

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 605/2012

ORIGINAL APPLICATION No. 602/2012

ORIGINAL APPLICATION No. 603/2012

ORIGINAL APPLICATION No. 604/2012

TUESDAY, this the 22nd day of September, 2015

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HON'BLE MR. U.SARATHCHANDRAN, JUDICIAL MEMBER

HON'BLE MR. RUDHRA GANGADHARAN, ADMINISTRATIVE MEMBER

O.A.No.605/2012

A.K.Hariharan, aged 63 years, s/o Kuttappan,
Retired Junior Deck Hand,
National Institute of Fisheries Post Harvest Technology and Training,
Foreshore Road, Kochi -16, residing at Adimakandathil
Elamkunnapuzha, Ernakulam District.

Applicant

(By Advocate Mr.T.A.Rajan)

Versus

1. Union of India represented by Secretary,
Ministry of Agriculture, Department of Animal Husbandry,
Dairying and Fisheries, New Delhi -110 001.
2. The Director,
National Institute of Fisheries Post harvest Technology and Training,
Foreshore Road, Kochi -682 016. Respondents

(By Mr.E.N.Hari Menon, ACGSC)

O.A.No.602/2012:

N.C.Sasidharan, aged 66 years, s/o Chathan,
Junior Deck Hand,
National Institute of Fisheries Post harvest Technology and Training,
Foreshore Road, Kochi -682 016, residing at
Nikathithara House, Seashore Colony,
Narakkal P.O., Ernakulam District.

Applicant

(By Advocate Mr.T.A.Rajan)

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Versus

3. Union of India represented by Secretary,
 Ministry of Agriculture, Department of Animal Husbandry,
 Dairying and Fisheries, New Delhi -110 001.

4. The Director,
 National Institute of Fisheries Post harvest Technology and Training,
 Foreshore Road, Kochi -682 016. Respondents

(By Mr.P.R.Sreejith, ACGSC)

O.A.No. 603/2012:

V.U.Hassan, aged 69 years, s/o Unni, Retired Junior Deck Hand,
 National Institute of Fisheries Post harvest Technology and Training,
 Foreshore Road, Kochi -682 016, residing at
 Vathukkal Parambil Malipuram,
 Ernakulam District

Applicant

(By Advocate Mr.T.A.Rajan)

Versus

5. Union of India represented by Secretary,
 Ministry of Agriculture, Department of Animal Husbandry,
 Dairying and Fisheries, New Delhi -110 001.

6. The Director,
 National Institute of Fisheries Post harvest Technology and Training,
 Foreshore Road, Kochi -682 016. Respondents

(By Mr.P.R.Sreejith, ACGSC)

O.A.No. 604/2012 :

N.K.Supran, aged 67 years, s/o Chathan,
 Retired Junior Deck Hand, National Institute of Fisheries
 Post harvest Technology and Training,
 Foreshore Road, Kochi -682 016, residing at
 Nikathithara House, Pulayas Road, Manjanakkad,
 Narakkal -682 505.

Applicant

(By Advocate Mr.T.A.Rajan)

Versus

1. Union of India represented by Secretary,
 Ministry of Agriculture, Department of Animal Husbandry,
 Dairying and Fisheries, New Delhi -110 001.



2. The Director,
 National Institute of Fisheries Post harvest Technology and Training,
 Foreshore Road, Kochi -682 016. Respondents
Anil Kumar Sr. P.C.G.S.C.
 (Mr. S. Jamal, AGGSC)

These Original Applications having been heard on 31.08.2015, this Tribunal on... 22.09.2015 delivered the following:

COMMON ORDER

BY HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

The applicants in these four O.As. are retired employees of the National Institute of Fisheries Post Harvest Technology & Training (NIFPHT&T), Kochi. They are aggrieved by non-granting of financial up-gradation under the ACP scheme. According to them they have been denied of ACP scheme on the ground that they did not possess the qualifications required for promotion to higher post.

