

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 305/2013

Monday, this the 7th day of July, 2014.

CORAM :

**HON'BLE Mr. U.SARATCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr. P.K.PRADHAN, ADMINISTRATIVE MEMBER**

P.Narayanan,
Skipper (Retd.),
Fishery Survey of India,
Sivasakthi , Upasana Road,
Maradu P.O.
Ernakulam -682304.

.... Applicant

(By Advocate Mr.C.S.G.Nair)

Vs.

1. Union of India,
represented by its Secretary
Ministry of Agriculture & Animal Husbandry,
New Delhi -110 001.

2. Director General,
Fishery Survey of India,
Botawala Chambers, Sir P.M.Road,
Mumbai – 400 001.

3. Zonal Director,
Fishery Survey of India,
Cochin -682 005.

.... Respondents

(By Advocate Mr. George Joseph, ACGSC)

The Original Application having been heard on 02.07.2014, the Tribunal
on 07.07.2014 delivered the following :

ORDER

HON'BLE Mr. P.K.PRADHAN, ADMINISTRATIVE MEMBER

This Original Application is filed seeking the following reliefs:

"(i) to declare that the applicant is entitled for 1st financial upgradation under ACP Scheme w.e.f. 9.8.1999, the 2nd financial upgradation w.e.f. 11.11.2003 and the 3rd financial upgradation under MACP Scheme w.e.f. 11.11.2009.

(ii) to direct the respondents to grant 1st financial upgradation under ACP scheme w.e.f. 9.8.1999, the 2nd financial upgradation w.e.f. 11.11.2003 and the 3rd financial upgradation under MACP scheme w.e.f. 11.11.2009.



(iii) to direct the respondents to grant the financial benefits arising from the 3rd financial upgradations including arrears of pay and allowances, retirement benefits, leave encashment and all other consequential monetary benefits within a stipulated time.

(iv) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

(v) Grant cost of this O.A."

2. The facts of the case are as follows:

The applicant joined the respondents on 2nd April 1973 as Bosun and was promoted as Skipper Mate on ad-hoc basis in 1978. Thereafter, he was selected by UPSC as Skipper under direct recruitment quota and joined as Skipper on 11.11.1979. The applicant did not get any promotion as the Skipper is an isolated post without promotional avenue. After introduction of ACP scheme w.e.f. 1999, he was entitled for his financial upgradation w.e.f. 9.8.1999 but he was given 1st ACP w.e.f. 1.4.2000 by order dated 2.2.2007 (Annexure -A2). By the said order, he was also granted 2nd financial upgradation w.e.f. 12.11.2003. However, subsequently, vide order dated 24.9.2007 (Annexure -A5), the date of 2nd financial upgradation was modified to 1.4.2004 instead of 12.11.2003. Thereafter, the MACP scheme was introduced vide O.M.No.35034/2/2008-Estt. dated 19.5.2009 (Annexure - A7). The applicant completed 30 years of service as on 10.11.09 and as such he was entitled for 3rd financial upgradation w.e.f. 11.11.2009. The applicant received an Office Note dated 2.7.2011 from the 3rd respondent communicating adverse remarks in the ACRs for 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 which were graded as 'Good'. Thereafter, the applicant submitted a representation for upgradation of remarks (Annexure -A8). On considering the representation, the 2nd respondent issued an order on 5.3.2012 (Annexure A-9) by which the gradings in ACRs of the years 2005-06, 2006-07, 2007-08 and 2008-09 were upgraded to 'Very Good'. However, the grading for 2009-10 was retained as 'Good'. Thereafter, the applicant was not granted MACP and he retired on superannuation on 31.1.2012. He further submitted representations (Annexure A-12 & A-13). Due to inaction on the part of the respondent to consider his representation, the



applicant has approached this Tribunal seeking the reliefs.

3 In his application, the Applicant has also referred to an order passed by this Tribunal in O.A. No. 610/2006, wherein it was held that "where benchmark is a must for grant of ACP in respect of promotional posts, for isolated posts, such benchmark is not of any utility value as the individual would be performing the same duties and there is no scope of his future promotion unlike the case of ACP in promotional posts".

4 It was further submitted that the Government have issued an OM No. 35034/3/2008-Estt.(D) Vol.II dt. 4.10.2012 modifying para 17 of Annexure A-17. It is stated in the said OM dt.4.10.12 that wherever promotions are given on non-selection basis (i.e. On seniority-cum-fitness basis), the prescribed benchmark as mentioned in para 17 of Annexure I of MACP scheme dt. 19.5.2009 shall not apply for the purpose of grant of financial upgradation under the MACP Scheme. Therefore, he submitted that he is entitled to reliefs which have been denied by the respondent.

