

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.491/05

Wednesday.....THIS THE 1st DAY OF MARCH, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.V.Joshy, Launch Mechanic,
Customs Sea Patrolling Unit,
Beypore, Kozhikode.Applicant

(By Advocate Mr. CSG Nair)

V.

- 1 The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
IS Press Road, Cochin.18.
- 2 The Commissioner of Customs (Preventive)
Central Revenue Buildings,
IS Press Road,
Cochin.18.
- 3 Union of India, represented by the
Secretary, Department of Revenue,
Ministry of Finance,
North Block, New Delhi.1.Respondents

(By Advocate Mrs. Mariam Mathai,ACGSC)

This application having been heard on 17.2.2006, the Tribunal on 01.03.2006 delivered the following:



ORDER

OA 491/05

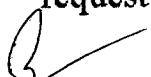
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance in the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 is that his request for second financial up-gradation on completion of 24 years of service has been rejected on the ground that he did not have the requisite qualification as per the Recruitment Rules when similarly situated persons have already been granted such benefit under the ACP Scheme.

2 The facts leading to the filing of the present OA are that the applicant joined as a Launch Mechanic on 28.12.79 in Customs Marine Organisation. On the recommendation of the 5th Central Pay Commission, the Government of India issued the Assured Career Progression Scheme for the Central Government civilian employees vide OM No.35034/1/97-Estt.(D) dated 9.8.99. In terms of the aforesaid scheme, the applicant was granted the first financial up gradation w.e.f 9.8.99. On completion of 24 years of regular service on 28.12.03 he became eligible for the second financial up-gradation but this benefit was not granted to him so far. The applicant had earlier approached this Tribunal with the same grievance in OA 258/2004 but it was disposed of vide Annexure.A3 order dated 16.6.04 directing the first respondent to consider the request of the applicant and to take appropriate decision and to communicate the same to him. Vide Annexure.A4 letter dated 14.10.04 in compliance of the aforesaid directions of this Tribunal



dated 16.6.04, the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs considered the matter in consultation with his cadre controlling authority, namely, the Commissioner (Logistic), Directorate of Logistics, New Delhi. During the consideration it was transpired that the second respondent had submitted certain proposal for amendment of the Recruitment Rules of Marine Organization. In the meantime the Directorate of Logistics had initiated proposal for the cadre restructuring of marine organization and sent to the Board and the said proposal is under the consideration of the Central Board of Excise & Customs. After the cadre restructuring is effected, the recruitment Rules of Marine Organizations will have to be duly amended giving due consideration for the promotional prospects of Marine Staff. The applicant was therefore, advised to take up his request for grant of second financial up-gradation under the ACP scheme with the Commissioner of Central Excise, Kochi, who is the competent authority to take a decision in the matter. Accordingly the applicant submitted a representation to the first respondent on 5.1.05 followed by another representation dated 31.1.05. It is in response to this representation dated 31.1.05 that the respondent No.1 has issued the impugned Annexure A7 letter dated 15.4.05 informing the applicant that he does not satisfy the eligibility conditions for promotion to the cadre of Engineer (Marine) as per the Recruitment Rules, 2004 for Group A and B posts in the Customs Marine Organization and therefore, his request for second ACP cannot be acceded to. The contention of the



applicant is that the Annexure A7 reply is not as per rules, rulings and instructions on the subject as Recruitment Rules for Engineer (Marine) was issued only on 25.2.04 for the first time. Further Para 6.3 of the ACP Scheme says as under:

“In order to prevent operation of the ACP Scheme from resulting into undue strain on the administrative machinery, the Screening Committee shall follow a time schedule and meet twice in a financial year – preferably in the first week of January and July for advance processing of the cases. Accordingly, cases maturing during the first half (April-September) of a particular financial year for grant of benefits under the ACP Scheme shall be taken up for consideration by the Screening Committee meeting in the first week of January of the previous financial year. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that should be maturing during the second half (October-March) of the same financial year. For example, the Screening Committee meeting in the first week of January, 1999 would process the cases that would attain maturity during the period April 1, 1999 to September 30, 1999 and the Screening Committee meeting in the first week of July, 1999 would process the cases that would mature during the period October 1, 1999 to March 31,2000.

