

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00108/2016

Wednesday, this the 20th day of October 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

K.Ibrahim, aged 55 years, S/o Mohammed,
Junior Engineer (Mechanical), Andaman
Lakshadweep Harbour Works, Willingdon Island,
Matsyapuri P.O., Kochi, residing at 'Karayil' House,
Nellikaparamba P.o., Kozhikode.

...Applicant

(By Advocate Mr.R.Sreeraj)

v e r s u s

1. Union of India
represented by its Secretary to the Government of India,
Ministry of Shipping, Road Transport & Highways,
New Delhi-110001.
2. The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works,
Portblair-7444 101.
3. The Deputy Chief Engineer,
Andaman Lakshadweep Harbour Works,
Kavaratti-682 555.

...Respondents

(By Advocate Mr.Sreenath.S., ACGSC)

This application having been heard on 6th October 2021, the Tribunal on 20th October 2021 delivered the following :

O R D E R

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

Shorn of the specific details, the basic issue to be adjudicated that remains in this matter, as per the learned counsel for the applicant Mr.R.Sreeraj, is whether once a final order has been pronounced by this Tribunal in the same matter, any action contrary to the same is possible or

even permissible, unless the order of this Tribunal was modified or set aside subsequently by the Hon'ble High Court or an application for review of the order was made and allowed by the Tribunal. This O.A was filed for the regularization of service and grant of second financial upgradation under the Assured Career Progression (ACP) Scheme to a Junior Engineer working in the Andaman Lakshadweep Harbour Works (ALHW). The same applicant had earlier approached this Tribunal in O.A.No.764/2013 which this Tribunal heard along with O.A.No.777/2013, O.A.No.811/2013, O.A.No.870/2013 and O.A.No.920/2013 filed by different Junior Engineers working in the ALHW. A common order was delivered in these OAs on 08.07.2015 allowing the reliefs sought for.

2. The applicants in the above OAs were aggrieved by the impugned order No.ALHW/ADM/2(19)/2010 dated 8/10.07.2013 issued by the Administrative Officer (ALHW), Office of the Chief Engineer & Administrator, Andaman Lakshadweep Harbour Works, by which, regularization of their adhoc appointment issued by Office Order No.793/2010 dated 10/13.12.2010 was cancelled. Consequently, orders relating to the second financial upgradation of the applicants under the ACP Scheme were also withdrawn and they were brought under the MACP Scheme. The applicants alleged in those OA's that the cancellation/modification orders were vitiated by legal malice and violation of the principles of natural justice. The applicants submitted that their adhoc appointments on 11.05.1984 and 18.05.1984 respectively had been made in accordance with law after complying with all the procedural formalities for a regular appointment. Their adhoc appointments were

against sanctioned vacancies, their service was also continuous and their service also was counted for all benefits, including increments. Their appointments on adhoc basis were followed by regular appointments with effect from 15.05.1985 and 26.04.1985 respectively. It was submitted in these OA's that following the regularization of the adhoc appointments the applicants should be deemed to have been regularly appointed to their posts with effect from the date on which the appointments were initially made on adhoc basis. In the case of the applicant in the present O.A, the adhoc appointment was made on 12.05.1984 and he was regularized later (vide order at Annexure A-2) with effect from the same date of the initial appointment. This was later removed and the regularization issued at Annexure A-2 was cancelled by order No.431/2013 dated 08/10.07.2013 (now produced at Annexure A-8). It was also indicated (at Annexure A-9 Office Order) that the ACP granted would also be withdrawn and he and some others would be eligible for second financial upgradation benefit only under the MACP Scheme with effect from 01.09.2008. Earlier the applicant in the present OA had got the second financial upgradation under ACP Scheme with effect from 12.05.2008 on completion of 24 years of service after taking his regularization from the date of his initial appointment on 12.05.1984.

