

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 6/05

Monday this the 12th day of December, 2005

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

T.V.Ramakrishnan, aged 60 years
S/o Velayudhan,
Retd.Daftry, Central Institute of Fisheries
Nautical & Engineering Training, Kochi.16.
Residing at Thoppil House, Anish Nivas,
Labour Corner, Eroor North PO
Ernakulam Dist.Applicant

(By Advocate Mr. T.C.Govindaswamy)

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- 1 Union of India, represented by the Secretary to the Govt. of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying, New Delhi.
- 2 The Director, Central Institute of Fisheries Nautical and Engineering and Training, (CIFNET) Kochi.
- 3 The Senior Administrative Officer, Central Institute of Fisheries Nautical and Engineering Training (CIFNET) Kochi.Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 24.11.2005, the Tribunal on 12.12.2005 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The Applicant has filed the present O.A for the implementation of the Annexure.A8 Office Order dated 15.7.02 by which the second financial up-gradation under the Assured Career Progression (ACP) Scheme as applicable to Group 'D' employees was sanctioned to him along with five others and the consequential Annexure.A9 order by which his pay has been fixed at Rs. 3650/- with effect from 9.8.99 and Rs. 3800/- w.e.f. 1.4.2000. He has also prayed for quashing the Annexure.A1 Memo dated 12.2.04, Office Memorandum dated 22.03.04 and Memo dated 30.4.04. By the Annexure.A1 Memo dated 12.2.04, the aforesaid Office Order dated 15.7.02 was withdrawn and ordered for recovery of the excess salary and other allowances alleged to have been paid to him. By the Annexure.A2 order dated 22.3.04, his Annexure.A10 representation dated 29.2.04 requesting to withdraw the said Memo dated 12.2.04 and to restore the second financial up-gradation granted to him under ACP Scheme was rejected. The reasons indicated in the aforesaid OM dated 22.3.04 for rejecting the said representation is reproduced hereunder:

"Shri T.V.Ramakrishnan, Daftry was sanctioned 2nd level Financial up-gradation under ACP with effect from 9.8.99 on the ground that he has not refused vacancy based promotion during the residency period of 24 years from the date of his regular appointment

on 16.12.68 at this Institute. Sri T.V.Ramakrishnan, Daftry has been offered vacancy based promotion as Attender (as per the existing RR) on 7.3.95 in the scale of pay of Rs.800-15-1010-EB-20-1150 (pre-revised) which is the next promotional grade in the hierarchy. However, he has accepted the post and has sought reversion to his original post of Daftry with effect from 1.12.96 in the pay scale of Rs. 775-1025 on his own request. Subsequently, he was allowed 2nd A.C.P with effect from 9.8.99 on the ground that he had not refused the promotion during the residency period ie., 24 years from the date of commencement of his career.

The internal audit has questioned the decision of this office to allow 2nd level ACP to Smt. Vimala, Sr. Clerk of this Institute who had refused promoted to the post of Accountant in the higher scale of pay prior to sanction of 2nd level ACP from 9.8.99. When this case was clarified to Ministry/DOPT, for clarification and further instructions, Ministry has communicated the instructions of DOPT stating that it is a clear case where an employee has refused vacancy based second level promotion prior to introduction of ACP Scheme and based on the clarification issued in this regard by DOPT she (and others similarly placed) is not entitled to second ACP. As per instructions it is immaterial that such refusal was after completion of 24 years of regular service as the postilion has to be seen as on the date of introduction of ACP scheme. The ACP scheme as per DOPT has been introduced as safety net against acute stagnation for want of adequate promotional avenues and since the employee refused a regular vacancy-based second level promotion prior to the introduction of ACP scheme she has not stagnated for want of adequate promotional avenues as on 9.8.99 and therefore, the provisions of ACP scheme are not applicable to her. The intimation further contains that the benefit allowed to Smt.K.G.Vimala, Sr. Clerk and others similarly placed which is contrary to the provisions of ACP scheme need to be withdrawn forthwith."

2 The applicant was initially appointed as a Peon with effect from 16.12.68 in the then scale of Rs. 196-232/750-940. He was

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promoted as Daftry in the scale of Rs. 775-1025 on 12.4.89. He was again promoted as Attender in the scale of Rs. 800-1150 with effect from 7.3.95. Thereafter, the scales of Rs. 775-1025 and Rs.800-1150 were merged together to form a common elongated scale of Rs. 775-1150 with effect from 1.4.95 and accordingly the applicant was fitted in that scale of pay. Since the scale of pay of Daftry and Attender has become the same, he opted to be re-designated as Daftry vide Annexure.A3 letter dated 6.6.96 which reads as follows:

"I have been promoted as attender from 7.3.95 from the post of Daftry. After my promotion the scale of pay of Attender and Daftry have been merged together both the post carry the same scale of pay ie., Rs.775-1150. Though I am posted as Attender, I still continue the duties of Daftry ie., record keeping and assisting the despatch section etc.

