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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 518/2009

Tuesday, dated, this the 6th day of July, 2010.

CORAM:

**HON'BLE Mr JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Ms K.NOORJEHAN, ADMINISTRATIVE MEMBER**

P.Koya,
S/o Syed Muhammed Koya,
W.C Mate, Lakshadweep Public Works Department,
Sub Division, Minicoy. .. Applicant

By Advocate Mr P.V.Mohanan

v.

1. The Administrator,
U.T. Of Lakshadweep,
Kavaratti.
2. Superintending Engineer,
Lakshadweep Public Works Department,
Kavaratti. Respondents

By Advocate Mr S Radhakrishnan

The application having been heard on 1.7.2010, the Tribunal on 6.7.2010 delivered the following:-

ORDER

HON'BLE Mr JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The applicant, working as W.C.Mate in the Public Works Department of Lakshadweep, Sub Division, Minicoy, has filed this application for a direction to the respondents to fix the pay of the applicant in the pre-revised scale on completion of 24 years of service with effect from 6.8.1983 on reckoning his N.M.R Mate service from 6.8.1983 for granting financial upgradation.

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2. The applicant was originally engaged as an N.M.R Mate on 6.8.1983 and assigned temporary status with effect from 1.9.1993. After the assignment of temporary status, his services were regularised with effect from 30.5.2005. The contention of the applicant is that he is a qualified hand for appointment as Mate on a regular basis and he was getting the pay scale of Rs.2610-3540 with effect from that date. The applicant made a representation for financial upgradation under the Assured Career Progression Scheme (ACP) on account of his temporary service as NMR Mate from 6.8.1983. The applicant filed representations to that effect for refixation of his pay on granting ACP by reckoning his NMR service for computation of the period of 24 years for financial upgradation. But the Department did not allow his claim. Hence the applicant filed the present O.A.

3. The O.A has been admitted and notices has been ordered to the respondents and in pursuance to the notice ordered, a reply statement has been filed on behalf of the respondents. The stand taken in the reply statement is that as per the instructions contained in the ACP scheme, the claim for financial upgradation cannot be applied to casual employees including even with temporary status. Further, it is stated in the reply statement that the period of regular service for grant of financial upgradation can only be considered as eligible period for computation of the period of 24 years as per the ACP scheme. Further, it is stated that though the applicant was initially engaged as NMR Mate and assigned temporary status with effect from 1.9.1993, his services were regularised only with effect from 30.5.2005.

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4. We have heard the learned counsel appearing for the applicant Mr P.V.Mohanan. The case set up by the counsel for the applicant is that since the applicant has been engaged continuously from 6.8.1983 without any break and the applicant was a temporary status Mate with effect from 1.19.1993 in a pay scale, the casual service along with the service after regularisation has to be reckoned for allowing financial upgradation to the applicant. The counsel also submits that Annexure A-1 and A-2 would show that the applicant had been continuously working as Group'D' employee with effect from 6.8.1983. If so, as per the principles laid down by the Apex Court in **Union of India v. Mathivannan & others** [2006 (6) SCC 57], the applicant is entitled for reckoning entire service which he had from 6.8.1983 onwards to get the benefit of financial upgradation and consequent refixation of his pay on the basis of such benefits. Resisting this contention, relying on the reply statement filed on behalf of the respondents, Shri S Radhakrishnan, learned counsel for respondents submits that the grounds urged by the learned counsel appearing for the applicant are not sustainable in the light of the scheme of ACP for reckoning the casual service for granting financial upgradation. The counsel submits that the scheme itself clearly states that for allowing financial upgradation only regular service can be reckoned and even full temporary status period cannot be reckoned for allowing his financial upgradation. The counsel further submits that the factual position considered by the Apex Court in Mathivannan's case (cited supra) are different from that of the case on hand. Hence the observation/dictum laid down by the Apex Court is not applicable to the case of the applicant.

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5. On an anxious consideration of the rival contentions of the parties and on perusal of the records, the question to be decided is that whether the applicant is entitled for reckoning his casual service or NMR service started from 6.8.1983 for granting financial upgradation under the ACP Scheme along with his regular service or not. A reading of the scheme itself would clearly indicate that the financial upgradation is a concession given by the Government and for allowing such financial upgradation or granting time bound promotion, only the regular service can be taken as qualifying service for computation of 24 years under the scheme. The case in hand, it has to be noted that the applicant was though engaged continuously with effect from 6.8.1983, was allowed to work on daily wages and his services were regularised only with effect from 2005. Though the applicant was granted temporary status with effect from 1993, the entire casual service cannot be considered as a qualifying period for granting financial upgradation by reckoning that period also for computation of such period. The judgment of the Apex Court in Mathivannan's case relied on by the counsel for the applicant had discussed this point very elaborately in paragraphs 13 and 19 of the said judgment and the Apex Court had stated the reasons for allowing the petitioner therein the decision of the Tribunal as well as the High Court was confirmed by the Apex Court. In that case, the petitioner was an employee in the Postal Service. He was sent for regular training and he was selected by a selection process and he had allowed the work in the Army and considering all these aspects, the Apex Court allowed the claim of the petitioner therein. If so, no doubt, the facts of the case in hand are different from in all particulars with that of the facts considered by the Apex Court in Mathivannan's case. In view of

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the above, we have no hesitation to hold that the O.A fails and deserves to be dismissed. Accordingly the O.A stands dismissed with no order as to costs.


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

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