

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.175/2001

Friday this the 12th day of April, 2002.

CORAM:

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

HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.K.Rajan,
S/o. Late M.A.Kunju,
Laboratory Assistant,
Integrated Fisheries Project,
Kochi-16. .. Applicant

(By Advocate Sri V.R.Ramachandran Nair)

vs.

1. Union of India represented by
The Secretary, Ministry of Agriculture,
Deptt. of Animal Husbandry & Dairying,
Krishi Bhavan, New Delhi.
2. The Secretary,
Ministry of Personnel, Public Grievances &
Pension,
Department of Personnel & Training,
New Delhi.
3. The Director-in-Charge,
Integrated Fisheries Project, Kochi-16.
.. Respondents

(By Advocate Sri C.Rajendran, SCGSC)

The Application having been heard on 6.3.2002, the Tribunal
on 12.4.2002 delivered the following:-

ORDER


HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The grievance of the applicant a Laboratory Assistant in the Integrated Fisheries Project, Cochin is that the financial upgradations 1 and 2 under the Assured Career Progression Scheme given to him by Annexures A5 and A8 orders, are not on the proper scale and that whatever benefit had been inadequately granted under these two orders are being unjustifiably taken away by Annexure A10 order dated 20.1.2001. He has therefore filed this application seeking to set aside the Annexures A5, A8 and A10 to the extent they adversely affect him and for a direction to the respondents to grant the applicant the pay scale of Rs.

6500-200-10500 as the first ACP with effect from 9.8.99 and the scale of Rs.7450-225-11500 as the second ACP with effect from 15.9.2000 with all consequential benefits. The facts relevant for a disposal of this application can be briefly stated as follows.

2. On 16.9.1976 the applicant was appointed by direct recruitment as a Processing Assistant in the scale Rs.380-560, with effect from 21.1.1981 the applicant was promoted as Laboratory Assistant in the scale Rs. 425-700. On implementation of the report of the 4th Central Pay Commission, the posts of Processing Assistant as also Laboratory Assistant were placed in the same pay scale of Rs.1400-2300 with effect from 1.1.86. The claim of the applicant for a higher pay scale for Laboratory Assistant than that of the Processing Assistant which was a feeder grade was rejected and the O.A. 222/98 filed by the applicant for placement in the higher pay scale was dismissed. While so, on implementation of the report of the 5th Central Pay Commission, 6 posts of Processing Assistant and 2 posts of Laboratory Assistant in the Integrated Fisheries Project, Cochin were merged to form a common feeder grade for promotion to the grade of Processing Technologist. These posts were granted the replacement scale of Rs.5000-8000. Thereafter the applicant by representation dated 19.2.2000 sought conferment of the first ACP in the scale of Rs.6500-200-10500 on completion of 12 years of service from his initial appointment as Processing Assistant. The third respondent issued Annexure A5 order granting the applicant first ACP in the scale of

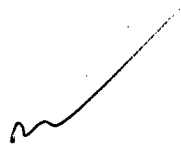
Rs.5500-175 -9000 with effect from 9.8.1999 . Since the next promotional post of the Processing Assistant as also Laboratory Assistant is Processing Technologist in the scale of Rs.6500-10500, the applicant submitted Annexure A6 representation seeking correct fixation of pay giving him the benefit of first ACP in the scale of Rs.6500-10500 with effect from 9.8.99. Thereafter to the dismay of the applicant, the third respondent issued Annexure A10 order dated 20.1.2001 stating that as the applicant had availed one promotion from Processing Assistant to Laboratory Assistant prior to 1.1.96 he was eligible only for the second financial upgradation in the scale Rs.6500-200-10500 applicable to the hierarchial grade of Processing Technologist with effect from 15.9.2000 , that therefore the grant of first ACP to the applicant in the scale of Rs.5500-175-9000 with effect from 9.8.99 was not in order and that the first ACP inadvertantly given to the applicant would be withdrawn referring to a letter of the Ministry dated 3.1.2001 .As the applicant was not served with a copy of the letter of the Ministry dated 3.1.2001 mentioned in Annexure A10 order even on his request, the applicant has filed this application seeking to set aside the Ministry's letter No.5-46/2000-Fy(A) dated 3.1.2001 to the extent it adversely affects him and Annexures A5, A8 and A10 to the extent they affects him and for a direction to the respondents to grant the pay scale of Rs.6500-200-10500 as



first ACP with effect from 9.8.99 and the scale of Rs.7450-225-11500 as the second ACP with effect from 15.9.2000 with all consequential benefits.