I, therefore, request you to change my designation as Daftry, as the scale of pay of Attender and Daftry are same, the above change of designation may not effect my emoluments. An early action requested."

In response to the aforesaid request of the Applicant, the respondents reverted him as Daftry vide Anexure.A.4 order dated 19.11.96. which reads as follows:

"As per the request cited above of Shri T.V.Ramakrishnan, Attender for reversion from the post of Attender to Daftry, the competent authority has approved the reversion and change of designation of Shri T.V.Ramakrishnan from the post of Attender in the scale of Rs. 775-1150 to the post of Daftry in the same scale w.e.f. 1.12.1996. He will continue to draw the pay now drawn in the post of Attender."

3 However, the 5th Central Pay Commission instead of giving the

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replacement scale for the elongated scale of pay of Rs. 775-1150, recommended its bifurcation again. Those who were drawing a basic pay below Rs. 1030/- were directed to be fixed in the scale of Rs. 2610-3540 and those who were drawing above Rs. 1030/-, in the scale of pay of Rs. 2650-4000. Accordingly, the applicant was fitted in the scale of pay of Rs. 2610-3540 w.e.f. 1.1.96..

4 Thereafter, the Government of India introduced the Assured Career Progression (ACP) Scheme vide Office Memorandum dated 9.8.99 and in terms of the said scheme vide Annexure.A6 Office Order dated 6.4.2000, the applicant was granted the second level financial up-gradation in the scale of pay of Rs. 2650-4000 w.e.f 9.8.99. Subsequently, the new elongated replacement scale of pay of Rs. 2610-4000 was accepted and implemented by the Government of India with effect from 1.1.96 in lieu of the erstwhile scale of Rs. 775-1150 in terms of Annexure.A7 OM dated 12.2.01. Consequently, the applicant was also granted the scale of pay of Rs. 2610-4000 with effect from 1.1.96 and as a result of which the second level financial up-gradation already granted by the Annexure.A6 order was cancelled. Thereafter, the Annexure.A8 order dated 15.7.2002 was issued granting the applicant the second financial up-gradation in the scale of Rs. 3050-4590 and subsequently by Annexure A9 order dated 16.8.02 his pay was also fixed in the upgraded scale w.e.f. 9.8.99. The scale of Rs.3050-4590

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was given to the applicant since the next higher post in the hierarchy is Gestetner Operator which carries the same scale of pay of Rs. 3050-4590.

5. While the aforesaid position was continuing, vide the impugned Annexure.A1 Order dated 12.2.04, the respondents withdrew the second level financial up-gradation under the ACP Scheme granted to the applicant vide the said order dated 15.7.02 and ordered to recover the excess amount paid to him. The applicant made the Annexure.A10 representation dated 19.2.04 against the aforesaid action of the respondents but the same was rejected vide Annexure.A2 order dated 22.3.04 which is also impugned in the present OA. As already stated earlier, the Annexure.A2 order was issued following the observation of the internal audit party questioning the decision of the Respondents allowing 2nd ACP to Smt. K.G.Vimala. Consequently, vide A.16 Memo dated 30.4.2004, the respondents have decided to recover Rs.13,362/- paid on account of grant of ACP to the applicant in four installments commencing from the salary for the month of May, 2004 onwards.

6. The Applicant has pointed out that this Tribunal has already set aside the Annexure.A11 order dated 15.12.03 in the case of Smt. K.G.Vimala which is said to be the foundation of the Annexure.A1 and A2 Memoranda in this OA, vide Annexure.A17 order dated 13.12.04 in OA 172/04. As mentioned earlier in this OA, she was

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working as Senior Clerk under the respondents. She had filed OA 172/04 questioning the validity of the Memo dated 12.2.04 issued to her by the respondents by which she had been advised that on the basis of audit query it had been found that the second level financial up-gradation granted to her under the ACP Scheme was irregular and was being withdrawn. She was also directed to refund the excess salary and allowances, which had came to be disbursed to her. This Tribunal had gone into the entire issues and ultimately it had been found that the impugned Memo was not sustainable and the same was set aside. In her case she commenced service on 6.7.69 as Junior Clerk in the CIFNET and promoted as Sr.Clerk on 28.1.82. After sixteen years on 20.3.98 she was offered promotion having been cleared by the DPC, as Accountant. But taking notice of her request, the promotion order was cancelled by Office Order dated 8.4.98. She had been advised by the competent authority that for a period of one year or till the vacancy arises, whichever is later, she will not be given a fresh offer of appointment on promotion. The question under consideration before the Tribunal was in such circumstances whether it will lead to a position whereupon she would also loose the ACP benefit. This Tribunal held that when a person declined to accept the promotion, the consequence would be only that he/she would be debarred for promotion for a period of one year and such period will not be counted for reckoning as eligible service

for second financial up-gradation. The Respondents have filed Writ petition against the aforesaid order of this Tribunal before the Hon'ble High Court of Kerala vide WP(C) No.14621/2005 – Union of India and others Vs. K.G.Vimala. While dismissing the Writ Petition filed by the respondents vide judgment dated 25.5.2005 the Hon'ble High Court held that a strict interpretation as is expected of while dealing with a statutory provision, may not be advisable when an executive order is analyzed. The Applicant has also relied upon the order in OA 348/04 -E.N.Leelamaniamma Vs. Union of India and others, ATJ 2005(3) 2000 wherein a coordinate Bench of this Tribunal has held that the financial up-gradation vide ACP Scheme cannot be denied on the ground that the employee concerned has refused vacancy based promotion prior to the introduction of the scheme. The said OA was allowed following the order of this Tribunal in Smt.K.G.Vimala's case (supra).

7 The Respondents have filed their reply. The case of the Respondents is also that the Annexure.A1 Memo dated 12.2.04 was issued on the basis of the Annexure A.11 letter dated 15.12.03 of the first respondent containing the clarification of DOPT, that Smt. K.G.Vimala, Sr. Clerk, one of the employees under the 2nd respondent and similar others who have refused vacancy based promotion prior to the introduction of ACP Scheme are not entitled to the grant of ACP. The said letter dated 15.12.03 reads as under:-

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"From the details furnished, it is seen that one Junior Clerk, appointed in 1969 and further promoted to the post of Sr. Clerk in 1992, was offered a further promotion in the grade of Accountant which is the next promotional grade in the hierarchy. However, she refused to accept the offer. Subsequently, she has been allowed second ACP w.e.f. 9.8.99 on the ground that she had not refused the promotion during the residency period i.e., 24 years from the date of commencement of her career. It has been stated that there are number of other cases also of this nature.

The decision of the Institute to allow second ACP in such cases where the refusal was prior to 9.8.99 has been questioned by the Audit. The reason why we had sought certain information was that in the earlier reference, it was stated that she was promoted as Senior Clerk on 25.1.2000 where as the refusal for the post of Accountant was in 1998. Thus, the picture was not clear. However, it is seen that she was actually promoted as Senior Clerk w.e.f 28.1.92. In terms of clarification now furnished, it is a clear case where an employee had refused vacancy based second promotion prior to introduction of ACP scheme and the clarifications issued in this regard by this department, she (and others similarly placed) is not entitled to second ACP. It is immaterial that such refusal was after completion of 24 years of regular service as the position has to be seen as on the date of introduction of the ACP Scheme. The ACP scheme has been introduced as a 'safety net' against acute stagnation for want of adequate promotional avenues and since the employee refused a regular vacancy based second promotion prior to introduction of ACP Scheme, she has not stagnated for want of adequate promotional avenues as on 9.8.99 and, therefore, the provisions of ACP scheme are not applicable to her. The benefit allowed to her and others similarly placed, which is contrary to the provisions of the ACP scheme would need to be withdrawn forthwith."

Q 8. According to the Respondents, the Applicant is one of such

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employees who declined promotion by way of reversion on his own request from the post of Attender to the lower post of Daftry. Therefore, as afore-stated, the applicant's representation requesting to withdraw Annexure.A1 memo was rejected vide the impugned Annexure.A2 memorandum dated 22.3.04 issued by the third respondent.

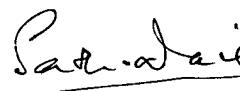
9. We have heard counsels for both the parties and perused the records made available as part of the pleadings. There is no dispute that the Respondents have passed the impugned orders against the Applicant based on the Annexure.A11 letter dated 15.12.03 in the case of Smt.K.G.Vimala. There is also no dispute that this Tribunal vide Annexure.A17 order dated 13.12.04 in OA 172/04, set aside the aforesaid A.11 letter dated 15.12.03 which formed the foundation of the impugned Annexures.A1 and A2 Memoranda in this OA. The Hon'ble High Court of Kerala vide order dated 25.5.05 has also upheld the aforesaid orders of this Tribunal dated 13.12.04. Therefore, the applicant's case is squarely covered by the aforementioned orders of the Tribunal dated 13.12.04 and the judgment of the Hon'ble High Court dated 25.5.05 and the other contentions and submissions of the Respondents are irrelevant. We, therefore, allow this O.A. Accordingly, we quash and set aside the Annexures.A1,A2 and A16 Memos dated 12.2.04, 22.03.04 and 30.4.04 respectively. We hold that the applicant is entitled to the

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benefit of Annexure A.8 order dated 15.7.02 and A9 order dated 16.8.02 and direct the Respondents to pay him the consequential arrears of pay and allowances accordingly. Since the Applicant has already retired from service, we also direct the respondents to revise and re-fix his pension and other retirement benefits and pay him the arrears of pension and other retirement benefits. The Respondents shall comply with these directions shall be given to the applicant within a period of three months from the date of receipt of this order. No costs.

Dated this the 12th day of December, 2005


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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