

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 23/2005

TUESDAY, THIS THE 10th DAY OF OCTOBER, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER**

- 1 All India Naval Clerks Association
No. XXXIX/6304, Alappat Road
Ravipuram, Kochi-16
represented by its General Secretary
KS Babu working as Security Assistant
Head Quarters, Southern Naval Command
Kochi-4

- 2 K.G. Lakshmikutty
UDC, INS Venduruthy
Naval Base, Kochi-45

Applicants

By Advocate Mr. S. Radhakrishnan

Vs.

- 1 Union of India represented by
the Secretary, Ministry of Defence
New Delhi.
- 2 The Chief of the Naval Staff
Naval Headquarters
New Delhi-110011
- 3 The Chief Staff Officer (P&A)
Hqrs Southern Naval Command
Kochi-682 004

Respondents

By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This original application has been filed seeking the following
reliefs:

- (a) call for the records connected with the case

- (b) declare that the decision of this Honourable Tribunal at Annexure A1 is a judgement in rem
- © direct the respondents to extend the same benefits granted at Annexure A1 to all similarly situated employees who have not been extended the same benefits till now
- (d) pass such other reliefs as this Honourable Tribunal may deem fit, just and proper in the facts and circumstances of the case.

2 The applicant association represents the clerical staff in the Ministerial cadre which includes LDCs, UDCs, Hindi Typists and Assistants working in the establishments under the Indian Navy. The applicants are aggrieved by the refusal on the part of the respondents in implementing the order passed by this Tribunal declaring that the applicants are entitled to ACP scheme on the basis of their regularization from the date of initial appointment including the service rendered on casual basis and directing the respondents to grant all consequential benefits of the scheme to the applicants, to all similarly situated persons working in the Navy and thus dragging them to unnecessary litigation before this court even though the Association was the 1st applicant in the first OA.

3 The applicant, All India Naval Clerks' Association along with 3 individuals approached this Tribunal by filing OA 755 of 2000 for a declaration that the applicants are entitled to the benefit of ACP scheme on the basis of date of regularization and it was allowed. Even after the OP was dismissed by the High Court, the respondents refused to implement the order and the applicant filed CPC 39/2003

before this Tribunal. The respondents then informed the court that 'Govt has approved the implementation of the CAT order in OA 755/2000 to the applicants as well as those who are members of AINC association and petitioners to the OA irrespective of their place of work' and recording the above the CPC was closed. But it is submitted by the applicants that the respondents are not honouring the undertaking given by them and individual applicants are being forced to approach the tribunal. For example, in OAs 599/03, 664/03, 1001/03 and 706 Of 2003, the respondents stated that they did not wish to contest the claims and granted the benefit as ordered by the Tribunal to the applicants therein. In short, the applicant association has submitted that the department is insisting that they should get individual and specific orders in this regard from the Tribunal and the only reason for the respondents to deny the benefits to the identically situated members of the association is that they are not parties to the original application and as far as certain other persons are concerned they became a member of the Association after filing of OA 755/2000.

4 The Learned counsel for the applicants submitted that in Inder Pal yadav v. Union of India (1985 (2) SLR 2481) and K.C.Sharma v. Union of India the Apex court has held that relief granted to certain individuals in law cannot be denied to those who are similarly situated merely because they have not come to the court earlier. In 1997 2 SCC 3 Ashwini Kumar v State of Bihar, (1997 2 SCC 3) the

Hon'ble Court specifically directed that all affected persons whether party or not should be included while granting the relief. He also relied on the decision of the Ahmedabad bench of this Tribunal in OA No.148 of 2003 wherein it was held that if the applicants are identically placed with the earlier applicants in the OA which has been allowed, there is no reason whatsoever not to extend the benefit to the applicants of the other OAS and directed the respondents to treat the decision as a judgement in rem and extend the same benefits to all similarly situated employees.

5 The respondents have filed a reply statement. They have submitted that on the basis of the Tribunal's direction contained in the order dated 20th September 2002 in OA755/2000, all the clerks who have been members of All India Clerks association as on 22nd June 2000, the date of filing of the said OA, and who were found to have been eligible for the benefits of ACP, had been granted the same. According to them no report in writing has been made to the respondents by the applicant's association till the date of filing this OA regarding non extension of ACP benefits to any one of its members who were eligible for such benefits. The applicant association cannot make a claim for extension of the benefits of the court order to similarly situated persons who have taken membership after filing OA755/00 or after the decision in the said OA and hence their stand is that the subject of the OA appears to be in the nature of a Public interest litigation which is not maintainable and liable for

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dismissal on that count alone.

6 We have heard the Learned Counsel Sri S. Radhakrishnan for the applicant and Sri Rajeev for the respondents and perused the material on record and the judgements referred to by the parties.

7 The applicant association in this OA was the applicant before this Tribunal in the earlier OA No.755/00 and the issue raised therein was the same i.e. to declare that the applicants are entitled to the benefit of the ACP scheme of the Govt of India on the basis of the date of regularization. The tribunal had given a categorical finding that the applicants are entitled to ACP scheme on basis of their regularization from their date of initial appointment. These facts are not in dispute. It is also not disputed that the applicant Association represents the ministerial cadre of LDCs, UDCs etc in the establishments under the Navy. In the face of these facts, the contention of the respondents that they are bound to extend the benefits as directed in the tribunal's order only to the members of the Association is arbitrary, illegal and highly objectionable. The Tribunal's order is not a benefit granted to the service Association but a declaration of a principle which should be uniformly applied to all the employees similarly situated irrespective of whether they are members of an association or not. It is the prerogative ^{of} ~~an~~ ^{but he} employee ^{can} always exercise his choice to become a member of an association or not. Membership of a service association is

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subject to change and does not remain constant over a period of time. There is no relationship between the ACP scheme and membership of the Association. The fact that the Association came forward to file an application before the Tribunal does not imply that those who are similarly placed should be denied the benefit. Such an interpretation by the respondents is highly mischievous and intended only to cause maximum harm to the employees by dragging them to the courts again and again. The Apex Court has come down heavily on such practice and cautioned that once a decision has been rendered on a principle and a declaration made, all similarly placed persons should be granted the same benefits without their having to approach the courts for similar relief.

8 In the result, we hold that all those who are similarly placed like the applicants in the earlier OA No. 755/00 shall be extended the same benefits granted in Annexure A1 judgement and declare that the decision of this Tribunal in the above judgement is a judgement in rem so that future litigation on this subject can be avoided.

OA is allowed.

Dated 10.10.2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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