3. This Tribunal considered the above issues in the O.A.No.764/2013 and connected cases and in the final common order dated 08.07.2015 found as follows in Paragraph 6 :

6. It is not in dispute that the ad-hoc appointment of the applicants were regularized by the respondents by order dated 10/13/12/2010 (Annexure A2) with retrospective effect. That the first and second financial up-gradation under ACP Scheme was allowed to the applicants by office order dated 12.1.2011 (Annexure A4) is also not disputed. Withdrawal of the regularization as well as the financial upgradation under the ACP Scheme is said to have been warranted by the clarification issued by the DoPT dated February 10, 2000. SLNo.11 of the clarification is reproduced below :-

11	<p><i>In the case of an employee appointed on adhoc basis and who is subsequently regularized, the adhoc service is counted towards increment. Whether the adhoc service may be counted for the ACPS also.</i></p>	<p>No. In terms of para 3.2 of the Office Memorandum dated August 9, 1999 (ACPS), only regular service which counts for the purpose of regular promotion in terms of relevant Recruitment/Service Rules shall count for the purpose of upgradation under ACPS.</p>
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It would appear from the above clarification that it is in respect of an employee appointed on an ad-hoc basis and subsequently regularized. In respect of such an employee, it has been clarified that while the period of ad-hoc service would count for increment, only the regular service which counts for regular promotion would count for the purpose of up-gradation under ACPS. This clarification is not at all about the employees who have been granted regularization of the period of ad-hoc service. The office order dated 13.10.2010 clearly states that "sanction of the competent authority is hereby accorded to the following employees for regularization of their ad-hoc appointment with effect from retrospective date of their appointment to the posts in which they had been initially appointed as shown against each name". It appears that there was a certain background to the regularization of the applicants from the date of ad-hoc appointment itself and this is said to be as a result of regularization of ad-hoc service granted to a junior employee of theirs earlier. The respondents in their reply have not thrown light on this contention. Be that as it may, the cancellation of the order is certainly not warranted on the basis of the DoPT clarification dated February 10, 2000 which is about employees appointed on ad-hoc basis and regularized from a subsequent date. In any case, the impugned orders have been passed without granting the applicants an opportunity to represent against the proposed action. As for the Apex Court's judgment at Annexure R4, the applicants in their rejoinder have correctly pointed out that the issue in that case was whether the ad-hoc service rendered

by the respondents therein could be reckoned as qualifying service for promotion as Executive Engineers. It was not about eligibility or entitlement of a person to get his ad-hoc service regularized or the regularization of ad-hoc service already approved by the competent authority.

(Emphasis Supplied)

4. It was also found in Paragraph 7 of the aforesaid common order of 08.07.2015 that the action of the respondents in passing the impugned orders was wholly unwarranted, arbitrary and unjust. The orders impugned in all these cases were quashed and it was held that the applicants are entitled to financial upgradation under ACPS by virtue of the orders that were issued earlier to regularize their adhoc appointment with retrospective effect. It was also directed that the applicant shall be entitled to consequential benefits on this basis. By Paragraph 9 the respondents were directed to give effect to the directions in Paragraph 7 within a period of three months.

5. However, it was also indicated at Paragraph 8 of the aforesaid order that in case the respondents had any valid reasons/evidence to conclude that the orders relating to the regularization of the adhoc service of the applicants were irregular and issued on extraneous considerations, they were free to conduct an independent enquiry and take appropriate action against the officers concerned. Even if the respondents chose to exercise this option, they were directed to follow the prescribed procedure and the applicants were to be granted an opportunity to duly represent their case before any final orders are passed.

6. It is submitted by the learned counsel for the applicant in this O.A that the above order has clearly found and established that the applicant was entitled for counting his service in a regular manner from the date of his initial appointment ie. 12.05.1984 and accordingly his second financial upgradation under ACP was due (and rightly given to him) with effect from 12.05.2008. However in the present OA by their impugned orders, this is sought to be reviewed by the respondents and the alleged excess payment sought to be recovered (under the Annexure A-13 order) by quoting instructions of the PAO (ALHW), New Delhi dated 12.02.2014 as well the directions of higher authorities in the ALHW as per letter dated 29.05.2015. As per the stated Annexure A13 order the applicant's pay has again now been shown as on an 'adhoc' basis as Overseer from 12.05.1984 and on 'regular' basis only from 26.04.1985, which would thus make him ineligible to draw the second financial upgradation under the ACP Scheme as the ACP Scheme itself was replaced by the MACP Scheme with effect from 01.09.2008. The applicant in this O.A therefore submits that once the final common order of this Tribunal has been passed in O.A.No.764/2013 and connected cases (produced at Annexure A-10) setting aside all the impugned orders thereon and once this very Order was not modified or reversed, the 3rd respondent is now incompetent to act against these directions given in the final order. Further, it is submitted that the Annexure A-10 final order was issued on 08.07.2015, after the PAO's instructions dated 12.02.2014 or the directions of the 2nd respondent vide letter dated 29.05.2015 referred to in the Annexure A-13 impugned order in this OA. The 3rd respondent does not have any authority, therefore, to overreach the directions in the final order. Thus, it is submitted that the Annexure A-13 impugned order exposes