3. The respondents contend that the applicant having been promoted to the post of Laboratory Assistant in 1981 in terms of the provisions of the scheme for grant of financial upgradation, he is not entitled to the first financial upgradation on completion of 12 years of service, but is entitled to the second financial upgradation in the next higher grade in the hierarchy. They contend that the Ministry has clarified that as the applicant was promoted as Laboratory Assistant in 1981 before the recommendation of the 5th Central Pay Commission were implemented with effect from 1.1.96 his case was not covered by the clarification contained in the Government of India, Department of Personnel and Training O.M. No.35034/1/97-Estt(D)(Vol.IV) dated 10.3.2000 (Annexure A4) and that accordingly, the action on the part of the respondents in taking away the first financial upgradation wrongly given and to grant only the second financial upgradation in the relevant hierarchial grade was perfectly in order.

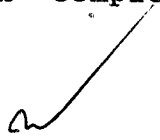
4. In the rejoinder filed the applicant contend that what is contained in Annexure R3(a) the letter of the Ministry dated 3.1.2001 is unsustainable in view of what is



contained in the Government of India, Department of Personnel and Training O.M. No.350341/9/97 Estt-D Vol.IV dated 18.7.2001 (Annexure A12).

5. The short question that arises for consideration for a disposal of the controversy in this case is " whether when two posts carrying different pay scale constituting two rungs in a hierarchy have been placed in a common pay scale as a result of rationalisation of pay scales, a person promoted to the higher of the two grades before equalisation is entitled to count his service in the lower scale for the purpose of benefits under the ACP scheme ?".

6. On facts there is no dispute .The applicant was promoted from the post of Processing Assistant in the scale Rs.380-560 to the post of Laboratory Assistant in the scale Rs.425-700 which was next in the direct line of hierarchy. It was thereafter that on implementation of the recommendation of the 4th Central Pay Commission ,that the post of Processing Assistant as also Laboratory Assistant were brought under the common pay scale of Rs.1400-2300. On implementation of the report of the 5th Central Pay Commission, these posts were placed in the common pay scale of Rs.5000-8000. According to the applicant financial upgradation is to be given to him to the next higher grade of Rs.6500-10500, the scale of pay of the Processing Technologist which is the next promotional post on completion of 12 years of service and to the scale of Rs.7450-225-11500 as the second ACP with effect from 15.9.2000 on completion of 24 years of service. Sri



Ramachandran Nair, the learned counsel of the applicant invited our attention to the clarification contained in the Government of India, Department of Personnel and Training O.M. No. 35034/1/97-Estt(D) (Vol IV) dated 10.2.2000 (Annexure A4) on Doubt No.1 . It is profitable to extract the clarification which reads as follows:-

"S.No.	Point of Doubt
1.	

Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay scale as a result of rationalisation of pay scales. This has resulted into change in the hierarchy in as much as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration:

Prior to the implementation of the Fifth Central Pay Commission recommendation two categories of posts were in the pay scale of Rs.1200-1800 and Rs.1320-2040 respectively: the latter being promotion post for the former. Both the posts have now been placed in the pay scale of Rs.4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases?.


Clarification:

Since the benefits of upgradation under ACP Scheme (ACPs) are to be allowed in the existing hierarchy, the mobility under ACPs shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPs ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade."

The learned counsel argued that in view of the clarification of the doubt , promotion availed by the applicant to the post of Laboratory Assistant is required to be ignored and the applicant became entitled for first ACP in the scale of

Rs.6500-10500 on 9.8.99 and the second ACP in the scale Rs.7450-11500 with effect from 15.9.2000 on completion of 24 years of service. The learned counsel of the respondents on the other hand argued that as clarified by the Ministry's letter dated 3.1.2001(Annexure R3(a)) as the applicant had been given one promotion from the post of Processing Assistant to Laboratory Assistant earlier than the recommendations of the 5th Central Pay Commission which were made applicable from 1.1.96, the applicant's case was not covered by the clarification at Sl.No.1 in Annexure A4. We find considerable force in the argument of the learned counsel of the applicant and little force in the contention of the respondents. Just because a doubt was entertained while implementing the Assured Career Progression Scheme and as an illustration, the merger of two scales into one on the recommendation of the 5th Central Pay Commission was given. It does not mean that if an anomalous situation would result on amalgamation of two pay scales into one on implementation of the previous Pay Commission recommendation, the method of reckoning service for ACP would be different. The above position would be further more clear from the clarification to Doubt No.52 regarding ACP Scheme issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training dated 18.7.2001(Annexure A12 i.e. Annexure R3(d)). For convenience sake, the same is extracted below:-


"Doubt 52:- Following the recommendations of the Pay Commission, feeder and promotional posts have been placed in the same scale. Consequently, hierarchy of a post comprises of Grades 'A', 'A',



and 'C', i.e., the entry level and the first promotional grade are in the same scale. What shall be his entitlements under ACPs?

