 12.04.2024 is accordingly disposed of as above."

Para 8: Both being judgments of Division Bench of High Court of Kerala, any view can be taken. However it is suggested that the view based on Judgment in W.A. 2211/2004 would align with the stand of CoPA in the matter.

As viewed by Legal Cell that **"it is suggested that the view based on Judgment in W.A. 2211/2004 would align with the stand of CoPA in the matter"**

In this circumstances, since this matter falls under the purview of Administration and is being dealt by GAD. Hence, we may inform the above legal opinion to Secretary for taking further action in this matter.

Submitted please

Note #46

Kindly refer to Note Para #45

Sri C Dileep Kumar has informed that, the Hon'ble High Court of Kerala in its judgement dated 03.11.2022 in WPC 19081/2024 had directed to restore the benefit granted to the petitioner Sri. K.P. Rajendran & others as per Secretary's Note No.A8/Fixation/2012/S dated 25.03.2013 and to refix their pay accordingly with in a period of three months from the date of receipt of copy of the judgement. Accordingly the file was forwarded for legal opinion Note Para #39. The file received from Legal Cell on 15.10.2024 and viewed that "There are 2 Judgements **"it is suggested that the view based on Judgment in W.A. 2211/2004 would align with the stand of CoPA in the matter"** Note Para #42 (refer)(refer)

In this circumstances, since this matter falls under the purview of Administration and is being dealt by GAD. The Secretary may clarify whether he is eligible to get two increments as per Hon'ble High court of Kerala in its Judgement dated 03.11.2022 in WPC 19081/2014 in consultation with Legal Cell/CoPA.

Submitted please /

Note #47

The proposal at Note Para #32 the request received from Sri.C.Dileep Kumar, Staff.No.4393, Sr.Acctt regarding fixation of pay on promotion to the post having in same scale and the comments of legal cell at Note Para #42 may please seen.

Two different judgements of Division Bench of High Court of Kerala in the same matter may also seen. (Judgment in WA 2211 of 2004) (Judgment in WA 19081 of 2014)

Para 6 of the Note Para #42 may please seen where it is mentioned that of late, it has been noticed that in an earlier Writ Appeal being W.A.No. 2211 of 2004 the challenge was that Firemen ACP cannot be given promotion as LDC as they hold scale of pay of Class III and not that of Class IV. The RR for 20% quota under



LDC then provided that the feeder post should be Class IV category. The Division Bench in that case found that the classification is with respect to posts and every post will have one or another scale of pay. That one incumbent holding such post for long time is given, as a concession, a higher scale, does not mean that post is having that scale. Only the incumbent is given a higher grade.

Adapting above observation, as the pay scale of feeder post of Firemen held by Dileep Kumar was not same that of the promotional post of LDC, he is not entitled for receiving 2 increments as per the administrative order mentioned above. Based on the above view is, it is suggested to reply as follows:

"The benefit of granting two increments arises if the scale of pay of the feeder and promotion posts fall in the same revised pay scale. The above classification is with respect to posts and every post will have one or another scale of pay. Giving a higher scale, as a concession, does not mean that post is having that scale. Only the incumbent is given a higher grade. Since the scale of pay of the feeder post of Fireman was not the same of that of promotion post of Lower Division Clerk, you are not entitled for the benefit of two increments as stated in the administrative order dated 25.03.2013. Your representation dated 12.04.2024 is accordingly disposed of as above."

Draft reply placed for approval please.

Note #48

Draft #1 - General Form Approved.



