

CENTRAL ADMINISTRATIVE TRIBUNAL

~~ERNAKULAM~~ BENCH

ORIGINAL APPLICATION NO.551/2013

DATED THE 16th DAY OF MARCH, 2016.

Order reserved on: 25.02.2016

Date of decision : 16/03/2016

CORAM:

HON'BLE MR U SARATHCHANDRAN, MEMBER(J)

HON'BLE MR E K BHARAT BHUSHAN, MEMBER(A)

S C Sayed Koya

: Applicant

Shri T C G Swamy

: Advocate for Applicant(s)

V/s

Union of India & 3 Ors

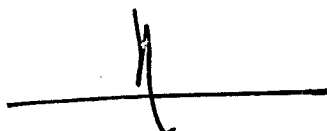
: Respondent(s)

Shri N Anilkumar PCGC

: Advocate for Respondent(s)

ORDER

- 1 Whether reports of local papers may be allowed to see the judgment? Yes
- 2 To be referred to the reporter or not? Yes
- 3 Whether their Lordships wish to see the fair copy of the judgment? No
- 4 Whether it needs to be circulated to other Benches Of the Tribunal? No



**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM
Original Application No.551/13**

This the 16th day of March, 2016

CORAM :

**HON'BLE SHRI U SARATHCHANDRAN, MEMBER (J)
HON'BLE SHRI E K BHARAT BHUSHAN, MEMBER(a)**

S C Sayed Koya,
S/o Adima,
Foreman of Stores (Sr. Store Keeper),
Material Organisation,
Southern Naval Command, Cochin-682 004
Residing at: Type II, A-4, Dawson Vihar Quarters,
Thycoodam, Vyttila, Ernakulam District,
Kochi – 682 019 ... Applicant

By Advocate Ms Sreekala T Gopi for
Shri T C G Swamy

V/s

- 1 Union of India represented by the
Secretary to Government of India,
Ministry of Defence (Navy), South Block,
New Delhi – 110 011.
- 2 The Chief of the Naval Staff,
Integrated Headquarters (for P&A),
Ministry of Defence (Navy), 'C' Wing,
Sena Bhavan, New Delhi – 110 011.
- 3 The Flag Officer Commanding-in-chief,
Headquarters Southern Naval Command,
Naval Base, Cochin – 682 004.



- 4 The Material Superintendent,
Material Organisation,
Headquarters Southern Naval Command,
Naval Base, Cochin – 682 004 ... Respondents

By Advocate Shri N Anilkumar Sr. PCGC

ORDER

Per Hon'ble Shri E K Bharat Bhushan, Member(A)

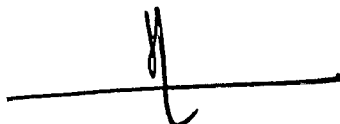
- 1 The OA has been filed by the applicant who is presently working as a Foreman of Stores (earlier designation Sr. Store Keeper) under the respondents in PB-2 + GP of Rs.4,200/- who is aggrieved by the refusal on the part of the respondents to grant a second financial upgradation under ACP Scheme w.e.f. 19.10.2006 and denial of third financial upgradation with effect from 19.10.2012. The reliefs sought are as follows:-

"(i) Call for the records leading to the issue of A1 and A2 and quash the same;

(ii) Declare that the applicant is entitled to be granted the 2nd financial upgradation under the ACP Scheme in PB -2 + GP Rs.4,600/- with effect from 19.10.2006 and direct the respondents to grant the benefits of the same accordingly;

(iii) Direct the respondents to grant the applicant the consequential benefits of arrears of pay and allowances with effect from 19.10.2006, with all other attendant benefits as well;

(iv) Declare that the applicant is entitled to be granted the 3rd financial upgradation under the MACP scheme in PB-2 + GP Rs.4,600/- with effect from 19.10.2012, with



