

O.A. NO. 142 OF 2009

The applicant is aggrieved by "hostile discrimination" meted to him in the grant of Assured Career Progression (ACP for Short) . The discrimination is not with reference to his own colleagues holding same post but with reference to identical posts.


2. To narrate the brief history of the case, the applicant has, since 28-01-1986, been functioning in the erstwhile Integrated Fisheries Project as Refrigeration Engineer which is a gazetted post carrying the pre-revised pay scale of Rs 6500 – 10500/-. This is a promotional post from the feeder grade of Ice Plant Operators. There is no post higher than Refrigeration Engineer.

3. On the introduction of ACP, the applicant was placed in the scale of pay of Rs 7450 – 11500/-. At that time, the applicant filed OA No. 476/2002 claiming higher pay scale of Rs 10500 – 15,200/- which was however, rejected, vide order dated 26th November, 2004. Challenge was made to this order through Writ Petition No. 4517/2007 which was disposed of with a direction to the respondents herein to dispose of the representation filed by the Applicant. The respondents have considered the representation but rejected the claim, vide impugned order dated 30th May 2008 (Annexure A-8) which reads as under:-

" Subject - Representation dated 21.4.2008 made by Shri K. Gopi, Refrigeration Engineer

The representation dated 21.04.2008 made by Shri K. Gopi to the Secretary (ADF) for grant of first financial upgradation under the ACP Scheme in the scale of pay of Rs. 10,000-15,200/- with effect from 9.8.1999 has been considered in the Ministry, and the following points have emerged:-

1. *The post of Mechanical Marine Engineer (MME) in the pay scale of Rs. 10000-15200/- was not a promotional post for Refrigeration Engineer in IFP. Therefore, even if Shri K. Gopi had possessed a Degree in Engineering, as prescribed in the Recruitment Rules for MME in IFP, he would not have been eligible for financial upgradation in the pay scale attached to the post of MME. In the absence of defined hierarchical grade in the case of Refrigeration Engineer, Shri K. Gopi has been rightly granted first financial upgradation under ACP Scheme in the next higher (Standard/Common) pay scale of Rs 7540-11500/- w.e.f., 9.8.1999 .*



2. *The posts of Assistant Engineer (Workshop) and Assistant Engineer (Design) having educational qualification of Degree in Engineering were feeder grade to the post of MME before re-organization of IFP and the incumbents of the respective posts of Assistant Engineer (Workshop) and Assistant Engineer (Design) have been allowed by the Court to be included in the feeder category for promotion to the post of MME despite only having diploma in Engineering. The Hon'ble Court has only lowered the educational qualifications for the feeder grade to accommodate the existing incumbents of the posts of Assistant Engineer (Workshop) and Assistant Engineer (Design).*

In view of forgoing, the request of Shri K. Gopi, Refrigeration Engineer for grant of financial upgradation in the scale of pay of Rs.10000-15200/- cannot be acceded to.

4. It is the above order that is under challenge in this O.A.
5. The ground of challenge is that when admittedly, the post of Refrigeration Engineer is not an isolated post, for ACP purposes, the scale as admissible to the next higher post available in other department should be followed. The applicant has cited the case of CPWD Executive Engineers on the one hand and of Mechanical Marine Engineers in his own department on the other.
6. It is pertinent to mention here that analogous to the above post are posts such as Assistant Engineer (Workshop) and Assistant Engineer (Design) with identical pay scale. All these come under the Division Head of Mechanical Marine Engineer in the pay scale of Rs 10,000 – 15,200/-. One of the Assistant Engineers filed certain O.As for relaxation of Rules/amendment to the Recruitment Rules for promotion to the post of Mechanical Marine Engineer and in pursuance of certain orders passed by the Tribunal, the Recruitment Rules for the post of Mechanical Marine Engineer were amended, vide Annexure A-5, effective from 11-08-2007. The effect of the amendment is that Assistant Engineers with Diploma and

possessing the specified years of experience would be considered for promotion to the post of Mechanical Marine Engineer. This enables the Assistant Engineers who are in the feeder grade to the above post to claim ACP in the higher scale of Rs 10,500 – 15,200/-. In fact, on reorganization of the set up of the respondents, the posts of Assistant Engineers had been associated with Mechanical Marine Engineer, while the post of Refrigeration Engineer has been left out.