the malicious intentions of the respondents by disregarding the directions of this Tribunal and attempting to interfere with the administration of justice. It is contended that the applicant has been forced to enter into litigation for a third time in this regard. The applicant submits that it is surprising that the Annexure A-13 impugned order by which his pay is being refixed and the dates by which second financial upgradation under ACP Scheme is sought to be withdrawn is being passed at all given the judicial directions by this Tribunal. The Orders of this Tribunal are not even referred to in the Annexure A-13 Office Order and thus the same is illegal, arbitrary, unjust and unreasonable.

7. In the reply and submissions in the course of hearing, Mr.Sreenath.S., learned counsel for the respondents has stated that they did not wish to override the decision of the Tribunal in any way but would only make the point that the said Office Order No.793/2010 at Annexure A-2 by which the adhoc appointment of the applicant and others were regularized from the dates of initial appointment, was erroneous. It is submitted that the applicant as well as others were initially appointed to the post of Overseer only on an adhoc basis by Annexure A-1, without conductng an interview and clearly on a condition that the appointment was purely on an adhoc basis and would not bestow on them any right for regular appointment to the post in which they were appointed. Further, it was only meant for a period of two months. The ACP Scheme for employees appointed on adhoc basis and who are subsequently regularized clearly mentions that the adhoc service is counted for increments but not for the purpose of upgradation under ACP. This is also stated in the copy of the

Office Memorandum of DoPT dated 10.02.2000 produced at Annexure R-2 (at point 11). In the case of the applicant and others, the regularization of the adhoc appointment has been withdrawn by the Office Order No.431/2013 dated 08/10.07.2013. The Hon'ble Supreme Court also in the matter of **Union of India & Ors. vs. G.R.Ramakrishnan & Ors.** in **Civil Appeal No.7032/2013**, arising out of SLP (C) No.20506/2011, has held that adhoc appointees cannot make a claim for regularization so as to avail benefit of Recruitment Rules. It is the wrong contention of the applicant that the adhoc appointment was ordered in accordance with law after complying with the procedural formalities for a regular appointment. The applicant has been appointed in ALHW on a regular basis only from 26.04.1985 and not from 18.05.1984. The DoPT O.M dated 10.02.2000 allows adhoc service to be counted for increment but not for the purpose of upgradation under ACPS. It is only regular service, which counts for the purpose of regular promotion in terms of relevant Recruitment/Service Rules, that would also count for the purpose of upgradation under ACPS, though adhoc service can count also as qualifying service in certain situations. Thus, employees who had been granted first and second financial upgradations under ACP Scheme after 31.08.2008 were later deprived of the benefit under various Office Orders of ALHW in compliance with the orders of Ministry of Shipping, New Delhi. The applicant is thus not eligible for financial upgradation under ACP Scheme counting his regular service for the purpose of financial upgradation since he was appointed on regular basis only from 26.04.1985.

