

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 241 of 2004

Friday, this the 21st day of July, 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMEBR
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

K. Mukundan,
Lab Attendant (Rtd.),
Koluveetil House,
Udayathumvathil,
Panangad P.O.,
Ernakulam District

... Applicant.

(By Advocate Mr. C S G Nair)

v e r s u s

1. Union of India represented by
The Secretary,
Department of Women & Child Development,
Kasthubha Gandhi Marg,
New Delhi : 110 001

2. The Deputy Technical Advisor,
Food & Nutrition Board,
Shastri Bhavan, 26, Haddows Road,
Chennai : 600 006

... Respondents.

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

This application having been heard on 7.7.06, the Tribunal on 21-7-06
delivered the following :

O R D E R

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The very short issue involved in this case is as to the interpretation of the
following clause which is one of the conditions attached to the entitlement for

 ACP benefits:-

"6. Fulfillment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government Accommodation, advances etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts etc.) shall be ensured for grant of benefits under the ACP Scheme."

2. The facts as per the OA are as under:-

- (a) The applicant retired as Lab Attendant from the Food and Nutrition Board Extension Unit, Cochin on 30.11.1999 on superannuation. On the basis of the Vth Central Pay Commission, Assured Career Progression Scheme (ACP Scheme, for short) dated 9.8.99 was formulated. In obedience to the said Scheme, the 2nd respondent has issued Annexure A/2 orders granting financial upgradation under ACP Scheme and the applicant's pay was fixed at Rs. 3,795/- as on 9.8.99. Accordingly, arrears of salary were paid to the applicant. The applicant was also paid arrears of leave salary on account of the revision of pay. The 2nd respondent has also issued a letter to the Pay and Accounts Officer (FNB), Chennai for revision of PPO of the applicant. As no intimation was received about the revision of pension, the applicant submitted a representation to the 2nd respondent on 15.10.2001. The 2nd respondent issued an office order dated 23.10.2001 as per which the applicant is not eligible for the financial upgradation to the scale of Rs. 3200-85-4900 on the

ground that the applicant does not fulfill the condition No. 6 of the ACP Scheme already reproduced above. From condition No. 6, it is clear that as far as Group 'D' employees are concerned, the only condition is seniority-cum-fitness. All those who have completed the period of 12 years or 24 years should be given financial upgradation if they are found fit for promotion. The condition of educational qualification and skill test etc. are only for Group A, B and C employees and not for Group D employees as can be seen from Condition No.6. The interpretation given in respect of orders dated 23.10.2001 and 1.6.2001 are wrong as no where such condition is stipulated. The applicant submitted a representation to the 2nd respondent on 29.5.2003 for granting revised pension and other retiral benefits. Wrong interpretation in the case of Group D employees is a denial of justice and violation of Article 14 of the Constitution of India.

3. Respondents have contested the OA and their version is as under:

- (a) The applicant was initially appointed as Grading Attendant with effect from 16.11.1962 in the Directorate of Marketing and Inspection and subsequently transferred to the Department of Food and Nutrition Board with effect from 30.6.1973. Subsequently, the applicant has been appointed against the Selection Grade with effect from 16.8.1980 in the time scale of pay of Rs. 200-3-212-4-432-EB-4-240 with the other usual allowances. He was selected as Attendant-cum-Cook and posted at CFNEU, Ernakulam with effect from 1.9.1982 in the time scale of pay of Rs. 210-4-250-EB-5-270. As per O.M. dated 9.8.1999 he was granted second ACP revising his pay with effect from 9.8.1999 and his

pay has been fixed at Rs. 3,795/- and retirement benefits were also given on his retirement with effect from 30.11.1999. On receipt of O.M. dated 1.6.2001 wherein the pay of all Group 'D' employees in the scale of pay (prior to Vth Central Pay Commission) was Rs.775-1025 and Rs. 800-1150, has been replaced by the new pay scale of Rs. 2610-4000 and the second financial upgradation on completion of 24 years of regular service shall be allowed at least to pay scale of Rs. 2750-4400. The orders were effective from 9.8.1999, as such all cases have been reviewed and orders have been issued accordingly. The applicant has retired from Government service on superannuation with effect from 30.11.1999. However, the applicant's pay has been revised and intimated the Pension Paying Authorities through the PAO, Chennai vide letter dated 6.11.2000. The pension sanctioning Authority have raised an objection for the revision of pension for which a suitable reply was also forwarded vide this office letter dated 15.2.2002. However, on receipt of the O.M. dated 1.6.2001, the second respondent had to adhere to the contents of the O.M. issued by the Department of Personnel, New Delhi, and as such pay scales of all such Grade 'D' employees whose ACP pay fixed as per the O.M. dated 9.8.1999 had to be refixed and their pay scales revised from Rs. 3200-85-4900. An order to this effect has already been issued vide order dated 20.7.2004. However, it is submitted that the applicant will not be at any loss due to the refixation. Actually, his revised pay will be Rs. 4100/- as on 1.9.1999 in the revised scale of pay Rs. 2750-70-3800-75-4400 as per order dated 20.7.2004.