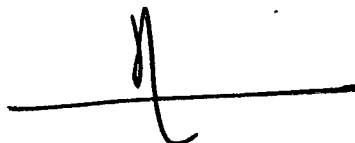
all consequential benefits emanating there from and direct the respondents accordingly;

(v) *Award costs of and incidental to this application;*

(vi) *Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."*

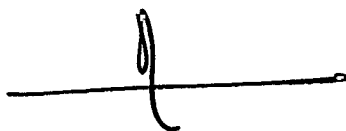
2 The case in brief is as follows:-

Shri Sayed Koya was initially appointed as an Assistant Store Keeper on 19.10.1982 on casual basis. Subsequently, his position was regularised during the year 1986. The applicant was granted the benefits of the first financial upgradation in PB -1 + Grade Pay of Rs.2400/- with effect from 8.5.2003. He was promoted in November, 2003 as Store Keeper but in the same scale of pay as above. The applicant's casual service was not taken into account as regular service for reckoning the benefit of the financial upgradation, under ACP scheme introduced with effect from 9.8.1999. After various representations made to the respondents, were rejected he and two others approached this Hon'ble Tribunal by filing OA 715/2008. This OA was allowed by order dated 19th August, 2009 wherein it was directed that the



".....Respondents to take into account the period of casual period service of the applicants which already stand regularised for the purpose of reckoning 24 years of service and accordingly grant the financial upgradation admissible to them."

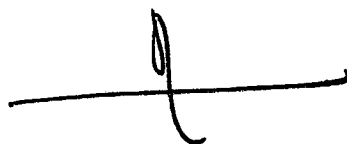
Assured Career Progression Scheme for the Central Civilian Employees introduced on 9.8.1999 envisage a grant of two financial upgradations after 12 and 24 years of completion of regular service. The applicant whose casual service had been regularised in 1986 would ordinarily have become eligible for first financial upgradation when the scheme was introduced in 1999. He was not allowed this benefit. This was attributed to the inability of the applicant to pass the qualifying departmental exam, which he had passed only on 8.5.2003. Admittedly, a delay of three years eight months and twenty-nine days occurred in the grant of the benefit. When ACP scheme was scrapped on 1.9.2008 and in its place Modified Assured Career Progression (MACP) was introduced, the applicant was yet to receive his second financial upgradation under ACP. MACP introduced with effect from 19.5.2009, envisages three



financial upgradations after completion of 10, 20 and 30 years. This was applied in the case of the applicant for grant of second and third financial upgradation under MACP, which were granted on 1.9.2008 and 19.10.2012 respectively.

The grievance of the applicant centres around the fact that he was denied his first ACP due when the scheme was introduced i.e. 9.8.1999. He was granted this benefit only on 8.5.2003 on the ground that he passed the Departmental Qualifying Examination (DQE) only by then. This has an adverse effect on his claim for the second ACP which should ordinarily have come his way on completion of 24 years of service from 19.10.1982, the date from which this Tribunal had ordered his regular service to be reckoned.

3 The respondents took a contrary view and stated that the delay that occurred in the grant of the first financial upgradation under the ACP scheme would have a cascading effect on the second financial upgradation which will be only due on completion of 12 years from the grant of the first financial



upgradation, which was on 8.5.2003. The applicant has claimed irretrievable loss as the ACP scheme itself was substituted with MACP in the meantime making him ineligible for the second upgradation, on account of this interpretation of the respondents.

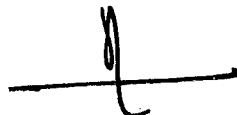
4 In the reply statement filed on behalf of the respondents, it has been maintained that the postponement of the second financial upgradation under ACP scheme by three years eight months and twenty-nine days from the date of introduction of ACP scheme had been solely because he had passed the DQE only on 8.5.2003. As the second financial upgradation is to be allowed only after 12 years of regular service from the date of the first financial upgradation, the applicant missed the bus as the scheme itself came to an end on 1.9.2008. It was maintained by the respondents that promotion norms under ACP are subject to the applicant acquiring the required eligibility. In other words, delay thus suffered in grant of first financial upgradation is meant to be carried forward to the second financial upgradation. The applicant has been granted two financial upgradations under MACP as eligible to him.



