

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 59 of 2013

Friday this the 5th day of February, 2016

CORAM

***Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member***

K.M.Rajan, aged 60 years
S/o K.C.Madhavan,
Seaman's Welfare Officer, Chennai (retired)
residing at Kottayarkil, Kosady PO, Madukka,
Mundakayam, Kottayam District.

...Applicant

(By Advocate Mr. Shafik M.A)

Versus

1. Union of India, represented by Secretary
to the Government of India, Ministry of Shipping
Road Transport and Highways, New Delhi.
2. The Director General Shipping
Department of Shipping,
Ministry of Shipping, Road Transport and Highways
Jahaz Bhawan, W.H Marg, Mumbai-400 001.
3. The Principal Officer Cum Joint DG (Tech)
Mercantile Marine Department, Ministry of Shipping
Anchor Gate Building, II Floor,
Rajaji Salai, Chennai-600 001.

...Respondents

(By Advocate Mr. N. Anil Kumar, Sr.P.CGSC)

This application having been finally heard on 28.01.2016, the
Tribunal on 05.02.2016 delivered the following:

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

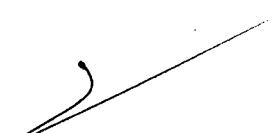
The applicant has approached this Tribunal complaining of refusal

by the respondents to grant the applicant financial upgradation under the ACP Scheme to the correct scale and also complaining of non-grant of benefit of 3rd MACP even after his retirement. The applicant retired on superannuation on 30.6.2012. He had nearly 32 years of service. Earlier the applicant approached this Tribunal filing OA 778/2010 when his 2nd ACP benefit was denied to him. This Tribunal allowed that OA and directed the respondents to grant 2nd financial up gradation. Based on that order Annexure A1 impugned order has been issued treating the post of the applicant as an isolated post and granting the up gradation to the next higher scale with a difference of Rs. 50/- only. The post held by the applicant cannot be treated as an isolated post as per the definition given in the ACP scheme. Even though the applicant has completed 30 years of service he has been denied the 3rd MACP. The pension was also not fixed correctly.

2. The respondents contend that the applicant has already been granted the 2nd financial up gradation to the higher grade as per order dated 6.7.2012 issued by the third respondent under the ACP Scheme. It was done in compliance with the order passed by this Tribunal in OA 778/2010. It is stated that the 3rd financial up gradation under the MACP scheme was also under consideration. It is contended that the official functions of the Office of the Seamens' Welfare Officer were reviewed and streamlined against the backdrop of the maritime labour situation as well as national and

international labour regulations. Thus due to the exigencies of official workload the applicant was temporarily transferred to Calcutta in public interest and thereafter the applicant discharged his functions exclusively as the Seamens' Welfare Officer under the administrative and functional control of the 3rd respondent. The claim for financial up gradation for the post of Regional Officer (Sails) was considered in pursuance of Ministry of Finance, Government of India Office Memorandum dated 13.11.2009 under which the post of Regional Officer existed in the pre revised pay scale of Rs. 6500-10500 (Pay Band 2). The post of Principal Seamen Welfare Officer was abolished about 20 years ago. Official record thereto is not available in the office of the Director General of Shipping. Post of Seamens' Welfare Officer is an isolated post in the pre-revised pay scale. The applicant was accordingly granted the immediately next higher pay scale of Rs. 7500-11000. The applicant was appointed as Assistant Instructor (Seamanship & Navigation) in the office of the Deputy Director, Central Institute of Fisheries, Nautical & Engineering Training, Madras w.e.f. 4.7.1980 and later on recommendations of the Union Public Service Commission, he was appointed as a Regional Officer (Sails), Bombay w.e.f. 28.1.1991. It is stated that action was being taken to consider the claim of the applicant for the grant of benefit under 3rd MACP.

3. In the rejoinder filed by the applicant, he contended that though he was granted 2nd financial up gradation as per Annexure A1 dated



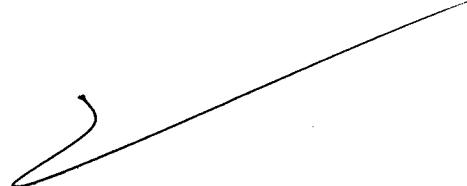
6.7.2013 it was not to the correct scale of pay. What was given to the applicant is not a scale available in the Department.

4. An additional reply statement was filed by the respondents. The applicant was promoted to the post of Seamen Welfare Officer w.e.f. 18.7.1994 to the then scale of Rs. 7450-11500, which was revised as per the 6th CPCV to PB-2 – Rs. 9300-34800 with Grade Pay of Rs. 4800. The 2nd financial up gradation was granted to the applicant as per order dated 28.3.2012. There is no lenier promotion post channel upwards from the post of Seamens' Welfare Officer. Hence the question of grant of next higher grade pay of a promotion post does not arise. The post of Seamens' Welfare Officer is an isolated post and is not a feeder grade post for the post of Assistant Director (Shipping).

5. The point for consideration is whether the applicant is entitled to get 2nd financial up gradation as per ACP Scheme in the scale of pay of Assistant Director in the department and whether the applicant is also entitled to get the 3rd financial up gradation as per the MACP Scheme?

