

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 124 / 2009

Tuesday, this the 30th day of March, 2010.
CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

1. P.Matharsha,
Government Senior Secondary School,
Agathi Island,
Union Territory of Lakshadweep.
2. C.K.Hussain,
Sports Boy,
Directorate of Education,
Union Territory of Lakshaweep,
Kavaratti.
3. K.K.Nalla Koya,
Sports Boy,
Regional Coaching Sub Centre,
Androth Island,
Union Territory of Lakshadweep.
4. K.Kaderkoya,
Government Senior Secondary School,
Kiltan.
5. B.Musthafa,
NCC Lascar,
Government High School, Androth.
6. K.Khalid,
Sports Boy,
Directorate of Sports & Youth Affairs,
Kavaratti,
Union Territory of Lakshadweep.
7. A.P.Mohammed,
Sports Boy,
Directorate of Sports & Youth Affairs,
Kavaratti, Union Territory of Lakshadweep.
8. E.C.Khader,
NCC Lascar,
GSSS, Kavaratti,
Union Territory of Lakshadweep.
9. Siraj Koya,

2

Government Senior Secondary School,
Amini.

10. P.Hamzakoya,
NCC Lascar,
GM GSS, Androth Island,
Union Territory of Lakshadweep.
11. B.K.Mohammed Rafeek,
Government Senior Secondary School,
Kalpeni.
12. C.Muthukoya,
Sports Boy,
Directorate of Education,
Kavaratti.
13. Maralpulla,
Sports Boy,
Dr KK Mohammed Koya,
Government Senior Secondary School,
Kalpeni.Applicants

(By Advocate .Mr MR Hariraj)

v.

1. Union of India represented by
the Secretary to Department of Personnel,
Public Grievances & Pensions,
New Delhi.
2. Administrator,
Union Territory of Lakshadweep,
Kavaratti.
3. Secretary,
Department of Education,
Union Territory of Lakshadweep,
Kavaratti.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC for R.1)

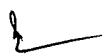
(By Advocate Mr S Radhakrishnan for R. 2 & 3)

This application having been finally heard on 9.3.2010, the Tribunal on 30.3.2010 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This is the 2nd round of litigation by the 1st applicant for grant of 1st and 2nd



ACP benefits in the scale Rs.3200-4000 and 4000-6000 respectively from the due dates. The other applicants have joined with him in this O.A as they also have similar grievances. Among them, some are Sports Boys and others are NCC Lascars. The 1st applicant, Shri P Matharsha has been working as Sports Boy in the Education Department of the 2nd respondent. He had approached this Tribunal earlier vide O.A.871/2003 seeking grant of benefits under the ACP scheme. During the pendency of the said O.A, he and other similarly placed persons were granted the 1st and 2nd ACP placements in the scales of Rs.2610-4000 and 2750-4400 respectively. However, his contention is that he is entitled for the ACPs in the higher scales of Rs.3200-4700 and 4000-6000 as in the case of Fisherman category. He based his claim on the Annexure A-2 clarification No.10 issued by the Department of Personnel vide their O.M.No.35034/4/1/97-Estt(D) Vol.VI dated 10.2.2000. The said clarification reads as under:

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| <p>"10. For isolated posts, the scale of pay for ACPS as recommended by the Pay Commission may be implemented and not the standard/common pay scales indicated vide Annexure-II of the Office Memorandum dated August 9, 1999.</p> | <p>For isolated posts, the scales of pay for ACPS shall be the same as those applicable for similar posts in the same Ministry/Department/Cadre except where the Pay Commission has recommended specific pay scales for mobility under ACPS. Such specific cases may be examined by respective Ministries/Departments in consultation with the Department of Personnel and Training. In the case of remaining isolated posts, the pay scales contained in Annexure-II of the Office Memorandum dated August 9, 1999 (ACPS) shall apply."</p> |
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This Tribunal, vide Annexure A-3 order dated 7.3.2007 allowed the O.A 871/2003 (supra) and came to the finding that the posts of Sports Boy is an isolated one and it is similar to that of the post of Fisherman and hence the aforesaid clarification would squarely apply in his case. As required in the aforesaid clarification, this Tribunal has given an opportunity to the respondents



to make a comparison of other Group'D' posts for which two ACP benefits have been extended and to refer the matter to the Department of Personnel to seek their instructions. It was also observed in the said order by this Tribunal that in case the Department of Personnel takes a different decision, they should communicate the reasons for doing so to the applicant. Thereafter, the 2nd respondent has issued the impugned Annexure A-1 order dated 8.12.2008 in purported implementation of the order of the Tribunal in O.A.871/2003(supra) wherein it has been stated that the case was referred to the Department of Personnel & Training but the latter has opined that so far as the grant of 1st and 2nd financial upgradations to Fishermen in the pay scale of Rs.3200-4900 and 4000-6000 respectively was concerned, the same has been granted in terms of the doubt and its clarifications at point No.32 of the Office Memorandum dated 10.2.2000 of the Ministry of Personnel, Public Grievances & Pensions (Annexure A-2 in this O.A), as there are two promotional grades in the hierarchy of Fishermen to Senior Fishermen and Fishermen Expert. The said doubt and its clarifications are as under:

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| <p>“32. Where the cadre/hierarchy is limited to two grades only what should be the pay scale for grant of second upgradation under ACPS?</p> | <p>Such a cadre/hierarchy shall not fall in the isolated category as defined at S.No.31 above. Hence, the standard/common pay scales mentioned in Annexure-II of the Office Memorandum dated 9.8.1999 shall not be applicable in such cases. Action in such cases may, therefore, be taken as per following clarifications:</p> <p>(i) If such cadre/hierarchy exist in the Ministry/Department concerned the second upgradation may be allowed in keeping with the pay scale of an analogous grade of a cadre/post in the same Ministry/Department; However, if no such grade exists in the Ministry/Department concerned comparison may be made with an analogous grade available in other Ministry/Departments.</p> <p>(ii) In the case of attached/subordinate offices, the second upgradation under ACPS may be given in keeping with the pay scale of an analogous grade of a cadre/post of the concerned office. However, if no such cadre/post exists in the concerned office, comparison may be made with an analogous grade available in other attached/subordinate offices of the Ministry/Department concerned.”</p> |
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According to the said Respondent, the applicants were eligible for the 1st and 2nd financial upgradation only in the pay scales of Rs.2610-4000 and 2750-4400 respectively in terms of the DoPT O.M. No.35034/2/2001-Estt(D) dated 1.6.2001 on completion of 12/24 years of regular service and not in the scales of pay Rs.3200-4000 and 4000-6000. Since the decision of the DoPT was not made available to the applicant, he sought a copy of the same under the Right to Information Act and accordingly the Department of Personnel has provided him with the relevant Office Note under Dy.No.8981/CR/2008 dated 25.7.2008 (Annexure A-4). It says that there is no inter-relation between the post of Fisherman and Sports Boy though the scales of pay at the base level of both the posts are the same and both the categories are employed both in the Education Department as well as Fisheries Depart of U.T of Lakshadweep. As regards the grant of 1st and 2nd financial upgradations to the Fisherman in the scale of Rs.3200-4900 and Rs.4000-6000 respectively was concerned, they were granted in terms of doubt No.32 and its clarification given in the Annexure A-2 Office memorandum dated 10.2.2000. The DoPT has, therefore, advised the respondents to file a Writ petition before the Hon'ble High Court as the orders of this Tribunal was against the policy of the Government of India.

2. The contention of the applicant is that the findings of this Tribunal in O.A.871/2003 (supra) is binding on the respondents. They have also contended that the only other direction to the respondents in the said order was to make a comparison between the post of Sports Boy and other Group'D' post for which the 2 ACP benefits have been extended before the case was referred to the DoPT. They have also submitted that it was gross discrimination to treat them differently from Fishermen for the purpose of ACP benefits.



3. In the reply statement also the respondents have reiterated the aforesaid position. They submitted that the Fishermen and Sports Boy cannot be treated at par for the purpose of granting the ACP benefits. As the post of Sports Boy is an isolated one with no prospect of promotion in the same Department or any other Department of the Administration, they are eligible for financial upgradation to the next higher pay scale only. However, in the case of Fishermen category, it is not an isolated post but it has the promotional avenues as Senior Fishermen and Fishermen Experts having the pay scales of Rs.3200-4000 and 4000-6000 respectively. Further, they have submitted that while the nature and duties of NCC Lascars/Sports Boys are similar and are interchangeable, the duties of Fishermen are different and they cannot be interchanged with those of the NCC Lascars/Sports Boys. The similarity between the posts of NCC Lascars/Sports Boys on the one side and the Fishermen on the other hand is only to the extent that all of them belong to Group'D' non-Ministerial category and their basic pay is the same i.e. Rs.2550-3200. While the Sports Boys are employed only in the Educational Department, the Fishermen are employed both in the Education Department as well as Fisheries Department. In the Education Department, there is no promotional avenues available to NCC Lascars/Sports Boys. However, for the Fishermen category, there are promotional avenues in the Fisheries Department where they are promoted as Senior Fishermen in the scale Rs.3200-4000 and 2nd ACP in the scale of pay of Fishermen Expert i.e. Rs.4000-6000. Therefore, the NCC Lascars/Sports Boys can be granted the 1st and 2nd ACP scales only in the scales Rs.2610-4000 and Rs.2750-4400 respectively in terms of condition No.7 as contained in O.M. dated 9.8.1999 which reads as under:

“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 scale as indicated in Annexure-II which is in keeping with part-A of the first schedule annexed to the Notification dted 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 scale S-5 and S-6 Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by 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."

