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OF C.A.T. (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. Nos. 1353/2000, 103/20001, 212/2001 & 297/2001

Tuesday, this the 18th day of December, 2001.

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. 1353/2000

1. M.P.Jerson
Welder, Integrated Fisheries Project
Kochi-16
2. K.C. Sebastian
Mechanic, Integrated Fisheries Project
Kochi-16
3. N. Gopi
Mechanic, Integrated Fisheries Project
Kochi-16
4. M.N. Raghunatha Kurupu
Lascar, Integrated Fisheries Project
Kochi-16
5. K.P. Xavier
Carpenter, Integrated Fisheries Project
Kochi-16
6. K.R. Kuttappan,
Assistant Foreman (Structural),
Integrated Fisheries Project
Kochi-16
7. A.K. Karthikeyan
Mechanic
Integrated Fisheries Project
Kochi-16
8. J.George,
Assistant Operator,
Integrated Fisheries Project
Kochi-16
9. T.P. Mohanakrishnan,
Bosun
Integrated Fisheries Project
Kochi-16

Applicants

By Advocate Sri V.R. Ramachandran Nair

Vs

1. Union of India represented by
The Secretary, Ministry of Agriculture,
Deptt. of Animal Husbandry and Dairying,
Krishi Bhavan, New Delhi.

.2..

2. The Secretary,
Ministry of Personnel, Public Grievances &
Pension, Department of Personnel & Training,
New Delhi.
3. The Director-in-Charge,
Integrated Fisheries Project,
Kochi-16.

.. Respondents

By Advocate Mr. Govindh K. Bharathan

O.A. No. 103/2001

1. M.L. Xavier,
Engine Driver, Class II,
Integrated Fisheries Project,
Kochi-16.
2. Gilbert Gomez,
Junior Deck Hand,
Integrated Fisheries Project,
Kochi-16.
3. K.K. Somasundaran,
Junior Deck Hand,
Integrated Fisheries Project,
Kochi-16.
4. K.K. Pavunni,
Junior Deck Hand, Integrated Fisheries Project,
Kochi-16.

(By Advocate Sri V.R. Ramachandran Nair)

Vs

1. Union of India represented by
The Secretary, Ministry of Agriculture,
Deptt. of Animal Husbandry and Dairying,
Krishi Bhavan, New Delhi.
2. The Secretary,
Ministry of Personnel, Public Grievances &
Pension, Department of Personnel & Training,
New Delhi.
3. The Director-in-Charge,
Integrated Fisheries Project,
Kochi-16.

.. Respondents

(By Advocate Shri C. Rajendran, SCGSC)

O.A. No. 212/2001

S. Ismail,
Junior Deck Hand,
Integrated Fisheries Project,
Kochi-16

.. Applicant

(By Advocate Sri V.R. Ramachandran Nair)

Vs.

1. Union of India represented by
The Secretary, Ministry of Agriculture,
Deptt. of Animal Husbandry & Dairying,
Krishi Bhavan, New Delhi.
 2. The Secretary,
Ministry of Personnel Public Grievances & Pension,
Department of Personnel & Training,
New Delhi.
 3. The Director-in-Charge,
Integrated Fisheries Project,
Kochi-16
- .. Respondents

(By Advocate Sri Govindh K. Bharathan)

O.A.No.297/2001

T. Jayapalan,
Senior Deck Hand, Skipper II,
Central Institute of Fisheries Nautical and
Engineering Training (CIFNET),
Chennai-600 013.

.. Applicant

(By Advocate Sri V.R. Ramachandran Nair)

Vs.

1. Union of India represented by
The Secretary, Ministry of Agriculture
Department of Animal Husbandry & Dairying,
Krishi Bhavan, New Delhi.
 2. The Director,
Central Institute of Fisheries Nautical &
Engineering Training,
Dewan's Road, Kochi-16.
 3. The Secretary,
Ministry of Personnel Public Grievances &
Pensions,
Department of Personnel and Training,
New Delhi.
- .. Respondents

(By Advocate Sri C. Rajendran, SCGSC)

These Applications having been heard on 13.11.2001, the
Tribunal delivered the following on 18.12.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the facts leading to the above four Original
Applications were similar and the issue to be adjudicated is
the same these four Original Applications were heard together
and is being disposed of by this common order.