6. Heard the learned counsel for the parties and have also gone through the pleadings and documents produced by them.

7., Annexure A3 is the order dated 21.7.1994 as per which the applicant was appointed on regular and long term basis as Seamens' Welfare Officer, Madras (Group B- gazetted). Complaining of refusal on the part of the respondents to grant 2nd financial up gradation under the ACP



Scheme, he approached this Tribunal filing OA 778/2010. Annexure A4 is the order passed in OA 778/2010. It was held by this Tribunal that the applicant got promotion only in 1994 and as per the MACP Scheme if he is continued on the same grade for more than 10 years he becomes entitled for 2nd financial up gradation. Thus it was held that even if the period of service is reckoned from 1994 the date on which the promotion was given as Seamens' Welfare Officer, he becomes entitled to 2nd financial up gradation in 2004. It was thus held by this Tribunal:

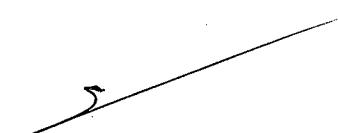
"In the result, we declare that the applicant is entitled for the second financial up gradation as on 2004 and there will be a direction to the respondents to calculate the said benefits and pay the same as early as possible, at any rate, within a period of three months from the date of receipt of a copy of this order. The OA is allowed as above to the limited extent of reconsidering the benefits under MACP Scheme which is denied under Annexure A-1, the same stands quashed."

Annexure A1 is the order passed by the 4th respondent in pursuance of Annexure A4 order.

8. Annexure A1 order dated 6.7.2012 shows that the applicant who was a Seamens' Welfare Officer, who by then retired, was declared fit for the 2nd financial up gradation to the higher grade under ACP Scheme in the pay scale Rs. 7500-250-12000 w.e.. 4.7.2004. The learned counsel for the applicant would submit that instead of granting the financial up gradation to the next higher scale, the respondents have chosen to add Rs. 50/- to the pay scale Rs. 7450/- to make the scale of of Rs. 7500-12000 -which is not a post available in the department, according to the applicant. Referring to

the information obtained under RTI (Annexure A7) the learned counsel for the applicant submits that the statement, showing the hierarchy of Group A and B posts available in the Director General of shipping and its allied offices, would show that Assistant Director (OL) Group B gazetted post, is the post to be given to the applicant. The scale of pay is shown as Rs. 15600-39100. To the question as to how many SWIO was available under the Director General of Shipping and how many are abolished ad how many are still in existence the respondents replied that as per the exiting record in that office there is only one post of Seamens' Welfare Officer available under the Directorate General of Shipping. There is no record about existence of more than one post and/or abolishment thereof under the Directorate since the matter is more than 20 years old. Therefore, the learned counsel for the applicant would submit that it is not a case where so many other officers are there to claim similar benfit.

9. According to the applicant it is not an isolated and stand alone post and so the financial up gradation has to be given to the applicant taking an analogous post available, as shown in Annexure A7. Since the applicant was entitled to get the 2nd financial up gradation under the ACP Scheme, it cannot be denied to him. He has to be given the financial up gradation to the next higher scale of the promotion post and not higher pay in the pay band only. Since the respondents could not point out any other record to show that there is any other post, the scale of which can be made



applicable to the applicant, we are inclined to hold that the applicant is to be given financial up gradation under the ACP Scheme in the scale of pay applicable to Assistant Director (OL) which is a Group B Gazetted post,. It shall be done with effect from 2004 as has been held in Annexure A4 order.

10. It was stated by the respondents that the claim for 3rd financial up gradation is under consideration.

11. Based on what have been stated above, order granting the financial up-gradation as aforesaid shall be issued by the respondents and consequential benefits/arrears shall be disbursed to the applicant within three months from the date of receipt of a copy of this order. No order as to costs.



(Mrs. P. Gopinath)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member

Central Administrative Tribunal**Ernakulam Bench**CP(C)/180/00097/2016in OA 59/2013Thursday, the 2nd day of November, 2017**CORAM****HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER****HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

K.M.Rajan

S/o.Late K.C.Madhavan, Seaman's Welfare
Officer, Chennai (Retired), residing at
"Kottayarikil" Kosady PO, Madukka
Mundakayam, Kottayam District
Pin – 686 513

Petitioner

(By Advocate: M/s. Shafik.M.Abdulkadir Associates)

Versus

1. Shri.Rajive Kumar
Secretary to the Government of India
Ministry of Shipping
Road Transport and Highways
New Delhi – 110 001
2. Dr.Malini Shankar
The Director General of Shipping
Department of Shipping
Ministry of Shipping
Road Transport and Highways
Jahaz Bhavan, W.H.Marg
Mumbai – 400 001
3. Shri.S.Barik
The Principal Officer cum Joint DG (Tech)(In charge)
Mercantile Marine Department
Ministry of Shipping, Anchor Gate Building
II Floor, Rajaji Salai
Chennai – 600 001



4. Dr.Shakunthala Devi
 Chief Controller of Pensions
 Central Pension Accounting Office
 Ministry of Finance, Government of India
 Trikoot II Complex
 Bhikaji Cama Place
 New Delhi – 110 066

Respondents

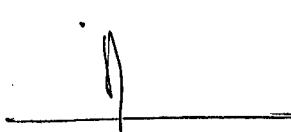
(By Advocate: Mr.Sinu G Nath,ACGSC)

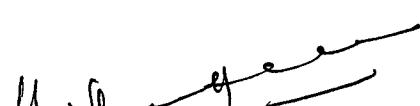
The CP(C) having been taken up on 2nd November, 2017, this Tribunal delivered the following order on the same day:

O R D E R (Oral)

By Hon'ble Mr.U.Sarathchandran, Judicial Member

Mr.Shafik M.A, learned counsel for the petitioner submitted that the applicant is satisfied with the payments effected by the respondents and thereby acting in compliance of the order passed by this Tribunal. Mr.Sinu G Nath,ACGSC, learned counsel for the respondents present. Hence the CP(C) is closed. No costs. Notices shall stand discharged.


 (E.K.BHARAT BHUSHAN)
 ADMINISTRATIVE MEMBER


 (U.SARATHCHANDRAN)
 JUDICIAL MEMBER

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