

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.78 / 2007

Thursday, this the 7th day of February, 2008.

CORAM

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Jose Daniel,
Electrician,
Integrated Fisheries Project,
Kochi-16.Applicant

(By Advocate Mr P.A.Kumaran)

1. Union of India represented by
Secretary,
Ministry of Agricultural,
Department of Animal Husbandry and Dairying,
New Delhi.
2. The Director,
Integrated Fisheries Project,
Kochi-16..Respondents

(By Advocate Mr.CM Nazar, ACGSC)

This application having been finally heard on 16.1.2008, the Tribunal on 7.2.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER


The applicant's grievance in this O.A is that he was not granted the first financial upgradation under the Assured Career Progression Scheme (ACPS for short) issued by the Government of India, Department of Personnel & Training on 9.8.1999.

2. The brief facts of the case are that the applicant was appointed as an Electrician in the Integrated Fisheries Project (IFP for short) on 28.4.1994. The

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said post had two promotional posts viz, Supervisor (Electrical) and Electrical Supervisor both in the scale of pay Rs.4500-7000. Though the two posts carried the same scale of pay, the qualification prescribed for promotion to them were different. While the qualification required for promotion to the post of Supervisor (Electrical), was Diploma in Electrical Engineering, there was no such requirement for promotion to the post of Electrical Supervisor. Another difference was that the eligibility condition for promotion to the post of Supervisor Electrical was 3 years service in the grade of Electrician but for promotion to the post of Electrical Supervisor it was five years service as Electrician. The post of Electrical Supervisor in IFP was lying vacant since 18.5.1993 and the vacancy was not filled up due to ban orders existing at the relevant time and other administrative reasons. It got lapsed after one year. Further, as a consequence of reorganization of IFP, the various sections of IFP along with staff, machineries etc. were transferred to other two sister organisations, viz, CIFNET and FSI. The Marine Engineering Section, where the applicant was working, was transferred to FSI. But one post of Supervisor (Electrical) and 2 posts of Electrician including that of the applicant were retained in IFP and attached to the Refrigeration Section. Therefore, when the applicant completed the minimum period of service of 5 years as Electrician in the year 1999, he was not considered for any promotion. He has, therefore, submitted that since an employee is entitled to get two financial upgradations, under the ACP Scheme introduced by the Government of India with effect from 9.8.1999, first on completion of 12 years of regular service and second on completion of 24 years of service, and since he had already completed 12 years of service on 28.4.2006, the respondents are bound to grant him the first financial upgradation with effect from the said date. He has also submitted that the first financial upgradation under the ACP Scheme was granted to several other similarly placed persons in the respondent-department vide Annexure A-6 order.

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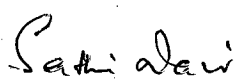
3. The contention of the respondents is that after the re-organisation of IFP, only the post of Supervisor (Electrical) is remaining with IFP and grant of promotion/ACP to the said post possession of Diploma in Electrical Engineering is essential which the applicant does not possess. They have further submitted that a proposal for amendment of the recruitment rules for the post of Supervisor (Electrical) by lowering the Educational qualification for the feeder cadre is under consideration and the applicant will be considered for promotion/grant of ACP benefits, if he will be eligible for consideration under the amended Recruitment Rules.
4. We have heard Shri P.A.Kumaran for applicant and Shr C.M.Nazar, ACGSC for respondents. The undisputed fact is that the applicant was appointed as an Electrician with effect from 28.4.1994 in IFP and during his entire service of 12 years, he has neither been promoted to any higher post nor granted any financial upgradation under the ACP scheme. Prior to the reorganisation of IFP, the only post to which he was entitled to be promoted was to the post of Electrical Supervisor in the scale of pay Rs.4500-7000. The said post was lying vacant from 18.5.1993 and later on got lapsed. After reorganisation of the IFP, the applicant was retained in IFP. The applicant was not eligible to be considered for promotion to the post of Supervisor (Electrical) which has been retained with the IFP after reorganisation. Thus, the post of Electrician being held by the applicant has rendered itself an isolated post. The contention of the respondents that the proposal for amendment of the Recruitment Rules for the post of Supervisor (Electrical) by lowering the education qualification is under consideration is of no use, as the same would materialise only in future, if at all the proposal made in this regard is accepted by the competent authority. But the reality is that the applicant is stagnating at
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present in the same post for more than 12 years. The essence of the ACP Scheme is that if two regular promotions during the period of 12 years and 24 years have not been availed of by an employee, he shall be qualified for the first and second financial upgradation on completion of 12 years and 24 years of regular service. The denial of the benefit of the said scheme to an employee for reasons not attributable to the employee is illegal and violative of Articles 14 and 16(1) of the Constitution of India.

5. In the facts and circumstances of the case, we consider that the denial of the first financial upgradation under the ACP Scheme to the applicant is illegal and against the purpose and intent for which the scheme itself has been formulated. We, therefore, allow this application and declare that the applicant is eligible and entitled to get the financial upgradation under on completion of 12 years of regular service as Electrician in the scale of pay Rs.4500-7000 attached to the post of Electrical Supervisor to which he was entitled to be promoted before the said post was lapsed/absorbed under ACP Scheme. We also direct the respondents to grant such financial upgradation to the applicant with all consequential benefits including arrears of pay within a period of two months from the date of receipt of copy of this order. No costs.

Dated, the 7th February, 2008.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN