

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 137 OF 2008**

MONDAY, this the 9<sup>th</sup> day of March, 2009.

**CORAM:**

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

P.J.Antony  
Mate Grade - II  
Central Institute of Fisheries Nautical &  
Engineering Training, Kochi - 16  
Residing at Pulickal House  
Puthenthodu, Kannamalyu  
Ernakulam District ... Applicant

(By Advocate Mr. TCG Swamy )

versus

1. Union of India represented by the Secretary  
to the Government of India  
Ministry of Agriculture  
Department of Animal Husbandry Dairying and Fisheries  
New Delhi
2. The Director  
Central Institute of Fisheries Nautical &  
Engineering Training, Kochi - 16
3. The Director  
Integrated Fisheries Project  
Kochi - 16 ... Respondents

(By Advocate Mr.Varghese P Thomas, ACGSC )

The application having been heard on 03.03.2009, the Tribunal  
on 03.03.2009, delivered the following:

**ORDER**


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

The applicant was initially appointed as Bosun (certified) in 1973  
under the 3rd respondent and then from May 1980 he was promoted as  
Mate Gr. II (scale of pay Rs 6500 – 10500) in which he continued. He  
became due for promotion in 1996 but was not granted the promotion and



on his juniors having been promoted, the applicant preferred OA No. 876/1997 which was allowed by order dated 26th May 2000, directing the respondents to constitute a review Department Promotion Committee in accordance with the Recruitment Rules current as on 8-6-1996. Accordingly the respondents conducted review DPC and this time the DPC came to the conclusion that none was found eligible to be promoted. The above decision resulted in the reversion of the two juniors who were earlier promoted to the post of Mate. These two challenged their reversion and the reversion orders quashed by the High Court. One of them had been promoted and the other's case is under challenge before the Apex Court.

2. Meanwhile, the Government introduced Assured Career Progression effective from 09-08-1999 and the case of the applicant was considered in the DPC held on 7-6-2002 but the ACP was not granted to him w.e.f. 9-8-1999 or thereafter. This resulted in the applicant preferring OA 910/2003 which was disposed of by order dated 01-11-2006, whereby the respondents were directed to communicate the relevant ACRs for the years considered in the screening committee on 7-6-2002 and the applicant was to submit his representation, in which event the representation should be considered by the competent authority. Accordingly, vide Annexure A-4 to A-7, the adverse remarks of ACR for the years 94-95, 95-96, 96-97 and 97-98 have been communicated and the applicant had filed his separate representation for each year, vide Annexures A-8 to A-11. By a common order dated 21st May 2007 vide Annexure A-14, the respondents stated that the ACRs have been reviewed by the concerned and no modifications have been made in the remarks of ACRs. Therefore, the request of the applicant for review and expunging of the overall grading and adverse




remarks could not be considered. Further, the respondents had informed the applicant, vide Annexure A-17 that the review committee, as per the direction of the Tribunal reviewed the earlier DPC but the committee did not modify the earlier grading given. Thus, the applicant has challenged annexure A-4 to A-7, A-14 and A-17 orders. Meanwhile, of course, the DPC considered the case of the applicant in 2006 and on its recommendations, the respondents had granted the ACP to the applicant w.e.f. 01-04-2002, vide Annexure A-16.

3. Respondents have contested the O.A. According to them, the order of the Tribunal has been complied with and the competent authority had retained the earlier grading. The Review DPC also endorsed the said grading. The applicant's performance being good in respect of ACP as on 01-04-2002, he was accordingly afforded the ACP benefits.

4. The applicant filed his rejoinder, reiterating his contentions as in the OA and further annexing the judgment of the High Court in respect of the cases of the two juniors, referred to in para 1 above.

5. Counsel for the applicant argued that the order of the Tribunal has not been complied with inasmuch as while the review DPC was directed to review the DPC proceedings of 7-6-2002, it had reviewed the DPC proceedings of 2006. In this regard, the counsel referred to the statement above the penultimate paragraph of Annexure A-17. Further, it has been argued by the counsel that the applicant being a mate, is not expected to be an expert in knowledge of accounting or drafting and noting, about which only the average remarks were endorsed, vide Annexure A-4




to 7. These have been clearly spelt out in his representation vide Annexure A-8 to 11; however, the competent authority had failed to consider all the contentions and passed the impugned Annexure A-14 order, which is cryptic and non speaking. The counsel referred to the decision by the Apex Court in the case of *Dev Dutt v. Union of India*, (2008) 8 SCC 725 with particular reference to para 33, which reads as under:-

*33. In our opinion, fair play required that the respondent should have communicated the "good" entry of 1993-1994 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.*

6. Counsel for the respondents submitted that as contained in the counter, the case of the applicant has been dealt with by the authority correctly and no interference is called for.

7. Arguments were heard and documents perused. The tribunal gave certain directions and from the records it is observed that these have been followed. Though it has been contended by the counsel for the applicant that elaborate explanation has been given against each of the adverse remarks, vide Annexure A-8 to 11, none of them has been met with in the impugned Annexure A-14 order, the said order does refer to the relevant years of ACR as also the representation of the applicant and it has been clearly stated that the ACRs have been reviewed by the concerned and no modifications have been made in the remarks of ACR. Again, the DPC independently reviewed the ACRs and it also endorsed the same grading for the relevant period, as could be seen from the tabulation contained in annexure A-17. It is trite law as held in the case of *State of*




Orissa v. Jugal Kishore Khatua, 1997 SCC (L&S) 1768 that the Tribunal does not function as an appellate forum in respect of assessment made by a superior officer about the performance of an employee. The Apex Court has, in that case, held as under:-

*"While exercising the power of judicial review in respect of adverse remarks in the ACR, the Tribunal does not function as an appellate forum in respect of the assessment made by a superior officer about the performance of an employee working under him. Such assessment is made by the reporting authority which is subject to scrutiny by the countersigning authority as well as by the higher authority which considers the representation of the employee against the remarks."*

8. Much stress had been laid by the counsel for the applicant with reference to Ground B and reply therefore. The said ground and the reply thereof read as under:-

*"The applicant begs to submit that as per the orders of this Hon'ble Tribunal in Annexure 3 A-3, the applicant was directed to be considered for grant of benefit under ACP Scheme, on and with effect from 09.08.1999; that is evident from a mere reading of Annexure A-3. The review Departmental Screening Committee which was directed to be convened for the purpose of consideration for grant of 2nd financial up-gradation was for deciding the eligibility of the applicant for grant of the same with effect from 1.4.2002, by a subsequent committee. On the contrary, Annexure A-17 reads that there was no need to change the recommendations of the Departmental Screening Committee (Group A) held on 22.2.2006, in respect of the applicant for the purpose of granting him the second financial upgradation with effect from 01.04.2002. Annexure A-17 therefore, on the very face of it is arbitrary, discriminatory and hence violative of the Constitutional guarantees enshrined in Articles 14 and 16."*

*"The OA 910/2003 filed by the applicant was allowed by the Hon'ble CAT on the grounds that the adverse entries were not duly communicated to the applicant. The Tribunal observed that the ratings of 'Average' assumes the character of an adverse entry, the same should have been communicated to the applicant and only based upon the*



*results of such communication, should any decision have been taken relating to the Assured Career Progressive upgradation. The Hon'ble Tribunal has not directed to grant Assured Career Progressive to the applicant w.e.f. 09.08.1999, as averred by him. The directions of the Hon'ble Tribunal in the Annexure A-3 judgment has been duly complied with by the respondents."*

9. The applicant has misconstrued the contents of Annexure A-17. When DPC considers the suitability of a candidate for grant of ACP as on a particular date (9-8-1999 or 01-04-2000 or 01-04-2001 etc.,) it considers the ACRs for the preceding years and gives a grading. Thus, for grant of ACP as on 09-08-1999, the ACRs that would have been considered pertained to the period 1994 – 95 onwards upto 1998-99 and the grading given was only average. It was for this period that the earlier DPC which met on 07-06-2002 had considered. Thus, the argument of the counsel for the applicant that the DPC did not review the earlier DPC of 7-6-2002 as directed in the Tribunal's order, lacks merit.

10. In view of the above, the OA being bereft of merits, merits only dismissal which we so order. Under the circumstances, there shall however, be no orders as to cost.

Dated, the 9<sup>TH</sup> March, 2009.

  
K.NOORJEHAN  
ADMINISTRATIVE MEMBER

  
Dr.K.B.S.RAJAN  
JUDICIAL MEMBER