NOTE

Sub:- Finance -- 2nd MACP granted to Smt.C.B.Saudamini reg

Note #42

1. The benefit of 2 increments was made as per an administrative order issued by the Secretary in cases where the scale of pay of the feeder and promotion posts fall in the same revised pay scale with effect from 01.01.2007.
2. Scale of Pay of Firemen in 2007 was 3900-6860. Scale of pay of Leading Firemen was 4300-8120. As per the Assured Career Progression Scheme, the Firemen with 12 years of service without obtaining promotion will be placed in the higher pay scale of 4300-8120. Such Firemen receiving ACP benefits is named as Firemen (ACP) in CoPA.
3. W.P.(c) 19081/2014 was filed by KP Rajendran and 2 others claiming benefit of 2 increments stating that their feeder post being Firemen (ACP) and promotion post being shed clerk is having same pay scale. The Single Bench vide judgment dated 03.11.2022 allowed the Writ Petition stating that the pay scale of pay held by them of Leading Firemen was equivalent to the scale of pay of the post of Shed Clerk. The Court also set aside Ext. P5 communication issued by FA&CAO to all Heads of the Departments denying such entitlement citing reference to the case of C. Dileepkumar. The Writ Appeal filed by Cochin Port also was dismissed vide judgment dated 18.12.2023 citing that the finding of the Single Bench do not suffer infirmity or illegality.
4. Pursuant thereto, the management decided to accept the judgment and accordingly the payment was released to the petitioner.
5. The case of Dileep Kumar is similar to above, with only difference that he was promoted to the post of LDC instead of Shed Clerk. Hence, the request of Dileep Kumar can be considered on the same ground and being similarly situated.
6. However, of late, it has been noticed that in an earlier Writ Appeal being W.A.No. 2211 of 2004 the challenge was that Firemen ACP cannot be given promotion as LDC as they hold scale of pay of Class III and not that of Class IV. The RR for 20% quota under LDC then provided that the feeder post should be Class IV category. The Division Bench in that case found that the classification is with respect to posts and every post will have one or another scale of pay. That one incumbent holding such post for long time is given, as a concession, a higher scale, does not mean that post is having that scale. Only the incumbent is given a higher grade. (Judgment in WA 2211 of 2004)
7. Adapting above observation, as the pay scale of feeder post of Firemen held by Dileep Kumar was not same that of the promotional post of LDC, he is not entitled for receiving 2 increments as per the administrative order mentioned above. If this view is taken, it is suggested to reply as follows: "*The benefit of granting two increments arises if the scale of pay of the feeder and promotion posts fall in the*



same revised pay scale. The above classification is with respect to posts and every post will have one or another scale of pay. Giving a higher scale, as a concession, does not mean that post is having that scale. Only the incumbent is given a higher grade. Since the scale of pay of the feeder post of Fireman was not the same of that of promotion post of Lower Division Clerk, you are not entitled for the benefit of two increments as stated in the administrative order dated 25.03.2013. Your representation dated 12.04.2024 is accordingly disposed of as above."

8. Both being judgments of Division Bench of High Court of Kerala, any view can be taken. However it is suggested that the view based on Judgment in W.A. 2211/2004 would align with the stand of CoPA in the matter.



12

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File No: A6/WP(C) 19081 of
2014/ KP Rajendran/T

Cochin Port Trust

NOTE

Sub:- Traffic - - WP(C) 19081/2014, K.P.Rajendran V/s CoPT & Otrs

Note #34 Renjith Kumar K R, SR.DCA-1, TM-OFFICE, 09-Jan-2024 01:09 PM

1. Please see the Law Officer (**Email dtd 21.12.2023**) informing that appeal filed by CoPA challenging the judgment in the Writ Petition filed by Sri.K.P.Rajendran and others is dismissed by the Hon'ble High Court of Kerala. LA has also advised to comply with the judgment in the WP.
2. The Hon'ble High Court of Kerala in the Judgment dtd 03.11.2022 has directed the respondents to restore the benefits granted to the petitioners and re-fix their pay accordingly. Appropriate action shall be taken within a period of three months from the date of receipt of a copy of this judgment (**refer**).
3. The Wharf Supdt. after verification has forwarded the Pay fixation arrears for Sri.K.P.Rajendran, Sri.K.J.John and Sri.K.G.Babu. The total expenditure comes to Rs.816,146/- as per the judgment (**statement**). The statement which has been attached is verified by the HR and forwarded to E&O office for further action.
4. Sr.AO-I has submitted that Finance Dept. has no role in this regard as the restoration of benefits granted to them earlier and refixing of the pay is to be dealt by the HR Division of GAD and concerned department (**refer**) which is approved by FA & CAO.
5. As per the **Delegation of Powers** in the case of Legal Matters: Chairperson is the competent authority for sanctioning the payments (**refer**).
6. In view of the the above, Chairperson's sanction is sought for the payment of arrears to the petitioners Sri.K.P.Rajendran, Sri.K.J.John and Sri.K.G.Babu for an amount of **Rs.816,146/-** as per the judgment of the Hon'ble High Court of Kerala and the amount may be remitted to the pension/ salary account.

