

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 172 of 2004

Monday, this the 13th day of December, 2004

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. A.K. BHATT, ADMINISTRATIVE MEMBER

1. K.G. Vimala,
W/o Shri P.N. Pankajakshan Pillai,
Senior Clerk, Central Institute of
Fisheries, Nautical and Engineering
Training (CIFNET), Kochi,
Residing at: "Rail View",
Old St. Augustine Road,
Ernakulam North, Cochin-18 Applicant

[By Advocate Shri T.C. Govindaswamy]

Versus

1. Union of India represented by the Secretary to the Govt. of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying, New Delhi.
2. The Director, Central Institute of Fisheries, Nautical and Engineering Training (CIFNET), Kochi.
3. The Senior Administrative Officer, Central Institute of Fisheries, Nautical and Engineering Training (CIFNET), Kochi. Respondents

[By Advocate Shri Thomas Mathew Nellimootttil]

The application having been heard on 13-12-2004, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant commenced service as a Junior Clerk under respondents 2 and 3 on 6-7-1969. On 28-1-1982 she was promoted as Senior Clerk in the scale of pay of Rs.330-560. By order dated 20-3-1998 she was offered promotion as Accountant, which she declined. She completed 24 years of service on 6-7-1993. By Annexure A5 order dated 25-1-2000 the applicant was given

two financial upgradations with effect from 9-8-1999. The grievance of the applicant is that without any notice and for no justifiable reason by Annexure A1 order dated 12-2-2004 the second financial upgradation granted to the applicant was cancelled intimating her that steps for recovery of overpayment would be taken. Since Annexure A1 order was issued based on Annexure A7 reply to audit query, the applicant has filed this application seeking to set aside Annexure A1 and A7 and for a direction to the respondents to continue to grant the applicant the benefits of Annexure A4 as if Annexure A1 order has not been issued at all. It is alleged in the application that as the applicant has neither offered nor declined second promotion till completion of 24 years of service the decision taken in the impugned order is unsustainable.

2. Respondents seek to justify the impugned action on the ground that since the applicant has, while working as Senior Clerk, refused to accept the promotion as Accountant offered on 20-3-1998, in terms of the clarifications issued by the Department of Personnel and Training (Annexure R3 - against Doubt 38) the applicant is not entitled to the financial upgradation and therefore the impugned orders have been issued only to rectify the mistake committed. Regarding the claim that the impugned order was issued without notice, it has been contended that the applicant had at the time when the benefit under the ACP Scheme was granted undertaken to refund if any benefit not due had been given to her.

3. We have carefully gone through the pleadings and all the materials available on record and have heard the learned counsel on either side.

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4. The undisputed facts of the case are that the applicant who commenced service on 6-7-1969 completed 24 years of service acquiring eligibility for the second financial upgradation for not getting the second promotion on 6-7-1993 and that till that date the applicant had not refused to accept any promotion. Learned counsel of the applicant argued that since the applicant did not get the second promotion till she completed 24 years of service, her declining promotion offered 5 years thereafter would not take away the eligibility acquired by her for second financial upgradation under the Scheme by continuing in service for 24 years and not getting the second promotion. The effect of declining to accept promotion, according to the learned counsel, is that the official would be debarred from promotion for a period of one year and that the period during which the incumbent was debarred would not be counted for reckoning 24 years of service for eligibility for the second financial upgradation. Since it is undisputed that the applicant had not refused promotion till she completed 24 years of service, the contention of the respondents that the applicant was ineligible for the second financial upgradation because she had refused to accept promotion offered in the year 1998 is unsustainable, argued the learned counsel.

5. Learned counsel of the respondents, on the other hand, argued that the Scheme for financial upgradation having been evolved with the laudable objective mitigating the conditions of persons stagnating for want of promotional avenues and not for upgradation of persons who declined to accept promotion and the scheme being only prospective in operation, if an officer declines to accept promotion even after completion of a period of 24 years, he would not be entitled to the benefit of second financial upgradation.

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6. On a perusal of the scheme for financial upgradation and on consideration of the rival contentions in the light of the scheme and the relevant materials, we find that there is no substance in the contention of the respondents that, even if the applicant did not decline promotion for 24 years but has refused to accept the promotion offered at any time thereafter, he would not be entitled to the financial upgradation is not tenable. Paragraph 5.1 deals with the relevant period of non-availing of promotion to become eligible for the financial upgradation under the Scheme. It reads as follows:-

"5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him; ..."

7. The eligibility condition No.10 under the ACP Scheme deals with the effect of declining to accept promotion, which reads as follows:-

"10. Grant of higher pay scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. ..."

8. It would be discernible from what is quoted above that the effect of declining to accept promotion would be debarment for a period of one year for promotion and that this period would not be counted for reckoning the eligibility service for second financial upgradation. Thus, if a person has not been offered two promotions during the period of 24 years, on expiry of a period of 24 years with effect from the date on which the date of commencement of the ACP Scheme he would not be entitled to the first and second financial upgradations. The declining to accept promotion after 24 years would not disentitle a person who has already completed the eligibility period for the two financial upgradations. In the circumstances, we find that there is no substance in the opinion of the internal check audit based on which Annexure A7 orders have been issued and that Annexure A1 order also is not sustainable in law.

9. In the light of what is stated above, we allow the Original Application. The impugned orders Annexure A1 and A7 are set aside. The respondents are directed to continue the applicant financial upgradation already granted to her. There is no order as to costs.

Monday, this the 13th day of December, 2004



A.K. BHATT
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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