

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 499 of 2010

Monday, this the *26th* day of March, 2012

CORAM:

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.D. Ouseph, S/o. Late Chacko,
Retired Net Mender,
Cochin Base of Fishery Survey of India, Cochin,
Residing at "Karikompil",
Athirampuzha PO, Kottayam.

... Applicant

[By Advocate Mr. Shafik M.A.]

Versus

1. Union of India, represented by
The Director General,
Fishery Survey of India,
Mumbai.
2. The Zonal Director, Cochin Base of
Fishery Survey of India, Cochin.
3. The Mechanical Marine Engineer,
Cochin base of Fishery Survey of India,
Cochin.

... Respondents

[By Advocate Mr. A.D. Raveendra Prasad, ACGSC]

26/03/2012 The application having been heard on 19.03.2012, the Tribunal on 26/03/2012 delivered the following:

ORDER

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

The applicant in this O.A. was appointed as Netmender in the Cochin base of Fishery Survey of India on 14.04.1973. He retired from service on 31.01.2010 on attaining the age of superannuation without any promotion. He was offered promotion on three occasions in August, 1997, July, 2004 and



March, 2006 to the post of Junior Deck Hand but he refused to accept promotions owing to his domestic problems and severe sea sickness. In the meantime, the Assured Career Progression (ACP) Scheme was introduced by the Government with effect from 09.08.1999 to mitigate the hardship suffered by the employees for want of promotional avenues. Under the said scheme, on completion of 12 years of regular service an employee can be given if he is eligible for promotion, the 1st financial upgradation and on completion of 24 years, the 2nd financial upgradation. The applicant was given the 1st financial upgradation on completion of 12 years of regular service with effect from 03.07.1992 as per Annexure A-1 order dated 08.03.2000. The financial upgradation given to the applicant was subsequently withdrawn on the ground that he had declined regular promotion in August, 1997. Aggrieved, the applicant has filed this O.A. for the following reliefs:

- (i) To declare that the applicant is entitled to get 1st financial upgradation to the grade of Rs. 2750-4400 (pre revised) with effect from 03.07.1992 and direct the respondents to grant the same;
- (ii) To direct the respondents to grant consequential benefits of fixation of pay and revise his pension and other terminal benefits on the basis of such re-fixation of pay;
- (iii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case; and
- (iv) To Grant the costs of this Original Application.

2. The applicant contended that his refusal to accept regular promotion in August, 1997 cannot justify the withdrawal of the 1st financial upgradation granted to him with effect from 03.07.1992.

3. The respondents in their reply statement submitted that the refusal of the applicant to accept vacancy based promotion prevented them from granting



the 1st financial upgradation to him as per Government orders. The applicant having been offered and declined promotion in August, 1997 was not eligible for upgradation under the ACP Scheme as on 09.08.1999. When he was granted the 1st financial upgradation, the fact of refusal of promotion by him was wrongly not taken note of. As per the circular No. E1-3/2000-AIS/1762/6 dated 07.03.2000 as at Annexure R-7, an employee who had once refused promotion at his own will cannot later on claim a right for upgradation under the ACP Scheme. It was on the basis of this directive that his 1st financial upgradation was withdrawn.

4. We have heard Mr. Shafik M.A., learned counsel for the applicant and Mr. A.D. Raveendra Prasad, learned ACGSC appearing for the respondents and perused the records.

5. The crux of the issue in this O.A is whether the refusal of promotion by the applicant in the year 1997 prior to the notification of the ACP Scheme on 09.08.1999 is a bar to his getting the 1st financial upgradation under the said scheme with effect from 03.07.1992 or not. The ACP Scheme was introduced on 09.08.1999 by the Government of India to mitigate the suffering of the employees due to lack of promotional avenues. The 1st financial upgradation was to be granted on completion of 12 years service to those employees who though eligible for promotion, did not get promotion during the period of 12 years. The applicant was eligible to get the 1st financial upgradation with effect from 03.07.1992 and the same was granted to him vide Annexure A-1 order 08.03.2000. However, it was withdrawn subsequently on the ground that the applicant had declined vacancy based promotion in August, 1997. The applicant had become eligible for the 1st financial upgradation on completion of



12 years from 1980 to 1992 without any promotion. The respondents have no case that he was offered promotion during the period from 1980 to 1992. He was offered promotion only in 1997, i.e. 5 years after his becoming eligible for the 1st financial upgradation which he declined. The refusal of the promotion after 1992 can impact adversely his eligibility for the 2nd financial upgradation in 2004 only. The relevant part of Para 10 of the Annexure to ACP Scheme is extracted as under:

“10. Grant of higher pay scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently.....”

(emphasis supplied)

6. An employee has to first accept the financial upgradation on completion of 12 years of regular service without promotion. His acceptance of the financial upgradation is deemed to be his unqualified acceptance for regular promotion on occurrence of vacancy subsequent to avilment of the financial upgradation. In the present case, the refusal of the applicant to accept promotion on occurrence of vacancy subsequent to avilment of the 1st financial upgradation with effect from 03.07.1992 can affect his eligibility for the 2nd financial upgradation only on completion of 24 years. As per the provisions of the ACP Scheme, the refusal of promotion subsequent to avilment of financial upgradation can affect his 2nd financial upgradation only. There is no provision in the scheme to withdraw the 1st financial upgradation granted to the applicant. When regular promotion is refused, the penalty is debarment from promotion for one year only. The period of debarment will not count for the 2nd financial upgradation. On upgradation under the ACP Scheme, the financial benefit allowed is final. Therefore, the forfeiture of the



1st financial upgradation granted to the applicant with effect from 03.07.1992 is illegal. In the result, the O.A. succeeds.

7. The applicant is entitled to get the 1st financial upgradation to the grade of Rs. 2750-4400 (pre-revised) with effect from 03.07.1992^x. The respondents are directed to grant the 1st financial upgradation with effect from 03.07.1992 and consequential benefits of fixation of pay and to revise his pension and other terminal benefits on the basis of such refixation of pay within a period of 2 months from the date of receipt of a copy of this order.

8. No costs.

(Dated, the 26th March, 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE PR RAMAN
JUDICIAL MEMBER

cvr.