4. As regards the order of this Tribunal in O.A.871/2003 (supra) is concerned, they have submitted that this Tribunal itself has given the opportunity to the respondents 2&3 to refer the matter to the Ministry of Personnel and the only stipulation was to communicate the decision to the applicant if it holds the view that the posts of Sports Boy and Fishermen are not identical. They have, therefore, submitted that the matter was accordingly referred to the Ministry of Personnel but have not agreed that the aforesaid 2 posts are identical for the reasons that the posts of Sports Boys do not have any promotional prospects but the post of Fishermen has got the promotional prospects to Senior Fisherman as well as Fisherman Expert. They have further submitted that while the Fisherman in Education Department has got only one grade of promotion i.e. to Pablo Boat Driver, the Fisherman in the department of Fisheries has got 2 grades of promotion i.e. to Senior Fisherman and Fishermen Expert.

5. We have heard Shri M.R.Hariraj, learned counsel for applicant and Shri Sunil Jacob Jose, SCGSC for respondents. As stated earlier, this is the second



round of litigation by the first applicant seeking the 1st and 2nd ACP in the scale Rs.3200-4000 and 4000-6000 respectively. In O.A.871/2003(supra) filed by him, this Tribunal has considered the fact that while the post of Fishermen is not an isolated one but the post of Sports Boy is an isolated post. However, this Tribunal examined the nature of work and duties of Sports Boys and Fishermen and relying upon the doubt and its Clarification at Point No.10 referred to earlier in this order, held that the scales of pay for ACPs shall be the same as those applicable for similar posts in the same Ministry/Department/Cadre except where the Pay Commission has recommended specific pay scales for mobility under ACPs which are to be examined by the respective Ministry/Department in consultation with the Ministry of Personnel. Only in the case of isolated posts, the pay scales contained in Ministry of Personnel O.M dated 9.9.1999 are to be applied. Thereafter, this Tribunal has considered the question whether post of Fishermen and Sports Boys are same or similar. As both the posts of Sports Boy as well as Fishermen are Group'D' posts having the same pay scale at the recruitment level and having the same educational qualifications as IVth Standard, the Tribunal held that both the posts are similar. As regards the mobility from Sports Boy to Fishermen, though there is no provision of appointment through transfer in the case of Fishermen to Sports Boy but that cannot be a reason to contend that two posts are not similar. Though this Tribunal has allowed the O.A, yet it permitted the respondents to refer the matter to the Ministry of Personnel as required under Clarification No.10 referred to above. After due consideration, the Ministry of Personnel held that since the post of Fishermen has got 2 promotional grades in the hierarchy to that of Senior Fishermen and Fishermen Expert and the post of Sports Boy has no such promotional avenues, the Fishermen are entitled for ACPs in terms of doubt No.32 of the Ministry of Personnel dated 10.2.2000 but the applicants are to be

(Signature)

governed by the provisions of the DoPT OM dated 1.6.2001 according to which the 1st ACP were to be granted after 12 years in the scale Rs.2610-4000 and the 2nd ACP after 24 years in scale Rs.2750-4400. They have also advised the Lakshadweep Administration to challenge the aforesaid findings of this Tribunal before the High Court by filing a Writ Petition. The Lakshadweep Administration, however, did not file any such Writ Petition but simply expressed its inability to treat the posts of Fishermen and Sports Boys similar for the purpose of grant of ACPS. We cannot accept such a stand by the Lakshadweep Administration. As this Tribunal has already arrived at the findings that the Fishermen and Sports Boys are same and similar for the reasons stated in the order, there cannot be a contrary decision by the Department of Personnel. The purpose of this Tribunal to allow the Lakshadweep Administration to refer the case to the Department of Personnel was that the clarification given to point of doubt No.10 in the Annexure A-2 Memorandum contains a stipulation for such reference. We, therefore, quash and set aside the impugned Annexure A-1 order of the Lakshadweep Administration dated 8.12.2008 and declare once again that the post of Sports Boys are same and similar to post of Fishermen for the purpose of grant of ACPS and they shall be granted the first and second ACP placements in the scale of Rs.3200-4000 and 4000-6000 respectively from the due dates. The respondents shall carry out the above direction within a period of 3 months from the date of receipt of copy of this order.

6. As regards the category of NCC Lascars are concerned, they have not made any representation to the respondents before they have approached this Tribunal. They were also not parties before this Tribunal in O.A.871/2003 (supra) filed by the 1st applicant who is a Sports Boy. Neither the respondents nor this Tribunal had the occasion to consider their cases earlier. Therefore, we



do not pass any orders in their cases. However, we grant liberty to them to file proper individual representations before the respondents justifying their claim for 1st and 2nd financial upgradation under ACPS to the scale of Rs.3200-4900 (pre-revised) and Rs.4000-6000(pre-revised) respectively. If such representations are received, the respondents 2 & 3 shall consider them in accordance with the extant rules and convey their decision to them. If the decision of the respondents is not in their favour, they are at liberty to approach this Tribunal again through appropriate proceedings,

7. With the above direction and observation, this O.A is partly allowed. There shall be no order as to costs.



K NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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