Clarification:- Normally, it is incorrect to have a feeder grade and a promotional grade in the same scale of pay. In such cases, appropriate course of action is to review the cadre structure. If as a restructuring, feeder and promotional posts are merged to constitute one single level in the hierarchy, then in such a case, next financial upgradation will be in the next hierarchical grade above the merged levels and if any promotions has been allowed in the past in grades which stand merged, it will have to be ignored as already clarified in reply to point of Doubt No.1 of O.M. dated 10.2.2000. However, if for certain reasons, it is inescapable to retain both feeder and promotional grades as two distinct levels in the hierarchy though in the same scale of pay, thereby making a provision for allowing promotion to a higher post in the same grade, it is inevitable that benefit of financial upgradation under ACPs has also to be allowed in the same scale. This is for the reason that under the ACPs, financial upgradation has to be allowed as per the 'existing hierarchy'. Financial upgradation cannot be allowed in a scale higher than the next promotional grade. However as specified in Condition No.9 of the ACP Scheme (vide DOP&T, O.M. dated 10.2.2000, pay in such cases shall be fixed under the provisions of FR 22(1) (a)(1) subject to a minimum benefit of Rs.100."

It is to be noted that in this clarification no reference has been made with regard to merger of two pay scales into one level on the basis of any particular Pay Commission report. Therefore it is obvious that for implementation of the ACP Scheme if the two posts in the hierarchy have been merged into one level, the promotion to the higher level before merger is to be ignored, otherwise it would result to an inequitable and anomalous situation where the juniors would become entitled to the 1st financial upgradation while seniors would not get it. Learned counsel of the respondents argued that as it has been mentioned in the clarification that if it is inescapable to retain both a feeder and the promotional grades as two distinct level in the hierarchy, though in the same pay scale providing for a



promotion in a higher post in the same grade, the benefit of financial upgradation under ACPs has to be allowed in the same scale. In the instant case there is no case for the respondents that for inescapable reasons, the posts of Processing Assistant and Laboratory Assistant were retained as two distinct hierarchial levels. As a matter of fact both these posts have been made feeder category for promotion to the post of Processing Technologist. Under these circumstances, we are of the considered view that the stand taken by the respondents to deny the first ACP to the applicant to the scale of Rs.6500-10500 with effect from 9.8.99 is unsustainable.

7. In the light of what is stated above, we find that the applicant is entitled to succeed in this application. We accordingly allow this application, set aside the impugned orders Annexures A5, A8 and A10 and direct the respondents to consider the applicant for grant of the scale of Rs.6500-10500 as first ACP with effect from 9.8.99 and the second ACP in the scale of Rs.7450-11500 with effect from 15.9.2000 as the applicant had on these dates become eligible for the first and second ACPs respectively and issue the consequential orders. The above directions shall

be complied with and the financial benefits flowing therefrom shall be made available to the applicant as expeditiously as possible at any rate not later than two months from the date of receipt of a copy of this order. No costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

/njj/

APPENDIX

Applicant's Annexures:

1. Annexure A1 True copy of order No.5/16/96-FY(Admn) dt. 8.12.97 issued by the Joint Secretary to the Government of India, Ministry of Agriculture (Deptt. of Animal Husbandry & Dairying), New Delhi.
2. Annexure A2 True copy of judgment dt.5.9.2000 in O.A.No.222/98 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench.
3. Annexure A3 True copy of the ACP Scheme approved by the Government as per G.I.Department of Personnel & Training O.M.No.35034/1/97-Estt(D) dated 9.8.99.
4. Annexure A4 True extract of the relevant portion of the clarificatory order No. 35034/1/97-Estt(D)(Vol IV) dated 10.2.2000.
5. Annexure A5 True copy of the office order No. 82/2000(No.A1/2/97/Part III dated 18.8.2000 issued by the 3rd respondent granting 1st ACP to the applicant in the grade of Rs.5500-175-9000.

6. Annexure A6 True copy of representation dated 25.8.2000 submitted by the applicant to the first respondent.
7. Annexure A7 True copy of pay fixation statement No.A1/1-1/2000 dated 28.8.2000 issued by the Accounts Officer, Integrated Fisheries Project, Kochi-16.
8. Annexure A8 True copy of office order No. 110/2000(No.A1/1-2/97/Part III)dt. 2.11.2000 issued by 3rd respondent granting the II ACP in the pay scale of Rs.6500-200-10500 w.e.f. 15.9.2000.
9. Annexure A9 True copy of pay fixation statement dated nil issued by the Accounts Officer, Integrated Fisheries Project, Kochi-16.
10. Annexure A10 True copy of memo No.A1/1-2/97/Part-V/37 dated 20.1.2001 issued by the 3rd respondent.
11. Annexure A11 True copy of representation dated 24.1.2001 submitted by the applicant to the 3rd respondent.

Respondent's Annexures:

1. Annexure R3A Photocopy of the order No.5-46/2000-Fy(A) dated 3.1.2001 of the Ministry of Agriculture, New Delhi.
2. Annexure R3B Photocopy of the order No.15-2001 dated 2.2.2001 of the 3rd respondent.
3. Annexure R3C Photocopy of the revised pay fixation statement in respect of the applicant.