

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. N.. 652/2007 & .O.A. No. 9/2008

Wednesday this the 4th day of March 2009



C O R A M

**HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

O.A. No. 652/2007

K.P. Xavier S/o Papputty
Carpenter, Fishery Survey of India
Kochi-5
residing at Kalluveettil House
Near Pattuprackal Temple, Kakkanad.

Applicant

By Advocate M/s T.A. Rajan & C.K. Jayakumar

Vs.

- 1 Union of India represented by the Secretary
Government of India, Ministry of Agriculture
Department of Animal Husbandry
Dairying and Fisheries
Krishi Bhavan, New Delhi.
- 2 The Director
Integrated Fisheries Project
Kochi-16
- 3 The Director General
Fishery Survey of India
Botwawala Chambers
Sir P.M. Road, Mumbai
- 4 The Zonal Director
Fishery Survey of India
Kochi-5

Respondents.

By Advocate Mr. George Joseph, ACGSC

O.A. 9/2008

- 1 K.C. Sebastian S/o Cleetus
Mechanic, Marine Engineering Division
Fishery Survey of India
Kochi-16
residing at Kottalakad House
X/1321, Amaravathi, Kochi-1

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K.K. Jose S/o Kochuvareed
Mechanic, Marine Engineering Division
Fishery Survey of India
Kochi-16
residing at IFP Staff quarters, Block-2
C-11, St. Francis Church Road,
Pullepady, Kochi-18

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By Advocate M/s T.A. Rajan & C.K. Jayakumar

Vs.

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Fishery Survey of India
Kochi-5

Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC

These Applications having been heard on 11.2.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Since similar facts and common question of law are involved in these two OAs, they were heard together and are disposed of by this common order.

O.A. 652/2007

2 The applicant is presently working as Carpenter in the Fishery Survey of India. He was initially working as Carpenter on casual basis and later on regular basis w.e.f. 30.12.1978 in the Marine Engineering Workshop under the Integrated Fisheries Project, Kochi (A-1). The applicant is still working as Carpenter in the same grade of 260-350 (revised scale of Rs. 3050-4590) and was granted three stagnation increments (A-2). On introduction of Assured Career Progression Scheme for the Central Govt. Employees, the applicant was given 1st financial upgradation by order dated 1.8.2000 (A-4). But pursuant to the instructions of the 1st respondent, the 2nd respondent cancelled the financial upgradation by order dated 21.12.2000 on the ground that in a defined hierarchy of grade, financial upgradation can be given only if an employee fulfills the conditions of notified recruitment rules of next higher post. It is submitted that the next promotion post of Carpenter in the Integrated Fisheries Project is Assistant Foreman(Carpentry) and the qualification required for the post is Diploma in Mechanical Engineering with two years experience in building of wooden boat carpentry repair of wooden boats or ITI certificate in the grade of carpentry with 7 years experience in building or repairs of wooden boats. The applicant did not possess the above qualifications. The order cancelling the grant of 1st ACP was challenged in O.A. 1353/2000 before this Tribunal which was allowed (A-5). The respondents challenged the order of the Tribunal in OP NO. 18024/02 and other connected cases before the Hon'ble High Court of Kerala. The Hon'ble High Court allowed the OP. On the basis of the Report of the Committee constituted for review and re-orientation of

various activities of IFP, Govt. decided to revise the mandate of IFP after orientation (A-6) and Marine Engineering workshop etc. have been identified to be transferred to FSI, including the applicant under the Engineering Section (A-7). Accordingly, he joined FSI on 1.10.2005. The applicant has submitted that the post of Carpenter in FSI is an isolated post, there is no promotion post available. There is no Recruitment Rules to higher post of Carpenter. The carpenters like P.M.Sudalai working in the FSI were given financial upgradations to the scale of pay of Rs. 3200-4900 on completion of the requisite years of service without insisting on any qualification (A-8). It is submitted that pursuant to the judgment of the Tribunal in O.A. 1062/04 the 1st financial upgradation was granted to Sri D. Chelladurai, Carpenter, FSI, Chennai was later revised to the scale of pay of Rs. 4000-6000. (A-9). In the case of Shri Sudalai also, the pay scale has been revised to Rs. 4000-6000. It is submitted that the applicant now a permanent employee of FSI has 27 years of regular service and the Carpenters in FSI has been given the financial upgradation benefits, he is also entitled to get the same benefits. The representation submitted by the applicant has been rejected by A-11 order. Hence he filed this O.A challenging A-11 order.

3 The main grounds advanced by the applicant are as follows:

- (i) that there is no post of Asst. Foreman (Carpentry) in the FSI and consequently there is also no Recruitment Rule.
- (ii) the Carpenters in the FSI have been granted the benefit without insisting for any educational qualification.