DTM
Sr.DTM
TM
Secretary

Note #35 D. Anilkumar, DTM (OPERATION), 09-Jan-2024 01:13 PM

May be approved.

Sr.DTM
TM
Secretary
Dy.Chairperson
Chairperson

Note #36 Jimmy George, SR. DY. TRAFFIC MANAGER, 09-Jan-2024 01:17 PM



May be approved.

Note #37 Vipin R. Menoth, TRAFFIC MANAGER, 09-Jan-2024 01:25 PM

1. Kindly peruse Note Para #34 regarding the payment of pay fixation arrears in compliance of the direction of the Hon'ble High Court of Kerala in the Judgment dtd 03.11.2022 (refer).
2. As per the **Delegation of Powers** in the case of Legal Matters: Chairperson is the competent authority for sanctioning the payments (refer).
3. In view of the the above, Chairperson's sanction is sought for the payment of arrears to the petitioners Sri.K.P.Rajendran, Sri.K.J.John and Sri.K.G.Babu for an amount of **Rs.816,146/-** as per the judgment of the Hon'ble High Court of Kerala and the amount may be remitted to the pension/ salary account.
4. The file is routed through the Secretary for the administrative verification and through the FA&CAO for financial concurrence before submitting to the Competent Authority.

Secretary
FA&CAO
Dy. Chairperson
Chairperson

Note #38 C Premakumari, SECRETARY, 10-Jan-2024 05:20 PM

HR division may please verify and resubmit.

Note #39 R Satish, SR. DS, 11-Jan-2024 07:44 AM

May pls verify.

Note #40 Srinivasan N.J, MANAGER (B&C), 17-Jan-2024 03:40 PM

1. As observed by the Secretary Note Para #38, the Pay arrears statement submitted by the Traffic Department has been verified.
2. Since the pay roll data in SAP are available only from 1.5.2010, the arrears statement from 1.10.2007 to 31.4.2010 in r/o the petitioners viz. Sri K.P.Rajendran, (Refer) Sri K.J.John (Refer) and Sri K.G.Babu (Refer) was prepared manually. For the period from 1.5.2010 to 31.12.2023 the details of arrears to be paid has been generated from the SAP (refer) . An abstract with regard to the disbursement of arrears in r/o 3 petitioners has also been prepared and attached herewith for kind perusal please (Refer). The total amount payable to the three petitioners will come to Rs.8.33.614/-.
3. As one of the petitioner Sri K.J.John has been filed Contempt Case No.2530/2023 for non compliance of the judgment which is pending before the Hon'ble High Court of Kerala.
4. Since the Hon'ble High Court of Kerala disposed both the Writ



Petition and Writ Appeal in favour of the petitioners and the Legal Adviser has advised us to comply the the judgment.

Submitted for approval please .

Secretary
FA & CAO

Note #41 R Satish, SR. DS, 18-Jan-2024 06:55 PM

As reworked and verified @ Note Para #40 ,
Chairperson's sanction is sought for the payment of arrears to the petitioners Sri.K.P.Rajendran, Sri.K.J.John (retd) and Sri.K.G.Babu (retd) for an amount of **Rs.833,614/-** as per the judgment of the Hon'ble High Court of Kerala and to remit the amount the pension/ salary account.
Submitted pls

Secretary
FA&CAO
Dy. Chairperson
Chairperson

Note #42 C Premakumari, SECRETARY, 29-Jan-2024 06:36 AM

Submitted for financial concurrence and approval please.

Note #43 (Seen.) Malla Srinivasa Rao, FA & CAO, 29-Jan-2024 10:39 AM

Note #44 (Seen.) George Varkey, DCA2 (PURCHASE3), 29-Jan-2024 11:48 AM

Note #45 PV Pushpan, SR.DCA (HR-ESTT), 30-Jan-2024 10:06 AM

On verification the arrear to be paid is seen as Rs. 833573/-.
Please check and resubmit please.

Note #46 Srinivasan N.J, ASST. SECRETARY (B&C), 30-Jan-2024 10:13 AM

As observed by Sr.DCA(HR-ESTT) at Note Para #45, the amount to be paid has been verified. The arrear amount shown in the Abstract is to be paid as arrears i.e. Rs.8,33,573/- (ref)

Submitted for approval please

Note #47 (Seen.) Srinivasan N.J, ASST. SECRETARY (B&C), 30-Jan-2024 10:14 AM

Note #48 PV Pushpan, SR.DCA (HR-ESTT), 30-Jan-2024 04:57 PM

The fixation statement for revision of pay in r/o. the employees is not attached with this file.



Necessary action may be taken to refix their pay and resubmit for further action please.

Note #49 Srinivasan N.J, ASST. SECRETARY (B&C), 05-Feb-2024 10:39 AM

Kindly see the observation made by the SR.DCA (HR-ESTT) at [Note Para #48](#)

The revised pay fixation statements (2012 & 2017) as per the judgment of Hon'ble High Court of Kerala in the Writ Petition No.19081/2014 and Writ Appeal No.477/2023 in r/o Sri K.P.Rajendran, Staff No.4493, AWS (Refer) Sri K.J.John, Staff No.4498, AWS (Retired) (Refer) and Sri K.G.Babu, Staff No.4399, AWS (Retired) (Refer) are attached herewith. The Due-Drawn-balance statement prepared manually for the period from 1.10.2007 to 31.4.2010 in r/o the petitioners is also attached herewith (Refer) (Refer) (Refer). For the period from 1.5.2010 to 31.12.2023 the revised details of arrears to be paid has been generated from the SAP is also attached (Refer) (Refer) (refer) A revised abstract with regard to the payment of arrears to be made to the petitioners is also attached herewith (Refer)

Submitted for approval please

Note #50 (Seen.) Srinivasan N.J, ASST. SECRETARY (B&C), 05-Feb-2024 10:40 AM

Note #51 PV Pushpan, SR.DCA (HR-ESTT), 08-Feb-2024 05:07 PM

As per the Court order (ref) (ref) , the TM has prepared a fixation statement and forwarded to GAD for verification of the same by the HR section. The HR section has verified, duly signed for releasing arrear payment to the concerned employees (petitioners) subject to concurrence of the FA & CAO, please.

Arrear amount due to revised fixation in r/o. 3 employees will comes to Rs. 7,19,157/- (Abstract)

The Fixation and verification of arrears have been done by the HR section as per the centralized set up and workflow.

As proposed by the TM and recommended by the Secretary vide [Note Para #42](#) , may be concurred by the FA & CAO for releasing the above mentioned payment to the employees.

Submitted please.

Note #52 (Seen.) Malla Srinivasa Rao, FA & CAO, 08-Feb-2024 10:54 PM

Note #53 PV Pushpan, SR.DCA (ADMN), 09-Feb-2024 10:40 AM

Department files are being submitted through Sr.Dy.CAO as per their instruction, and the file was submitted directly to FA & CAO in the absence of the Sr. Dy.CAO.

As directed by the FA & CAO, the file is routed thro' the Sr. AO for concurrence of FA & CAO, please. Please refer [Note Para #51](#)



Note #54 Surya Madhu, SENIOR ACCOUNTS OFFICER 1, 09-Feb-2024 05:36 PM

The revised pay fixation in respect of 3 employees is stated to be done based on the Hon'ble HC of Kerala dated 03.11.2022 which was verified by HR section and recommended at Note Para #42.

Financial concurrence may please given to release the payment of arrears to the petitioners Sri.K.P.Rajendran, Sri.K.J.John (retd) and Sri.K.G.Babu (retd) for an amount of Rs.7,19,157 as proposed by the Dept.

Submitted please.

Note #55 Malla Srinivasa Rao, FA & CAO, 12-Feb-2024 10:51 AM

The proposal at Note Para #37 as recommended by the TM and as confirmed by the Secretary at Note Para #47 is concurred subject to correction in arrears as mentioned above at Note Para #54.

Dy. Chairman / उप. अध्यक्ष Chairman / अध्यक्ष

Note #56 Vikas Narwal, DY. CM, 14-Feb-2024 03:09 PM

Please discuss.

Note #57 Meera Krishna, ASST.SECRETARY (GR.I), 26-Feb-2024 11:07 AM

1. Kindly see the details of the case at Note Para #15 and the judgment in WP (refer) .As proposed and agree to, CoPA had filed appeal against the judgment. However, vide judgment dated 18.12.2023, the Division bench has dismissed the appeal filed by CoPA (WA judgment).
2. On perusal of the Writ appeal and the judgments, it is evident that the Courts



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have acknowledged the submissions made by CoPA that the Writ petitioners are not entitled to the 2 increments granted as the substantive post they were holding was Fireman, which post's pay scale was below that of Shed Clerk to which they were promoted. They were only enjoying the benefits of ACP. However, the Division Bench also interpreted the circular as in the WP and dismissed the CoPA's appeal.