...4...

2. The facts as stated in each Original Applications in brief are follows.

O.A.1353/2000

3. The applicants in this Original Application are Group-C and D employees in the Integrated Fisheries Project, Kochi. The Government of India, Ministry of Personnel and Training vide its order No. 35034/1/97-Estt(D) dated 9.8.1999, evolved a scheme known as Assured Career Progression Scheme (ACP Scheme for short) (Annexure A1). The Scheme provide for two financial upgradations, one on completion of 12 years of service and the other, on completion of 24 years of service in the case of persons genuinely stagnating for want of adequate promotional avenues. Pursuant to the above scheme, the third respondent issued an order dated 11.2.2000 granting financial upgradations to the to the ninth applicant (Annexure A3) and another order dated 1.8.2000 by which the financial upgradations were given to the remaining applicants. The applicants' pay were fixed in accordance with the above orders and consequential benefits were granted to them with effect from 9.8.1999. The present grievance of the applicants is that all of a sudden the impugned orders dated 21.12.2000 was issued by the third respondent cancelling the ACP scheme benefits to the applicants (Annexure A-5) Pursuant to the instructions issued by the Administrative Ministry in its letter No.5-48/2000-Fy-Admn dated 7.12.2000. Alleging that the impugned order was unjustified and opposed to the policy contained in Annexure A-1 scheme and the clarifications issued in Annexure A-2, was passed without giving the applicants a notice and an opportunity to show cause against the reduction is vitiated

for violation of the principles of natural justice, the applicants have filed this Original Application seeking the following reliefs:

"(i) To call for the records leading up to Ministry's letter No. 5-48/2000-fy-Admn dated 7.12.2000 and quash the same to the extent it adversely affect the applicants.

(ii) To call for the records leading up to Annexure A-5 and quash the same so far as it relates to the applicants.

(iii) To direct the respondents to continue to grant the benefits of the ACP Scheme to the applicants with all consequential benefits.

(iv) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

O.A. No. 103/2001

4. The applicants in this Original Application are similarly placed as those in Original Application No. 1353/2000 except that the first applicant was given financial upgradations by A-3 order dated 11.2.2000 and the remaining applicants were given financial upgradations by A-4 order dated 1.8.2000. Through this Original Application they sought the following reliefs:

"(i) To call for the records leading up to Ministry's letter No. 5-48/2000-fy-Admn dated 7.12.2000 and quash the same to the extent it adversely affect the applicants.

(ii) To call for the records leading up to Annexure A-5 and quash the same so far as it relates to the applicants.

(iii) To direct the respondents to continue to grant the benefits of the ACP Scheme to the applicants with all consequential benefits.

(iv) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

O.A. No. 212/2001

5. The applicant who was working as Junior Deck Hand in the Integrated Fisheries Project and was due to superannuate on 30.6.2001 was granted financial upgradation under the Assured Career Progression Scheme approved by the Government vide the O.M. dated 9.8.99 (Annexure A1) by A3 order dated 11.2.2000 issued by the 3rd respondent. By another order dated 17.2.2000 the applicant's pay was fixed in the grade of Rs.3200-85-4900 with effect from 9.8.99. However, the applicant did not get the financial benefit flowing therefrom. Therefore the applicant has filed this Original Application seeking the following reliefs:

"(i) To issue a direction to the respondents to effect the financial upgradation and fixation of pay in accordance with Annexure A-3 and Annexure A-4 with all consequential benefits immediately to the applicant.

(ii) To direct the respondents to pay 18% interest for the delayed payment of arrears.

(iii) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

O.A. No. 297/2001

6. The applicant a Senior Deck Hand who claims to have put in 21 years of service, has filed this Original Application aggrieved by A-4 order dated 9.1.2001 by which his claim for financial upgradation under the ACP Scheme was rejected on the ground that he did not possess the requisite qualification for promotion to the next higher grade as per the notified Recruitment Rules. He sought the following reliefs through this Original Application:

"(i) To call for the records leading up to Annexure A-4 and quash the same.

