

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCHO.A No. 167 / 2009Monday, this the 30<sup>th</sup> day of November, 2009.

## CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. K NOORJEHAN, ADMINISTRATIVE MEMBER

P.J. Mary,  
Store Keeper,  
Central Institute of Fisheries  
Nautical and Engineering Training,  
Kochi-16. ....Applicant

(By Advocate Mr TC Govindaswamy )

v.

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 and Engineering Training,  
Kochi-16.
3. The Senior Administrative Officer,  
Central Institute of Fisheries  
Nautical and Engineering Training,  
Kochi-16. ....Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC )

This application having been finally heard on 23.11.2009, the Tribunal on  
delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The dispute in this O.A is regarding the number of years of regular service rendered by the applicant for grant of second financial upgradation under the Assured Career Progression Scheme (ACPS for short). The contention of the applicant is that she was on ad hoc and continuous service from 9.11.1978

before her service was regularised with effect from 30.5.1984 and, therefore, the respondents are required to reckon 9.11.1978 as the date of commencement of her regular in order to grant the second financial upgradation under the ACPS,service in terms of para 3.2 of the ACPS issued by the Government of India vide OM No.35034/1/97-Estt(D) (Vol.IV) dated 10.2.2000 reads as under:

“3.2 Regular Service for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service rules.”

However, the contention of the respondents is that her regular service will commence only from 30.5.1984 and not from 9.11.1978 in terms of the Point of doubt at Sl.No.11 and the clarification given alongside vide OM No.35034/1/97-Estt.(D) dated 10.2.2000 which are as under:

11. In the case of an employee appointed on ad hoc basis and who is subsequently regularised, the ad hoc service is counted towards increment. Whether the ad hoc service may be counted for the ACPS also?	No. In terms of Para 3.2 of the Office Memorandum, dated August 9, 1999 (ACPS), only regular service which counts for the purpose of regular promotion in terms of relevant Recruitment/Service Rules shall count for the purpose of upgradation under ACPS
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2. The brief facts of the case: Applicant was initially appointed as a Junior Clerk on ad hoc basis with effect from 17.12.1975. She was again appointed on ad hoc basis at different spells to the aforesaid post as and when vacancy had arisen. However, from 9.11.1978 onwards she was appointed as a Junior Clerk on ad hoc basis without any break (Annexure A-1). According to her, when a regular vacancy has arisen on 1.9.1981, instead of appointing her on regular basis, respondents terminated her service with effect from 21.10.1981. Aggrieved by the aforesaid action, the applicant filed O.P.No.1511/1981 before the Hon'ble High Court of Kerala which was transferred to this Tribunal and number as T.A.K.22/1987. By the Annexure A-2 order dated 18.6.1987 the Tribunal disposed of it by directing the respondents to consider her case for

regularisation from the date of her junior was regularised. Pursuant to the aforesaid order, the respondents, vide Annexure A-3 letter dated 4.12.1987 regularised her service with effect from 30.5.1984 i.e. the date of her junior in CIFNET was regularised in service on the post of Junior Clerk. However, the respondents have reckoned her service from 9.11.1978 onwards for the purpose of annual increment, pension, leave etc. While thus continuing as Junior clerk, she was promoted as Store Keeper in the scale of Rs.4000-6000 with effect from 27.3.1998 on regular basis. According to the Annexure A-7 recruitment rules for the post of Store Keeper, the qualification required for consideration for promotion was "Junior Clerk with 3 years experience". When the ACPS was introduced with effect from 9.8.1999 she was granted the second financial upgradation with effect from 30.5.2008 in the scale of Rs.5000-8000 vide Annexure A-8 dated 2.6.2008. According to the applicant, the respondents should have taken into consideration her ad hoc service with effect from 9.11.1978 and should have given her the second financial upgradation under the ACPS from 9.11.1978 in terms of para 3.2 of the scheme which defines regular service for the purpose of ACPS as the "eligibility service" counted for regular promotion in terms of the relevant Recruitment Rules/Service Rules. She has, therefore, made the Annexure A-9 representation dated 28.11.2008 stating that from 9.11.1978 she was appointed as Junior Clerk as and when regular vacancy arisen and continued without break.

3. The Learned counsel for applicant Shri Mohan Kumar has also relied upon the judgment of the Hon'ble High Court of Kerala in W.P.(C) No.10694/2004(S) dated 27.9.2004 – **Sajad A v. The Assistant Superintendent of Post Offices, North Subdivision, Trivandrum and others** wherein it has been held as under;

"2. The counsel for the petitioner refers to the amended provision (Ext.P12)wherein it is stated as follows:

"Extra Departmental Agents, the age-limit shall be 55

years with 5 years relaxation for the Scheduled Castes/Scheduled Tribes candidates as on 1<sup>st</sup> July of the year in which the examination is held and he should have completed a minimum of 5 years of satisfactory service as on 1<sup>st</sup> January of year in which the examination is held"

It is clear from the above that regular service is not the criterion, but what is required is only satisfactory service of five years. / that means the service can either be provision or regular. A combined reading of the old Rule and the new Rule reveals that the word 'regular' was omitted in the newly framed Rule. The intention of the rule making authority is clear from the omission of the word 'regular'.

3. So the order passed by the respondents as per Ext.P15 cannot be sustained. Respondents have no case that the petitioner's total service is less than 5 years or that it is not satisfactory. The impugned judgment shows that the Tribunal did not consider the matter on the basis of the relevant Rules and thus committed an error of law. Hence, Ext.P17 judgment is quashed.

4. During the pendency of these proceedings, the petitioner had appeared for the examination on the basis of the interim order. Now what remains to be done is only the declaration of the result of the departmental test.

5. The writ petition is allowed. The respondents are directed to declare the result of the test, as expeditiously as possible."

4. The respondents in their reply have submitted that in order to be eligible for grant of first/second financial upgradation, the employee concerned should have completed 12/24 years of regular service. In the case of the applicant, she was initially appointed as Junior Clerk and she got one promotion as Store Keeper with effect from 27.3.1998. When she completed 24 years of regular service on 29.5.2008, she was given the 2<sup>nd</sup> financial upgradation under the ACPS, considering her regular service from 30.5.1984. They have denied her contention that ad hoc service rendered by her prior to her regular service has been counted for promotion to the post of Store Keeper and therefore, the same is to be treated as regular service for the purpose of grant of ACPS. Even though it has been stated in the recruitment rules that for promotion to the post of Store Keeper, the Junior Clerk with three years experience is enough for consideration, she had put in 14 years of regular service from 30.5.1984 to get

her promotion as Store Keeper with effect from 27.3.1998.

5. We have heard the learned counsel on both sides. The Doubt raised at item No.11 in the Annexure A-6 OM is whether the ad hoc service rendered by an employee prior to his date of regular appointment can be counted for the purpose of ACPS or not. The clarification given is an emphatic NO. It is stated further that in terms of Para 3.2 of the OM dated 9.8.1999 only regular service are counted for the purpose of upgradation under the ACPS. However, the definition of 'regular service' for the purpose of ACPS contained in Para 3.2 of the scheme is the "eligibility service" counted for regular promotion in terms of relevant recruitment rules. In other words, if the service rendered by a Government employee whether ad hoc or substantive, is the "eligible service" counted for regular promotion, such service can be taken into consideration for granting financial upgradation under the ACPS. According to the recruitment rules for the post of Store Keeper to which the applicant was regularly promoted, the qualification required is 3 years experience as Junior Clerk. There is no mention whether the experience as Junior Clerk should be against an ad hoc vacancy or a substantive vacancy. In the absence of such clarification, it is obvious that the service rendered as Junior Clerk for 3 years on ad hoc basis also is to be reckoned for the purpose of promotion to the post of Store Keeper. It is, however, altogether a different thing that she was not promoted as Store Keeper after 3 years of service as a Junior Clerk on ad hoc basis or even on regular basis.

6. We have considered the submissions and arguments of the counsel for the parties. In our view, there is merit in the contention of the counsel for the applicant. What is stated in para 3.2 of the ACPS is quite unambiguous. It has been made clear that the "regular service" for the purpose of ACPS is the

"eligibility service" counted for regular promotion in terms of the relevant recruitment/service rules. In other words, the first and second financial upgradation under the ACPS are granted only after the regular service of 12 years and 24 years respectively which would mean that the employee concerned should have put in the required number of years of substantive service. However, in cases where the "regular service" is "eligibility service" counted for regular promotion in terms of the relevant recruitment/service rules, such eligibility period is to be reckoned for determining the total service rendered by the employee for the purpose of grant of financial upgradation under the ACPS. As the eligibility service for promotion of the applicant as Store Keeper is only 3 years of service as Junior Clerk, the service rendered by her as Junior Clerk, irrespective of it was ad hoc or substantive, shall count for her promotion as Store Keeper.

7. In view of the above position, the O.A is allowed. Annexure A-10 Memo dated 8.1.2009 is quashed and set aside. It is declared that the applicant is entitled to have the benefit of 2<sup>nd</sup> financial upgradation in scale Rs.5000-8000 granted with effect from 9.11.2002 as per the ACPS. Consequently, the respondents are directed to grant the 2<sup>nd</sup> financial upgradation to the applicant accordingly along with the arrears of pay and allowances arising therefrom within a period of two months from the date of receipt of copy of this order. There shall be no order as to costs.

  
K NOORJEHAN  
ADMINISTRATIVE MEMBER

  
GEORGE PARACKEN  
JUDICIAL MEMBER