

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 231 OF 2010

Wednesday, this the 16th day of February, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. K.C.Supran
Fitter (Integrated Fisheries Project)
Fisheries Survey of India, Kochi – 682 016
2. K.M.Subramanyan
Black Smith (I.F.P) Now working at
Fisheries Survey of India, Kochi – 682 016 ... Applicants

(By Advocate Mr.T.Niklauva – Not present)

versus

1. Union of India represented by the Secretary
Ministry of Agriculture
Department of Animal Husbandry & Dairying
Krishi Bhawan, New Delhi – 1
2. The Director
National Institute of Fisheries Post Harvest
Technology and Training
Government of India, Kochi – 16
3. Zonal Director
Fishery Survey of India
Kochi – 682 016 ... Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

Neither the counsel nor the applicant is present. OA is dismissed for default. No costs.

Dated, the 16th February, 2011.


**K GEORGE JOSEPH
ADMINISTRATIVE MEMBER**


**JUSTICE P.R.RAMAN
JUDICIAL MEMBER**

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 231 OF 2010

Tuesday, this the 20th day of September, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. K.C.Supran
Fitter (Integrated Fisheries Project)
Fisheries Survey of India, Kochi – 682 016
2. K.M.Subramanyan
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(By Advocate Mr. T.Niklauve)

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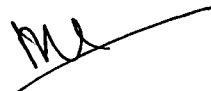
(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 20.09.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The 1st applicant is working as a Fitter and the 2nd applicant is working as a Blacksmith in the National Institute of Fisheries. They were earlier working in the Integrated Fisheries Project. Both of them entered into service in the year 1982 and 1985 respectively. As no actual



promotion given to the applicants, based on the scheme for financial upgradation introduced with effect from 1996, the applicants were given the 1st Financial upgradation only with effect from 09.08.1999 in the pay scale of ₹ 4500-7000. According to the applicants, they are entitled to get the 1st Financial Upgradation under the ACP Scheme with effect from 01.01.1996 in the pay scale of ₹ 5000-8000. They also placed reliance on the decision of this Tribunal in OA 637/2003 in support of their contention. Even they made representations by Annexures A-4 and A-5, there was no response to the same. Hence they have filed this OA for necessary reliefs.

2. It is contended that the Government of India after accepting the 5th Central Pay Commission recommendations have granted the pay scale of ₹ 5000-8000 to the Technical staff and the respondents were granted the said scale to those applicants in OA 637/03 who were all Assistant Foreman. According to the applicants, they are similarly situated and they are entitled to get similar benefits and denial of such benefits is arbitrary and illegal and they seek appropriate direction to refix the 1st Financial Upgradation in the pay scale of ₹ 5000-8000 with effect from 01.01.1996.

3. In the reply statement filed by the respondents it is admitted that the 1st applicant was appointed as Fitter on 03.11.1982 and the 2nd applicant as Blacksmith with effect from 27.02.1985 Both of them were under the 2nd respondent in the posts carrying the same scale of pay. The next hierarchical post as per the existing Recruitment Rules was Assistant Foreman in the scale of ₹ 4500-7000. Consequent on the reorganistaion of the Integrated Fisheries Project, they were transferred to Fishery Survey of India and now they are working under the 3rd respondent. The 5th Central

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Pay Commission introduced the ACP Scheme for the Central Government civilian employees with effect from 09.08.1999. As per the scheme, two financial upgradations will be admissible to Groups 'B', 'C' and 'D' employees on completion of 12 years and 24 years of regular service subject to fulfillment of certain prescribed conditions. One of the conditions stipulates that fulfillment of normal promotion norms including benchmark, departmental examination etc. shall be ensured for grant of such benefits. It is stated that the applicants have completed 12 years of regular service as on 09.08.1999 without any promotion, were granted 1st ACP to their respective hierarchical post of Assistant Foreman in the pay scale of ₹ 4500-7000 as per Annexures A-1 and A-2 respectively. The 5th Central Pay Commission recommended that the existing pay scale of ₹ 1400-2300 applicable to the post of Chargeman which belongs to Technical Supervisor cadre in workshops and for whom Diploma in Engineering of the relevant discipline or Graduation in Science has been prescribed as the required qualification may be revised to ₹ 1600-2600. Accordingly, the existing pay scale of ₹ 1400-2300 in respect of the posts viz., Chargeman / Chargeman 'B' / Chargeman (Technical) Grade II/ Junior Engineer Grade II (Workshop) which are categorized as Technical Supervisors under workshop staff was revised by Government to ₹ 5000-8000 with effect from 01.01.1996 vide Appendix B to the first schedule of CCS (Revised Pay) Rules, 1997. The post of Assistant Foreman, Ice Plant Operator and Freezing Plant Operator which carried the pre revised scale of pay of ₹ 1400-2300 could be considered as Technical Supervisors and comparable to Chargeman 'B' / Chargeman (Technical) Grade II/ Junior Engineer Grade II (Workshop) covered under the rules *ibid*. Though proposals were put forth by this respondent to the 1st respondent from 1998 onwards to consider



upgradation of the pay scale of the posts of Assistant Foreman, Ice Plant Operator and Freezing Plant Operator to Chargeman 'B' / Chargeman (Technical) Grade II/ Junior Engineer Grade II (Workshop) which are categorized as Technical Supervisors to ₹ 5000-8000, the same were not agreed to by the 1st respondent. Therefore, Shri N.K.Krishnankutty, Assistant Foreman and four other Assistant Foreman filed OA 637/03 before the Central Administrative Tribunal, Ernakulam Bench praying for grant of the scale of ₹ 5000-8000 instead of ₹ 4500-7000 already granted to them. It was allowed by this Tribunal on 17.11.2005 observing that there cannot be any discrimination between direct recruits and promotees in the same cadre so far as grant of pay scale is concerned and therefore the Tribunal declared that the applicants therein are entitled for the pay of ₹ 5000-8000 with effect from 01.01.1996 and also for arrears of pay in the revised scale of pay with effect from 01.01.1996. The said decision became final as the Writ Petitions were all dismissed. Subsequently, the decision of the CAT was implemented and pay scale was upgraded to ₹ 5000-8000 with effect from 01.01.1996 as per Annexure R-1 order. According to them, the 5th Central Pay Commission had recommended the pay scale of ₹ 1400-2300 applicable to the post of Chargeman which was of the Technical Supervisor cadre in the workshops and for whom Diploma in Engineering of the relevant discipline or Graduation in Science was prescribed to be revised to the scale of ₹ 1600-2600. The post of Assistant Foreman in the Workshop does not fall under the Technical Supervisory category and hence the normal replacement pay scale of ₹ 4500-7000 was allowed. Therefore, the applicants were granted the first Financial Upgradation under the ACP Scheme allowing the pay scale of ₹ 4500-7000 which was applicable to the post of Assistant Foreman being the



promotional posts for the posts of Fitter and Blacksmith.

4. We have heard the learned counsel for the applicants and also the learned counsel for respondents. After going through the reply statement, we find that the contention which they raised, in OA 637/03 which is repeated in the reply statement. The said contentions were rejected by this Tribunal and while upholding the contentions of the applicants in OA 637/03. Annexure A-3 is the copy of the order passed in OA 637/03.

5. The challenge in OA 637/03 is that the applicants therein were working under the Integrated Fisheries Project claiming the category of Technical Supervisors, to which the 5th Central Pay Commission recommended the scale of ₹ 1600-2600 against the existing scale of ₹ 1400-2300. It was also their contention that the reason given by the 5th Central Pay Commission for revision of pay scale is that the Direct Recruitment qualification for the initial pay scale of Technical Supervisors in Workshops in the Ministry of Railway is Diploma in Engineering in the relevant discipline or Graduation in Science and as a general principle it was decided to improve the remuneration of Diploma Engineers in Government. The said recommendation was accepted by the Government and issued necessary orders. The Technical Supervisors and the work establishment staff in the scale of ₹ 1400-2300 were granted the revised scale of ₹ 5000-8000. The applicants therein contended that similarly situated persons in other categories have been granted the scale of ₹ 5000-8000. For instance, the employees working as Assistant Foreman in CIFNET who are also non diploma holders are granted the scale of pay of



₹ 5000-8000. In the case of Processing Assistants in the IFP they were drawing the same scale as the applicants for the last three decades. They were also getting the scale of pay of ₹ 5000-8000. Earlier when the 4th Central Pay Commission has not granted the scale of pay of ₹ 1400-2300 to the Processing Assistants at par with the applicants, they approached this Tribunal by filing OA 1323/92 claiming the same scale of pay of the Assistant Foreman. The Tribunal allowed their claim and declared that the applicants therein are entitled to the higher pay scale of ₹ 1400-2300 on par with the Assistant Foreman. Processing Assistants working under the 2nd respondent and Assistant Foreman were treated alike and they were also getting equal pay having regard to the fact that they were doing similar work the Tribunal while passing Annexure A-3 order in OA 637/2003 also compared the duties of the Assistant Foreman and that of Processing Assistants and span of control. It was held that the Food Processing Section should be treated at par with the workshop and the Processing Assistant should be given the scale applicable to the Assistant Foreman in the Workshop. This Tribunal found that discrimination based on qualification is well accepted principle and cannot be held to be arbitrary. So however, when the posts are alike, carrying same scale and the direct recruits have been given the higher pay scale of pay, there is no rational in denying the same benefit, who otherwise satisfies the requisite qualification for promotion. Having found that the Processing Assistant are on par with the applicants, they cannot be denied the same pay scale of ₹ 5000-8000.

6. It is an admitted fact that the next hierarchical promotion is to the post of Assistant Foreman when this Tribunal has equated Assistant

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Foreman with that of Processing Assistant and also found that the pay scale applicable to a promotee cannot be different from that of a direct recruit in the pay scale of ₹ 5000-8000, merely because the applicant did not file a case earlier, cannot be a valid ground to deny the benefit to the applicants when an earlier decision upheld by the Apex Court is sufficient to extend the benefits to similarly situated persons like the applicants. In the present factual situation, there is no dispute that the applicants have completed 12 years of regular service as on 01.01.1996. Their promotions is that of Assistant Foreman. The scale of pay applicable is ₹ 5000-8000 as decided in Annexure A-3 order. If so, the applicants are entitled to be paid in the pay scale of ₹ 5000-8000 with effect from 01.01.1996. Taking into account that the applicants have filed this OA in the year 2010, we declare that the applicants are entitled to have their pay fixation benefit with effect from 01.01.1996 in the scale of pay of ₹ 5000-8000 and for the arrears for a period of three years prior to the date of filing of the OA, i.e from 11.03.2010 and thereafter. The respondents shall calculate and pay the arrears within a period of three months from the date of receipt of a copy of this order.

7. OA is **allowed** as above. No costs.

Dated, the 20th September, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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