3. If we have to not accept the judgment, the next remedy is to file an SLP in the Supreme Court of India. It is a fact that the admissibility of SLPs by the Supreme Court of India is statistically very low and in this case, we have made our submissions clearly in the counter affidavit filed in the WP, submissions made at court as well as the Writ appeal. The Court acknowledges the feeder post as Firemen, however opines in the lines that the 2 increments granted was proper as they were holding the scale of pay as that of Shed Clerk, though by means of ACP.
4. These aspects were discussed with Legal Advisor also and they were also



of the opinion that it is not very likely that we may succeed in filing an appeal. Also, we may have to engage a Senior Advocate to get our matter presented to get the Court's attention which may incur a professional fee of atleast 1.5 lakhs per appearance, in addition to the Fees for Assisting Counsel, fee for filing SLP by Advocate-on-Record etc. The financial implication as calculated at Note Para #54 comes to around 7 lakhs to be paid to the 3 petitioners. As of our knowledge, one more person who is similarly situated may also raise a claim. If that is the case, considering the cost of filing appeal and chances of succeeding, we may accept the judgment and comply by paying the dues to the writ petitioners.

5. It is also informed that a contempt case has already been filed by one of the petitioners against Shri. Malla Srinivasa Rao and Smt. C. Premakumari. Therefore, the matter is to be decided on top priority.
6. Legal Cell is not in a position to analyse if there is a likelihood of more claims arising in this regard. Finance Department may look into that aspect



to decide upon filing an SLP, or to accept the judgment and pay the dues to the petitioners as proposed at Note Para #55 please.

FA&CAO
Dy. Chairperson
Chairperson

Note #58 (Seen.) Malla Srinivasa Rao, FA & CAO, 26-Feb-2024 11:34 AM

Note #59 (Seen.) Malla Srinivasa Rao, FA & CAO, 26-Feb-2024 11:53 AM

Note #60 Rajashree K Dabke, SENIOR DEPUTY CHIEF ACCOUNTS OFFICER, 27-Feb-2024 06:01 PM

(I) There are two incidences in the above case:

1) The ACP given to the Fireman after 12 years involves merely placement in the immediate next higher scale in the hierarchy and not the hierarchy. Accordingly Fireman was given the ACP with the financial benefits with one regular increment and one increment of higher grade (With regard to the fixation of pay on such financial upgration under



ACP Scheme, a Government servant has an option under FR 22(I)(a)(1) to get his pay fixed in the higher post from the date of his upgradation or from the date of his next increment)

2) The Firman with the financial upgradation of Leading Fireman under ACP was further promoted to the post of Shed Clerk which is having the same pay scale of that of Leading Fireman. [At the time of promotion to the post of Shed Clerk, he was holding the post of ACP Leading Fireman and hence such promotion are in accordance with the Rule]

Since this is the further promotion, though in the same pay scale, they are entitled for one increment for the promotion as per FR 22, as the promotion comes with the higher responsibilities and another increment towards annual time bound increment.

Since the promotion is in the same scale (from Leading Fireman to Shed Clerk), exercising the option under FR 22 (I)(a)(1) will not have any additional benefits but loss as mentioned in an example enumerated below this note.



(II) The present case falls in the 2nd

category as mentioned at (I) 2) above and as per the justification stated above, all the three petitioners are entitled for the two increments and hence there request of the petitioners in order and hence there is no base to challenge the Hon'ble High Court's order.

I have checked the service books of all the three petitioners and their respective pay fixation sheets based on their pay fixation in the pre-revised pay scale [Shri Rajendran Pg 28 to 30 Attached , Shri K.G. Babu Pg No.36 to 40 Attached and Shri K.J. John Pg 32 to 36 Attached) and it is found that the same are in order. (In respect of Shri K.G. Babu, there found a calculation error of one additional increment at the time of intial fixation of pay at the time of promotion. However, the same was not there while fixation of pay at the time of revision from 1.1.2007. Thus, the same is got rectified] All the three petitioners will be entitled for two increments one accrued on account of annual increment and the second accrued on account of promotion, even they are in the same pay scale. Accordingly file is submitted.