5 The two fellow applicants in OA 715/2013 were treated differently as they had passed the departmental qualifying examination earlier to the applicant in this OA. Further, the case of Shri K N Madhoosudhanan that he was given favourable treatment is not true. Shri Madhoosudhanan had qualified the DQE on 8.2.2001 in his first attempt and through an executive clarification (Annexure R/4), the employees such as he who passed the trade test at the first attempt were allowed the benefit of first upgradation on the date the ACP scheme was introduced – 9.8.1999.

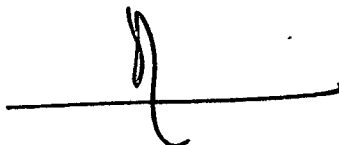
6 The learned counsel for both the parties were heard and the documents perused.

7 The issue at hand, is the delay in grant of first financial upgradation to the applicant on 8.5.2003, on account of non passing of departmental exam instead on 9.8.1999 when he would have been otherwise eligible, but for this condition and the view of the department that he would have to wait 12 years from the grant of the first financial upgradation which was delayed rather than estimating 12 years from 9.8.1999. So the



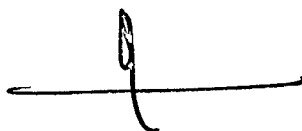
crux of the issue is the view that the respondents took to estimate 12 years from 8.5.2003 as otherwise, the benefit of the decision to reckon regular service from 1982 onwards, would have made the applicant eligible for the second upgradation under ACP due after completion of 24 years of service on 19.10.2006.

8 According to the ACP scheme promulgated vide Department of Personnel and Training Office Memorandum No.35034/3/2008-Estt (D) dated 19th May, 2009 the The ACP Scheme needs to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The scheme envisages the granting of first financial upgradation after 12 years of regular service and second financial upgradation after 12 years of regular service from the date of first financial upgradation. So far as the delayed granting is concerned, the scheme mentions *"if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential*



effect on the second upgradation which would also get deferred accordingly”.

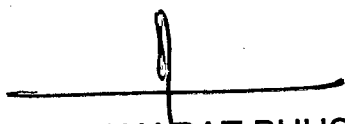
9 In the case of the applicant, while the first part was due to his late passing of the examination, the second was owing to the fact that the scheme itself was not in existence when he completed further period of 12 years. In so far as the prayer relating to the grant of third financial upgradation under MACP is concerned, the department has already committed their willingness to grant MACP – second and third upgradations on 1.9.2008 and 19.10.2012 respectively. On an examination of the facts of the case, it is seen that the hardship complained against by the applicant has been caused due to his inability to pass the DQE for more than three years, from the date when he was eligible for grant of ACP. The Department has taken recourse to the provision under the scheme quoted in pre-para and have indicated that the applicant was not eligible for the second upgradation under ACP. We cannot fault this approach as it is a part of the scheme and interfering with the provisions will have a cascading effect on several others as well. The respondents have succeeded in establishing that the case of




three others mentioned in the application and rejoinder, two fellow applicants before this Tribunal in OA 715/2008 and Shri Madhoosudhanan are quite different given the circumstances of the case. With respect to his second prayer for grant of third MACP on 19.10.2012, the respondent has indicated that this has been acceded to (Annexure A2).

10 In the circumstances, we find no reason to agree with the applicant that he should be given second financial upgradation under ACP scheme from 19.10.2006. There appears no reason for this Tribunal to give any direction on grant of MACP – second and third upgradations as the department has already indicated that these have been granted.

11 OA is dismissed. No costs.


(E K BHARAT BHUSHAN)
MEMBER(A)


(U SARATHCHANDRAN)
MEMBER(J)

abp