

A D M I T T E D

ON.....

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.O. II

O.A.No.119/2005.

Tuesday this the 29th March, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR H.P. DAS, ADMINISTRATIVE MEMBER

1. T.P.Sajeevan, Fireman Grade I,
INS Venduruthy, Cochin-4.
2. S.H.Shameer Khan, Fireman Grade I,
INS Venduruthy, Cochin-4.

Applicants

(By Advocate Shri Shafik M.A.)

Vs.

1. Union of India represented by Secretary to the
Government of India, Department of Personnel,
Ministry of Personnel,
Public Grievances and Pensions, New Delhi.
2. The Flag Officer Commanding in Chief,
Southern Naval Command, Cochin.
3. The Commanding Officer,
INS Venduruthy, Southern Naval Command,
Cochin-4.

Respondents

(By Advocate Shri P.J.Philip, ACGSC)

**The application having been heard on 29th March, 2005
the Tribunal on the same day delivered the following:**

O R D E R (oral)

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

The applicants are aggrieved by the refusal of the respondents to grant financial



upgradation to them in terms of the Scheme of Assured Career Progression Scheme issued by the Ministry of Personnel as per O.M. Dated 9.8.1999 issued by the Ist respondent. The applicants are further aggrieved by the order dated 20.2.2004 rejecting the claim of the applicants according to them on unreasonable grounds. The applicants sought the following reliefs:

- i. To call for the records relating to Annexure A-1 to A-4 and to quash Annexure A-1 & A-2 being illegal and arbitrary;
- ii. To declare that the applicants are entitled to be granted the second financial upgradation with effect from 9.8.99 as has been granted to the similarly situated other employees of the Government of India;
- iii. To direct the respondents to revise the pay of the applicants to that of the next higher scale as per Annexure A-3 scheme, and to place the applicants in the said scale of pay with effect from 9.8.99 with all consequential benefits including 18% penal interest.

2. The respondents have filed a counsel statement contending that, in view of the orders passed in a large number of similar cases (O.As.198/2004, 390/2004, 674/2004 etc.) the respondents do not wish to contest the claim of applicants for financial upgradation under ACP Scheme. The statement is recorded.

3. When the matter came up before the Bench, Shri Shafik M.A., learned counsel appeared for the applicant and Shri P.J.Philip, learned ACGSC appeared for the respondents. Counsel for respondents submitted that he has no objection in granting the reliefs to the applicants.

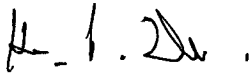
4. In view of the above submission made by the learned counsel of the respondents,



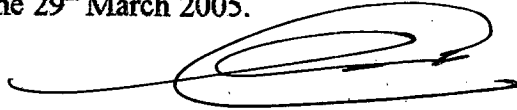
we quash Annexures A1 and A2 and direct the respondents to grant the reliefs to the applicants within a period of four months from the date of receipt of a copy of this order.

5. The O.A is allowed. In the circumstance, no order as to costs.

Dated the 29th March 2005.



H.P.DAS
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.119/2005

Monday this the 12 th day of March, 2007.

CORAM:

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

1. T.P.Sajeevan, Fireman Grade I,
INS Venduruthy, Cochin-4.
2. S.H.Shameer Khan, Fireman Grade I,
INS Venduruthy, Cochin-4. Applicants

(By Advocate Shri Shafik M.A.)

Vs.

1. The Union of India, represented by Secretary
to Government of India, Department of Personnel,
Ministry of Personnel, Public Grievances and Pensions,
New Delhi.
2. The Flag Officer Commanding in Chief,
Southern Naval Command, Cochin.
3. The Commanding Officer,
INS Venduruthy, Southern Naval Command,
Cochin-4. Respondents

(By Advocate Shri P.S.Biju, ACGSC)

The application having been heard on 12.3.2007
the Tribunal on the same day delivered the following:

ORDER

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

The applicants two in number have sought for the following reliefs:

- i) To call for the records relating to Annexure A-1 to A-4 and to quash Annexure A-1 & A-2 being illegal and arbitrary;
- ii) To declare that the applicants are entitled to be granted the second financial upgradation with effect from 9.8.99 as has been granted to the similarly situated other employees of the Government of India.
- iii) To direct the respondents to revise the pay of the applicants to that of the next higher scale as per Annexure A-3 Scheme, and to

place the applicants in the said scale of pay with effect from 9.8.99 with all consequential benefits including 18% penal interest;

iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case.

v) To grant the costs of this Original Application.

2. At the outset it is to be stated that the very same O.A. No.119/05 was allowed by order dated 29.3.2005. However, as the respondents have filed R.A.No.12/05, the same was considered and vide order dated 12.12.2005 this Tribunal has allowed the R.A., recalling the earlier order dated 29.3.2005. Against this order in review, the applicant had referred the Writ Petition No.14074/06 which was however dismissed by order dated 13.6.2006. As such, the O.A.119/05 is before us again for consideration afresh on the basis of merits.

