

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 120/2006

MONDAY THIS THE 16th DAY OF APRIL, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

M.A.Kalyani W/o S. Gopi
Lower Division Clerk
Regulating office, INS Garuda
Naval Base PO, Kochi
residing at Vadakkaparambil House,
Mariyapally PO, Muttam, Kottayam.

Applicant

By Advocate Mr. U. Balagangadharan

Vs.

- 1 Union of India represented by the Secretary
Ministry of Defence, South Block
New Delhi.
- 2 Flag Officer Commanding-in-Chief
Southern Naval Command
Naval Base, Kochi
- 3 Civilian Section Officer
Chief Staff Officer (P&A)
Head Quarters
SNC Kochi
- 4 The Commanding Officer
INS Garuda
Naval Base, Kochi.

Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant herein is seeking grant of second financial upgradation under the ACP Scheme on the strength of the judgment in O.A. 755/2000 dated 20.9.2002 of this Tribunal.

2 Briefly the facts are:- The applicant was initially appointed as Safaiwalla under the 4th respondent w.e.f. 10.2.1981 on casual basis with intermittent breaks and the service of the Saffaiwallas were regularised from the initial date of appointment i.e. from 10.2.1981 after prolonged litigation before this Tribunal. Thereafter, the applicant was promoted as Lower Division Clerk against 10% quota earmarked for Group-D employees w.e.f. 22.12.1988 and is continuing in the same capacity till date. The grievance of the applicant is that by Annexure A-4 impugned order she has been excluded from the benefit of second financial upgradation and she was to retire on 28.2.2006. According to the applicant she has completed 24 years of continuous service as on 10.2.2005 reckoning service from the initial appointment. She has cited instances of three other employees who were appointed like her who had been granted second financial upgradation. Her representation at Annexure A-3 seeking second financial upgradation was rejected by the impugned order stating that the petitioner was not party to the judgment in O.A. 755/2000 and that only the petitioners in the court case can be given the benefit of the judgment. The impugned order has been assailed on the ground that it is illegal, unsustainable and is also factually wrong to the extent it states that the applicant has been granted second financial upgradation from 22.8.2006. The following reliefs have been

sought:

- (a) Call for the records leading to Annexure A-4 and set aside them as highly arbitrary, illegal and unsustainable in the eye of law.
- (b) Direct the respondents to grant the scale of pay of Rs. 4000-6000 w.e.f. 10.2.2005 being the pay scale of next higher post in the hierarchy being the 2nd financial upgradation and fix pension accordingly.
- © Declare that the applicant is entitled to be granted the 2nd financial upgradation w.e.f. 10.2.2005 in the scale of pay of Rs. 4000-6000 and entitle to grant pension accordingly.
- (d) Award costs of and incidental to this application
- (e) Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

3 The respondents have filed a brief reply statement admitting the factual position. Their only contention is that the extant Government orders permit grant of financial upgradation from the date of regular appointment only which otherwise is the date of absorption against a regular post which is treated for promotion. The orders of this Tribunal in O.A. 755/2000 in which it was declared that the ACP Scheme benefit shall be granted reckoning the total regular service from the date of regularisation of the casual service also was implemented in the case of the petitioners therein. Though the applicant appears to be a similarly situated person, the respondents state that they are not in a position to extend the benefits violating the extant

Government orders.

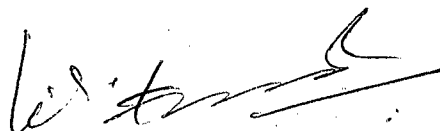
4 We have heard the learned counsel on both sides and perused the documents. The facts relating to the applicant's service are admitted by both sides. The respondents have also admitted that the applicant is a similarly situated person as the applicants in O.A. 755/2000 even though she was not a party to the O.A. In the face of these admissions, the contention of the respondents that the decision in O.A. 755/2000 cannot be made applicable to this applicant is not acceptable at all. In O.A. 755/2000, the All India Naval Clerks' Association represented by its Secretary was one of the applicants and the order in the O.A. is in the nature of a declaration that benefits under the ACP Scheme should be made available on the basis of regularisation from the date of initial appointment inclusive of the services rendered on casual basis. To that extent the impugned order in Annexure A4 in that O.A. issued by the respondents was also quashed. Once a principle is declared by the Court, it is applicable to all those who are similarly placed and no distinction can be made between the parties to the OA and others. Moreover, it is an admitted fact that the applicant's services were regularised w.e.f. 10.2.1981. This would imply that the casual service rendered by the applicant from 10.2.1981 to 13.11.1981 stood confirmed as regular service. The contention

of the respondents that the date of regular appointment means the date of absorption would have been correct if the applicant was only absorbed against a regular post without considering the casual service rendered prior to absorption. Since the regularisation order specifically treats the service of the applicant as regular from a particular date no further restriction can be imposed by the respondents restricting its effect for the purpose of counting the regular service for ACP. As submitted by the applicant, the impugned order is also factually wrong in stating that the applicant has been granted second financial upgradation from a future date of 22.8.2006 beyond the date of her retirement on 28.2.2006, probably it is an error. What the respondents intended to say was that the applicant would become eligible for second financial upgradation only from that date.

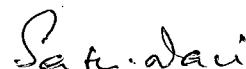
5 In the light of the above mentioned facts/reasons, we are of the view that there is no justification for denial of the second financial upgradation to the applicant on the ground that her regular service starts from the date of absorption. The applicant is entitled to the benefits granted in the orders of this Tribunal in O.A. 755/2000. The O.A. is allowed, the impugned order is quashed. The respondents are directed to grant the second financial upgradation to the higher scale of Rs. 4000-100-6000

to the applicant w.e.f. 10.2.2005 under the ACP Scheme. She shall also be entitled to pensionary benefits on the basis of this pay fixed in the higher scale. The reliefs shall be made available to the applicant within two months from the date of receipt of a copy of this order. No costs.

Dated 16.4.2007.



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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