The applicant has also submitted that similarly placed persons have also been granted the second financial up-gradation. In the seniority list of Group C and D Marine Staff as on 1.1.01 published by the Respondent No.1 the applicant's name appears at Sl.No.2 in the category of Launch Mechanic. Shri K.Subramanian who is at Sl.No.1 was given the second financial up-gradation on 5.6.01. Similarly, Shri A. Jayaprakash was granted second financial up -gradation with effect from 9.9.01. Both of them did not have any additional qualification than the applicant.

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3 The respondents in their reply have submitted that the ACP Scheme dated 9.8.99 was issued by the Department of Personnel and Training as a safety net to deal with the problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. They have denied the contention of the applicant that he had became eligible for second financial up-gradation because the condition No.6 of the Scheme stipulates fulfillment of normal promotion norms (bench mark/departmental examination etc.) for grant of financial up-gradations , performance of such duties as are entrusted to the employees together with retention of old designation....etc shall be ensured for grant of benefits under the ACP Scheme. Since the applicant did not satisfy the eligibility condition for promotion to the cadre of next higher grade of Engineer (Marine) as per Recruitment Rules, 2004 for Group A and B posts in Customs Marine Organizations, he is not entitled for the second financial up-gradation under the ACP Scheme. According to the respondents even though the Recruitment Rules for Group B officers were notified only on 25.2.04, the draft Recruitment Rules were already in existence and under the approval of the Ministry. As per the Draft Recruitment Rules submitted to the Ministry for approval on 4.1.99 the Engineer (Marine) should have the qualification of degree/diploma in Mechanical Engineering and this was applicable to the applicant on completion of 24 years of service on 28.12.03. In order to grant second ACP it is essential that all conditions of Recruitment Rules/draft Recruitment Rules are to be fulfilled as in the case of

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promotion. Since the applicant did not fulfill the eligibility condition of promotion to the cadre of next higher grade of Engineer (Marine) as per the Recruitment Rules, 2004, his request for second financial up-gradation under the ACP scheme was rejected. As regards the cases of Shri A. Jayaprakash and Shri K. Subramanian are concerned, they were given the second financial up-gradation during 2001 and only thereafter the revised Recruitment Rules for Group B officers of Marine Wing came into effect on 25.2.04. On 28.12.03 when the applicant had completed 24 years of service, the draft Recruitment Rules were in existence and it was submitted for approval of the Ministry. Hence the conditions for the eligibility for promotion as per the revised draft Recruitment Rules were to be taken into consideration for granting the second financial up-gradation to the applicant.

4 The applicant had filed a rejoinder. The applicant has submitted that his case of second financial up-gradation under the ACP Scheme should have been taken up during July, 2003 when he is eligible for up-gradation with effect from 28.12.03. The Recruitment Rules for Group A and B Marine staff came into force on 25.2.04 and it cannot have been made applicable to him in 2003 when he became eligible. He has contended that the actual fact was that the concerned papers for second ACP in his case were not forwarded to the first respondent by the Special Customs Preventive Division, Kozhikode in time. It was this failure of the concerned authorities resulted in this litigation.



5 We have heard Shri CSG Nair for the applicant and Shri Mariam Mathai, ACGSC for the respondents and perused the documents available on record. The reply statement filed by the Respondent No.1 clearly shows the delay on the part of the concerned authorities to process the case of the Applicant for grant of 2nd ACP on time. It is an admitted fact that the Applicant has completed 24 years of regular service as on 28.12.2003 and he became eligible for grant of 2nd financial up-gradation in terms of the Assured Career Progression Scheme for the Central Government Civilian Employees issued on 9.8.1999. The purpose of the scheme has been stated in the O.M dated 9.8.99 itself. It is a 'safety net' to deal with the problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The said O.M has also prescribed the time schedule for the Departmental Screening Committee to process the case for grant of benefits under the Scheme. The cases maturing during the first half (April-September) of a particular financial year for grant of benefits under the ACP Scheme shall be taken up for consideration by the Screening Committee meeting in the first week of January of the previous financial year. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that would be maturing during the second-half (October-March) of the same financial year. For example, the Screening Committee meeting in the first week of January, 1999 would process the cases that would attain maturity during the period April, 1, 1999 to September 30, 1999 and the Screening committee meeting in the first