7. Respondents have contested the O.A. According to them, since the posts of Assistant Engineers (Workshop) and Assistant Engineers (Design) are the feeder grades for promotion to Mechanical Marine Engineer, the relaxation of essential qualification in the amended RR is only to accommodate the candidates in the feeder category alone and hence, the provisions of amended RR cannot be extended to the applicant. The fact that the post of Refrigeration Engineer is not an isolated post has been admitted by the respondents, rather reiterated by them. That the case of the applicant was earlier dismissed by the CAT has also been highlighted in the counter.

8. Counsel for the applicant argued that when earlier the posts of Refrigeration Engineer and those of Assistant Engineer (Workshop) as well as Assistant Engineer (Design) were identical and financial upgradation was uniform i.e. Rs 7,450 – 11,500/- now as the financial upgradation to the other two posts has been modified, the case of the applicant should also be modified in accordance with the clarifications given by the DOPT in respect of non-isolated posts which have no further higher post.

9. Counsel for the respondents reiterated their contentions as contained in the counter.



10. Arguments were heard and documents perused. Admittedly, the post of Refrigeration Engineer is not an isolated post. And, there is no post higher than Refrigeration Engineer with any specific scale of pay. Thus, the following clarification applies squarely to the facts of this case:

<i>Sl No.</i>	<i>Point of Doubt</i>	<i>Clarification</i>
31.	What is an isolated post for the purpose of the ACP Scheme?	Isolated post is a <i>stand alone</i> post, having neither feeder grade nor promotional grade. As such, a post having no promotional grade but having a feeder grade and vice-versa shall not be treated as isolated post for the purpose of ACPS.
32.	Where the cadres/hierarchy is limited to two grades only, what should be the pay scale for grant of second upgradation under ACPS?	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:- (i) If such cadre/hierarchy exists 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 Ministries/Departments. (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.

11. The applicant has cited two examples of other departments/Ministry – his own department (with reference to Mechanical Marine Engineer) and CPWD (with reference to Executive Engineer). When comparison could be possible within the same Department, one need not have to look for other Departments/Ministries. Hence, the case of Mechanical Marine Engineer could well be taken for comparison purposes.

12. The claim of the respondents is that the relaxation in respect of qualification would be applicable only in respect of the incumbents in the feeder grade and cannot be applied to the applicant's case. It is to be pointed out here that the applicant does not claim any promotion to the post of Mechanical Marine Engineer but claims parity with Assistant Engineers (Workshop) and Assistant Engineer (Design) with reference to ACP. The claim of the applicant is tenable. However, it has to be seen whether the applicant is entitled to it under the rules in vogue. In the case of Satheesh Babu (Applicant in OA No. 757/2005 and 18/2007) A.E. (Workshop) if the respondents have afforded ACP in the higher Grade of Rs 10,000 – 15,200/- in the wake of amendment to the Recruitment Rules, notwithstanding the fact that his entitlement to the ACP accrued prior to the notification of the amended Recruitment Rules, there no reason as to why the applicant be not considered for the same. Of course, the authority for such consideration in the case of the said Satheesh Babu would be that he belongs to the same hierarchy of promotion, whereas the applicant's case comes under the aforesaid clarification. But the ultimate end result is the same.


13. In view of the above, the OA is disposed of with a direction to compare the case of the applicant with that of Shri Satheesh Babu and if the latter's date of ACP fell due prior to notification of the amended recruitment Rules but he had been granted the higher pay scale of Rs 10000 – 15200/- w.e.f. the date of notification, the same benefit be extended to the applicant. Arrears arising out of the same shall also be paid to the applicant. Instead, if the said Satheesh Babu had been duly promoted on or after the date of notification without any ACP benefit in the said scale of Rs 10,000 – 15,300/- (but was granted ACP in the scale of Rs

7450-11500, as the applicant herein) then the applicant is not entitled to any further benefit.

14. Let the exercise be conducted within a period of two months from the date of communication of this order.

Dated, the 22nd January, 2010.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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