

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.215/2011

....., this the 14 day of February 2012

CORAM:

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

Suresh P
 S/o.M Balakrishnan Nair(Late)
 Lower Division Clerk, Inspectorate Dock Safety(IDS)
 Government of India, Ministry of Labour and Employment
 G.V Iyer Road, Wellington Island,
 Kochi – 682 003
 Now residing at Ganesh Vihar
 Vadakkencherry P.O
 Palakkad, Kerala – 678 683

Applicant

(By Advocate Mr.B Harish Kumar)

Versus

1. Union of India, Represented by the Secretary
 Ministry of Labour and Employment
 Shram Shakthi Bhavan, Raffi Marg
 New Delhi – 1
2. Director General
 Directorate General Factory Advice Service and Labour
 Institutes (DGFASLI), SION
 CLI Building, Bombay -22
3. The Assistant Director (Safety)
 Inspectorate Dock Safety (IDS)
 Government of India, Ministry of Labour and Employment
 G.V Iyer Road, Wellington Island,
 Kochi – 682 003

- Respondents

(By Advocate Mr.George Joseph, ACGSC)

The application having been heard on 03.02.2012 , the Tribunal
 on 14.02.2012 day delivered the following:

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ORDERHON'BLE Ms.K NOORJEHAN, ADMINISTRATIVE MEMBER

1. The applicant is aggrieved by the denial of 2nd ACP as on 23.03.2007.
2. The applicant commenced his service as LDC on 23.03.1983 and was granted the first ACP on 09.08.1999 as UDC in the revised pay scale of Rs.4000-6000. During the year 2002 his willingness was sought for promotion to the post of UDC. The applicant gave his consent. There were only three vacancies and his name figured only at Serial No.7 in the DPC panel. The first three senior most candidates accepted the promotion. Subsequently, the respondents again circulated information regarding availability of another two posts of UDC in Jun 2003 and he was placed at serial No.2 in the DPC panel. However, he refused the promotion. No DPC was convened in 2004, 2005 and 2006 and hence no promotion to UDC was effected. The 2nd respondent issued office memorandum dated 01.02.2007 vide Annexure A-6 and as per the same, the applicant was placed at serial No.3 in the DPC panel. The senior most official refused the promotion and there was only one vacancy and he was the third official in the DPC panel. Respondents vide Annexure A-8 and Annexure A-9 issued memorandum intimating him that he received his First ACP and he refused two promotions and hence there was no scope of his 2nd ACP prior to 01.09.2008. As ACP Scheme has been substituted by MACP w.e.f 01.09.2008, he is only eligible for 2nd MACP from 01.09.2008. The applicant took up the matter vide Annexure A-10 on 03.05.2010 with the respondents. As there was no response, he sent a reminder to Annexure A-9 on 16.09.2010. This representation was considered and the impugned



Annexure A-11 order was issued informing him that his second financial upgradation under ACP got postponed by 2 years i.e. to 23.02.2009 and hence he is to be covered only by the MACP which came into effect on 01.09.2008. The applicant avers that his effective promotion was only for the year 2003 when there were three vacancies and he was the second senior most employee and the applicant is eligible for second financial up-gradation with effect from 23.8.2008. The denial of such ACP benefit to the applicant defeats the right conferred under Article 16(1) of the Constitution of India.

3. The respondents in their reply submitted that in the normal course he would have been eligible for 2nd financial upgradation after completion of 24 years of service i.e, on 23.03.2007. However, as he refused promotion twice, debarment period of two years will be reduced from his eligibility period and he would have been eligible for 2nd financial upgradation from 23.03.2009. In the meantime, the government introduced Modified Assured Career Progression Scheme (MACP) with effect from 01.09.2008 vide O.M No.35034/3/2008-Estt.(D) dated 19.05.2009 (R-2) and he became eligible for 2nd financial upgradation under MACP Scheme with effect from 01.09.2008 which was granted to him.

4. Arguments were heard and pleadings perused.

5. It is an undisputed fact that the applicant gave his willingness for consideration for promotion to UDC during the years 2002, 2003 and 2007 against three, two and one vacancy respectively. It is seen that the respondent department has adopted a procedure of calling for willingness from officials in the zone of consideration before the DPC is convened. So an extended panel of officials due for promotion is prepared based on the recommendations of the DPC. In the year 2002 the applicant's name figured

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at Serial No.7 and three senior officials were promoted. During the next year in 2003, there were two vacancies and the applicant was the second senior most. Since the applicant declined promotion he was debarred for promotion for one year. During the year 2007, there was only one vacancy, and his name was at serial No.3 and no junior to him was promoted. Eventhough, willingness is given when no promotion order is issued to the applicant there cannot be any debarment for promotion for one year which happened in 2002 & 2007. Unless the promotion and posting order is issued to the applicant and he gives a letter of declining in writing the respondents cannot treat it as refusal. Obviously, in 2002 & 2007 no promotion order would have been issued to the applicant as his seniors accepted the promotion and his turn for promotion did not come. The official has given his willingness and refused promotion when the promotion and posting order was issued to him in 2003. There were only two vacancies and he was the second senior most official. Therefore, the respondents have rightly contended that he stands debarred for one year from 2003.

6. It is only for the convenience of administration that the respondents are following a procedure of calling for willingness from all the officials in the zone of consideration. In case, the willingness is called only from those officials who are senior most and due for promotion against the available vacancies administration will be faced with the prospect of convening DPC frequently since those in the main DPC panel may refuse promotion if it involves a change of station. A procedure which is being adopted for the smooth flow of work and in the interest of administration cannot be used to the disadvantage of the employees. Therefore, the debarment of promotion will apply to the applicant only for the year 2003. During 2002 & 2007 his

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junior was never promoted as his seniors accepted the promotion. The applicant has averred that due to certain domestic problems he came from Bangalore to Kochi on request transfer in the month of August 2006 and hence he was not in a position to go to a far away place on promotion once again. So in our considered opinion the debarment will be valid only for the year 2003 when the applicant declined to accept the promotion after giving his willingness.

7. However, the clarification given by the DOPT in its office memorandum No.35034/1/97-Estt.(D) dated 09.09.1999, does not come to the aid of the applicant. Condition No.10 for grant of benefits under the ACP Scheme, given in Annexure A-1 shows that counting from the year promotion is refused, and one year of debarment his date of ACP will stand postponed. A further clarification was given by the Estt(D) Section of DOPT, MPPG and P in its note dated 15.11.1999 and O.M No.35034/1/97-Estt(D) (Vol(IV)) dated 10.02.2000. The relevant para is extracted below.

“ An employee who has not accepted the normal Vacancy Based Promotion shall not be entitled for upgradation under ACP Scheme, unless he accepts the regular promotion after completing the period of debarment on refusal of promotion. The condition is applicable for 1st and as well as 2nd ACP. In other words, no upgradation, whether 1st or 2nd shall be allowed to an employee, if he has refused Vacancy Based Promotion.”

8. In view of the foregoing, this O.A is devoid of merit and is dismissed. No costs.

(Dated, this the 14th day of February, 2012)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


DR.K.B.S RAJAN
JUDICIAL MEMBER

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