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week of July, 1999 would process the cases that would mature during the period October 1,1999 to March 31,2000. As the Applicant has become eligible to be considered for the 2nd ACP w.e.f 28.12.03, the Departmental Screening coming should have met in the first week of July, 2003. The Recruitment Rules were notified only on 25.2.04. However, the contention of the Respondents is that the draft Recruitment Rules were in existence from 4.1.99. If that is so, the respondents have no explanation as to why S/Shri Jayaprakash and K.Subramanian were granted the 2nd ACP in 2001. The Respondents' action in granting 2nd ACP Scheme benefits to the said Shri Jayaprakash and Shri Subramanian in 2001 when the draft Recruitment Rules were in existence as on 4.1.99 and denying the same to the Applicant on the same reason is absolutely arbitrary and illegal. Even otherwise the action of the Respondents denying the 2nd ACP to the Applicant on the ground of pending Recruitment Rules is also not sustainable in the eye of law. It is the Respondents' own case that for grant of benefits under the ACP Scheme, fulfillment of the normal promotion norms have to be ensured. The effect of amendment of the Recruitment Rules in filling up of posts which fell vacant prior to the amendment has been clearly spelt out by the Hon'ble Supreme Court in the case of Y.V.Rangiah and others V. J. Srinivasa Rao, AIR 1983 SC 852 wherein it has been held as under:

"Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub Registrar Grade II should have been made out of that panel. In that event



the petitioners in the two representation petitions who ranked higher than the Respondents Nos.3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules."

6. In **A.A.Calton Vs. Director of Education and another, 1983(3) SCC 33**, the Apex Court held as under:

"It is true that the legislature may pass laws with retrospective effect subject to the recognized constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect."

The aforesaid law laid down by the Apex Court has been followed in various subsequent cases also and some of them are **P.Mahendran and others Vs.State of Karnataka and others, (1990) SCC 405, P.Murugesan and others Vs. State of Tamil Nadu and others, 1993**

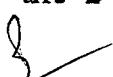
(2) SCC 340 and State of Rajasthan and others Vs. R.Dayal and others, 1997 (10) SCC 419.

7. It is true that the ACP Scheme envisages only placement in the higher pay scale to Government Servants on personal basis and it does not amount to functional or regular promotion. However, as per the Scheme itself two financial up-gradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through



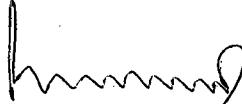
limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial up-gradations under the ACP Scheme shall be available only if no regular promotions during the prescribed period (12 and 24 years) have been availed by an employee. Further the benefit of ACP Scheme is granted only after the cases are processed by a duly constituted Screening Committee. The composition of the Screening Committee shall be the same as that of the DPC prescribed under the relevant Recruitment/Service Rules for regular promotion to the higher grade to which financial up-gradations is to be granted. However, in cases where DPC as per the prescribed rules is headed by the Chairman/Member of the UPSC, the Screening Committee under the ACP Scheme shall, instead, be headed by the Secretary or an Officer of equivalent rank of the concerned Ministry/Department. Therefore, the ACP has the full-trap of a vacancy based regular promotion, being granted after due screening by a regular Departmental Promotion committee as per relevant Rules/guidelines.

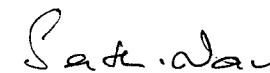
8. Having heard the counsels for the parties and in view of the aforesaid discussions, we do not find any force in the contention of the Respondents. On the other hand, we are of the considered opinion that the Respondents ought to have processed the case of the Applicant for grant of benefits of 2nd ACP benefits in July, 2003 itself in accordance with the unamended Recruitment Rules applicable to the Applicant and should have granted him the 2nd ACP w.e.f the due date, if he was otherwise found eligible. We,



therefore, direct the Respondents to consider the applicant for the 2nd Financial upgradation from the due date of completion of 24 years in terms of the Scheme and in accordance with the unamended Recruitment Rules as applicable to him as on the said date. This exercise shall be completed within a period of two months from the date of receipt of this order and if the applicant is found fit to grant of the 2nd ACP by the Screening Committee, the consequential benefits shall be granted to him within one month thereafter by passing an appropriate order in this regard. In the above terms, the Original Application is allowed. No order as to costs.

Dated this the 1st day of March, 2006


GEORGE PARACKEN
JUDICIAL MEMBER
S.


SATHI NAIR
VICE CHAIRMAN