

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 611/2004

Tuesday, this the 5th day of July, 2005.

C O R A M :

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

C.K. Narayanan,
Lab Attendant Cum Cook,
Central Food & Nutrition Board Extension Unit,
Parambithara Road,
Cochin - 682 016

... Applicant.

(By Advocate Mr. CSG Nair)

v e r s u s

1. Union of India,
Represented by the Secretary,
Ministry of Personnel, Public Grievances & pension,
South Block, New Delhi - 110 001.
2. The Secretary,
Department of Women & Child Development,
Kasturbha Gandhi Marg,
New Delhi : 110 001.
3. The Deputy Technical Advisor,
Food & Nutrition Board,
Shastri Bhawan, 26, Haddows Road,
Chennai : 600 006.

... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant who is working as Lab Attendant cum Cook in the Central Food and Nutrition Board Extension Unit, was granted two financial upgradations under ACP Scheme. Vide impugned order A/7, it is ordered to refix the pay of the applicant and recover the alleged excess amount paid to him on the ground that he is a non- matriculate. It is averred in the OA that the

action on the part of the respondents is contrary to the conditions contained in ACP Scheme as the question of qualification does not arise in the case of Group 'D' employees. Aggrieved by the A/7 impugned order, the applicant has filed this OA seeking the following main reliefs:

1. To quash Annexure A/7.
2. To declare that the two financial upgradations granted to the applicant as per Annexure A3 and the pay fixation made as per Annexure A4 are correct.
3. To direct the third respondent not to recover any amount from the applicant on account of pay fixation as per Annexures A3 and A4."

2. The respondents have filed a detailed reply statement contending that the third respondent had issued orders based on O.M.No.35034/1/97/Estt(D) dated 9.8.99 issued by the first respondent and the applicant's pay has been fixed accordingly. Subsequently, on receipt of O.M. No.35034/2/2001Estt(D) dated 1.6.2001 (R/1), wherein the pay scale of all the Group 'D' employees in the scale of pay (prior to Fifth Pay Commission) of Rs. 775-12-871-14-1025 and Rs. 800-15-1010-20-1150 has been replaced by the new pay scale of Rs. 2610-60-2910-65-3300-70-4000 and the second financial upgradation on completing of 24 years of regular service shall be allowed at least to the pay scale of Rs. 2750-70-3800-75-4400 (S-4). As per the said O.M., the cases have been reviewed and issued orders accordingly. It is further stated in the reply that based on seniority-cum-fitness, the applicant was offered posting at Madurai vide order No. 10(69)/RPC/2001 dated 11.5.2001, but he refused to accept the same on the ground that he has permanently settled at Ernakulam and was unable to move out of Ernakulam at the relevant point of time. They contend that the upgradation was erroneously allowed to the applicant earlier which was rectified and ordered recovery of the excess payment already paid to him. The applicant has not raised any objection for the terms of implementation of the



replacement scale and effect thereof. Further, the offer has been issued to the applicant for the post of Machine Operator, which is a Group 'C' post, but the applicant has not accepted the same at that time. Subsequently, the vacant post was abolished as per the Government policy on reduction of staff strength. Since the applicant has refused to accept the offer, the benefit thereon the applicant has to forego. The offer was issued only on the basis of seniority-cum-fitness and as per the Recruitment Rules prescribed for the post of Machine Operator. Therefore, the benefit of refixation ACP Scheme received by the applicant has to be refixed. The respondents have also filed additional reply statement contending that as per Column 11 of Annexure R/2 Recruitment Rules, the promotion for Machine Operator is to be made from the Laboratory Attendant/Attendant-cum-Cook with ten years regular service in the grade.

3. The applicant has also filed a rejoinder reiterating the contentions made in the O.A. and further submitting that the applicant did not accept the offer for Machine Operator on account of his personal difficulties in joining the post at Madurai during the relevant period. The applicant submitted that he should have been considered for the said post again after a period of one year, but the department did not do so.

4. We have heard Shri CSG Nair, learned counsel for the applicant and Shri TPM Ibrahim Khan, CGSC, for respondents.

5. Learned counsel for the applicant took us through various pleadings, material and evidence placed on record. Learned counsel for the applicant submitted that as per the recommendations made by the Fifth Central Pay Commission and as accepted by the Government, two financial upgradations

were introduced to the Group 'B', 'C' and 'D' employees to remove the genuine stagnation and hardship faced by the employees. But wrong interpretation in the case of Group 'D' employees resulted into denial of benefits which is violative of Article 14 of the Constitution.

6. Learned counsel for the respondents, on the other hand, persuasively argued that as per the Scheme, the second upgradation shall be allowed to only those civilian Group 'D' employees who are matriculate or equivalent and those employees who did not possess the required qualification are not entitled for second financial upgradation and such cases have rightly been recalled.

