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O.A. No.422 of 2008

ORDER DATED 16<sup>th</sup> OCTOBER, 2008

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)  
Hon'ble Mr. C.R. Mohapatra, Member (A)

Heard Mr. M.K. Rath, Ld. Counsel for the applicant and Mr. D.K. Behera, Ld. Counsel for the Respondents.

2. A retired Air Craft Assistant has filed this Original Application under Section 19 of the Administrative Tribunal's Act, 1985 with the following prayers:-

"a) To pass appropriate orders directing the Respondents to grant the benefit of the financial upgradation of Rs.3200-4900/- w.e.f. 09.08.1999 under the A.C.P. Scheme in favour of the applicant;

b) To pass appropriate orders directing the Respondents to release the arrear dues with interest, arising out of the aforesaid financial upgradation/pay fixation, in favour of the applicant; and

c) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow the O.A. with costs.

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3. The grievance of the applicant is that while he was working as Aircraft Assistant, as per Annexure-A/1 order the ACP Scheme was implemented by the Department allowing the benefit to the applicant also. According to the applicant, this order is in accordance with the O.M. No.35034/1/97-Estt (D) 09.08.99. As per Annexure-A/1, those employees who had completed 24 years of service without having a promotion, are entitled for financial upgradation as per the ACP Scheme in line with the provisions of FR-22(1) (a)(1) on filing their respective options. The applicant had already filed the option and now the applicant has already retired from service on 31.08.2004, exactly after one month of the implementation of ACP Scheme vide Annexure-A/1 order. Now the applicant has received Annexure-A/2 letter to submit technical resignation for the post of Traffic Hand. To Annexure-A/2 letter the applicant has already submitted the reply though after his retirement. In spite of the above reply and implementation of Annexure-A/1 in respect of other employees, the applicant did not receive the benefit of the financial upgradation as per Annexure-A/1 order and hence the applicant filed this Original Application.

4. We heard Ld. Counsel for both parties and perused the records placed before us. The main contention of Mr. M.K. Rath, Ld. Counsel for the applicant before us, is that the Respondents were bound to implement Annexure-A/1 order

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without any time lapse as and when they received the option. When the applicant was asked to submit technical resignation, he promptly submitted the same. If so, the stand taken by the Respondent in not allowing the financial benefits to the applicant is untenable. The Ld. Counsel for the applicant also argued that the applicant is entitled for the financial benefits, with interest.

5. Relying on the counter affidavit, Mr. D.K. Behera, Ld. Counsel for the Respondents, submits that since the applicant failed to give the details regarding his resignation from the post of Traffic Hand, the Respondents are justified in not paying the financial benefits to him. It is further contented by the Ld. Counsel for the Respondents that the applicant has already retired from service and he had given the information sought by the Department as per Annexure-A/2 ~~was~~ only after retirement. Hence the 3<sup>rd</sup> Respondent was not in a position to accept the resignation which the applicant furnished. Hence the applicant is not entitled for the financial benefits.

6. The question to be decided in this O.A is whether the Respondents are justified in denying the financial upgradation to the applicant or not? In this context, it is also to be considered as to whether the applicant is entitled for the benefit with normal interest or not?

7. Admittedly, the applicant was working as an Aircraft Assistant when Annexure-A/1 was put in force and he

is entitled for that benefit as per Annexure-A/1. The only condition as contained in Annexure-A/1 was that he was to give an option. It appears that the only objection raised by the Respondents is that the applicant had not submitted his technical resignation from the post of Traffic Hand w.e.f. 05.03.1965 when he was appointed to the post of Aircraft Hand. We are at loss to see that the authorities are not in a position to find out the status and recognition of the applicant from the Service Book. The name of the applicant was also included in Annexure-A/1. If so, the resignation which the Department wanted from him, vide Annexure-A/2 is not a reason to deny the benefit of financial upgradation to the applicant. No other ground is stated in the counter affidavit to deny the benefit except the technical resignation only after his retirement. The applicant has retired during 2004 and now four years have elapsed. Till date no action has been taken by the Respondents.

8. In the above circumstances, we are of the view that the prayers in this Original Application deserve to be allowed. It is declared that the applicant is entitled for 2<sup>nd</sup> Financial Upgradation as per Annexure-A/1. The applicant is entitled for the financial benefits even without considering the technical resignation which was required by the Department, because Department ought to have got the resignation from the service records after the retirement. It is not justifiable to ask the applicant to give all the service particulars because he is a

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pensioner now. The applicant is also entitled for interest on the amount payable to him. Respondents are directed to determine and disburse the ACP financial benefits to the applicant within a reasonable time, at any rate within 60 days from the date of receipt of the copy of the order. If the amount is paid within 60 days as contemplated in the order, the amount may carry interest @ 4% per annum from the date of the amount became due to be paid till the date of actual payment and if it is not paid within 60 days, then interest @ 6% per annum shall be paid to the applicant.

9. In the result, the Original Application is allowed to the extent indicated above. No costs.

Member (A)

Kappan  
MEMBER (J)