

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM**

ORIGINAL APPLICATION NO.180/00449/2013

DATED THIS THE 22nd DAY OF FEBRUARY, 2016

**HON'BLE SHRI U.SARATHCHANDRANMEMBER(J)
HON'BLE SHRI RUDHRA GANGADHARANMEMBER(A)**

1. K.Naganathan,
Aged 59 years,
S/o Late S.Krishnamoorthy,
Executive Engineer,
Office of the Deputy Chief Engineer,
Andaman & Lakshadweep Harbour,
Works, Kavaratti, UT of Lakshadweep
Residing at ALHW Quarters,
Kavaratti, UT of Lakshadweep -682 555.
...Applicants

(By Advocate ShriShafik M. Abdul Khadir)

Vs.

1. Union of India
Represented by the Secretary to
Government, Department of Shipping,
Ministry of Shipping, Road Transport and Highways,
Transport Bhavan, New Delhi – 110 011.

2. The Chief Engineer & Administrator,
Andaman & Lakshadweep Harbour Works,
Port Blair - 744 101.

3. The Deputy Chief Engineer,
Andaman Lakshadweep Harbour Works,
Kavaratti - 683 555.

...Respondents

(By Sr. Central Government Panel Counsel Shri N.Anil Kumar for respondents)

ORDER

HON'BLE SHRI RUDHRA GANGADHARAN ...**MEMBER(A)**

The applicant is an Executive Engineer in the office of the Deputy Chief Engineer, Andaman & Lakshadweep Harbour Works (ALHW). He joined service as draftsman grade I on 17.8.1987 in the pre-revised scale Rs.1600-2660. The said post was merged with the post of Assistant Engineer in respect of those who were graduate engineers in line with the recommendation of the Vth Central Pay Commission (CPC) with effect from 29.4.2005. As a graduate engineer the applicant got the benefit of this merger and was placed in the pay scale of Rs.6500-10500. However, consequent to a court direction, this merger was pre-dated to 8.9.1999 (Annexure R1). The applicant submits that his first and only promotion was to the post of Executive Engineer (EE) on 3.3.2011. He was never given financial upgradation either under the Assured Career Progression Scheme (ACP) or the Modified ACP (MACP) Scheme; hence the OA.

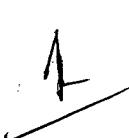
2. The applicant submits that he was entitled to the first ACP upgradation on 16.8.1999 when he completed 12 years of service. This would have got him the pre-revised pay scale of Rs.10,000-15,200. Based on his representation (Annexure A2) the respondents submitted a proposal dated 4.10.2008 (Annexure A3) which in turn was sent to the Ministry of Shipping, Road



Transport & Highways (MOST) on 17.11.2008 (Annexure A4). In a communication dated 4.3.2013 the ALHW recommended his case for the second financial upgradation under MACP. However the much-awaited upgradation never came. MOST has not responded either to his representations or those of the ALHW.

3. Meanwhile the applicant's junior, one P Ramachandran, was granted ACP upgradation with effect from 9.8.1999 in the pay scale of Rs.10,000-15200 corresponding to the revised pay band Rs.15600-39100 plus grade pay of Rs.6600/- (Annexure A9). The applicant submits that the said Ramachandran was also granted second MACP benefits with effect from 1.9.2008 since he had completed 20 years of service in 2007.

4. The applicant has produced a copy of letter dated 17.11.2008 from the Chief Engineer and Administrator, ALHW, concerning ACP financial upgradation to P Ramachandran which stated that ... *According to the clarification to the point of Doubt No.52 incorporated in O.M.No.35034/1/97-Estt(D), dated 18.7.2001 of the Ministry of Personnel, PG&P DOPT, New Delhi Shri P. Ramachandran, AE(Civil) is eligible to get the 1st financial upgradation under ACP w.e.f. 9.8.99 in the pay scale of Rs.10000-15200 from the date of his initial appointment. He has not got any promotion except change of pay scale*



and merger of post. The letter therefore recommended granting the first financial ACP upgradation to him (Annexure A11). Another communication dated 25.5.2010 states that P Ramachandran was due for the second financial upgradation under ACP on 20.4.2011; however, since the MACP had come into existence, the said Ramachandran would be granted MACP on completion of 20 years of service on 30.4.2007.

5. From the reply statement it appears that P Ramachandran successfully took legal recourse to change the date of merger of the two posts: in compliance with a direction issued by what the respondents mystifyingly refer to as "Hon'ble High Court of Calcutta in OA No.16/2008" dated 8.4.2009, the date was changed from Annexure R2 was issued on instructions of MOST after consultation with the Ministry of Law and Justice. The respondents claim that this date (8.9.1999) was chosen because the applicant was eligible for ACP upgradation from the year 1999. However since the applicant got a financial upgradation by virtue of the merger of two posts within 12 years of initial appointment he was not eligible for first ACP upgradation. He had completed 24 years of service on 17.8.2011. The MACP replaced the ACP with effect from 1.9.2008. Hence the applicant was eligible for grant of the second MACP with effect from 1.9.2008.



6. The respondents claim that since P Ramachandran was erroneously sanctioned the first ACP (Annexure A9) the said order was withdrawn on 8.7.2013 (Annexure R3). However P Ramachandran obtained an order dated 12.10.2015 in OA No. 351/00152/2014 from the Calcutta Bench of this Tribunal setting aside Annexure R3.

7. We are frankly baffled by the reference to the order of the "Hon'ble High Court of Calcutta in OA No.16/2008" by virtue of which the date of merger was declared to have come into effect from 8.9.1999. The reference number is obviously incorrect. This Tribunal deals with OAs; the High Court deals with WPs. The respondents have done nothing to clear up this mystery.

8. Be that as it may, the order to merge the two posts consequent to the Vth CPC's recommendations came into effect from 29.4.2005. We do not know under what circumstances the court ordered the date of such merger to be changed to 8.9.1999. There is nothing to show that the respondents in the said case challenged the order. We must therefore assume that it has attained finality.

9. The issue of merger of the two posts cannot however be conflated with that of ACP upgradation; the two are entirely different. Paragraphs 50.36 and 50.37 of Volume I of the Report of the Vth CPC reveal that the merger of posts was one of the recommendations of the Commission in response to issues

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raised by the Associations of Drawing Office Staff. The ACP on the other hand was designed to resolve the genuine problem of stagnation and hardship of central government staff due to inadequate opportunities for promotion. We believe the applicant was entitled to the benefits following the merger as well as those provided by the ACP in equal measure.

10. We note that P Ramachandran challenged the order revoking his ACP upgradation (Annexure A9) in OA No. 351/00152/2013 dated 12.10.2015. The Calcutta Bench of this Tribunal allowed the OA in the following words:

7. Trite is the law is that if any pay commission suggest merger of any post and thereby the lower post merges with the higher post that cannot be taken as up gradation for extending the ACP benefits or even for that matter MACP benefit. This rudimentary as well as trite proposition of law in service jurisdiction was not taken into consideration by the authorities concerned and because of that alone, the applicant was driven to the extent of filing this OA. As such no more elaboration in this regard is required. In the speaking order the authority concerned went on discussing about the applicability of MACP scheme in favour of the applicant which we are not at present concerned. As such we would like to direct the respondent authorities concerned to extend the ACP benefit as given on 09.08.1999 correctly and that has to be restored in structo sensu.

11. In this connection it is worth recalling the astute observation of the Hon'ble Apex Court in Council of Scientific and Industrial Research and Another Vs. K.G.S.Bhatt and Another¹ wherein the Court observed that: ...*The opportunity for advancement is a requirement for progress of any organisation.*

¹(1989) 4 SCC 635



It is an incentive for personnel development as well.

12. We also reproduce below a clarification provided by OM No.35034/1/97-Estt.(D) (Vol.IV), dated 18.7.2001:

Doubt 52. Following the recommendations of the Pay Commission, feeder and promotional posts have been placed in the same scale. Consequently, hierarchy of a post comprises of Grades 'A', 'A' and 'C', i.e., the entry level and the first promotional grade are in the same scale. What shall be his entitlements under ACPS?

Clarification. Normally, it is incorrect to have feeder grade and a promotional grade in the same scale of pay. In such cases, appropriate course of action is to review the cadre structure. If as a restructuring, feeder and promotional posts are merged to constitute one single level in the hierarchy, then in such a case, next financial upgradation will be in the next hierarchical grade above the merged levels and if any promotion has been allowed in the past in grades which stand merged, it will have to be ignored as already clarified in reply to point of Doubt No.1 of O.M., dated 10.2.2000. However, if for certain reasons, it is inescapable to retain both feeder and promotional grades as two distinct levels in the hierarchy though in the same scale of pay, thereby making a provision for allowing promotion to a higher post in the same grade, it is inevitable that benefit of financial upgradation under ACPS has also to be allowed in the same scale. This is for the reason that under the ACPS, financial upgradation has to be allowed as per the 'existing hierarchy'. Financial upgradation cannot be allowed in a scale higher than the next promotional grade. However, as specified in Condition No.9 of the ACP Scheme (vide DoP&T, O.M., dated 10-2-2000), pay in such cases shall be fixed under the provisions of FR 22 (I) (a)(1) subject to a minimum benefit of Rs.100.

13. The respondents have not explained why they granted P Ramachandran the ACP benefit while holding on to the proposal to grant a similar benefit for the applicant; admittedly the latter is the senior of the two. We find this silence quite deafening. Anyway, we are convinced based on the discussion in



the preceding paragraphs that the respondents have failed to substantiate their contentions.

14. We hold that the applicant is entitled to the first financial ACP upgradation with effect from the time he completed 12 years of service. Since his very first promotion took place only on 3.3.2011 he is also eligible for grant of the second MACP upgradation, as already recommended by the ALHW in its letter dated 1.3.2013 (Annexure A12). We direct the respondents to sanction both the said upgradations and to effect payment of the arrears due to him within two months of receiving a copy of this order.

15. The applicant has been subjected to harassment because of the incompetence and indifference of a few officials and is entitled to receive interest on the delayed payment of his dues; we direct the respondents to calculate interest at the current interest rate applicable to GPF with effect from the date on which each financial upgradation fell due till the date on which the arrears are finally disbursed to the applicant. We make it clear that the state exchequer shall not bear the burden of the incompetence of its staff. Therefore we direct the respondents to identify the officials responsible for the lapse, deduct the monies concerned from them, and pay interest as aforesaid to the applicant along with the arrears, within two months from the date of



receipt of a copy of this order. We trust such strong steps will engender a stronger sense of responsibility as well of empathy in bureaucracy.

16. The OA is allowed to the extent stated above.



(RUDHRA GANGADHARAN)
MEMBER(A)



(U.SARATHCHANDRAN)
MEMBER(J)

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