

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 83/2010

Monday, this the 19th day of March, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

K.Gopinathan Nair, S/o N Krishnann Pillai,
MES-167130, Refrigeration Mechanic Skilled,
Q/o the Asssitant Garrison Engineer (Air Force),
Pulayanarkotta, Thiruvickal.P.O.
Trivandrum-695 031. - - - - - Applicant

(By Advocate Mr P.K.Madhusoodhanan)

V

1. The Chief Engineer,
Dakshin Karan Mukhyalaya,
Engineer Shakha, Headquarters,
Southern Command, Pune-411 601.
2. Chief Engineer (Naval Works),
Military Engineer Services,
Naval Bas.P.O., Kochi-682 004.
3. Garrison Engineer (Air Force),
O/o the Garrison Engineer (Air Force),
Pulayanarkotta, Thiruvickal.P.O.
Trivandrum-695 031.
4. Chief Engineer A & N Zone,
Military Engineer Services,
Birchgunj, Junglighat.P.O.
Port Blair.
5. Union of India represented by its
Secretary, Ministry of Defence,
New Delhi.

(By Advocate Mr Sunil Jacob Jose, SCGSC)

~~This application having been finally heard on 14.03.2012, the Tribunal on 19.03.2012 delivered the following:~~

ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant's claim in this case is that he should be granted the financial upgradation as provided for the Assured Career Progression Scheme (ACP Scheme, for short) which is effective from 09-08-1999. As per the said scheme, in the event of a government servant stagnating in the same post, after 12/24 years, he would be considered for such financial upgradation, subject to his being eligible for promotion but could not be promoted due to non availability of vacancies. In case the individual has obtained one promotion, he would be eligible for the second financial upgradation after completion of 24 years from the date of initial appointment. The career map of the applicant as available in the OA is as under:-

(a) Joined as *Mazdoor* in June, 1973, the applicant became Motor Pump Attender (MPA for short) in January, 1979.

(b) The applicant was transferred to Port Blair in 1982 and obtained a promotion on 03-02-1986 as Refrigeration Mechanic in the erstwhile scale of Rs 260 – 400. In 1995 the applicant submitted a representation to the C.E. (Independent)Navy, Port Blair requesting him to take steps to conduct trade test for granting him the next promotion to the Highly Skilled Grade of Refrigeration Mechanic. This request was renewed in June, 1996 . Though the trade test was conducted, the result was not published as there was no vacancy. In 1999 again, the applicant made a representation vide Annexure A-2 and the same was followed up again in 2000.

2. On 09-08-1999 the ACP scheme was introduced but the applicant was not granted any benefit of the said scheme. Hence, the applicant again made a representation in 2002 vide Annexure A-5, requesting the authorities to conduct the trade test. This was again followed up by another representation in 2003 vide Annexure A-6. It was at this juncture that a trade test was scheduled on 23-05-2003. However, (according to the applicant), he being on medical leave at the material point of time, did not participate in the trade test. Again, when the trade test was conducted in April, 2005, he did not participate in the said test as he again fell ill. Hence, he had requested the authorities to afford him one more chance to sit in the trade test. But he was not permitted for the same.

3. It was by that time that the applicant was transferred on request to Trivandrum where he joined in March, 2006. He had this time participated and passed in the trade test. According to the applicant, this is the first attempt. Office Order dated 13-05-2008, vide Annexure A-10 as well as Annexure A-11 refers. As one of the conditions for eligibility for financial upgradation under the ACP Scheme, vide Annexure A-14, was that the individual should qualify in the trade test on the first occasion, the applicant requested for the same vide Annexure A-16. However, through Annexure A-17, the applicant came to know that the respondents' stand was that the applicant failed in the trade test conducted in May, 2003 and hence he is not entitled to the benefit of the ACP Scheme. It is this order that has been under challenge. The reliefs sought are as under:-

- (a) Set aside Annexure A-17.
- (b) Issue necessary directions to the respondents to grant and disburse to the applicant ACP scheme benefits in the scale of pay of Rs.4000-6000 with effect from 9.8.1999 with reasonable interest on it, to be fixed by this Hon'ble Tribunal, and at the earliest, at any rate, within a reasonable time

to be fixed by it.