2 In OA No. 602/12, the applicant's grievance is that he has not been granted 2nd financial up-gradation as per DOPT OM dt.9.8.1999. According to respondents, the applicant entered service as Topaz on 11.10.66 and was promoted to the post of Fishing Hand with effect from 1.6.70. He was appointed as selection grade post of Junior Deck Hand with effect from 1.6.1978. He retired on superannuation on 30.4.2006. Respondents further state that as per recruitment rules, Junior Deck Hands having Syrang certificate with 7 years experience in mechanised fishing vessels and having 3 years service in the grade only are eligible for promotion to the post of Bosun (UC). Since the applicant did not possess the said qualifications he was not granted ACP, especially when the Pay & Accounts Office objected to granting of 2nd financial up-gradation.

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3 In OA No.603/12, the applicant has the same grievance as in the case of the applicant in OA 602/12. He was working as Junior Deck Hand at the time of retirement on superannuation on 31.5.2004. He claims that he is entitled to get 1st and 2nd financial up-gradation under the ACP scheme. Respondents state that as per recruitment rules, Junior Deck Hands having Syrang certificate with 7 years experience in mechanised fishing vessels and having 3 years service in the grade are eligible for promotion to the post of Bosun (UC). It is also stated by the respondents in para. 11 of the reply statement that the applicant was not granted the ACP as he did not possess the requisite ACR grading.

4 In OA No. 604/12, the applicant retired from NIFPHT&T on 09.08.2002. He is claiming 2nd financial up-gradation under the ACP scheme. In the reply statement, respondents contend tat applicant was not considered for ACP as he did not possess the requisite ACR grading.

5 In OA No. 605/12 also the applicant was a Junior Deck Hand retired from service on 8.8.2002. He is claiming 2nd financial up-gradation under the ACP scheme. Respondents resist the claim on the ground that he was not granted the ACP as he did not have the required ACR grading.

6 We have heard Mr.T.A.Rajan, learned counsel appearing for the applicants in the above OAs. We have also heard the Central Govt. counsel appearing in each of the OAs.

7 According to applicants, in similar other cases,(i.e. OA No. 1353/2000, OA No. 103/2001, OA No. 212/2001 and OA No. 297/2001) this Tribunal had set aside

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the decision of the respondent authorities in refusing to grant the benefit of ACP scheme and had directed respondents to grant such benefits with consequential benefits. Applicants state that the common order of this Tribunal in the aforesaid cases was challenged by the respondents in OP No. 18024/2002 in the High Court of Kerala. The High Court allowed the OP setting aside the order of this Tribunal. Thereafter the matter reached the Apex Court in *M.N. Raghunatha Kurup and others v. Union of India and others* Civil Appeal No. 3562/2007. On 13.4.2011 the Supreme Court of India while allowing the Civil Appeal and setting aside the aforesaid judgment of the High Court observed:

"In the ACP scheme which is Annexure P1 to this appeal nowhere it is mentioned that for getting the benefit of ACP the applicant must possess the qualification of promotional post".

8. Applicants in the present four OAs heavily rely on the order of the Apex Court in *M.N. Raghunatha Kurup and others v. Union of India and others (supra)*. As noted earlier, the contention of the respondents in OA No. 602/12 and OA No. 603/12 is that the applicants did not possess the required qualifications for promotion to the next post in tune with the provisions in the recruitment rules. In OA No. 604/12, OA No. 605/12 and also in OA No. 603/12, respondents contend that the applicants were not eligible for ACP as they were not meeting the requisite ACR grading.

9. The respondents while contending that the order of the Apex Court in *M.N. Raghunatha Kurup's* case is applicable only to the parties in that case also contend that the applicant in these OAs could not be considered for benefits of ACP scheme in view of the conditions prescribed in Annexure- II to the DOPT OM dt 9.8.1999 notifying the *Assured Career Progression (ACP) scheme for Civilian employees*. The aforesaid scheme has been marked as Annexure A/1 in all these 4 cases. As per the DOPT OM dt 9.8.99, 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. It is further stated that the ACP scheme is to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Annexure- II of the aforesaid OM deals with conditions for granting of benefits under the ACP scheme. It stipulates that the ACP scheme is merely placing in higher pay scale/ grant of financial benefits through financial up-gradation on personal basis and therefore it neither amounts to functional / regular promotion nor would it require creation of new posts for that purpose. Nevertheless, among other conditions, condition No.6 in Annexure- II to the aforesaid OM is relied on by the respondents in these cases for rejecting the claim of the applicants.

Condition No.6 reads:

"6. Fulfilment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial up-gradation, performance of such duties as are entrusted to the employees together with retention of old designations, financial up-gradation as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme.

10. Though the construction of its sentences is not proper and poorly drafted, a reading of clause 6 shows that the applicants should fulfil the norms prescribed for the normal promotions for grant of benefits under the ACP scheme. The norms for normal promotion are indicated in parenthesis ie. bench mark, departmental examination, seniority-cum-fitness in the case of Group D employees etc. According to respondents possession of such norms is a condition precedent for grant of financial up-gradation.



11. Learned counsel for the applicant referred to the order dt. 4/6/2015 in OA No. 601/12 of this Tribunal. He submitted that the applicant in the aforesaid case also is a similarly situated person and therefore the applicants in these 4 cases are also entitled to the benefits under the ACP scheme.

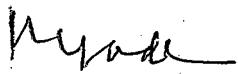
12. We have carefully perused the order in OA No.601/12 (*K.Vijayabhanu's* case). In that case, this Tribunal had relied on the *ratio* of Apex Court's order in *Raghunatha Kurup's* case in Civil Appeal No. 3262/07. The common order in OA Nos. 1353/2000,103/2001, 212/2001 and 297/2001 passed by this Tribunal which led to *Raghunatha Kurup* 's decision by the Apex Court shows that the applicants in those cases were deprived of ACP benefits on the ground that they did not have the requisite **educational qualification** for being promoted to the higher post. The Apex Court in *Raghunatha Kurup's* case held that nowhere in the ACP scheme it is mentioned that one should possess qualification for the promotional post. True, in the afore quoted condition No.6 for grant of ACP benefit there is no mention about educational qualification. However but condition No.6 in Annexure II of the OM does provide for possessing the requisite norms for promotion to the higher posts e.g. bench mark, departmental examination, seniority-cum-fitness, etc.

13. However in the present cases, ACP benefit was denied to the applicants not because they did not have the requisite educational qualifications. In OA Nos. 604/12 and 605/12, respondents specifically state that the applicants therein were not granted ACP benefits in view of their **inadequate ACR gradings**. ACR grading (Bench mark) is one of the norms in the aforementioned condition No.6. Similarly, seniority-cum-fitness mentioned in aforesaid condition No.6 is indicative of the requisite length of service as per the recruitment rules. Thus we are of the view that

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the present 4 cases on hand have to be distinguished from *Raghunatha Kurup's* case where ACP was denied for want of educational qualifications. In the present cases refusal of ACP was on account of not meeting the norms for promotion as per the recruitment rules which has no nexus with the Apex Court order in *Raghunatha Kurup's* case.

14. In the light of the above discussion, we are of the view that the applicants in these OAs cannot claim the benefit of the order in OA No. 601/12 of this Tribunal as they do not meet the requirements of condition No.6 in Annexure- II to the DOPT OM dt. 9.8.1999 on the ACP scheme. Hence we hold that there is no merit in these cases. Accordingly, OA No. 602/12, OA 603/12, OA No.604/12 and OA No. 605/12 are dismissed. Parties shall suffer their own costs.



(RUDHRA GANGADHARAN)
ADMINISTRATIVE MEMBER



(U. SARATHCHANDRAN)
JUDICIAL MEMBER

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