(ii) To issue a direction to the respondents to grant the financial upgradation and pay the consequential benefits thereof to the applicant.

(iii) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

7. Respondents filed reply statements in all the Original Applications contending that the benefit of ACP Scheme was to be granted to the employees who genuinely stagnate in a grade for want of adequate promotional avenues on fulfillment of recruitment qualifications for promotion to the next higher grade in a defined hierarchy of grades. As the applicants in the first three Original Applications did not qualify for promotion to the next higher grade in the direct line, the benefit wrongly given to them by A-3 and A-4 orders in O.A. 1353/2000 and O.A. No. 103/2001 were rightly recalled by A-5 Impugned order in these Original Applications and therefore there was no merit in these Applications. They contended that in O.A. 212/2001 A-3 and A-4 orders granting financial upgradation to the applicant and fixation of his pay were issued without adverting to the fact that the applicant was not possessing the requisite qualification for promotion to the next higher grade as per the notified Recruitment Rules, the said orders were recalled when the mistake came to light. In O.A. No. 297/2001 they in addition to the ground that the applicant did not possess the requisite qualifications for promotion to the next higher grade as per the conditions of eligibility entitled for financial upgradation also submitted that the applicant had completed only 11 years of regular service and justified the issue of the impugned order.

8. Applicants filed rejoinder in O.A. 1353/2000 reiterating the points made in the Original Application.

9. Heard learned counsel for the parties.

10. We have given our careful consideration to the submissions made by the learned counsel for the parties as well as the rival pleadings and have also perused the documents brought on record.

11. According to the applicants, they were given the benefits as per the ACP Scheme circulated under A-1 OM and the elaborate clarifications issued under A-2 OM. The benefits given were being taken away without any cogent reasons. If an employee who was only qualified was to be promoted to a higher grade, was made eligible to the Scheme, the extension of the scheme to isolated posts could never take place. In the case of isolated posts there could not be an assessment of the qualification to the next higher post. In the circumstances, those who were holding isolated posts were also to be denied the benefit of ACP Scheme if an interpretation as now advanced in the impugned order was adopted. The first respondent was not enjoined in law as per para 11 of Annexure AI OM dated 9.8.99 to issue the clarificatory letter dated 7.12.2000. According to him the very object of the scheme being only to mitigate the hardship of the employees in the Group-C and D stagnating in a grade for a long time and as there was no provision in the scheme which laid down that to be entitled for the financial upgradation the employees should possess the recruitment qualification for the next higher grade, the impugned order was highly unjustified. The impugned orders of cancellation had been issued without affording an opportunity to the applicant to show cause against the reduction. As per the ACP Scheme and the elaborate clarifications issued, the applicants were eligible for the ACP Scheme. The eligibility

condition for appointment of a post was different from the eligibility condition for promotion/appointment to a higher post. One who was not qualified could not be promoted to a higher post. Such an employee does not have an avenue of promotion.

12. The respondents rely on the condition No. 6 of Annexure-I to A-1 OM dated 9.8.99 and the Ministry's letter dated 7.12.2000 for issue of the impugned order dated 21.12.2000 in OA No. 1353/2000 and 103/2001 and for withdrawal of benefits/non-grant of benefits under ACP Scheme in the other two OAs. Referring to condition No. 7 of Annexure -I to A-1 OM dated 9.8.99 they submitted that in the case of posts which were part of a well defined cadre, the benefits should be granted confirming to the existing hierarchical structure only.

13. Respondents filed R-3G statement in O.A. No. 1353/2000 and R-7 statement in O.A. 103/2001 purported to be indicating inter alia the present grade of each of the applicants, next higher grade in accordance with the existing hierarchy as per notified Recruitment Rules, qualifications prescribed for regular promotion to the next higher grade in accordance with the existing hierarchy and qualifications possessed by the applicants to prove that the applicants do not have the qualifications prescribed in the Recruitment Rules. They also justified the clarification dated 7.12.2000 on the basis of Annexure 22.1 of para 22.31 of the Report of the Fifth Central Pay Commission (Annexure R-3H in O.A. 1353/2000).

14. In the light of the above rival contentions we shall consider the validity of the action taken by the respondents in the context of the objectives of the ACP Scheme as contained in the ACP Scheme circulated under A-1 OM dated 9.8.99 and clarifications contained in A-2 OM dated 10.2.2000.

15. In our view para 1 of A-1 OM dated 9.8.99 gives the Government's reasons for introducing the ACP Scheme. The said para 1 reads as under:

"The Fifth Central Pay Commission in its Report has made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. 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. Accordingly, after careful consideration it has been decided by the Government to introduce the ACP Scheme recommended by the Fifth Central Pay Commission with certain modifications as indicated hereunder:-"

From a reading of the above we are of the view that in case of any doubt regarding eligibility or otherwise for grant of benefits under the ACP Scheme, the guiding principle has to be to see whether the concerned group of employees are faced with the problem of stagnation due to lack of adequate promotional avenues or because of any fault of theirs.

16. The conditions No. 6 and 7 of Annexure-I to A-1 OM dated 9.8.99 relied on by the respondents read as under:

"6. Fulfillment of normal promotion norms(benchmark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of 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 Schemes 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."

"7. Financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay scales as indicated in annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure) For instance, incumbents of isolated posts in the pay scale S-4 as indicated in Annexure-II will be eligible for the proposed two financial upgradations only to the pay scales S-5 and A-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay scale) when vacated. Posts which are part of a well defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only."

17. The impugned letter dated 7.12.2000 issued by the first respondentsnt relied on by the third respondent for withdrawing/denying the benefits of ACP Scheme to the applicants in these Original Applications reads as under:

"To

The Director
I.F.P.
P.B.No.1801
Cochin-682016

Sub: ACP scheme for the Central Govt.
Civilian Employees-reg.

Sir,

I am directed to refer to your letter No. A1/1-2/97-Pt.III/Vol.II/3968 dated 13.10.2000 on the above mentioned subject and to say that in a defined hierarchy of grades financial upgradation can be given only if an employee fulfils the conditions of notified Recruitment Rules of next higher post and

failing which he cannot be given financial upgradation under ACP Scheme either in promotion grade or in standard/common higher pay scale.

Yours faithfully,

Sd/- K.P. Malhotra
Under Secretary to Govt. of India"

18. From condition 6 reproduced above it is evident that fulfillment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group-D employees, etc.) are the pre-requisite for grant of financial upgradation. This will ensure that the stagnation is not due to the employees' fault. Nowhere in this condition, "fulfillment of conditions of notified Recruitment Rules" as included in the impugned letter dated 7.12.2000 is mentioned. Further, we are of the view that the report of the Fifth Central Pay Commission or their recommendations could not be an authority for the respondents for issue of the letter dated 7.12.2000. Their actions are to be on the basis of Government's orders on the subject. On a complete reading of A-1 and A-2 OM's we find that there was no mention that the two financial upgradations would be on the basis of possession of prescribed educational qualifications for the direct recruits as stated in the Recruitment Rules. From a reading of condition No. 7 we find that financial upgradation under the scheme was to be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose and in absence of defined hierarchical grades the financial upgradation were to be given by Ministries/Departments concerned in the immediately next higher (standard/common) pay scales as indicated in Annexure-II to the said OM. It was also enjoined that posts which were part of a well-defined cadre was not qualified for ACP scheme on dynamic basis. Keeping in view the

instructions contained in this condition No. 7, for deciding whether the employees in a particular category of post are entitled for the benefits of ACP Scheme in the next higher grade in the hierarchical structure or in the next higher grade on dynamic basis, it has to be seen as to whether the employees are in posts which are part of "a well defined cadre" or are holding "isolated posts". For deciding these aspects the respective Recruitment Rules of the lower and higher grade posts are relevant.

19. Respondents have not produced the Recruitment Rules of the posts which have been shown by them as the "Next Higher Grade in accordance with the existing hierarchy as per notified Recruitment Rules" in R-3G statement before this Tribunal so that this Tribunal can consider whether the posts held by the applicants and the posts shown in the statement could be said to be in the hierarchy of posts. Only in O.A. No. 297/2001 respondents, in support of their stand that the applicant therein did not fulfil the qualifications prescribed for the higher post of Bosun(Certified), had annexed the Recruitment Rules for the post of Bosun (Certified) as Annexure-2A. In col. 7 of the Schedule to the Recruitment Rules for the post of Bosun(Certified) the education and other qualifications required for direct recruitment is indicated as follows:

"Essential

Possession of Fishing Second Hand Competency Certificate issued by the Mercantile Marine Department.

Desirable:

1. Matriculation
2. Successful completion of training as Fishing Second Hand at Central Institute of Fisheries Operatives."

In col. 10 - "The method of recruitment whether by direct recruitment/promotion/deputation/transfer and percentage of the vacancies to be filled by various methods" - it is indicated as "100% by promotion failing which by direct recruitment". It is further stated in col.8 titled "Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees" "Age - no, Educational qualification - yes". In col. 11 titled "In the case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made" it is stated "Senior Deckhand/Senior Deckhand-cum-Cook with three years service and Junior Deckhand with 5 years service in the respective grade." It is this recruitment rule which is relied on by the respondents in the said Original Application to deny the financial upgradation under the ACP scheme to the applicant therein. What has been reproduced above as to the contents of Col. 11 will clearly indicate that what the Recruitment Rules provided for is only that the post of Bosun(certified) is to be filled up first by the serving employees of the lower categories who fulfil the qualifications prescribed for direct recruitment. As for both Junior and Senior Deck Hands, the next promotional grade is Bosun (Certified) we hold that even though in Col.10, the word "promotion" had been used, this is actually a case of filling up of the posts of Bosun (Certified) by "Transfer" by employees of lower grades who fulfill the educational qualifications for direct recruits. In this view of the matter, it cannot be treated that all these posts form part of "a well-defined cadre" as stated in Condition 7 of Annexure-I to the A-1 ACP Scheme.

20. From R-3G statement we find that for the first applicant who is a Welder the post in the next higher grade had been shown as Asst. Foreman (Welding). Welder is an artisan post and Asst. Foreman is a Supervisory level post. As per our information the hierarchy of posts for an Artisan cadre is Skilled Grade-III, Skilled Grade-II, Skilled Grade-I and Master Craftsman. In this view of the matter in our view the post of Welder and Assistant Foreman could not be treated as part of a well defined cadre.

21. We also find considerable force in the applicants' contention that if educational qualifications for the higher grade post is being insisted upon for promotion of an employee in a lower grade, such an employee cannot be said to have an adequate promotional avenue as provided for in A-1 OM dated 9.8.1999. Supposing there are two posts, Post A and Post B, Post A being in a grade lower than that of Post B. The recruitment qualification for Post A is Matriculation and recruitment qualification for the higher grade Post B is Graduation and if it is provided for that, Post B should be filled up 100% by promotion by those in Post-A who are Graduates, it can never by any stretch of imagination be stated that post -B is a promotional post to post-A because those who have joined post A with Matriculation qualification can never aspire to become holders of post B unless they acquire the educational qualification of Graduation. At the same time, if the Recruitment Rules provide that a certain proportion of the post-B would be filled up by incumbents of the post-A without any stipulation regarding educational qualifications, then post-B can be taken as a promotion post of post-A. Reaching a higher grade post after acquiring a higher educational qualification can never be considered as a promotional avenue and therefore the two posts can never be

considered as part of a well defined cadre. According to us this has been clarified under clarification No.8 given by the Department of Personnel & Training by their OM No. 353034/1/97-Estt (D) Vol.IV dated 10.2.0 (A2 in this OA) which reads as follows:

8. Appointment on the basis of limited departmental examination by which an employee joined a new service should be treated as promotion or not. For example, in case of Group-D employees appointed as LDCs or Grade-D Stenographers appointed from amongst LDCs should be treated as direct recruits or not in the respective higher grades.	If the relevant Recruitment Rules provide for filling up of vacancies of Stenographers Grade-D/Junior Stenographers by direct recruitment, induction of LDCs to the aforesaid grade through Limited Departmental Competitive Examination may be treated as direct recruitment for the purpose of benefit under ACPS. However, in such cases, service rendered in a lower pay scale shall not be counted for the purpose of benefit under ACPS. The case of Group-D employees who become LDCs on the basis of departmental examination stand on different footing. In their case, relevant Recruitment Rules prescribe a promotion quota to be filled up on the basis of departmental examination. Therefore, such appointments shall be counted as promotion for the purpose of ACPS. In such situations, past regular service shall also be counted for further benefits, if any under the Scheme.
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It will be evident from the above that what is relevant is passing of departmental examination and not educational qualifications possessed by Group-D employees for the purpose of ACP Scheme. In the present OA We find that the respondents do not have a case that the applicants have not passed the departmental examination prescribed, but their contention is that they do not have the educational qualifications prescribed for direct recruits. This contention is not as per the ACP Scheme.

22. From a reading of para 7 of Annexure -I to A-1 OM dated 9.8.99 and what is brought out above in our view what is required to be examined is whether there is a well defined cadre consisting of different grades where promotion from the lower grade to the higher grade is on fulfillment of promotional norms like passing of a suitability test, fulfillment of bench mark, etc. and if an employee fulfils these conditions irrespective of whether there is a vacancy in the higher grade or not if he has completed the prescribed period of service in the lower grade as per the ACP scheme, he will be eligible for financial benefits. On the other hand if a higher educational qualification than what was prescribed for the lower grade post to which he was recruited/promoted, is provided for in the Recruitment Rules, for filling up the next higher grade post, in that case such a post cannot be taken as a promotional post and both the posts cannot be stated to belong to a "well defined cadre."

23. Another relevant factor that we notice is that all the posts under the respondents have to belong to either a well defined cadre or isolated ones. If they belong to a well defined cadre, there will be either a lower grade post or a higher grade post in the Cadre. If the post is an isolated one, there will be neither a feeder post nor a promotional post. In such a case the question of possession of prescribed qualifications for the promotional post does not arise at all. The first applicant in O.A. 1353/2000 was a Welder in grade 3050-4590 and by Officer order No. 74/2000 he was given the second ACP direct to grade 4000-6000. By this act the respondents had accepted that the post of Welder was an isolated post and the holder of the post was eligible for the benefit of ACP scheme on dynamic basis. If the post of Welder is an isolated post there can not be any promotion

post for the said post of Welder. Under such circumstances the claim of Welders for the benefit of ACP Scheme under dynamic ACP Scheme cannot be denied if they complete the prescribed years of service.

24. We also find from para 11 of A-1 OM dated 9.8.99 that any clarification/doubt as to the scope and meaning of the scheme would be given by Department of Personnel & Training (Establishment-D). When such a specific provision is made and there is no indication in the impugned order dated 7.12.2000 that the same had been issued by the DOPT (Establishment-D) and the same has been issued by the Ministry of Agriculture, we hold that the same is against para 11 of A-1 OM. Even though respondents in the additional reply statement submitted that the first respondent had issued the same in consultation with the DOPT, we are unable to accept the same because there is no indication to this effect in the said order. Thus apart from the merit, for the reason that the said order had been issued by an authority not competent to issue the same as per A1 scheme also the said impugned order dated 7.12.2000 cannot be sustained and is liable to be set aside.

25. We also find that in OA 103/2001, applicants had filed MA 1071/2001 enclosing therewith A-8 Office Order dated 21.5.2001 issued by the Controller of Accounts (HQ) and submitted that according to their understanding the Senior Accountants included in A-8 were also withheld the benefits of ACP Scheme stating that they were not fully qualified for promotion as per Recruitment Rules but the benefits of ACP Scheme had been given to them by A-8. According to the applicants the same yardstick would have to be applied in their case also. There were no submissions from the side of

the respondents before this Tribunal in this connection. This leads us to conclude that what had been stated in MA 1071/2001 as factual.

26. Though the respondents have used only the word "qualifications" in the impugned orders in O.A. No. 1353/2000, O.A.No.103/2001 and O.A. NO. 297/2001, from a reading of R-3G and A-7 we hold that what the respondents mean by the said word is "educational qualifications." We have already held that when different educational qualifications are prescribed for lower and higher grade posts both posts could not be said to be a part of a well defined cadre. Further if such a higher grade post only is available to the incumbents of the said lower grade post for career progression, then such incumbents cannot be said to have adequate avenue of promotion.