(c) Declare that the applicant is eligible and entitled to be granted and disbursed with ACP scheme benefits with effect from 9.8.1999, ordered in Annexure A-3 and as clarified in Annexures A-4, A-12 and A-13 in view of Annexures A-7, A-8, A-10, A-11 and A-14, in the scale of pay of Rs.4000-6000 (pre-revised) and grant and disburse all consequential benefits, including monetary benefits arising therefrom at the earliest.

(d) Issue necessary directions to the respondents to grant and pay and also fix his pension and pensionary benefits on the basis of the grant of ACP scheme benefits as well as per law.

(e) Award costs of these proceedings.

(f) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper.

4. Respondents have contested the O.A. According to them, the applicant is not entitled to the benefit of financial upgradation under the ACP Scheme in view of the fact that he did not pass in the first attempt in the Trade Test conducted in May, 2003. This information was furnished by the Headquarters, Chief Engineer A & N zone, Port Blair, addressed to the Chief Engineer (NW), Naval Base Cochin, vide Annexure R-1. As per DOPT instruction, as conveyed through Annexure R-2, in case of those who qualified in the Trade Test on the first occasion, ACP benefits would be available from 09-08-1999 while those who qualify subsequently, would be entitled to the benefits only from the date of such passing the trade test. It was after the applicant had qualified in the Trade Test that he was considered for actual promotion to the post of HS Grade in February, 2008, vide Annexure R-3 and R-4.



5. In his rejoinder, the applicant again contended that he did not appear in the trade test conducted in 2003 as he was on medical leave.

6. Counsel for the applicant argued on the above lines maintaining that it was in 2008 that the applicant appeared for the first time in the trade test and qualified in the same which is borne out by the entry in the service book, and as such, he is entitled to the benefit of financial upgradation w.e.f. 09-08-1999, while the respondents' stand is that the applicant had failed in the trade test conducted in May, 2003. As such, in order to ascertain the fact, the records were ordered to be produced. The respondents have produced the same and on scrutiny, it is observed that the applicant did participate but failed in the trade test. In the casualty list dated 16-02-2004, this fact has been duly indicated , with the authority of CE A & N Zone, Port Blair letter dated 22-12-2003.

7. Counsel for the applicant referred to the entry made in the Service Book, dated 25-02-2008 wherein it was indicated that the applicant had passed in the first attempt but the same has been struck off with the endorsement Amendment made on 05-03-2009 on the basis of some authority dated 02-02-2009.

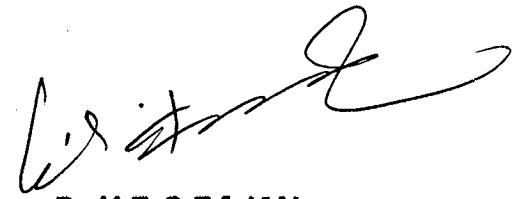
8. Counsel for the respondents submitted that the above entry of qualifying in the first attempt was reflected inadvertently and on ascertaining the actual facts, the same had been rectified. The contemporary records showed that the applicant did not qualify in the trade test conducted on 23-05-2003. In yet another occasion of 2008, that he had been absent had been clearly reflected.

9. We are fully satisfied on the basis of the records produced that the applicant failed in the trade test conducted in May, 2003. The contemporary documents cannot be doubted. The error in reflecting that the applicant passed

the trade test in the first attempt obviously has crept in as the fact of the applicant's having failed in 2003 would not be known to the Trivandrum Office, since the applicant appeared in the Trade Test conducted in May 2003 at Port Blair.

10. In view of the above, we find no merit in the O.A. Hence, the OA is **dismissed**. No costs.

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K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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