[Example. i) if his basic pay is Rs. 9400 and he gets promoted in the same scale in the month of February and his annual increment is in April, he will draw one increment of Rs. 282@3% from February to March and annual increment @3% on Rs.9682 (Rs. 9400+282) amounting to Rs. 9972/- from April onwards.

ii) By exercising the option under FR22 (I)(a)(1) , he will continue with the basic pay of Rs. 9400/- for February and March and in April when his annual increment takes place, he will first draw annual increment first which makes his pay Rs. 9682 (9400+3%) and on this he will draw one more increment of promotion (9682+3%) by which his pay will become 9972/-

In the second option ii) in the above example, employee lost the initial increment @3% for two months which is not beneficial to the employee. Thus, exercising the option is not necessary in the same pay scale. Getting two increments in the same scale promotion is important]



Note Para #60 may be ignored.

(I) There are two incidences in the above case:

1) The ACP given to the Fireman after 12 years involves merely placement in the immediate next higher scale in the hierarchy and not the hierarchy. Accordingly Fireman was given the ACP with the financial benefits with one regular increment and one increment of higher grade (With regard to the fixation of pay on such financial upgration under ACP Scheme, a Government servant has an option under FR 22(I)(a)(1) to get his pay fixed in the higher post from the date of his upgradation or from the date of his next increment)

2) The Firman with the financial upgration of Leading Fireman under ACP was further promoted to the post of Shed Clerk which is having the same pay scale of that of Leading Fireman. [At the time of promotion to the post of Shed Clerk, he was holding the post of ACP Leading Fireman and hence his promotion to Shed Clerk is in accordance with the Rules. Every 12 years promotions under ACP and 10,20,30 years promotions under



MACP are happening based on the promoted post held in the earlier MACP. Like wise even the regular promotion in the same scale or higher scale are possible based on the promoted post held due to ACP/MACP. Hence the above promotion is in order.]

The second point is regarding pay fixation when the promotion is in the same scale. Since this is the promotion, though in the same pay scale, a Government employee is entitled for one increment for the promotion as per FR 22 as the promotion comes with the higher responsibilities and another increment towards annual time bound increment which one will any how get.

Since the promotion is in the same scale (from Leading Fireman to Shed Clerk), exercising the option under FR 22 (I)(a)(1) will not have any additional benefits (but loss) as mentioned in an example enumerated below this note.

(II) The present case falls in the 2nd category as mentioned at (I) 2) above and as per the justification stated above, all the three petitioners are entitled for the two increments and hence their request of



the petitioners in order and hence there is no base to challenge the Hon'ble High Court's order.

I have checked the service books of all the three petitioners and their respective pay fixation sheets based on their pay fixation in the pre-revised pay scale [Shri Rajendran Pg 28 to 30 Attached , Shri K.G. Babu Pg No.36 to 40 Attached and Shri K.J. John Pg 32 to 36 Attached) and it is found that the same are in order. (In respect of Shri K.G. Babu, there found a calculation error of one additional increment at the time of intial fixation of pay at the time of promotion. However, the same was not there while fixation of pay at the time of revision from 1.1.2007. Thus, the same is got rectified] All the three petitioners will be entitled for two increments one accrued on account of annual increment and the second accrued on account of promotion, even they are in the same pay scale. Accordingly based on the Hon'ble High Court's Order of restoring the benefits to the three employees, the arrears may be paid to these employees as verified at Note Para #54 . It is understood that there are 2 or 3 similar cases in the Port



on the similar lines who will also come up for claim which can also be paid as it will be in accordance with the Rules.

Submitted please.