3. **Facts in nut shell:**

The applicants had joined the respondent No.3 organisation on casual basis with effect from 29.1.1982 as Firemen Grade II and were absorbed as Regular Firemen Grade II in the year 1983. In May 1986, they were promoted as Firemen Grade I. Vide order dated 9.8.99 (A3) the Government of India introduced the Assured Career Progression (ACP for short) Scheme, paragraphs 4 and 5.1 of which read as under:

"4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly.;

5.1 Two financial upgradations under the ACP Scheme in the entire Government Service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from

the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed period (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him."

Para 15 of the said order reads as under:

In cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the Scheme shall be granted directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the Scheme) shall be given at the subsequent stage (Second) of financial upgradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently they shall be considered for Second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme."

4. Relying upon the provisions contained in para 15 of A-3 order the applicants have claimed the 2nd ACP claiming that the same should be granted with effect from 9.8.1999.

5. Respondents have contested the O.A. According to them admittedly the applicant No. 1 got his first promotion in 1986. Vide Annexure R-1 dated 28.6.2005, applicant No.1 was promoted as LHF(Ordinary Grade) with effect from 1.7.2005 or from the date of assumption of higher duties whichever is later. Thus, in so far as the applicant No.1 is concerned, he having been granted two promotions within a span of 24 years, the ACP Scheme does not apply in his case.

In so far as applicant No.2 is concerned, according to the respondents, vide para 5 of their reply, since the said applicant did not complete 24 years on regular


service his case cannot be considered for 2nd ACP benefit prior to completion of 24 years of service. The respondents have taken 4.1.1983 as the date of regular service of the applicants.

6. The applicants have filed a rejoinder in which mainly the locus standi of the authority who filed the counter was challenged and as regards the merits of the matter they have reiterated the earlier contentions.

7. Counsel for the applicants submitted that para 15 of the O.M.dated 9.8.99 is clear in as much as for second financial upgradation, that need not be on completion of 12 years of service, if first one is granted as on 9.8.99. Adopting the same, in so far as the applicants are concerned, since they had got their first promotion as early as in 1986 they should be considered for ACP with effect from 9.8.99 itself, and they need not have to wait for completion of full 24 years.

8. Counsel for the respondents on the other hand submitted that according to para 5.1 (extracted above) of O.M.dated 9.8.99, when a person had been granted one promotion, for availing of the ACP Benefit, he has to complete 24 years of service to become eligible for consideration for second ACP and in so far as the applicant No.1 is concerned, as he had already been granted two promotions well before completion of 24 years of service, his case is not falling within the purview of the ACP Scheme.

9. As regards the applicant No.2, counsel submitted that he too has been granted the 2nd promotion as LHF in 2006 and it is within 24 years from the date of regular service reckoned from 1983. However, if the service of the applicant No.2 is reckoned from 29.1.1982, his second promotion was, six months after the



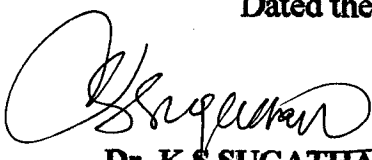
completion of 24 years of service. Counsel for the respondents fairly conceded that by virtue of an earlier order of the Tribunal the initial appointment should be from the date of casual service (later on regularised) and the same has been followed in other cases as well. As such, if the same benefit is extended to the applicant No.2, his entitlement to the 2nd ACP benefit would accrue from the date of completion of 24 years of service reckoned from 29.1.1982. This would mean that his pay scale as for LHF may have to be advanced by six months i.e. with effect from 29.1.2006.

10. In view of the facts submitted above by counsel for the respondents it is declared that the applicant No.2 i.e. entitled to the benefit of 2nd ACP with effect from 29.1.2006 by taking into account his entire service as referred to in para 6 of the reply and it is directed that the respondents shall pass suitable orders in this regard and grant the applicant the pay scale 3050-4590 with effect from 29.1.2006 and pay arrears on pay and allowances accrued there from. The above directions shall be complied with within a period of three months from the date of communication of this order.

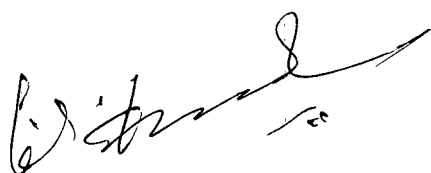
11. As regards the applicant No.1, as he had already been granted two promotions within the span of 24 years, he is not entitled to any further benefits under the ACP Scheme.

12. O.A. is disposed of as above. No costs.

Dated the 12th March, 2007.


Dr. K.S. SUGATHAN
ADMINISTRATIVE MEMBER

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Dr. K.B.S. RAJAN
JUDICIAL MEMBER