

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 127/2008

Monday this the 22nd day of June, 2009.

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

K.N. Bhuvanendran S/o Narayanan
Unskilled Labourer, Base Victualling Yard
Naval Base, Kochi-4
residing at Kuruppamveedu,
North Bajanamadam, Kumbalangi
Kochi-7

Applicant

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

Vs

- 1 Union of India represented by Secretary
Government of India
Ministry of Defence,
New Delhi.
- 2 The Flag Officer Commanding -in-Chief
HQrs, Southern Naval Command
Naval Base, Kochi-4
- 3 The Chief Staff Officer (P&A)
HQrs, Southern Naval Command
Naval Base, Kochi-4

Respondents

By Advocate Mr.TPM Ibrahim Khan, SCGSC

The Application having been heard on 10.6.2009 the Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant filed this Application for grant of first financial upgradation under the ACP scheme w.e.f the date of completion of 12

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years of service instead of from the date of passing the Qualifying the Departmental test.

2 The applicant is presently working as a regular unskilled labourer in the Base Victualling Yard, Naval Base, Kochi. He was initially engaged as a casual labourer. While working so, his services were terminated on 20.6.1988 which was challenged before the Labour Court Ernakulam. The Labour Court allowed the Petition and directed reinstatement with continuity of service and to place him senior to those who were juniors to him at the time of termination of service. The High Court upheld the Award of the Labour Court. Based on the Award and judgment of the High Court he was reinstated and his services were regularised w.e.f. 1.2.1991. But, instead of granting 1st ACP on completion of 12 years of service on 1.2.2003, he was granted the benefit w.e.f. 2.12.2005 the date of passing the Departmental Qualifying Test. Hence he filed this O.A. for grant of 1st financial upgradation under the ACP Scheme w.e.f. 1.2.2003 when he completed 12 years of service.

3 Per contra, the respondents in their reply statement submitted that the applicant has not passed the departmental qualifying test for promotion to the next higher grade in time, which is mandatory for consideration for grant of financial upgradation under ACP scheme and that he passed the qualifying test only on 2nd December, 2005. Therefore, the 1st financial upgradation under ACP scheme was sanctioned w.e.f. that date. They also submitted that Smt. Suhashini was granted the 1st financial upgradation under ACP Scheme w.e.f. 1st February, 2003 as she had passed the requisite departmental qualifying test in time. They also

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denied the contention of the applicant that the departmental qualifying tests were not conducted in time and stated that the test was conducted periodically each year from 2001 to 2004 which was held on 18.5.2001, 7.6.2001, 20.5.23002 to 6.6.2002, 15.12.2003 to 18.12.2003 and 13.12.2004 to 21.12.2004 respectively and that the applicant attended the test only in the year 2005. In the above circumstances, they submitted that the first financial upgradation under the ACP scheme could be granted only after qualifying the departmental test. The plea for stepping up of pay on par with the junior also cannot be granted to the applicant as the junior is drawing higher pay by virtue of her qualifying the departmental test earlier than the applicant and accordingly becoming eligible for grant of financial upgradation under the ACP scheme.

4 The applicant filed rejoinder contending that the applicant should have been called for the departmental qualifying test well before 1.2.2003 instead, he was called for the test only after making representation. The respondents filed additional reply statement reiterating their stand of calling for applications from eligible employees for Departmental Qualifying Test periodically and the test is conducted every year. The applicant filed additional rejoinder contending that there was no publication of Departmental Qualifying Test in the years 2002, 2003 and 2004.

5 We have heard learned counsel appearing for both the parties and perused the records carefully.

6 We notice that the applicant along with two others have approached this Tribunal earlier through O.A. 1024/2003 for a direction to

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refix their pay. This was disposed of vide order dated 8.6.2004 directing the respondents to consider the applicants representation if they have any grievance. Consequently when the representations submitted by the applicants were not considered, they filed O.A. 45/2007 being aggrieved by getting less pay than that of their juniors and also for not getting 1st ACP even after it was granted to his juniors. That OA was disposed of on the submission of the learned counsel for the applicants to direct the respondents to consider the representations submitted by the applicants in accordance with the rules. The applicant in this O.A. challenges the order rejecting the representation submitted by him.

7 The two issues that come up for consideration are (i) despite ante-dating the seniority of the applicant, Smt. Subhashini his junior is drawing higher pay and (ii) Even though he has completed 12 years of service the benefit of 1st ACP was denied to him.

8 From a perusal of the ACP Scheme it is obvious that mere completion of the requisite qualifying service of 12 years is not the only deciding factor for granting financial upgradation under the ACP Scheme, passing the Departmental Qualifying Test if any is mandatory. In this connection, the Department of Personnel had issued various clarifications. The clarification No. 16 which is relevant in this case is extracted below:

Point of Doubt	Clarification
16. The relevant Recruitment / Service Rule prescribe departmental examination / skill test for vacancy based promotion. However, this need not be insisted for upgradation under ACPs	As per the Scheme (Condition No. 6) all promotion norms have to be fulfilled for upgradation under the Scheme. As such, no upgradation shall be allowed if an employee fails to qualify departmental / skill test prescribed for the purpose of regular promotion

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From the above it is clear that the employee should fulfill all the norms of promotion to become eligible for grant of ACP. Admittedly, the applicant qualified the Test only on 2.12.2005 and the benefit of ACP was granted from that date onwards.

9 The allegation of the applicant is that the Department did not notify the conduct of the test every year as required. This is refuted by the respondents. Passing of the Departmental Qualifying Test on 30.12.2003 by Smt. Subhashini, the immediate junior of the applicant itself proves that the test was conducted in 2003. The applicant had not availed of the opportunity to appear in the test despite publication/notification made in this regard during the years 2002, 2003 and 2004 respectively. The applicant was not alert about the Departmental Qualifying Test being conducted every year. The respondents were directed to produce the file with complete note sheets from which Annexure A-7 letter has been issued to the applicant. We have perused the documents produced before us. The Unit head certified, in the concerned examination file that the date of holding the test has been circulated as required, by the SNC office. It is seen that a general notification has been issued, no employee is addressed individually and the applicant has not been isolated in that way. The DPC records however reveal that an eligibility list of employees within the zone of consideration who have completed 12 years of service and passed the Qualifying Departmental Test is prepared every year on the basis of the seniority and placed before the DPC for assessing their fitness for grant of 1st financial upgradation under the ACP Scheme.

10 The applicant is under the mistaken impression that the financial upgradation under the ACP Scheme is granted automatically on

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completion of 12 years. The point of doubt and the clarification extracted supra will show that wherever pass in the Qualifying Departmental Test is prescribed for promotion, the employee should possess that qualification for consideration for grant of financial benefits under the ACP Scheme. While similarly placed employees were vigilant about responding to the periodical circulars issued intimating the conduct of the tests, the applicant failed to do so. Only when, he was addressed by the respondent about the conduct of the test as directed by this Tribunal, he sat for the test, qualified and then became eligible for grant of ACP.

11 In the circumstances, we do not find any infirmity with the action of the respondents in granting the 1st ACP only from the date of Qualifying the Departmental Test for promotion and not from the date of completion of 12 years service.

12 In this view of the matter, we do not find any merit in the Application, it is accordingly dismissed. No costs.

Dated 22nd June, 2009.



K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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