

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 610 of 2006

Tuesday, this the 8th day of January, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MRS. O.P. SOSAMMA, ADMINISTRATIVE MEMBER**

P. Haridasan,
Skipper (Retd.),
Sagarika,
Arattuvayal Road,
Baliyapattom P.O.,
KANNUR : 670 010

... Applicant.

(By Advocate Mr. CSG Nair)

V e r s u s

1. Union of India, represented by
The Secretary,
Ministry of Agriculture & Animal Husbandry,
New Delhi : 110 001

2. The Director General,
Fishery Survey of India,
Botawala Chambers,
Sir P.M. Road, Mumbai – 1

3. The Zonal Director,
Marmagao Zonal Base,
Fishery Survey of India,
Marmagao, Goa.

... Respondents.

(By Advocate Mr. Varghese P. Thomas, ACGSC)

(This Original application having been heard on 8.1.08, the Tribunal on the same day delivered the following) :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The issue involved in this case is whether for extending the benefits under Assured Career Programme (ACP) for an incumbent to an isolated post, whether the normal Bench mark for comparable post is a requirement?

2. The applicant had been appointed as Skipper under Respondent No. 2 and the said post is an isolated post. He superannuated in May, 2005, after rendering 34 years of service. There had been no promotion at all as the post was isolated.

3. Provision exists for grant of ACP benefits under certain conditions and the applicant had preferred a representation for grant of 2 ACPs. The applicant preferred a representation vide Annexure A-4 dated 10-11-2003 requesting the respondents for grant of 1st ACP in the Pay scale of Rs 12,000 – 375 – 16,500/- and 2nd ACP in the pay scale of Rs 12,000 – 18,000 with effect from 9th August, 1999. This was followed by two further communications dated 11-12-2003 (Annexure A 5) and 12-01-2004 (Annexure A-6). For the latest representation, there has been a response dated 26-03-2004 (Annexure A-7) to the stating that a clarification in the matter is still awaited in the Ministry. The case will be processed on receipt of the above clarification.

4. As no further communication was received, the applicant filed one more representation dated 25th June, 2005 and even this not having entailed fruitful result, the applicant has moved this OA seeking the following main reliefs:-

- (i) To declare that the applicant is entitled for two financial upgradation under the ACP Scheme with effect from 9.8.1999.
- (ii) To direct the respondents to grant the applicant two financial upgradation with effect from 9.8.1999 with all consequential benefits including arrears of pay and other retiral benefits within a stipulated period.

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5. Respondents have contested the OA. According to them, the case was considered but as the applicant did not possess the minimum bench mark i.e. Very Good, the Committee did not recommend the grant of ACP to the Applicant.

6. Applicant has filed the rejoinder in which he had stated that the ACR had been written by scientists who had no knowledge about the performance of duties of skipper. Again, there had been no communication of any adverse remarks and there are various decisions of the Apex Court, High Court and the Tribunal wherein it has been held that uncommunicated adverse remarks cannot be taken into consideration. Two such judgments had been annexed to the rejoinder.

7. Counsel for the applicant submitted that for isolated post, there is no requirement of Bench Mark, as Bench Mark is stipulated only for promotion and the applicant was holding only isolated post. He had further submitted that assuming without accepting that such Bench Mark is essential, then again, as the applicant had not been communicated any downgrading of the grading, no such grading below the Bench Mark could have been taken into account.

8. Counsel for the respondents has submitted that the rules do not distinguish between ACP for promotional post and that of isolated post.

9. Arguments have been heard and documents perused. ACP is granted to those who have been stagnating without any promotion for a substantial period.

The preamble to the letter dated 9th August 1999 reads as under:-



"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."

10. Vide para 12 of the scheme, the ACP Scheme contemplates merely placement on personal basis in the higher pay scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned.

11. The Bench Mark stipulation, especially in respect of senior posts (i.e. promotions to the revised pay scale (grade) of Rs 12,000 – 16,500 has been prescribed with a view to ensuring 'element of higher selectivity'. This is obviously intended to ensure that the person who are holding that post should have higher caliber. However, as per ACP, though higher pay scale is granted, there is no higher responsibility. Thus, for isolated categories, ACP has no relevance with the Bench Mark.

12. ACP for Isolated posts is different from ACP for other posts, where there are promotion channels. Thus, where the post is isolated, the higher pay scale is as per Annexure II to the scheme, which is not identical with the pay scale where promotional avenues exist. In so far as grant of ACP for promotional post is concerned, there are certain restrictions, such as in the event of grant of promotion, the individual who had availed of ACP cannot refuse the promotion. Such impediments are not available in the case of ACP for isolated posts. Thus, when the ACP for isolated posts have wide difference, such a difference could be maintained in respect of bench mark. In other words, where Bench Mark is a must for grant of ACP in respect of promotional posts, for isolated post, such



bench mark is not of any utility value as the individual would be performing the same duties and there is no scope of his future promotion, unlike the case of ACP in promotional posts.

13. In view of the above, the OA is allowed. It is declared that the applicant is entitled to ACP benefits from 9-8-1999. The claim for ACP has been made only from 2003 and not earlier. As such, arrears would be admissible only with effect from the date of first representation i.e. August, 2003. From 9th August, 1999, the benefit would be notional, while the same would be actual from August, 2003 till the date of retirement i.e. 31-05-2005. The last pay drawn after the grant of the two ACPs would form the basis for grant of terminal benefits and pension. Arrears arising out of the same would also be payable.

14. Respondents are directed to pass suitable orders for the above benefit to the applicant and also pay the arrears. While orders be passed within a period of three months, payment of arrears be made within a period of two months thereafter.

15. Under the above circumstances, there shall be no orders as to costs.

(Dated, the 8th January, 2008)


(O.P. SOSAMMA)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.