(iii) S/Shri A.K.Karthikeyan and N. Gopi Mechanics in IFP who were not granted the benefits under the ACP Scheme on the ground that they did not have the requisite educational qualifications were now given the benefits as the post of Mechanics in IFP became isolated post because of transfer of the employees from IFP to other Institutions (A-12)

(iv) Sri P. Pavithran, Carpenter in IFP has been given the 1st ACP benefits in the scale of pay of RS. 4500-7000 and the 2nd ACP benefits in the scale of pay of Rs. 6600-9000 (A-12), the applicant having completed more than 24 years of service is entitled to get the first and second financial upgradations after completion of 12 and 24 years of service.

O.A. NO. 9/2008

4 The applicants are now working as Mechanics in the Marine Engineering Division of Fishery Survey of India directly under 4th respondent. They were initially engaged as Casual workers under the second respondent on 7.6.68 and 23.1.68 respectively and later were regularly appointed as Slipway worker on 2.9.1977 and 2.9.1978 respectively. While so, they were selected and appointed as Mechanic (A2 & A3). They are still continuing as Mechanic in the grade of Rs. 260-350 revised to Rs. 3050-4590. They were given stagnation increment (A4). The next promotion post of Mechanic is Assistant Foreman (Mechanic). The 1st financial upgradation granted to the applicants have been cancelled as they do not have the requisite qualification of ITI in Diesel Mechanic/ Fitter/ Blacksmith with 7 years experience in the trade. The

applicants do not possess the above qualification. The 1st applicant's challenge against the cancellation order was allowed by the Tribunal but the order of the Tribunal was set aside by the Hon'ble High Court in O.P.18024/2002. While so, the applicants were transferred to FSI w.e.f. 1.10.2005. The post of Mechanic in the FSI is an isolated post, there is no promotion post and hence there is no Recruitment Rules. That being the position, there is no question of fulfilling any condition in the Recruitment Rules. They are seeking 1st and 2nd financial upgradations in the scale of pay of Rs. 4500-7000 and Rs. 5500-9000 as has been granted to Fitters in the FSI (A-10). They have also submitted that M/s Sugandhi Behera, Bhima Shankaram, G. Sankara Rao and E. Appa Rao are having the educational qualifications of Vth standard, etc. but were granted the ACP Scheme benefit. Their representations to this effect have not been considered so far. Hence, they have approached this Tribunal with similar grounds like the applicant in O.A. 652/07.

5 The respondents have filed reply statement in the two OAs.

6 In O.A. 652/2007 the respondents have denied that the post of Carpenter is an isolated post. They admitted that earlier the Post of Asst. Foreman (Carpentry) was not available in FSI. But they stated that among the posts transferred from IFP to FSI included one post of Assistant Foreman (Carpentry) also and hence the FSI now possess the post of Assistant Foreman (Carpentry) in the pay scale of Rs. 3050-4590. Therefore, the employees like the applicant can be granted financial upgradation under ACP provided they have the requisite qualification prescribed under the Recruitment Rules. They have also denied that the

cases cited by the applicant are similarly situated. They were granted financial upgradation when there was no promotion post before the transfer of the promotion post of Assistant Foreman (Carpentry) from IFP to FSI. As regards the case of Shri D.I Chelladurai, they have admitted that pursuant to the allowing of O.A. 1062/2004 by the Madras Bench of the Tribunal he was finally granted the 1st financial upgradation in the pay scale of Rs. 4000-6000 on par with similarly placed Welders, Fitters and Machinists. However, it is submitted that a Committee has been constituted to study and amend the Recruitment Rules of such categories. Therefore, the applicant and similarly situated persons have to wait for the amendment of the Recruitment Rules. The case of S/Shri N. Gopi and A. K. Karthikeyan cannot be compared to the case of the applicant. It is submitted that the posts having become isolated for the reason whatsoever, the two individuals became eligible for upgradations under the ACP Scheme and accordingly they were granted. In the case of Shri Pavithran as he possess ITI certificate with the requisite years of experience, he was granted 1st ACP in the pay scale of Rs. 4500-7000 and 2nd ACP in the pay scale of Rs. 5500-9000. They further submitted that the Recruitment Rules of all the posts transferred from IFP to FSI are under review for amendment and therefore the cases will be examined after amendment of the Recruitment Rules.

7. The respondents have filed reply in O.A. 9/08 more or less on similar lines of reply in O.A. 652/07 except change in the name of the post held by the applicants. The respondents submitted that the applicants were recruited to the post of Mechanic under Direct Recruitment method w.e.f. 8.2.1982. The next promotion post of Mechanic as per the

Recruitment Rules is Assistant Foreman (Engines & Equipment) provided they possess the requisite qualifications viz. Diploma in Mechanical Engineering with 5 years of service or ITI Certificate in Diesel Machine Fitter with 7 years service. Both the applicants admittedly do not possess the required qualifications, hence they are not eligible for financial upgradations under the ACP scheme. Though the applicants have filed O.A. 1353/2000 before this Tribunal and obtained a favourable order, it was finally rejected by the Hon'ble High Court in O.P.No.18024/2002 (R-II). The posts of Mechanic as well as Assistant Foreman were transferred from IFP to FSI the promotional avenue available for Mechanic has not been disturbed and the promotional avenue of Mechanic remains unchanged in FSI as well. It is not an isolated post as contended by the applicants. They have also distinguished the case of Fitters. However, they have submitted that efforts are being made to commonize various categories of posts transferred from IFP with those available in the FSI by amending the Recruitment Rules. Hence, the cases of grant of upgradations under ACP Scheme for all the relevant categories of employees are kept in abeyance.