27. In the light of the detailed analysis given in the foregoing paragraphs we hold that these four Original Applications are liable to succeed to the extent indicated below:

(i) We set aside and quash the letter No. 5-48/2000 Ey-Admn dated 7.12.2000 issued by the Govt. of India, Ministry of Agriculture (which is Annexure R-3C in OA No. 1353/2000, Annexure R-2 in O.A. No. 103/2001 and Annexure R-3D in O.A. No. 212/2001

(ii) We set aside and quash A-5 order dated 21.12.2000 to the extent it relates to the applicants in O.A. No. 1353/2000 and O.A. No. 103/2001.

(iii) We direct the respondents to continue to grant the benefits of ACP Scheme to the applicants in O.A. No. 1353/2000 and O.A. No. 103/2001 with all consequential benefits.

(iv) We direct the respondents to grant the benefits of ACP Scheme to the applicant in O.A. No. 212/2001 in accordance with A-3 and A-4 orders dated 11.2.2000 and 17.2.2000 and the consequenteial benefits thereof; and

(v) We set aside and quash A-4 order dated 9.1.2001 in OA No. 297/2001 and direct the respondents to re-examine the case of the applicant afresh for grant of benefits under ACP Scheme keeping in view the directions and observations contained in this order and A1 and A2 OM dated 9.8.99 and 10.2.2000.

28. We dispose of the four Original Applications as above with no order as to costs.

Dated the 18th of December, 2001.

Sd/-
(G.RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

kmm

APPENDIXO.A. 1353/2000Applicants' Annexure

- A-1: True copy of the ACP Scheme approved by the Government as per G.I. Department of Personnel & Training O.M. No.35034/1/97-Estt(D) dated 9.8.99.
- A-2: True copy of O.M. No.35034/1/97-Estt(D) (Vo. IV) dated 10.2.2000 clarifying A.C.P.
- A-3: True copy of Office Order No.15/2000 (No.A1/1-2/97/Part III/M 161) dated 11.2.2000 issued by the Director, Integrated Fisheries Project, Kochi-16,
- A-4: True copy of Office Order No.74/2000 (No.A1/1-2/97/Part III) dated 1.8.2000 issued by the 3rd respondent granting ACP grade to the applicants 1 to 8.
- A-5: True copy of cancellation order No.122/2000(No. A1/1-2/97/Part II) dated 21.12.2000 issued by the 3rd respondent.
- A-6: True copy of representation dated 22.12.2000 submitted before the Director, Integrated Fisheries Project, Kochi-16 by the Integrated Fisheries Project Employees' Federation.
- A-7: True extract of the relevant portion of the report of the Vth Pay Commission recommendation from para 22.1 to 22.31.
- A-8: True copy of Annexure 22.1 captioned 'Basic Features of ACP Scheme recommended for Central Government employees.'

Respondents' Annexure

- R-3A: Photo copy of the order No.75/2000 dated 1.8.2000 of the 3rd respondent.
- R-3B: Photo copy of the letter No.PAO/Agri/Cochin/Pre-check /IFP/IX-17/122 dated 11.10.2000 of the Pay and Accounts Office, Cochin.
- R-3C: Photo copy of the letter No.5-48/2000-Fy-Admn. dated 7.12.2000 of the Ministry of Agriculture.
- R-3D: Photo copy of the undertaking given by the applicants.
- R-3E: Photo copy of the undertaking given by the applicants.
- R-3F: Photo copy of the undertaking given by the applicants.
- R-3G: Photo copy of the statement showing the present grade of the applicants prepared by the 3rd respondent.

