

OA No.134/2013

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM**

O.A.No. 134/2013

Dated Tuesday, this the 17th day of May, 2016

CORAM:

**HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MRS. MINNIE MATHEW, ADMINISTRATIVE MEMBER**

T.P. Aboobacker, aged 59 years,
S/o Kunchi Koya, Assistant Engineer (Shipping)
Directorate of Port, Shipping & Aviation
Kavaratti P.O., Union Territory of Lakshadweep,
Permanent Address: Thekku Puthiyaillam house,
Agatti Island, Union Territory of
Lakshadweep

.... **Applicant**

(Applicant by Mr. T.C. Govindswamy, Advocate)

v.

1. Union of India,
represented by the
Secretary to the Government of India,
Ministry of Shipping, Department of Shipping,
Transport Bhavan, No.1,
Parliament Street, New Delhi 110 001.

2. The Administrator,
Union Territory of Lakshadweep,
Lakshadweep Administration,
Kavaratti 682555

3. The Director,
Directorate of Port,
Shipping and Aviation,
Union Territory of Lakshadweep,
Kavaratti 682 555

4. The Secretary to the Government of India,
Ministry of Home Affairs,
North Block,
New Delhi 110 001.

... **Respondents**

**(Respondents by Mr. S Radhakrishnan, Advocate for R.2 and 3
Mr N. Anilkumar, Sr. PCGC (1 &4) rep.**

This Application having been finally heard and reserved for orders on
09.03.2016 and the the Tribunal on 17 /05/2016 delivered the following:

ORDER**Per: MR. U. SARATHCHANDRAN, JUDICIAL MEMBER:**

The grievance of the applicant is that he has not been granted second financial upgradation under the Assured Career Progression Scheme (ACPS) and third financial upgradation under the Modified Assured Career Progression Scheme (MACPS). He was working as Assistant Engineer (Shipping) in P.B.2 + GP 4600 Group 'B' (Gazetted) under the respondents. (Subsequent to the filing of this O.A. he was superannuated on 31.5.2013.)

2. He was initially appointed as Junior Engineer in the Port Workshop under respondent No.3 with effect from 5.6.1978 with a scale of pay of Rs. 425-700 which was given a replacement scale of Rs. 1400-2300 and Rs.5000-8000 in the 4th and 5th Central Pay Commission scales of pay respectively. He was promoted as Chief Engine Driver from 12.5.1987 in the scale of pay of Rs.1640-2900 which was given a replacement scale of Rs. 5500-9000 in the 5th CPC scale of pay. Thereafter he was promoted from 28.8.1998 in the scale of pay of Rs.6500-10500 in the present post he was holding. The next promotion in the hierarchy is to the post of Executive Engineer in the then pay scale of Rs. 10000-15200.

3. On 9.8.1999 the Govt. of India introduced ACPS in terms of which every Government servant is entitled to 2 financial upgradations in a span of 24 years in case he has not been granted two promotions in the meanwhile. As applicant was promoted as Chief Engine Driver in 1987 and as Assistant Engineer during 1998, he was not granted the benefit of first or second financial upgradations under the ACP Scheme. However, on the basis of the 6th Pay Commission recommendations, the scales of pay of Rs.5000-8000 and Rs.5500-9000 were merged together to form a common replacement Pay Band of Rs.9300-34800 (PB-2) + GP of Rs.4200/-with effect from 1.1.2006. Therefore, according to the applicant, the benefit of the

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promotion to the post of Chief Engineer during 1987 got nullified as if he had only one promotion as an Assistant Engineer granted in 1998.

4. Subsequent to the 6th Pay Commission recommendations the Government of India introduced MACPS with effect from 1.9.2008 in terms of which the old ACPS continued upto 1.9.2008. Every Govt. Servant would also be entitled to the 3rd financial upgradations on completion of 10 years, 20 years and 30 years as indicated therein.

5. The financial upgradations under the MACP Scheme due to the applicant and to one of his colleagues Shri Jalaludeen were not granted under the pretext that there is some dispute on the question of whether the scales of Junior Engineers of Port and Ship Aviation Directorate has undergone any variation or not. The third financial upgradation under the scheme on par with Junior Engineers in other departments would arise only if the scale of Junior Engineers is Rs.5000-8000 in the revised pay scale. Shri Jalaludeen filed O.A. 748/2011. He was continuing as Chief Engine Driver against the post left by the applicant on being promoted as Assistant Engineer. O.A. 748/2011 was allowed by this Tribunal vide Annexure A/3 order dated 2.8.2012 holding that the scale of pay attached to the post of Junior Engineer in the Port Workshop had been revised to that of Rs.5000-8000 with effect from 1.1.1996 and that financial upgradation under the career progression scheme has to be granted on that basis. Accordingly Shri Jalaludeen was granted first financial upgradation under the MACP Scheme in PB 2 with Grade Pay 4200 with effect from 1.9.2008 in PB 3 + GP 7600 in the light of the Annexure A/3 judgement of this Tribunal. Applicant submitted Annexure A/6 representation dated 27.9.2010 to the second respondent. As there was no response to Annexure A/6 he submitted an appeal to Respondent No.1 on 2.11.2011, a copy of which is marked as Annexure A/7. Annexure A/7 was forwarded by respondent No.1 to the Ministry of Home Affairs vide Annexure A/8

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communication dated 25.11.2011. Ministry of Home Affairs sent Annexure A/9 letter dated 5.3.2012 to respondent No.2 seeking information on the action taken on applicant's representation by the respondents. Hence the applicant seeks:

"(i). Declare that the non-feasance on the part of the 2nd respondent to grant the applicant the benefit of the 2nd financial upgradation in PB-3 +GP of Rs.6600/- with effect from 01.01.2006 is arbitrary, discriminatory, contrary to law and unconstitutional;

(ii) Declare that the non-feasance on the part of the 2nd respondent to grant the applicant the benefit of the 3rd financial upgradation under the MACP scheme in PB-3 + GP of 7600/- with effect from 01.09.2008 is arbitrary, discriminatory, contrary to law and unconstitutional;

(iii) Direct the respondents 1 and 2 to grant the applicant the benefit of the 2nd financial upgradation under the ACP/MACP schemes with effect from 01.01.2006 in PB-3 + GP of Rs.6600/- and direct further to grant the applicant the 3rd financial upgradation under the MACP scheme in PB-3 + GP of Rs.7600/- with effect from 01.09.2008;

(iv) Direct the respondents to grant the applicant all the consequential arrears of pay and allowances arising out of the declarations and directions in 8 (i) to 8 (iii) above within a time limit as may be found just and proper by this Hon'ble Tribunal;

(v) Award costs of and incidental to this Application.

(vi) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case. "

6. Respondents had filed two reply statements. In the first reply statement it was contended that the applicant was never placed in the replacement scale of Rs.5000-8000 and that he was drawing only a scale of Rs. 4500 -7000 which was the replacement scale granted to the post of Junior Engineer during the 5th CPC. Respondents further contend that only those Junior Engineers having Diploma were granted scale of 5000-8000 whereas the applicant who had SSLC and certificate of competence as Engine Driver issued by the MMD as per MS Act 1958 did not enjoy the replacement scale of Rs.5000-8000/-.

7. According to the respondents Mr. Jalaludeen who obtained Annexure A/3 order from this Tribunal was having Diploma in Engineering and hence he was directed to be given the scale of Rs.5000-8000 whereas the pay scale attached to the post of Junior Engineer (Workshop) remained Rs. 4500-7000 which was replaced by the 6th CPC scale Pay Band on Rs. 5200-20200 in P.B.1 with Grade Pay of Rs. 2800/-. Shri Jalaludeen was granted first and second financial upgradation under MACP

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scheme in P.B.2 + GP of 4600 and GP of 4800 on completion of his ten years of service in the entry grade of Junior Engineer (Port Workshop) having a pre-revised scale of Rs. 5000-8000 in P.B.2 and G.P. Rs. 4800 with effect from 25.10.2008. on completion of 20 years of his regular service as indicated in Annexure A/4 order. Regarding the grievance of the applicant in Annexure A/6 respondent No.2 is considering financial upgradation under MACP in accordance with the guidelines of the Schemes before the applicant gets superannuated.

8. A rejoinder was filed by the applicant contending that it is not correct that the revised scale of pay of Junior Engineers under 5th CPC was Rs. 4500-7000. According to the applicant respondents have not produced copy of the complete text of CCS (Revised Pay) Rules 1997 wherein Part B of the Ist Schedule of CCS (Revised Pay) Rules 1997 deals with "revised pay scales for certain common categories of staff:" which deals with technical supervisors and workshop staff. The Junior Engineers workshop are placed in the replacement scale of Rs.5000-8000 replacing their old scale of Rs. 1400-2300/-. The applicant therefore, contends that since he was employed in Port Workshop, the scale of pay attached to the post of Junior Engineer (Port Workshop) in terms of the aforementioned CCS (RP) Rules 1997 is Rs. 5000-8000 with effect from 1.1.1996.

9. The above contentions in the rejoinder led to filing of additional reply statement by respondent No.2 and 3. According to them clause XXV of Para B1 of the Ist Schedule of CCS (RP) Rules 1997 is not applicable to the Port Workshop, Kavarati. They state that the pay scale of Rs. 5000-8000 was granted as a special sanction to Junior Engineers having three years Diploma. Referring to Annexure R.2(g) - a copy of the Service Book of the applicant - it was pointed out by the respondents that the applicant could procure the certificates of competence of fishing vessel engine driver only on 8.10.1985 ie. after seven years of his

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appointment as Junior Engineer. The 5th Central Pay Commission which recommended the scale of pay of Rs. 5000-8000 to Junior Engineers with three years Diploma recommended further that the same scale may be extended to all Junior Engineers with similar qualifications who are working in the different departments of Union Territories. As the applicant did not have three year diploma in Engineering, he was not entitled to the scale of Rs.5000-8000 but only the normal replacement scale of Rs. 4500-7000 (which was the pre-revised 4th C.P.C. Pay scale of Rs. 1400-2300/-). Therefore, the question of merger of pay scales as stated in the O.A. ignoring the promotion to the pay scale of Rs. 5000-9000 does not arise. Applicant was promoted as Chief Engine Driver which has been given a replacement scale of Rs. 5500-9000 with effect from 12.5.1987 i.e. before completion of 12 years of service and hence he is not entitled to the financial upgradation under the ACP. The applicant was again promoted as Assistant Engineer (Shipping) in the scale of pay of Rs. 6500-10500 revised to pay band 2 Rs.9300-34800 + GP 4600/- with effect from 28.8.1998 before completion of the next 12 years of service. Therefore, he is not entitled to the second financial upgradation also as he has earned the second promotion within the total service of 20 years and three months. There is no post of Executive Engineer in the Department of Port, Shipping & Aviation. It and hence it is not true that the next promotional avenue for the applicant in the hierarchy is Executive Engineer. The post of Assistant Engineer (Shipping) held by the applicant is the highest category in the line of promotion available to the applicant. The respondents have examined the matter of granting 3rd financial upgradation to the applicant under the MACPS with effect from 2.9.2008 and accordingly applicant had been considered and has been awarded third financial upgradation. MACP Scheme in the pay band of Rs.9300-34800 + GP of Rs.4800/- vide Annexure R 2(h).

10. The applicant has filed additional rejoinder quoting para 104.16 of the

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recommendations of the 5th CPC. It reads:

"104.16. Junior Engineers – Presently Junior Engineers in various departments of all Union Territories are recruited in different pay scales. We have separately recommended the scale of Rs. 1600-2680 along with ACP scales of Rs.1640-2900 and Rs.2000-3500 for all Junior Engineers with three years diploma. These recommendations may be extended to all the Junior Engineers with similar qualifications who are working in different departments of Union Territories."

11. Applicant has quoted para XXV of Part-B of the Ist Schedule of CCS (Revised Pay) Rules, 1997 also:

"XXV. TECHNICAL SUPERVISORS 7 WORKSHOP STAFF:

Sl.No.	Posts	Present scale	Revised scale	Para. No. Of Report
(a)	Chargeman/ Chargeman 'B'/ Chargeman (Technical) Grade II/Junior Engineer Grade II (Workshop)	1400-40-1800-50-2300	50000150-8000	54.38

12. Applicant contends that Junior Engineers of Workshop are entitled to the scale of Rs.5000-8000. According to him he was possessing requisite qualifications prescribed in the then Recruitment Rules for the post of Assistant Engineers. And therefore, he is also entitled to the 5th C.P.C. Replacement scale of Rs. 5000-8000.

13. The applicant has produced M.A/1 and M.A/2 documents (along with MA.48/2015) in support of his contention that similarly situated Junior Engineers in the Lakshadweep Public Works Department have been granted revised 5th Pay Commission Scale of Rs.5000-8000 and that they have been given the consequential revision of pay and other benefits on the basis of 6th Pay Commission recommendations also.

- 14 Heard Mr. T.C.G. Swamy, learned counsel for the applicant and Shri S. Radhakrishnan, learned standing counsel for the Respondent No.2 and 3. Mr. N. Anilkumar, learned Sr. PCGC appeared for respondent No.1 and 4.

15. The controversy in this case has been summarised by the applicant himself in his rejoinder :

".....the question not whether the scale of pay of Junior Engineers is PB-2 + G.P. Rs.4200/- or PB-1 + GP of Rs.2800/- after issuance of R2 (b) dated 22.02.2011. The question in short is what should be the scale of pay as revised by the CCS (RP) Rules 1997 to a Junior Engineer posted in Port workshop as on 01.01.1996."

Applicant places heavy reliance on Annexure A/3 order of this Tribunal for his claim that as per the provisions of CCS (RP) Rules 1997 the Junior Engineers in Port Workshop are entitled to the revised scale of 5000-8000. Respondents contend that 5th Pay Commission recommendations in Para 104.16 quoted above is applicable only to Junior Engineers with three years diploma and to those Junior Engineers with similar qualifications. According to respondents, since the applicant was not having diploma in Engineering, he is not entitled to the benefit of the above recommendations of the 5th CPC.

16. Learned counsel for the applicant argued that the qualification of diploma in Engineering is one of the several alternative qualifications mentioned in the recruitment rules which include the certificate of competency as issued by the MMD as per MS Act 1958 or ISV Act or or Harbour Craft Rules possessing minimum educational qualification of SSC and two years experience in operation and maintenance of diesel engine/ workshop. Referring to Annexure A/10 he further submitted that the applicant is having the requisite qualification of certificate of competency as Engine Driver of a fishing vessel. The counsel argued that both the diploma holders in engineering and holders of certificate of competency as Engine Driver after having posted as Junior Engineers in terms of the Recruitment Rules are performing the same work and hence it would be violation of equality if they are placed in two different scales of pay.

17. The argument seems to be quite attractive. However, the Pay Commission recommendations are outside the bounds of judicial scrutiny as has been held by the

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Apex Court in *UOI v. T.R. Das 2003 (II) SCC 658*. The pay commission reports are susceptible to acceptance/rejection with modifications by the Government. Here the 5th Pay Commission's recommendations relating to Junior Engineers' pay has been accepted and implemented by the Government as applicable to diploma holders and those having similar qualifications.

18. Shri Govindswamy strenuously attempted to bring to our notice that as per clause XXV Part B of Ist Schedule of CCS (RP) Rules 1997 the revised pay scale of Rs. 5000-150-8000 has been given to Junior Engineer grade II in Workshop also. This argument was contradicted by Shri S. Radhakrishnan pointing out that applicant is a Junior Engineer working in the Port Workshop which does not come under the purview of the afore-quoted provisions of CCS (RP) Rules 1997 and submitted that applicant has never been placed in the scale of 5000-8000. He brought to a sharp focus that the applicant was granted 5th Pay commission replacement scale of Rs. 4500-7000/ only, from the pre-revised scale of 1400-2300 he was enjoying.

19. We feel that the claim of the applicant for second and third MACPs can be considered only if he establishes that he is entitled to the Vth CPC scale of Rs.5000-8000. In our considered view the applicant was not successful in proving that he was put in the 5th CPC pay scale of Rs. 5000-8000 at any point of time. Even if he produced Annexure MA/1 and MA/2 documents indicating the pay scales of other Junior Engineers, on a close perusal we could see that they relate to the Public Works Department of Lakshadweep Administration whereas the applicant is working in an isolated stand alone department ie. Port Workshop which has not been given any reference in the 5th CCS (RP) Rules 1997. The applicant cannot seek refuge in the benefits received by Shri Jalaludeen vide Annexure A/4 order by virtue of Annexure A/3 order of this Tribunal. Shri Radhakrishnan, learned counsel for the respondents No.2 to 4, in our opinion could convincingly distinguish the case of Shri

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Jalaludeen in Annexure A/3 order from the case of the applicant indicating that Shri Jalaludeen was a diploma holder in engineering which is a qualification the applicant is lacking in. Despite all his strenuous endeavours, the applicant was not able to convincingly prove that he, not having a diploma in engineering, was entitled to the benefit given by the 6th Pay Commission recommendations to the diploma holders in engineering by providing them with the scale of Rs. 5000-8000. This inherent lack in qualification does take wind out of the sails of the applicant.

20. According to the applicant after joining the service as Junior Engineer with effect from 5.6.1978 he was granted promotion to the post of Chief Engine Driver in the scale of Rs.5500-9000 on 12.5.1987 and thereafter promoted to the present post as Assistant Engineer from 28.8.1998. He states that from 1.1.2006, scales of pay of Rs. 5000-8000 and 5500-9000 of the 5th Pay Commission were merged together to form a common replacement pay band of rs. 9300 – 34800 (PB-2) + GP 4200. According to the applicant because of this merger of two grades, the promotion he obtained as Chief Engine Driver in 1987 got nullified. Shri Radhakrishnan learned counsel for the respondents 2 to 4 pointed out that such a merger has not enured any benefits to the applicant because he has never been placed in the scale of Rs. 5000-8000 because he was still in the pay scale of Rs. 4500-700 as Junior Engineer. Mr. S Radhakrishnan therefore submitted that promotion obtained by the applicant as Chief Engineer Driver in 1987 will indeed disentitle him to the first financial upgradation under the ACPS as he was granted promotion within a period of 12 years from joining the entry cadre. Shri Radhakrishnan further submitted that the applicant again promoted to the post of Assistant Engineer with effect from 28.8.1998, within the next 12 years, taking him out of the benefit of the second financial upgradation under the ACPS.

21. Referring to Annexure A/5 clarification issued by the DoPT regarding the

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implementation of MACPS Shri T.C.Govind Swamy submitted that in terms of the clarifications by the DoPT applicant is entitled to the second financial upgradation under ACPS and the third MACP. The relevant question and clarification in Annexure A/5 is extracted below:

"

(iii)	If a Government servant recruited in the pre-revised pay scale of Rs. 5000-8000 has been promoted in the promotional hierarchy in the pre-revised pay scale of Rs. 5500-9000 prior to 1.1.2006 (and he has put in 14 years of regular service) then would there be any claim for financial upgradation under ACPS	(iii) The pre-revised pay scales Rs. 5000-8000 & Rs. 5500-9000 have been merged and placed in PB-2 with grade pays of Rs.4200 with effect from 1.1.2006. Hence, the the promotion would be ignored as he has completed his 12 years of regular service and the benefit of 1st ACP would accordingly be allowed in the promotional hierarchy i.e. in the grade pay of Rs. 4600 w.e.f. 01.01.2006.
(iv)	If the above Government servant had put in 22 years as on 31.08.2008, then what would be the entitlement in MACP	(iv) As given above, the 1st ACP would be in Pb-2 grade pay of Rs.4600 after ignoring the previous promotion. Thereafter, since employee has completed more than 20 years of regular service on 01.09.2008, he would be entitled for 2 nd finance upgradation under the MACPS in the immediate next higher grade pay of Rs. 4800 in PB-2 subject to fulfillment of condition as stipulated in para 17 of Annexure I of MACPS dated 19.05.2009.

22. In view of the finding that the applicant was not enjoying the pre-revised scale of Rs. 5000-8000, it goes without saying that he cannot claim any benefit of the aforesaid clarifications. Therefore it appears to us that in the case of the applicant the reference to A/5 quoted above is only hypothetical. In the first reply statement respondents submitted that the respondent No 2 to 4 are considering the MACP benefits applicable to the applicant as per his request in the Annexure A/6 representation. But, along with additional reply statement filed on 4.12.2014,

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respondents No.2 to 4 produced Annexure R (h) copy of the order granting third financial upgradation for the applicant. It reads:

" Administration of the
Union Territory of Lakshadweep
(DIRECTORATE OF PORT, SHIPPING AND AVIATION)
Kavaratti Island 682555

F.No6/2/2011-Port (Accts)

Dated 16.04.2013

ORDER

Sub: Directorate of Port Shipping & Aviation – Awarding of 3rd Financial upgradation under MACP Scheme – Fixtion of Pay – Orders issued .

Ref: 1. Order F. No. 1/7/2011-Port, dated 15.04.2013 of Director, Port Shipping & Aviation, Kavaratti.

Shri T.P. Aboobacker, Assistant Engineer (Shipping), Directorate of Port Shipping and Aviation, Kavaratti has been granted 3rd Financial upgradation under MACP Scheme with effect from 01.09.2008 in the Pay Band of Rs.9300-34800 plus Grade Pay of Rs. 4800 vide order No. 1/7/2011-Port, dated 15.4.2013. At the time of awarding Financial upgradation on 01.09.2008 he is drawing basic Pay of Rs. 18540/- + GP 4600/- in the Pay Band of Rs.9300-34800 + GP Rs 4600/. Accordingly his pay is fixed as under:

- | | |
|---|---------------------|
| (a) His pay as on 31.08.2008 in the pay Band 9300-34800 + GP Rs. 4600/- | Rs.18540 + 4600/- |
| (b) Notional increment | Rs. 700/- |
| (c) Pay to be fixed in the revised Pay Band as on 01.09.2008 | Rs.19240/- + 4800/- |
| (d) Date of next increment | 01.07.2009. |

Subsequent increment from 1.7.2009 onwards sanctioned as order.

1.07.2009	= 19970- + 4800/-	= 24770 x 3%	= 750/-
1.07.2010	= 20720 + 4800/-	= 25520 x 3%	= 770/-
1.07.2011	= 21490 + 4800/-	= 26290 x 3%	= 790/-
1.07.2012	= 22280 + 4800/-	= 27080 x 3%	=

(A. Hamza)
Director Port Shipping & Aviation ""


23. In our view the respondents No.2 to 4 have correctly applied pay scales enjoyed by the applicant for the purpose of the aforesaid financial upgradation with effect from 1.9.2008, i.e. the time when he reached 30 years of service.

24. We are of the view that the attempt of the applicant was to bring his case identical to that of Shri Jalaludeen, a diploma holder in engineering, who was directed to be paid Rs. 5000-8000 and other consequential benefits by virtue of Annexure A/3 order of this Tribunal. However, the applicant not being a diploma holder in engineering cannot equate himself with the benefits conferred on Shri

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Jalaludeen. Therefore, it goes without saying that the applicant's case as framed in this O.A. should fail.

25. In the result, O.A.is dismissed. Parties shall suffer their own cost.


(MINNIE MATHEW)
ADMINISTRATIVE MEMBER


(U. SARATHCHANDRAN)
JUDICIAL MEMBER

sj*