

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 569 of 2009

Wednesday, this the 06th day of April, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member

CGN Menon, aged 63 years, S/o Gopalan Nair
Senior Assistant Engineer (M) (Retd)
Andaman Lakshadweep Harbour Works, Kochi
residing at Cheithanaya, Thiruvaniyoor.P.O
Ernakulam District – 682 308

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Applicants

(By Advocate – Mr.R Sreeraj)

V e r s u s

1. Union of India represented by its Secretary to the
Government of India, Ministry of Shipping,
Road Transport and Highways,
Transport Bhavan, 1, Parliament Street,
New Delhi – 110001

2. The Chief Engineer and Administrator,
Andaman Lakshadweep Harbour Works
Port Blair, UT of A & N Islands - 744101

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Respondents

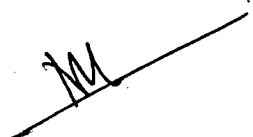
(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 06.04.2011, the
Tribunal on the same day delivered the following:

ORDER

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

1. The applicant is aggrieved by the inaction on the part of the



respondents in not granting the benefit of the second financial upgradation under the Assured Career Progression Scheme in the enhanced scale of pay of Rs.10000-325-15200. Admittedly he was granted the second financial upgradation in the scale of Rs. 7450-225-11500.

2. The short question therefore arises for consideration is as to whether he is entitled for higher scale of pay of Rs. 10000-325-15200 by way of second financial upgradation under the Assured Career Progression Scheme.

3. The applicant has retired from service as Senior Assistant Engineer(M) with effect from 31.05.2006. On completion of 24 years of regular service, on 17.01.2001, while working as Assistant Engineer(M) he was granted the second financial upgradation under the ACP Scheme in the scale of pay of Rs.10000-325-15200 as per the Ministry's Order No. A-12022/2/2000-PE-II dated 29.03.2001. But thereafter the same was withdrawn as per subsequent order dated 26.06.2001 on the ground that he is a diploma holder only and do not possess the required educational qualification for promotion to the next grade of Executive Engineer(M) as per the prescribed Recruitment Rules. Annexure A-1 is a true copy of the order dated 26.06.2001 issued by the first respondent withdrawing the ACP benefit. Subsequently the Assistant Engineer (M) posts, having only diploma in Mechanical Engineering were treated as isolated posts and the applicant was given the 2nd financial up-gradation under the ACP scheme in the scale of pay of Rs.7450-225-11500 with effect from 17.01.2001 as per Annexure



A-2 order dated 24.04.2003. Subsequently he was promoted as Senior Assistant Engineer in the scale of pay of Rs.7500-250-12000 and while working as such he retired from the said post as stated earlier. According to him as per order No.626/2008 dated 17.09.2008 issued in accordance with Ministry of Shipping, Road Transport and Highways order No.A-26020/1/2006-PE-II dated 15.09.2008 granted the 2nd financial up-gradation under the ACP Scheme in the scale of pay of Rs.10000-325-15200 to several other serving and retired staff of Andaman Lakshadweep Harbour Works. Their pay has been refixed in the pre-revised scale also before implementing the re-fixation under the CCS(Revised Pay) Rules 2006. It is averred by the applicant that they were also diploma holders only and they were given the benefit with retrospective effect from 1999 onwards. Annexure A-3 is a copy of the order produced in this case. Therefore the main contention of the applicant is based on Annexure A-3 order. According to him the applicant alone was discriminated against similarly situated persons who have been benefitted by the second financial up-gradation in the higher scale.

4. In the reply statement filed by the respondents it is stated that as per the letter of first respondent dated 27.07.2010 informing that the granting of financial upgradation under ACP scheme has been examined in the Ministry in consultation with DOP & T. As per the said letter, the benefit of extending ACP is to be allowed as per the hierarchy existing, as on the date the employee become eligible for financial upgradation under the ACP Scheme. Except saying so, the respondents have not denied the statement

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of the applicant that second financial upgradation has been given in the higher grade to similarly situated persons, though they were also diploma holder at the relevant point of time.

5. Heard both sides.

6. Annexure A-3 order produced in the case was issued on 16.09.2008 by the Ministry of Shipping, Road Transport and Highways, New Delhi extending the second financial upgradation under the ACP Scheme to the officers/officials who have completed 24 years of service in the post of Junior Engineer/Assistant Engineer as detailed thereunder and the higher scale thus granted in the scale of pay of Rs.10000-325-15200. In the case of the applicant the financial upgradation in the post of Junior Engineer/Assistant Engineer was given but in a lower grade. The only reason for not granting him the higher pay scale is that he did not possess degree in engineering but possessed only a diploma in engineering. And thus he lacks in educational qualification for promotion. This ground is certainly would have been valid had it been uniformly applied in the case of others also. It is not ^{so} in any individual case that Annexure A-3 has been passed on the other 36 persons have been benefitted by a common order, given them the benefit of higher grade by way of Second financial upgradation. If for any reason the applicant is not similarly situated and to be treated differently from those covered by Annexure A-3 that is a matter which should have been pleaded. There is no justification for denying the higher grade to the applicant while similarly situated persons were given the



the benefit by Annexure A-3 order. In the circumstances we hold that action on part of the respondents in not granting the higher scale to the applicant while the same benefit was granted to others vide Annexure A-3 order is clearly arbitrary and wrong. Accordingly we declare that the applicant is also entitled to the same benefit as was given vide Annexure A-3. Accordingly he will be granted financial upgradation in the same scale of pay of Rs.10000-325-15200 as against Rs.7450-225-11500, as it is now given to him. Since he is already given second financial upgradation under the ACP scheme in a lower grade, he will be only entitled for the difference in the amount to be calculated by the respondents and pay the same as early as possible, at any rate within a period of 4 months.

7. In view of the above his last drawn pay also will be refixed and revised pensionary benefit will be paid but he will not be entitled for any arrears for a period beyond 3 years prior to the date of filing the application namely 14.08.2009. Original Application is allowed as above.

(Dated this the 06th day of April, 2011)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER