

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 431 of 2009

MONDAY, this the 14th day of February, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

V. Radhakrishnan, aged 53 years, S/o. K. Narayanan Nair,
 Fitter, Central Institute of Fisheries, Nautical and Engineering
 Training, Kochi-16, Residing at : Kalarickal Parambil, Edappally
 North P.O., Kunnumpuram, Kochi-24. **Applicant**

(By Advocate – Mr. T.C.G. Swamy)

V e r s u s

1. Union of India represented by the Secretary to the Government of India, Ministry of Agriculture, (Department of Animal Husbandry, Dairying and Fisheries), Krishi Bhavan, New Delhi-110 001.
2. The Director, Central Institute of Fisheries, Nautical and Engineering Training, Kochi-16. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 20.01.2011, the Tribunal on
14-02-11 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant was appointed as a Fitter in the Central Institute of Fisheries, Nautical Engineering Training (CIFNET in short). His appointment as Fitter with continuity of service from 3.12.1986 was ordered to be regularized by this Tribunal in OA No. 79 of 2007. The relevant extract of the order in the aforesaid OA is reproduced as under:-



"7. In view of the above, the OA succeeds. It is declared that the period from 03-06-1987 to 11-02-1990 during which the applicant was out of service, shall be treated as regular service for all purposes, including for grant of notional increments, for working out 12 years of regular service for ACP purposes and fixation of pay. Thus, Annexure A-4 and A-9 which do not conform to the above are liable to be quashed and we accordingly order. The respondents shall work out the pay of the applicant from 1990 onwards, consider the applicant for ACP from the date the applicant completed 12 years of service or 09-08-1999 whichever is later and such amounts due to the applicant shall be duly paid to the applicant within a period of four months from the date of receipt of a certified copy of this order."

2. The first financial up-gradation was granted to the applicant in the pay scale of Rs. 3200-4900/- with effect from 9.8.1999. The applicant filed a representation dated 24.10.2007 addressed to the 2nd respondent for grant of first financial up-gradation under ACP in the scale of pay of Rs. 4500-7000/- at par with those who were similarly placed. The representation was rejected vide order dated 29.11.2007 which is reproduced as under:-

"With reference to his request dated 24.10.2007, Shri V. Radhakrishnan, Fitter is informed that as per the condition No. 7 of Annexure-I of DOPT, OM No. 35034/1/97-Estt (D) dated 9.8.1999, financial up-gradation under the ACP Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts. The existing hierarchy to the post of Fitter is Senior Fitter in the scale of Rs. 3200-4900 at this Institute. Accordingly, he was granted 1st level ACP in the hierarchy scale of Rs. 3200-4900/-."

3. Aggrieved the applicant has filed this OA for a declaration that he is entitled to be granted the first financial up-gradation in the scale of pay of Rs. 4500-7000/- under the ACP scheme and for a direction to the respondents to grant the same with effect from 9.8.1999.

4. The applicant submits that as per Annexure A-4 Recruitment Rules the



next promotional post of Fitter is to the post of Mechanical Supervisor in the scale of pay of Rs. 4500-7000/- . The post of Senior Fitter in the pay scale of Rs. 3200-4900/- is not a promotional post of Fitter as per the Recruitment Rules. The post of Senior Fitter as per Annexures A-6 and A-7 is no more in existence. Fitter and Senior Fitter are together eligible for promotion to the post of Mechanical Supervisor. The ACP scheme is uniformly applicable to all Central Government organizations. Therefore, he alone cannot be discriminated for grant of scale of pay of Rs. 4500-7000/- . It is not permissible to discriminate the Welders and Fitters alone for grant of Rs. 4500-7000/- merely because they were granted intermediate grade of Rs. 3200-4900/- which was non-functional for all material purposes and purely personal.

5. The respondents in their reply statement submitted that the whole period of ad hoc service from 3.12.1986 to 2.6.1987 was counted towards continuous service from 12.2.1990 treating the period between the date of his termination and reinstatement in service from 3.6.1987 to 11.2.1990 as dies non. As directed by this Tribunal vide order dated 10.10.2007 the period from 3.6.1987 to 11.2.1990 has been treated as regular service for all purposes including for grant of notional increments, for working out 12 years of regular service, for the purpose of grant of ACP and fixation of pay etc. He was granted first level financial up-gradation in the pay scale of Rs. 3200-4900/- i.e. the scale of pay of Senior Fitter which was the next promotional post of Fitter. As per the condition 7 of Annexure-A laid down in DOP&T OM No. 35034/1/97-Estt(D), dated 9.8.1999 financial up-

gradation under the ACP scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts. The applicant was a Fitter and the existing hierarchy to the post of Fitter was Senior Fitter in the scale of Rs. 3200-4900/- in the respondents' institute. Accordingly, applicant was granted first financial up-gradation in the pay scale of Rs. 3200-4900/. The DOP&T instructions dated 18.7.2001 vide clarification No. 42 provided that when RRs provide for multiple channels for promotion, first financial up-gradation shall be allowed with reference to the lowest promotional grade. The second financial up-gradation shall be as per hierarchy of the grade to which he has been promoted. Further it was submitted by the respondents that there was only one post of Senior Fitter in the pay scale of Rs. 3200-4900/- and the same has been merged with feeder post with effect from 4.4.2009 due to the vacation of the holder of the post of Senior Fitter on getting promotion to the post of Mechanical Supervisor. As such the post of Senior Fitter no more exists with effect from 4.4.2009 onwards. Even though the respondents office and the Fishery Survey of India (FSI)^{are} coming under the Ministry of Agriculture, they follow their own recruitment rules framed in consultation with the administrative ministry DOP&T, UPSC and Law Ministry according to their functional requirements. The comparison of the applicant with the sister organization has nothing to do with the grievance of the applicant in the instant case. In view of the above facts the grounds urged by the applicants are untenable.

6. In the rejoinder the applicant submitted that with the abolition of the post of Senior Fitter by Annexure A-6 order, the Recruitment Rules

(Annexure A-4) should be read in such a way that the next higher promotional post of Fitter should be Mechanical Supervisor and not Senior Fitter.

7. In the additional reply statement the respondents reiterated their earlier position.

8. In the affidavit filed by the respondents it was clarified that the posts of Senior Fitter, Senior Welder and Senior Carpenter and Senior Electrician were downgraded as Fitter, Welder, Carpenter and Marine Electrician. However, the existing incumbents were allowed to continue in the same post in the pay scale of Rs. 3200-4900/- on personal basis. The applicant could be allowed financial up-gradation under ACP only as per rules/instructions applicable/prevailing at the particular time during to which he was to be considered for the same.

9. We have heard the learned counsel for the applicant Mr. Mohana Kumar representing Mr. T.C.G. Swamy and Mr. Rajesh representing Mr. Sunil Jacob Jose, SCGSC and perused the materials on record.

10. The short question to be decided in this OA is whether the applicant is eligible for the first financial up-gradation in the pay scale of Rs. 3200-4900/- or in the pay scale of Rs. 4500-7000/-. The applicant had completed 12 years of service as on 9.8.1999 when the ACP scheme was introduced. He became eligible for first financial up-gradation on 9.8.1999. The



DOP&T had clarified vide OM No. 35034/1/97-Estt.(D)(Vol.IV), dated 18.7.2001 the following:-

"Doubt 42.- An employee in Grade 'A' is eligible for promotion simultaneously to Grades 'B', 'C' and 'D' (in ascending order) with varying requirements of length of service in the present grade. In other words, he has multiple channels of promotion. What shall be his eligibility under the ACP?"

Clarification – Provisions in the existing Recruitment Rules in various organizations providing for multiple channels for promotion are not consistent with the guidelines on framing of the Recruitment Rules. All such Rules should be reviewed immediately so as to provide only a single channel of promotion. However, till such a review is undertaken, the first financial up-gradation in such cases shall be allowed with reference to the lowest promotional Grade which is Grade 'B'. If he does not earn any promotion in 24 years, his second financial up-gradation will be as per the hierarchy of Grade 'B'. However, if he has already earned one regular promotion, then his second financial up-gradation shall be as per the hierarchy of the Grade to which he has been promoted."

11. The lowest promotional grade for the post of Fitter held by the applicant on 9.8.1999 was Senior Fitter in the pay scale of Rs. 3200-4900/-.

Therefore, as per the above clarification the applicant was given first financial up-gradation in the pay scale of Rs. 3200-4900/- which is perfectly legal and valid. Vide order dated 12.12.2008 (Annexure A-6) the post of Senior Fitter was down graded to the post of Fitter and vide order dated 31.3.2009 (Annexure A-7) the present incumbent in the post of Senior Fitter continued in the pay scale of Rs. 3200-4900/- as personal to him.

Annexures A-6 and A-7 orders came subsequent to 9.8.1999. Those orders will have no applicability to the position as on 9.8.1999 as far as the applicant is concerned. He was to be considered for grant of ACP benefits as per rules/instructions applicable/prevailing at that particular point of time when he was considered for the same. The applicant is eligible for the first



financial up-gradation in the pay scale of Rs. 3200-4900/- only

12. In view of the above, the Original Application is dismissed with no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”