8. However, we note that the respondents have made no reference in their reply statement whatsoever to the findings of this Tribunal in O.A.No.764/2013 and connected cases, more particularly to the points in Para 6 and the directions in Paras 7 to 9 of the common order. As noted earlier regularization of the applicant's service from 12.05.1984, his date of initial appointment and grant of second financial upgradation under ACP Scheme with effect from 12.05.2008 have all been upheld in the order and specific directions have been given to the respondents to give effect to the same within a period of three months with all consequential benefits. The respondents have not gone on appeal in the matter to the Hon'ble High Court of Kerala; nor have they appeared before this Tribunal for any review of the Order, even though by the Para 8 of the order, the respondents were given some time to conduct an internal inquiry and take appropriate action in case the regularization of the adhoc services of the applicants were irregular and issued on extraneous consideration. They were also allowed to take appropriate action against officers concerned in case of any irregularity. It appears that the respondents on the basis of this direction had appointed an Executive Engineer (Mech) to conduct an independent inquiry on the issue of withdrawal of subsequent regularization of adhoc appointment as well as on the financial upgradation under ACP Scheme. The Executive Engineer (Mech) in his findings and conclusions, as brought out at Annexure A-11, found that all the employees were given adhoc appointments as Overseers without any selection criteria for various periods of time till their regular appointment in 1985. The orders appointing them on regular basis stipulated that they would be on probation for two years and then subsequently substantially appointed. The employees at the time

of such regularization had not challenged the same nor had made a representation for treating previous service on adhoc basis as regular service. They had accepted the order together with the probation of two years period. The employees thus cannot be faulted for the regularization and thereby benefits drawn from the ACP Scheme. Further, the report concluded that the department officials appeared to be not worried about the financial ramifications due to the regularization of adhoc service and allowing the ACP Scheme after retirement of employees and also about the potentially divisive effects in the absence of 'duly explanatory addenda' for regularization after 25 years. The department officials were found to have regularized the adhoc service 25 years after the regular appointment without providing any explanation of why it was necessary to regularize the adhoc service with relevant rules. They had allowed the ACP Scheme by counting adhoc service which is in contravention of rules in force. Hence, the report found that the regularization of adhoc service after prolonged period for the benefit of ACP Scheme was out of line with relevant rules and was not free from doubt. The applicant made a representation against these findings vide Annexure A-12. However, inspite of specific findings of irregularities by the Inquiry Officer regarding regularization of the employees by including the adhoc period, no further steps appear to have been taken by the respondents. The reply statement is silent about any further action taken by them on this inquiry report, except to the extent it mentions that the Executive Engineer conducted an inquiry on the issue of withdrawal of subsequent regularization of adhoc appointment and financial upgradation under ACP Scheme. The reply only mentions that the report indicates that regular service which counts for the purpose of regular promotion in terms

of the relevant Recruitment/Service Rules shall count for the purpose of upgradation under ACP Scheme. Thus, only a bland reference has been made to this inquiry report indicating the relevant O.Ms covering the requirement of continuous regular service towards qualifying service for the purpose of MACP Scheme; but no further information of action proposed or taken in light of this Report is given.

9. We find that the response of the respondents in the entire matter has been very quixotic and somewhat casual. It is also very inconsistent with different steps being taken at different points of time. Whatever may be their reasons for this, we are conscious that the final Order of this Tribunal in O.A.No.764/2013 and connected cases has given certain directions and also identified further steps required to be done by the respondents. We are now bound to go by these directions even if there is anything to the contrary found in other reports. Our position in this is underlined by the findings of the Hon'ble Apex Court in **Civil Appeal No.4840/2021** arising out of **S.L.P. (C) No.18198/2018** in the case of **Neelima Srivastava v. The State of Uttar Pradesh & Ors.** In this order which went into issues relating to regularization of service including adhoc service in light of various previous judgments including **Secretary, State of Karnataka & Ors. v. Umadevi & Ors. [(2006) 4 SCC 1]**, the Hon'ble Apex Court found as follows in respect of the appellant therein :

“25. The only question which now requires consideration is whether her continuation on the post on the strength of the interim order passed by the High Court would dis- entitle her from regularization in view of the dictum in the case of Umadevi(3).

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30. *It becomes absolutely clear from the above clarification that earlier decisions running counter to the principles settled in the decision of Umadevi (3) will not be treated as precedents. It cannot mean that the judgment of a competent Court delivered prior to the decision in Umadevi (3) and which has attained finality and is binding inter se between the parties need not be implemented. Mere over-ruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught. There is a distinction between over-ruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognized by law. Mere over-ruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties.*

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36. *Thus, it is very well settled that it is not permissible for the parties to re-open the concluded judgments of the Court as the same may not only tantamount to an abuse of the process of the Court but would have far reaching adverse effect on the administration of justice.”*

10. The impugned order at Annexure A-13 is therefore quashed. The financial benefits should be restored to the applicant with all consequential benefits. The recovery from the applicant had been stayed by the Tribunal when it came up for admission on 09.02.2016. This interim order is made absolute now with these findings. Thus the O.A is allowed granting all the reliefs. There shall be no order as to costs.