4. Rejoinder and additional reply have also been exchanged reiterating the respective stands as contained in the OA and Reply.

5. Arguments were heard and documents perused. The learned counsel for the applicant submitted that in respect of another individual in the very same department, when such an order was passed by the respondents, the individual had moved the Tribunal in OA No. 611/2004 and the decision of this Tribunal, as given in order dated 5th July, 2005 is as under:-

8. The only condition mentioned in the ACP Scheme in so far as Group 'D' employees are concerned, is seniority-cum-fitness. All those who have completed 12 years or 24 years should be given financial upgradations if they are found fit for promotion and other conditions are not applicable in the case of Group 'D' employees, but only to Group 'C', 'B' and 'A'. The financial upgradation was being denied to the applicant only for the reason that he did not possess the matriculation or equivalent qualification, which is prescribed for next promotion. The learned counsel for the applicant submitted that the financial upgradation not being a promotion as even on such upgradation the employee would be discharging the same duties of a Group 'D' employee without enjoying the status of the higher post, the insistence on possession of educational qualification for financial upgradation is the result of an erroneous interpretation of condition No.6 of the Annexure A2 (supra). According to the applicant, this interpretation defeats the very purpose of the Scheme, which is to provide a safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. There is great force in this argument. On going through the said condition No. 6 of the ACP Scheme we find that the denial of upgradation to the applicant on the ground of non-possession of the educational qualification (SSLC) is faulted.

9. The condition precedent for grant of first and second financial upgradation in the case of Group 'D' employees is only seniority-cum-fitness and the educational qualification does not seem to be a condition precedent. The Scheme itself was evolved to mitigate the hardship of such employees. By giving financial upgradation what is achieved is

only certain financial benefits and not an elevation in status. They continue to be working in the lower cadre but enjoying only the higher scale of pay after rendering service for a specified period without any promotional chance. We are, therefore, of the view that the interpretation for insistence on possession of educational qualification (SSLC) as a pre-condition for financial upgradation is erroneous. Further, regarding second upgradation the clarification issued by the impugned order A/7 and other O.Ms referred to therein are also opposed to the spirit of the Assured Career Progression Scheme. Such a differentiation is not made on the basis of any intelligible differentia which bears a nexus with the objective sought to be achieved by the scheme. The applicant is entitled to be considered for the relief.

10. The another contention raised by the respondents was that the applicant has been promoted to the post of Machine Operator and posted at Madurai but he refused to accept that offer and, therefore, he is not entitled to second upgradation. The rule position in such circumstances is that if an employee under the Central Government refuses to accept the promotion, he/she will be losing the chance of promotion for one year and thereafter, he may again be offered posting afresh. It is true that the applicant did not accept the offer due to some personal difficulties at the relevant point of time. At the same time, he was also not considered for promotion again by the respondents after the period of one year. Therefore, at best, that one year period could be kept in abeyance while granting the ACP Scheme. In other words, the benefits could have been deferred for one year and in that case also, the applicant is eligible for the same. In the present case, the applicant had already completed 30 years of service as on 9.8.1999 (date of the Scheme). Therefore, the question of deduction/deferring of one year also does not arise in his case. Learned counsel for the applicant has also invited our attention to the order of this Bench passed in O.A. No. 309/2001 dated 7th January, 2002, wherein an identical matter was disposed of granting the reliefs in favour of the applicant therein. We are in respectful agreement with the said decision.

11. In the conspectus of the facts and circumstances of the case, we are of the view that the impugned order Annexure A7 is liable to be set aside and that the applicant being a Group 'D' employee, is entitled to second upgradation despite the fact that he does not possess the educational



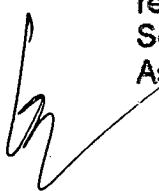
qualification of SSLC. We accordingly set aside the impugned order A/7 and declare that the applicant is entitled to second financial upgradation as prayed for. Respondents are directed to grant the benefits flowing out of this order within a time frame of two months from the date of receipt of a copy of this order.

6. In fact, the above order was passed after considering an order dated 07-01-2002 of this Tribunal in yet another OA No. 309/2001, wherein this Tribunal held as under:-

2. The first respondent thereafter issued O.M. no. 35034/2/2001 Estt(d) dated 1.6.2001 (Annexure A12) providing that Group 'D' employees on completion of 24 years of service would be allowed second financial upgradation at least to the pay scale of Rs. 2750-4400 and that Group D employees who are Matriculates will be eligible to second financial upgradation to the scale of Rs. 3050-4590.

4. In the case of Group 'D' employees the condition precedent for grant of the financial upgradation first and second is only seniority-cum-fitness. Possession of educational qualification prescribed for appointment as LDC does not appear to be a pre-condition. It is not easy for a Group D employee to acquire the educational qualification prescribed for recruitment to the post of LDC. The Scheme itself was evolved to mitigate the hardship of such employees. By giving the financial upgradation what is made available is only a financial benefit and not an elevation in status.....

6. In the result, declaring that the Group 'D' employees in the cadre of Sepoys/Havildars in the Central Excise and Customs Department are on completion of 24 years of service and being found fit for promotion entitled to the second financial upgradation to the scale of Rs. 3050-4590 even if they do not possess the educational qualification of matriculation or its equivalent, we set aside the impugned orders Annexures A8, A11 and A12 and direct the respondents to consider the first applicant and similar Sepoys/Havildars who are members of the second applicant Association for the second financial upgradation on their

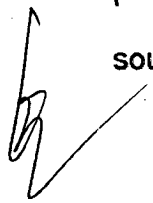


completion of 24 years of service and to grant them the second financial upgradation to the scale Rs. 3050-4590 with effect from the due date with consequential monetary benefits even though they do not possess educational qualification of Matriculation or its equivalent, if they are not found otherwise unfit for promotion by the Screening Committee...."

7. Per contra, the counsel for the respondents has relied upon the judgment dated 06-12-2005 and submitted that by virtue of the said judgment, which had taken into account the Full Bench Judgment of the Chandigarh Bench, as stated in para 6 thereof, the stand of the respondents cannot be faulted with. The operative portion of the said order reads as under:-

"7. We are in respectful agreement with the said decision and we are of the view that the applicant is not entitled for the second financial upgradation to the post of Assistant Social Welfare Officer/Assistant Curator as she did not possess the educational qualification. However, on the basis of the submission made by the respondents in para 4 of the reply statement dated 4.2.2004, which is recorded above, we direct that the respondents shall take appropriate steps to grant the relief that has been admitted by the respondents and pass appropriate orders with all consequential benefits flowing out of such orders within a time frame of three months from the date of receipt of a copy of this order."

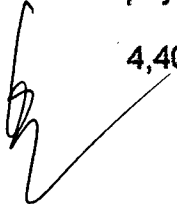
8. The counsel for the applicant, however, distinguished the aforesaid order stating that the same applies to ACP in Group C post whereas the case of the applicant is ACP benefits in a Group D post, in respect of which full analysis has been made in the earlier order dated 07-01-2002. In addition, the counsel pleaded that this is a case where the benefit having already been granted, is sought to be withdrawn and that the applicant already superannuated on



30-11-1999. Taking into account the fact that the earlier order dated 25th July, 2005 in respect of the very same office had been implemented and also the fact that the decision of the Tribunal dated 6th December, 2005, was with reference to a Group C post, whereas the applicant retired in a Group D post, we are of the firm view that the applicant should not be discriminated against and the benefit made available to the other individual (applicant in OA No. 611/2004) should be made available to this applicant.

9. In view of the above, the OA succeeds. The impugned order at Annexure A6 (order dated 23-10-2001) which already stood quashed vide order dated 25-07-2005 in OA 611/2004 being now not existing, coupled with the fact that the other impugned order Annexure A-7 (order dated 01-06-2001) which also stood quashed and set aside vide order dated 07-01-2002 in OA No. 309/2001, the order already passed by the Respondents granting two ACP benefits vide order dated 10-08-2000 shall stand intact and the respondents shall work out the pensionary benefits (pension, gratuity, leave encashment etc., which have the last ten months average pay/last pay drawn by the applicant as the basis for calculation) and make available the said pensionary benefits to the applicant within three months from the date of communication of this order.

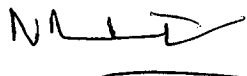
10. We would hasten to add that according to the respondents, the applicant's pay would be fixed at Rs 4,100/- as on 01-09-1999 in the scale of Rs. 2,750 - 4,400 as per order dated 20-07-2004, vide penultimate para of their counter




reply. As such, the respondents shall work out the pension on the basis of that pay admissible to the applicant which would be more beneficial to the applicant. The drill involved in complying with this order shall be completed within a period of three months from the date of communication of this order.

11. Under the circumstances, there shall be no orders as to costs.

(Dated, the 21st July, 2006)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

cvr.