[Example. i) if his basic pay is Rs. 9400 and he gets promoted in the same scale in the month of February and his annual increment is in April, he will draw one increment of Rs. 282@3% from February to March and annual increment @3% on Rs.9682 (Rs. 9400+282) amounting to Rs. 9972/- from April onwards.

ii) By exercising the option under FR22 (I)(a)(1) , he will continue with the basic pay of Rs. 9400/- for February and March and in April when his annual increment takes place, he will first draw annual increment first which makes his pay Rs. 9682 (9400+3%) and on this he will draw one more increment of promotion (9682+3%) by which his pay will become 9972/-

In the second option ii) in the above example, employee lost the initial increment @3% for two months which is not beneficial to the employee. Thus, exercising the option is not necessary in the same pay scale. Getting two increments in the same scale promotion is important]



Note #62 (Seen.) Malla Srinivasa Rao, FA & CAO, 28-Feb-2024 01:01 PM

Note #63 Rajashree K Dabke, SENIOR DEPUTY CHIEF ACCOUNTS OFFICER, 29-Feb-2024 02:04 PM

In continuation of the Note Para #61 it is further stated that-

(I) Secretary's order dated 25.3.2013 Attached mentions of giving two increments if the scale of pay of feeder and promotion posts falls in the same revised pay scale w.e.f. 1.1.2007 subject clarification by the Ministry or the provision thereof in the final wage settlement due from 1.1.2012. Accordingly Wage Revision Settlement of Class III and IV effective from 1.1.2012 was verified and at Para 9.4 of the Wage Settlement confirms for the two increments on promotion if the feeder and the promotional posts fall in the same revised pay scale Attached . Hence the submission at Para (II) of the Note Para #61 will get modified to the extent that there will be total three increment, two on the promotion in the same scale and one on the annual increment (It was assumed



earlier that including annual increment there were two increments).

(II) Submission about consideration of the post of Leading Fireman and consideration of the pay scale fixed for the Leading Fireman due to ACP for the promotion of Shed clerk as submitted in Note Para #61 above is in order.

(III) The methodology of calculation of the arrears statement submitted under Note Para #54 has been checked now and found in order.

(i) Based on the order of the Hon'ble High Court, the Pay which was corrected by withdrawing one increment based on the FA&CAO's Note Dated 16.11.2013 to Dy. Conservation Attached at the time of fixation of Pay of Pay Revision of 2007 had been now considered and one additional increment taken while calculating the arrears. Accordingly arrears now comes out to Rs. 7,19, 157/- from October 2007 to February 2024. Abstract of arrears is Attached herewith.

(ii) In addition to the above, there will financial impact on the pensionary benefits such as monthly pension (recurring), Gratuity difference,



Commutation difference and Final Leave Encashment difference of the two petitions who retired on 30.11.2020 (Shri K.J. John) and on 31.5.2021 (Shri K.G. Babu).

(iii) The additional Pensionary benefits for Shri K.J. John is Rs. 77,637/- Attached and for Shri K.G. Babu Rs.1,01,967/- Attached

There will also increase in the monthly pension of Rs. 1296 (Rs.900 + 44% DA) in case of Shri K.J. John and Rs.1440 (1000 +44% DA)(as on date).

(IV) There will be two/ three similar cases which may submit their claim after the decision on this case which may be approx. Rs. 5 to 6 lakh (2,89,292 based on the arrears of Shri Rajendran who is presently in Service X 2= Rs. 5,78,584). However, actual no. may be given by the departments.

(V) Considering 1),2) and 3) above, the financial implication of approximately Rs. 14 Lakh

As submitted in detail in Note Para #61 and (II) above and clear order of two increments for the promotion in the same scale, there is no base to challenge the Ho'ble High Courts Order and hence the



arrears as above at (V) and the increase in the pension as brought out at (III) (iii) can be paid.

Submitted please.

Note #64 Malla Srinivasa Rao, FA & CAO, 01-Mar-2024 11:20 AM

Consequent on discussions with Dy. Chairman by the AS (Gr-I), the submissions of AS (Gr-I) at Note Para #57 may please be seen.

The detailed submissions of Sr. DCAO at Note Para #61 and Note Para #63 may also please be seen.

In view of the above confirmations, the proposal of GAD at Note Para #41 and as recommended by Secretary at Note Para #42 is concurred subject correction of arrears payable.

Subject to approval, the HR Section functioning under the GAD to ensure the correctness of the arrears before release of the payments.



Dy. Chairman / उप. अध्यक्ष

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Chairman / अध्यक्ष

Note #65 Vikas Narwal, DY. CM, 07-Mar-2024 11:23 AM

The proposal at Note Para #64 may please be approved.

Note #66 B. Kasiviswanathan ., CHAIRMAN , 07-Mar-2024 01:01 PM

Note Para #64 Approved