8 The applicants have filed rejoinder contending that consequent on the transfer of the applicants to FSI they are governed by the Recruitment Rules in FSI and that there are no Recruitment Rules to the post of Assistant Foreman in FSI as such the post of Mechanic is an isolated post in FSI having no avenue for promotion. Hence they submitted that they are entitled to get the financial upgradation benefits under the ACP Scheme. The applicants are doing the duties of Fitters hence they have to be treated on par with the Fitters in FSI. They have also relied on the judgment of

the Hon'ble High Court of Kerala in Union of India & Ors. Vs. M. Lilly Vasudevan and another.

9 The respondents have filed additional reply statement opposing the stand of the applicants that there is no recruitment rules for the post of Assistant Foreman (Engine & Equipments) in FSI. According to them the Marine Engineering Workshop in the IFP was transferred to FSI in its entirety with personnel.

10 We have heard Shri T. A. Rajan the learned counsel for the applicants and Ms. Jisha counsel appearing for SCGSC and Shri George Joseph , ACGSC appearing for respondents in th respective OAs.

11 The question that comes up for consideration is whether the applicants while working in the IFP were not given financial upgradation under the ACP Scheme due to lack of qualification for promotion to the higher post, consequent on their transfer to FSI where there is no Recruitment Rules prescribing the promotion post or requisite qualifications, are entitled to the benefits or not. The applicants argued that prior to their transfer to the FSI, the similar employees in the FSI have got the benefit as there was no recruitment rules, hence, after transfer of the applicants since there is no recruitment rules notified and that they are holding isolated posts they are entitled to the benefits. According to them the recruitment rules in the IFP could not be made applicable in FSI consequent on the transfer of the employees from IFP to FSI. Therefore, they are eligible for the financial upgradations under the ACP Scheme. The respondents on the other hand took the stand that the employees

were transferred in their entirety i.e. the employees along with the Recruitment Rules were transferred. In the case of the applicants the holder of their promotion post were also transferred. Hence they are not holding isolated posts in FSI and they are not eligible for financial upgradation under ACP scheme. They have further submitted that the Institute has appointed a Committee to review and amend the Recruitment Rules and the case of the applicants will be examined after amendment of the Recruitment Rules.

12 After hearing the learned counsel on both sides and perusal of the the pleadings we find that in IFP, the applicants were not eligible for 1st financial upgradation under the ACP Scheme as they did not have the requisite qualifications prescribed for the promotion post. In FSI, as there were no promotion posts, the employees received financial upgradations against an isolated post. Even after the transfer of the applicants from IFP to FSI, no new rules were notified. According to the applicants they are holding isolated posts as in the case of the employees of FSI prior to their transfer. The respondents have argued that along with the applicants the recruitment rules and the incumbent of the promotion post were also transferred. Can it be said that when the transfer of the employees was effected, along with the employees their recruitment rules have also been made applicable to FSI? In the order No.5-16/2002-Fy (T.5)(1) dated 19.5.2005 there is no mention about the transfer of recruitment rules (A-6). In the order No.5-16/2002-Fy.(T.5)(II) dated 19.5.2005 (A-7) it is mentioned that the service conditions and seniority of the employees will be governed by the rules and instructions issued by the Government of India from time to time. No rules or

-11-

instructions issued by the Government of India have been brought to our notice. However, the learned counsel for the respondents has submitted that amendment of the recruitment rules of posts in FSI are being finalised. The transfer of the applicants have been effected on 1.10.2005. Even the Report of the Sixth Pay Commission recommending three financial upgradations has since been implemented by the Government w.e.f. 1st January, 2006. Therefore, the amendment of the recruitment rules of FSI needs to be finalised as quickly as possible.

13 In this view of the matter, we are of the view that the both the O.As can be disposed of directing the respondents to complete the review and amendment of the Recruitment Rules of all the posts transferred from IFP to FSI at the earliest and keeping in view the hardship faced by the employees, consider them for grant of financial upgradations under the ACP Scheme. We do so. Action on the above lines shall be completed within six months from the date of receipt of this order. The O.As are disposed of as above. No costs.

Dated 4.3.2009.

K. NOORJEHAN
ADMINISTRATIVE MEMBER

JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

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