7. The applicant was joined the services as Laboratory Attendant-cum-Cook in 1969. The Fifth Pay Commission for Central Government Employees had recommended for minimum two promotions in the career of an employee, which was accepted by the Government and the orders were passed vide A2 O.M. Dated 9.8.1999. The applicant has completed 30 years of service as on 9.8.1999 on which date the ACP Scheme came into force. The applicant was eligible for financial upgradations which were granted vide A/3 order dated 12.7.2000 and accordingly his pay was fixed vide A/4 order dated 24.8.2000. Though the applicant was promoted as Machine Operator and posted to Madurai, he could not accept that promotion due to some personal reasons. He submitted A/6 representation dated 17.5.2001. A/7 is the impugned orderrefixing the pay of the applicant and ordering recovery of the alleged excess payment paid to him. Learned counsel for the applicant took us through condition 6 of the ACP Scheme (Annexure A/2) dated 9.8.1999, which is reproduced as under :-

“6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case



of Group 'D' employees, etc.) for financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations 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."

8. The only condition mentioned in the ACP Scheme in so far as Group 'D' employees are concerned, is seniority-cum-fitness. All those who have completed 12 years or 24 years should be given financial upgradations if they are found fit for promotion and other conditions are not applicable in the case of Group 'D' employees, but only to Group 'C', 'B' and 'A'. The financial upgradation was being denied to the applicant only for the reason that he did not possess the matriculation or equivalent qualification, which is prescribed for next promotion. The learned counsel for the applicant submitted that the financial upgradation not being a promotion as even on such upgradation the employee would be discharging the same duties of a Group 'D' employee without enjoying the status of the higher post, the insistence on possession of educational qualification for financial upgradation is the result of an erroneous interpretation of condition No.6 of the Annexure A2 (supra). According to the applicant, this interpretation defeats the very purpose of the Scheme, which is to provide a safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. There is great force in this argument. On going through the said condition No. 6 of the ACP Scheme we find that the denial of upgradation to the applicant on the ground of non-possession of the educational qualification (SSLC) is faulted.



9. The condition precedent for grant of first and second financial upgradation in the case of Group 'D' employees is only seniority-cum-fitness and the educational qualification does not seem to be a condition precedent. The Scheme itself was evolved to mitigate the hardship of such employees. By giving financial upgradation what is achieved is only certain financial benefits and not an elevation in status. They continue to be working in the lower cadre but enjoying only the higher scale of pay after rendering service for a specified period without any promotional chance. We are, therefore, of the view that the interpretation for insistence on possession of educational qualification (SSLC) as a pre-condition for financial upgradation is erroneous. Further, regarding second upgradation the clarification issued by the impugned order A/7 and other O.Ms referred to therein are also opposed to the spirit of the Assured Career Progression Scheme. Such a differentiation is not made on the basis of any intelligible differentia which bears a nexus with the objective sought to be achieved by the scheme. The applicant is entitled to be considered for the relief.

10. The another contention raised by the respondents was that the applicant has been promoted to the post of Machine Operator and posted at Madurai but he refused to accept that offer and, therefore, he is not entitled to second upgradation. The rule position in such circumstances is that if an employee under the Central Government refuses to accept the promotion, he/she will be loosing the chance of promotion for one year and thereafter, he may again be offered posting afresh. It is true that the applicant did not accept the offer due to some personal difficulties at the relevant point of time. At the same time, he was also not considered for promotion again by the respondents after the period of one year. Therefore, at best, that one year period could be kept in abeyance while granting the ACP Scheme. In other words, the benefits could have been

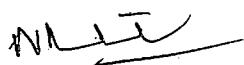


deferred for one year and in that case also, the applicant is eligible for the same. In the present case, the applicant had already completed 30 years of service as on 9.8.1999 (date of the Scheme). Therefore, the question of deduction/deferring of one year also does not arise in his case. Learned counsel for the applicant has also invited our attention to the order of this Bench passed in O.A. No. 309/2001 dated 7th January, 2002, wherein an identical matter was disposed of granting the reliefs in favour of the applicant therein. We are in respectful agreement with the said decision.

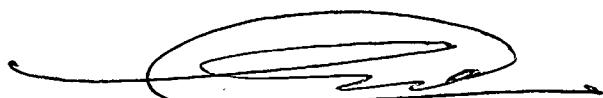
11. In the conspectus of the facts and circumstances of the case, we are of the view that the impugned order Annexure A7 is liable to be set aside and that the applicant being a Group 'D' employee, is entitled to second upgradation despite the fact that he does not possess the educational qualification of SSLC. We accordingly set aside the impugned order A/7 and declare that the applicant is entitled to second financial upgradation as prayed for. Respondents are directed to grant the benefits flowing out of this order within a time frame of two months from the date of receipt of a copy of this order.

12. The O.A. is allowed as above. In the circumstances, no order as to costs.

(Dated ..~~5/7/~~ July, 2005)



(N.RAMAKRISHNAN)
ADMINISTRATIVE MEMBER



(K.V. SACHIDANANDAN)
JUDICIAL MEMBER

cvr.