(Dated this the 20th day of October 2021)

**K.V.EAPEN
ADMINISTRATIVE MEMBER**

**P.MADHAVAN
JUDICIAL MEMBER**

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List of Annexures in O.A.No.180/00108/2016

1. **Annexure A-1** : True copy of the Letter LHW/Estt/2/84/1649 dated 06.04.1984 submitted by the Deputy Chief Engineer, Lakshadweep Harbour Works to the Chief Engineer & Administrator, ALHW
2. **Annexure A-2** : True copy of the Office Order No. 793/2010 (Letter No.ALHW/ADM2(33)/2010/4371) dated 10/13.12.2010 issued by the Administrative Officer (ALHW), Office of the 2nd respondent.
3. **Annexure A-3** : True copy of the Certificate dated 17.12.2011 issued by the Deputy Chief Engineer, ALHW, Kavaratti.
4. **Annexure A-4** : True extract of the relevant portions of the Office Order No.12/2010 (Letter No. ALHW/ADM/2(35)/2010/148) dated 12.01.2011 issued by the 2nd respondent.
5. **Annexure A-5** : True copy of the Office Order No. 25/2011 (Letter No.LHW/Estt/127/146) dated 15.01.2011 issued by the 3rd respondent.
6. **Annexure A-6** : True copy of the Office Order No. 266/2013 (Letter No.LHW/Estt/127/1354) dated 09.04.2013 issued by the 3rd respondent.
7. **Annexure A-7** : True extract of the Office Order No. 66/2013 (Letter No.ALHW/ADM/2(35)/2011/148) dated 11.02.2013 issued by the 2nd respondent.
8. **Annexure A-8** : True copy of the Office Order No. 431/2013 (Letter No.ALHW/ADM/2(19)/2010) dated 8/10.07.2013 issued by the Administrative Officer (ALHW), Office of the 2nd respondent.
9. **Annexure A-9** : True copy of the Office Order No.591/2013(No.DCE/KVT/Estt/160/2008/2675) dated 05.08.2013 issued by the 3rd respondent.
10. **Annexure A-10** : True copy of the final order dated 8.7.2015 in OA 764/2013 and connected cases on the file of this Hon'ble Tribunal.
11. **Annexure A-11** : True copy of the Enquiry Report dated 12.09.2015 submitted by Shri. Kuppuswamy, Executive Engineer (Mech) and forwarded to the applicant as per ALHW/ADM/2(4)/2013/3198 dated 29.09.2015 issued by the Administrative Officer (ALHW).
12. **Annexure A-12** : True copy of the representation dated 12.10.2015 submitted by the applicant to the 2nd respondent.
13. **Annexure A-13** : True copy of the Office Order No. 8/2015 (No.DCE/KVT/ESTT/127(A)/18 dated 02.01.2016 issued by the 3rd respondent.
14. **Annexure R-1** : A photocopy of the letter dated 06/04/1984 issued by the 3rd respondent.

- 15. Annexure R-2 :** A photocopy of the office memorandum of DoPT dated 10.02.2000.
- 16. Annexure R-3 :** A photocopy of the letter dated 13.02.2013 issued by PAO.
- 17. Annexure R-4 :** A photocopy of the Audit Observation of PAO, New Delhi, along with the covering letter dated 10.07.2015.
- 18. Annexure R-5 :** A photocopy of the Judgment dated 23.08.2013 in Civil Appeal No.7032/2013 of the Hon'ble Supreme Court.
- 19. Annexure R-6 :** A photocopy of the letter No.ALHW/ADM/1(8)/84 dated 21.04.1984.
- 20. Annexure R-7 :** A photocopy of the letter No.PE/DD/C-2/89 dated 31.12.1984 of Chairman, Selection Committee.
- 21. Annexure R-8 :** A photocopy of the letter dated 06.02.2013 issued by the Ministry of Shipping.