R-3H: Photo copy of Sl.No.(1) of Annexce.22.1 of para 22.31 of Annexure A-7:

O.A.103/2001

Applicants' Annexures

- A-1: True copy of the ACP Scheme approved by the Government as per G.I. Department of Personnel & Training O.M. No.35034/1/97-Estt(D) dated 9.8.99.
- A-2: True copy of the Office Memorandum No.35034/1/97-Estt(D) (Vol.IV) dated 10.2.2000.
- A-3: True copy of Office Order No.15/2000 (No.A1/1-2/97/Part III) dated 11.2.2000 issued by the Director, Integrated Fisheries Project, Kochi-16.
- A-4: True copy of Office Order No.74/2000 (No.A1/1-2/97/Part III) dated 1.8.2000 issued by the 3rd respondent.
- A-5: True copy of cancellation order No.122/2000 (No.A1/1-2/Part II/737) dated 21.12.2000 issued by the 3rd respondent.
- A-6: True copy of representation dated 22.12.2000 submitted before the Director, Integrated Fisheries Project, Kochi-16 through the Integrated Fisheries Project Employees' Federation.
- A-7: True copy of order dated 9.1.2001 in M.A. No.1627/2000 in O.A. No.1353/2000 of the Hon'ble Central Administrative Tribunal, Ernakulam.
- A-8: True copy of Office Order No.29/2001 (No.A.12023/Pr.Ao/Coord/ACP Scheme/2000-01/567-80) issued by the Controller of Accounts (HQ), Govt. of India, Ministry of Agriculture & Cooperation, New Delhi dated 21.5.2001.

Respondents' Annexure

- R-1: True copy of letter No.PAO/Agri/Cochin/Pre-check/IFP/IX-17/122 dated 11.10.2000 issued by Senior Accounts Officer to the Accounts Officer, Integrated Fisheries Project, Cochin.
- R-2: True copy of letter No.5-48/2000-Fy. Admn. Government of India, Ministry of Agriculture to the Director, I.F.P., Cochin.
- R-3: True copy of undertaking dated 2.12.2000 furnished by the 1st applicant.
- R-4: True copy of undertaking furnished by the 2nd applicant.
- R-5: True copy of undertaking furnished by the 3rd applicant dated 14.11.2000.
- R-6: True copy of undertaking furnished by the 4th applicant.
- R-7: True copy of Statement issued by Director I/C.

O.A. 212/2001

- A-1: True copy of the ACP Scheme approved by the Government, as per G.I. Department of Personnel and Training O.M. No.35034/1/97-Estt (D) dated 9.8.99.
- A-2: True copy of O.M. No.35034/1/97-Estt (D) dated 10.2.2000.
- A-3: True copy of Order No.14/2000 (No.A1/1-2/97/Part III/M 201) dated 11.2.2000 issued by the Director, Integrated Fisheries Project, Kochi-16.
- A-4: True copy of Sanction Order No.A1/1-1/2000/F 97 dated 17.2.2000 with fixation statement issued by the Accounts Officer, Integrated Fisheries Project, Kochi-16.
- A-5: True extract of the relevant portion of Para 22.1 to 22.31 of the Vth Pay Commission recommendations along with Annexure 22.1.

Respondents' Annexure

- R3A: Photo copy of the order No. 33/2000 dated 16.3.2000 of the I.F.P. Cochin.
- R3B: Photo copy of the order No.74/2000 dated 1.8.2000 of the I.F.P. Cochin.
- R3C: Photo copy of the letter No.PAO Agri/Cochin/Precheck/OFP/IX-17/122 of the Ministry of Agriculture dated 11.10.2000.
- R3D: Photo copy of the letter No.5-48/2000-Fy.Admn. dated 7.12.2000 of the Ministry of Agriculture.

O.A. 297/2001

Applicant's Annexure

- A-1: True copy of the ACP Scheme approved by the Government as per G.I. Department of Personnel and Training O.M. No.35034/1/97-Estt (D) dated 9.8.99.
- A-2: True copy of the Memorandum No.35034/1/97-Estt (D) (Vol.IV) dated 10.2.2000.
- A-3: True copy of representation dated 22.11.2000 submitted by the applicant to the 2nd respondent.
- A-4: True copy of Memo No.13-2/2000 Adm. dated 9.1.2001 issued from the Office of the Director, Central Institute of Fisheries Nautical and Engineering Training, Kochi-16.

Respondents' Annexure

- R2A: Photo copy of the recruitment rules of the post of Bosun (Certified).