

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 460 OF 2007

Friday, this the 18th day of January, 2008

CORAM :

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mrs.O.P.SOSAMMA, ADMINISTRATIVE MEMBER**

Vijayan
Diesel Mechanic Cum Foreman
LHW, Androth,Kavarathi (Retired)
Residing at : Vijaya Mandiram, Kollam : **Applicant**

(By Advocate Mr. S.M.Prem)

Versus

1. Union of India represented by Secretary
to Government
Ministry of Shipping, Road Transport and Highway, New Delhi
2. Chief Engineer and Administrator
Andaman and Lakshadweep Harbour Works, Port Blair
3. Deputy Chief Engineer
Lakshadweep Harbour Works, Kavaratti
4. Executive Engineer
Lakshadweep Harbour Works, Anthroth : **Respondents**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 18.01.2008, the Tribunal
on the same day delivered the following :

O R D E R

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was originally appointed in the pay scale of
Rs.260-350 as Welder-cum-Fitter in 1974 and was regularised in the said
post in 1989. The revised pay of the above scale became Rs.3050-4590.
Later on he was promoted as Welder-cum-Mechanic in the pay scale
330-480 which underwent a revision of Rs.1200-1800 and subsequently
he was also promoted as Diesel-Mechanic-Foreman in the scale of
Rs.380-560 whose replacement scale was Rs.1300-2040. After Vth

Central Pay Commission Recommendations, there has been a merger of the erstwhile pay scale of RS.1200-1800 and Rs.1300-2040 and the revised pay scale became Rs.4000-6000 for the two aforesaid pay scales. The applicant was granted Financial Upgradation in the scale of Rs.4500-7000 on 15.04.2001. This benefit has been enjoyed by him all through till the date of his superannuation. However, the authorities have raised an objection stating that the applicant having got in all two promotions, he is not eligible for any benefit under the ACP Scheme. Consequently, his DCRG has been withheld and there is a proposal to revise his pension as well. The applicant has come against the decision of the respondents.

2. Respondents have contested the OA . According to them, the applicant was appointed in Lakshadweep Harbour Works on 03.04.1971 as Khalasi and retired on superannuation on 30.11.2006. The applicant was appointed to the post of Welder-cum-Fitter in the pay scale of Rs.260-350 / 950-1400 (Revised pay scale Rs.3060-4590) on 01.01.1974 and Welder-cm-Mechanic in the pay scale of Rs.330-480 / 1200-1800 (Revised pay scale Rs.4000-6000) on ad-hoc with effect from 07.01.1985 and regularised with effect from 15.04.1989. As per Recruitment Rule the next promotional post is Diesel-Mechanic-cum-Foreman in the pay scale of Rs.380-560 / 1320-2040 (Revised pay scale of Rs.4000-6000). Thus he has been promoted to the post of Diesel-Mechanic-cum-Foreman on 05.11.1997 on ad-hoc and regularised with effect from 11.10.2001. His pay was fixed under FR 22 (1) (a) (i) with effect from 05.11.1997. Since he has been appointed to the post of Welder-cum-Mechanic on regular basis with effect from 15.04.1989 the eligibility for first financial upgradation is on 15.04.2001. Since he has already been promoted to the post of Diesel-Mechanic-cum-Foreman on 05.11.1997 on ad-hoc basis int eh next post and scale of pay as the existing hierarchy and enjoyed the



promotional benefit of pay fixation etc. he is not entitled for financial upgradation under ACP with effect from 15.04.2001 as specified in clarification regarding ACP vide G.I Department of Personnel & Training O.M.No.35034/1/97-Estt.(D) (Vol.IV) dated 18.07.2001 Sl.No.52 of Swamy's Compilation of Seniority & Pension (Annexure R-3). The order issued allowing financial upgradation under ACP with effect from 15.04.2001 in the scale of pay of Rs.4500-9000 is a mistake which has been rectified as pointed out by the Senior Accounts Officer, Office of the Chief Controller of Accounts, Ministry of Shipping, Road Transport & Highways, New Delhi vide No.PA/ALHW/Pension/V.Vijayan/2006-07 dated 18.10.2006 (Annexure R-1)

3. Counsel for applicant submitted that the two pay scales (1200-1800 and 1320 -2040) having been merged into a single pay scale of Rs.4000-6000 the applicant is deemed to have obtained only one promotion whereby he becomes eligible for 2nd financial upgradation after 24 years of his service. As such, according to him, there is no need to revise the pay scale as proposed by the respondents.

4. Counsel for respondents reiterated the contention made in Para 4 of the counter as extracted above.,

5. Arguments were heard and documents perused. The facts are not in dispute in this OA. The only question is whether due to merger of two pay scales under rationalisation the promotions enjoyed by the applicant should be treated as a single promotion or two promotions. Answer to this question in identical terms has been given by clarification by the DOPT vide Clarification No.1 of Annexure II of order dated 10.02.2000 and the same is extracted hereunder:-

Points of doubt	Clarification
<p>Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay scale as a result of rationalization of pay scales. This has resulted into change in the hierarchy in as much as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration : Prior to the implementation of the Fifth Central Pay Commission recommendation, two categories of posts were in the pay scales of Rs.1200-1800 and Rs.1320-2040 respectively: the latter being promotion post for the former. Both the posts have now been placed in the pay scale of Rs.4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases ?</p>	<p>Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under SCPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade.</p>

6. The above clarification clinches the issue and it is evident that the applicant is entitled to 2nd financial upgradation as granted to him on 15.04.2001 revising his pay scale at Rs.4500-7000. Consequently the OA is allowed. Respondents are directed not to revise the pay of the applicant but release the entire DCRG withheld within a period of eight weeks from the date of communication of this order. Any delay in release of this amount shall entail interest at the rate of 9% payable from the date of expiry of eight weeks and such amount of interest shall be recovered from the erring officer. No costs.

Dated, the 18th January, 2008.



O.P. SOSAMMA
ADMINISTRATIVE MEMBER

vs



K.B.S. RAJAN
JUDICIAL MEMBER