

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 50 of 2010

Thursday, this the 01st day of September, 2011

CORAM:

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

1. C. Viswanathan, aged 57 years
 S/o. K Ganapathi, Store Keeper
 Material Organisation, Naval Base, Kochi – 4
 Residing at Journalist Nagar
 Trikkakara – 682 021
 Ernakulam District

2. K.P Thankappan, aged 59 years
 S/o Padmanabhan, Store Keeper
 Material Organisation
 Naval Base, Kochi – 4, residing at Kumbalangi
 Ernakulam District Applicants

(By Advocate – Mr.K Shri Hari Rao)

V e r s u s

1. Union of India, represented by
 Secretary, Ministry of Defence
 North Block, New Delhi

2. The Flag Officer Commanding-in-Chief
 Southern Naval Command, Headquarters
 Naval Base. Kochi – 4

3. Director of Logistic Support
 Integrated Headquarters (Navy), New Delhi

4. Material Superintendent
 Material Organisation, Naval Base
 Kochi – 4 Respondents

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

This Original Application having been heard on 01.09.2011, the
 Tribunal on the same day delivered the following:

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ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

1. The first and second applicants entered the service as unskilled labourers (USL for short) on casual basis with effect from 02.05.1979 and 21.04.1976 respectively. Subsequently, both of them were absorbed in the said post from 01.04.1982 and 20.06.1979 respectively. Both of them applied for the post of Assistant Store Keeper (ASK for short) and were selected and appointed as ASKs with effect from 02nd August 1983 on casual basis and later they were absorbed in the said post from 01st December 1986. First applicant's casual services in the post of USL and ASK were regularised as per Court Order in O.A 1427/93 and Govt Order dated 26th June 1995 respectively. It is said in the reply statement that similarly the Casual Service rendered by the 2nd applicant Shri K.P Thankappan, in the post of ASK had also been regularised, as per Govt Orders. But as per the Tribunal's order in O.A 750/2005 the casual service rendered in the post of USL has been regularised and based on which granting/antedating of ACP has also been ordered. According to the respondents, the second applicant has no case to agitate as the relief sought for has already been granted to him as he is one of the members of 5th applicant union in O.A 750/2005 and the relief sought for has already been granted to him as contained in the order dated 02.12.2009 issued by the 4th respondent vide Annexure R1. The only reason which differentiated the case of the first applicant from that of the second applicant is stated in para 4 of the reply statement that in the case of second applicant, he was a member of the union who was a party in O.A 750/2005. But since the first



applicant did not move this Tribunal for any such order, so he was not granted such benefits.

2. Admittedly, if the first applicant is found entitled for the same benefits as that of the second applicant, the first applicant will also become entitled for the second ACP. When factual details as furnished by the respondents themselves are identical, there is no reason to discriminate the first applicant from that of the second applicant merely on the ground that the first applicant did not file a case before this Tribunal. When two persons are similarly situated and in the case of one, by virtue of a Court Order, the benefit has been extended, it may not be proper to restrict the benefit to the second applicant alone. Had the respondents extended the benefits to the first applicant as well, unnecessary litigation could have been avoided.

3. In the case of State of Karnataka and others versus Smt.C Lalitha (2006 2 SCC 747) vide para 29, it has been held by the Apex Court that

“ Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached this court that would not mean that persons similarly situated should be treated differently. It is further more well settled that the question of seniority should be governed by the Rules. It may be true that this Court took notice of the subsequent events, namely,, that in the meantime she had also been promoted as Assistant Commissioner which was a category I post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her there in as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to. ”

The respondents being a public authority they are bound by the law



declared by this Tribunal especially in the absence of any challenge to the order of this Tribunal, in the case of the second applicant. In the circumstances the first applicant is also entitled to get the same benefit. It is pointed out that the second applicant has already been given the benefit though he received the order only after filing a case. Therefore as for the second applicant, this Original Application has become infructuous, but as regards the first applicant, we allow this O.A.

4. We direct the second respondent to extend the benefit of 2nd ACP to the first applicant as extended to the second applicant and pay all consequential benefits thereto as expeditiously as early as possible or at any rate within two months from today. A copy of this order shall be given to both sides. The Original Application is allowed as above.

(Dated this the 01st day of September, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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