

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 604 OF 2009

Thursday, this the 23rd day of June, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. K.K Soman,
Retired Senior Assistant Engineer,
Andaman Lakshadweep Harbour Works,
Residing at Kannadithara, Amballur P.O.,
Dist. Ernakulam, PIN - 682 315 .
2. J. P. Vijayappan Nair,
Retired Junior Engineer,
Andaman Lakshadweep Harbour Works,
Residing at Pulinthanathu House, Vrindavan,
Varanadu P.O., Cherthala, Ward-6, PIN-688543.
3. V.P Jayanandan,
Retired Junior Engineer,
Andaman Lakshadweep Harbour Works,
Residing at Rejishma House, Pvayil,
Thalakolathur P.O., Kozhikode - 673317
4. S. Rajendran Pillai,
Retired Assistant Engineer (Civil),
Andaman Lakshadweep Harbour Works,
Residing at Kuzhivilathekethil, Mampuzha,
Alummoodu P.O, Kollam - 691 577
5. V. Mohan,
Retired Assistant Engineer (Civil),
Andaman Lakshadweep Harbour Works
Residing at Mamta, Altharammoodu-P.O., (via)Alamcode,
Attingal, Trivandrum -695102.
6. P.V. Ravindran,
Retired Junior Engineer,
Andaman Lakshadweep Harbour Works,
Residing at Rakendu, Swamikunnu Road,
Illathuthazham, Temple Gate Post, Thalassery - 670102
7. V.P. Venugopalan,
Retired Senior Assistant Engineer,
Andaman Lakshadweep Harbour Works,
Residing at Narayaneeyam, Triveni Gardens,
Calvari Road, Poothole P.O., Thrissur - 680004

8. R.Ravindran,
Retired Assistant Engineer,
Andaman Lakshadweep Harbour Works,
Residing at Mini Bhavan, Pedikulam,
Pulimathu PO, Trivandrum.

9. N. Gopalan,
Retired Senior Assistant Engineer,
Andaman Lakshadweep Harbour Works,
Residing at PN Bhavan, Near Block Office,
Agasthyacode, Anchal P.O., Kollam 691306

10. K.G.Sekharan,
Retired Executive Engineer,
Andaman Lakshadweep Harbour Works,
Residing at Sreepadmm, Avootty Road,
Nathiattukunnam North, Paravoor - 683513.

11. M.O.K. Nambiar ,
Retired Executive Engineer,
Andaman Lakshadweep Harbour Works,
Residing at Krishnakripa, Mayyil P.O.,
Kannur 670602.

12. C. Manikantan Nair,
Retired Assistant Engineer (Civil),
Andaman Lakshadweep Harbour Works,
Residing at Bodhini, House
No: 2/279-B, BK Unneeri Road,
Karaparamba, Koszhikode – 673010.

13. K. Kumaran,
Retired Assistant Engineer (Civil),
Andaman Lakshadweep Harbour Works,
Residing at Arunodayam, Velliadukkam,
Puthariyadukkam P.O., Nileswar - 671314 ... Applicants

(By Advocate Mr.R.Sreeraj.)

versus

1. Union of India represented by its Secretary
to the Government of India
Ministry of Shipping
Department 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 ... Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 23.06.2011, the
Tribunal on the same day delivered the following:

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ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicants at Sl.Nos. 1,7 & 9 retired as Senior Assistant Engineers, applicants at Sl.Nos. 2,3 & 6 retired as Junior Engineers, applicants at Sl.Nos.4,5,8,12 & 13 retired as Assistant Engineers and applicants at 10 & 11 retired as Executive Engineers from the Andaman Lakshadweep Harbour Works. They were aggrieved by the non consideration of their claims for financial upgradation with effect from 09.08.1999. According to them, after their retirement from service, there was re-designation of certain posts, in that Inspector of Works which was hitherto a promotion post of Junior Engineer was abolished and merged with the post of Junior Engineer. Likewise the post of Senior Assistant Engineer was abolished and merged with that of Assistant Engineer with effect from 07.11.2007 long after the retirement of some of the applicants and soon after the retirement of others. Since the re-designation was on a higher post with that of a lower post they did not suffer from the re designation. Subsequent to the re designation it appears that representations were made claiming the benefit of financial upgradation under the ACP Scheme which was under consideration of the concerned Ministry and ultimately, by Annexure A-6 order in pursuance of Ministry of Shipping, Road Transport & Highways, New Delhi the 2nd financial upgradation was extended to the officers / officials who completed 24 years of service in the post of junior Engineer or Assistant Engineer whose names are mentioned thereunder. It is the case of the applicants that some of the officers who had been given the benefit were either Inspector of Works or as Senior Assistant Engineer before the re-designation. But their service rendered in the promotion



post of Inspector of Works or as Senior Assistant Engineer were not excluded for the purpose of computing 24 years of service in the respective cadres to which ACPs was extended. According to the applicants, though they retired after the re-designation order was made, their services in the respective posts they held at the time of retirement as Inspector of Works or Senior Assistant Engineer as the case may be, should be excluded and their case may also be considered for extending the ACP benefits as per Annexure A-6 as in the case of others. The denial of such benefits to the applicants is discriminatory and is violative of Article 14 of the Constitution of India. Reliance is also placed on certain decisions to support the argument that there cannot be any discrimination in the matter for extending the benefits to similarly situated persons.

2. Respondents in the reply statement has contended that benefit of extending the ACP Scheme was allowed as per the hierarchy existing on the date of employees become eligible for financial upgradation under ACP Scheme.

3. We have heard Mr.Sreeraj, the learned counsel for applicant and Mr.Sunil Jacob Jose, the learned SCGSC for official respondents.

4. The facts as borne out by the pleadings from which there is hardly any dispute that the re-designation of the posts were much after the applicants retired from service. When the post of Inspector of Works, which is the promotion post of Junior Engineer stood merged with the post of Junior Engineer, such of those working as Junior

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Engineers as on the date of re-designation stand to lose one stage of promotion to the next cadre viz., Inspector of Works. Likewise, re-designation of the post of Senior Assistant Engineer, merging with Assistant Engineer, the Assistant Engineer on role as on the date of re-designation stood to lose the chance of promotion as Senior Assistant Engineer. Further their seniors who had been working in the respective post which were abolished happened to be re-designated as Junior Engineer and Assistant Engineer as the case may be and the immediate result is that such Junior Engineer and Assistant Engineer on the role as on the date of re-designation would have to complete a longer period for promotion to the post of Assistant Engineer or Executive Engineer respectively until their senior gets promoted. The object behind grant of ACP is to ameliorate the grievance of those who continued in the same post for a prescribed period without any avenue of promotion by giving them financial upgradation by way of ACP. Therefore, when the benefit of ACP Scheme was extended to the Junior Engineers and Assistant Engineers continued in the respective posts for a prescribed period as provided in the ACP Scheme the only point that would arise for consideration is whether the applicant is a similarly situated person with those who had been given the benefit by Annexure A-6 order. In this context, the argument by the learned counsel for applicants is that by virtue of their earlier promotion as Inspector of Works or Senior Assistant Engineer, as the case may be, they have enjoyed the promotion and therefore the period of service rendered by them in the promotion post are not excluded for reckoning the period of service in the re-designated post. The argument of the learned counsel for applicants as to whether those persons who got re-

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designated to a lower post are entitled for the benefit of ACP Scheme or not is not a matter for consideration by us. The fact remains that the benefit is extended by an executive order but for such extension probably they may not fall under the parameters as prescribed in ACP Scheme, Annexure A-5. But the Court cannot prevent the executive in giving or extending the benefits to some others who otherwise would not have become entitled for the benefit under the ACP Scheme. Therefore, the only question is as to whether the applicant would also fall in the same class as those re-designated employees benefited by Annexure A-6. Admittedly, the benefits were extended to Junior Engineers or Assistant Engineers as the case may be, only to those officers who were re-designated as Junior Engineers or Senior Assistant Engineers who continued in service as on that date. Admittedly, none of the applicants did suffer any re-designation to their dis-advantage. Secondly, they have retired before the date of re-designation. We cannot re designate them as Junior Engineers or Assistant Engineers even notionally as it is outside the purview and jurisdiction of a Court nor legally warranted. If only the person had continued in service as Junior Engineer or Assistant Engineer, as the case may be, further question as to whether their earlier services rendered in the promotion post should be reckoned for availing the benefit of Annexure A-6 would arise for consideration. The applicant do not fall within the same class of those who were benefited by Annexure A-6. Applicants being not equals with those benefited under Annexure A-6, there is no discrimination meted out to them as opposed to Article 14 of the Constitution of India.

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5. We may also observe that in the case of others, other than the Junior Engineers or Assistant Engineers, even the very question may not arise for consideration. In the circumstances, we find no merit in the OA and the same is **dismissed**. No costs.

Dated, the 23rd June, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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