5 Respondent in their reply submitted that the applicant was appointed to the post of Skipper in Fishery Survey of India on selection by Union Public Service Commission w.e.f. 12.11.1979. Skipper being an isolated post, the Applicant was granted 1st financial upgradation under ACP scheme w.e.f. 01.04.2000, seven months after the due date of 09.08.1999. The above postponement of his first financial upgradation was due to his below bench mark ACR for the 5 years period from 1994-95 to 1998-99. Due to the above deferment of 1st financial upgradation, 2nd financial upgradation granted to the Applicant w.e.f. 12-11-2003 was also deferred to 01.04.2004. The fact that the Applicant did not represent against the above deferment of his 1st & 2nd financial upgradation for a period of 4 years while he was in service until the present O.A., substantiate that he was well aware of the reason for deferment of the 1st & 2nd financial upgradation under ACP. Therefore the present claim in that respect is belated, unreasonable and untenable. The Applicant having completed 30 years of service on



11.11.2009 was due for financial upgradation under MACP scheme. The applicant's eligibility for grant of 3rd financial upgradation under MACP scheme from the due date i.e. 12.11.2009 depends upon the bench mark of 'Very Good' in his ACR for 5 years from 2005-06 to 2009-10. The below bench mark grading in the ACR of the applicant for the year 2009-10 was retained by the Competent Authority as evident from Annexure A-9. Therefore, the 3rd financial upgradation under MACP scheme due to the applicant would be deferred to 01.04.2010. A consolidated proposal for grant of financial upgradation to the officials worked/ working in the post of Skipper in the entire institute including the Applicant is being finalized by the 2nd respondent. Accordingly, all eligible officials will be granted financial upgradation shortly. Grant of financial upgradation to the category of Skipper was delayed due to below bench mark ACR of most of the officials held/ hold the post. Annexure A-7 Order of Govt. of India , D.O.P.T. introducing MACP scheme vide para 17, prescribed bench mark of 'very good' for financial upgradation to the grade pay of Rs. 7600 & above. Being an isolated post, Skipper has no promotional post. Therefore, clarifications provided in Annexure A-11 O.M. Is not applicable to the post of Skipper. Therefore the bench mark of 'very good' is required for grant of financial upgradation for the post of Skipper under MACP scheme."

6 Heard the learned Counsel for the parties. Learned Counsel for the applicant submits that applicant is entitled for 3rd financial upgradation in November 2009. Since that is part of the year, ACR for 2009-10 should not be taken into reckoning while deciding the financial upgradation. She also referred to judgment passed in O.A. No. 610/2006 as well as the clarifications given by DoPT vide order dated 4.10.2012 to justify that the applicant is entitled to the MACP benefits. She contends that since the post of Skipper has no promotional opportunities, his case has to be considered on non-selection basis and therefore, bench mark should not be part of assessment performance for financial upgradation under MACP.



7 Learned counsel for respondent on the other hand submitted that the first relief sought by the applicant was relating to preponement of first and second financial upgradation does not hold any merit. It was given at a later date due his below bench mark grading. Moreover, if the applicant had grievance due to delayed grant of 1st and 2nd financial upgradation, then he should have agitated over that at that point of time and not now. On the issue of 3rd financial upgradation under MACP, he contends that respondents are considering a proposal for grant of financial upgradation to all the officials working in the post of Skipper in the entire institution. However, he could not clarify as to whether the applicant will be considered by them since in their reply in this O.A., they have taken a stand that the bench mark 'Very Good' is required for grant of financial upgradation and also of the fact that applicant's grading for 2009-10 is only 'Good'.

8 We have carefully considered the facts of the case and submissions made by the parties. It is an admitted fact that the post of Skipper is an isolated post and there is no promotional avenue. Therefore, the only benefit that is admissible to the applicant is by way of financial upgradations which was introduced under the ACP scheme and subsequently under MACP. On the issue of 1st financial upgradation, it has been contended by the respondent that first financial upgradation was deferred to 1.4.2000 in view of the below bench mark grading. Applicant did not meet the minimum bench mark of 'Very Good' in ACRs for the years 1994-95 to 1999-2000. After considering the ACRs for the period 2000-01, he was considered for first financial upgradation w.e.f. 1.8.2000. Consequently, the 2nd financial upgradation was also deferred to 1.4.2004. In any case, if the applicant was aggrieved by the delay in award of the first and second financial upgradations, then as contended by the respondents, he should have agitated over the matter at that point of time but he chose to accept the same. Therefore, both on this account as well as the reasoning given by the respondent on the delayed admissibility of the 1st & 2nd financial upgradation, we are of the view that the applicant is not entitled to any relief on this account.



9 On the issue of 3rd financial upgradation, the fact remains that applicant was communicated below bench mark gradings for 4 years and based on his representation, his gradings were upgraded for 3 years but retained for the last year i.e. 2009-10 and based on grading in this ACR, he was not allowed 3rd financial upgradation. In this context, the applicant had referred to the order, passed by this Tribunal in O.A.No. 610/2006 wherein the Tribunal had observed as follows:

"10. Vide para 12 of the scheme, the ACP scheme contemplates merely placement on personal basis in the higher pay scale/ grant of financial benefits only and shall not amount to actual /functional promotion of the employees concerned .

11 The Bench Mark stipulation, especially in respect of senior posts (i.e. Promotions to the revised pay scale (grade) of Rs.12,000-16,5000 has been prescribed with a view to ensuring 'element of higher selectivity'. This is obviously intended to ensure that the person who are holding that post should have higher caliber. However, as per ACP, though higher pay scale is granted, there is no higher responsibility. Thus, for isolated categories, the ACP has no relevance with the bench Mark.

12 ACP for isolated posts is different from ACP for other posts, where there are promotion channels. Thus, where the post is isolated the higher pay scale is as per Annexure II to the scheme, which is not identical with the pay scale where promotional avenues exist. In so far as grant of ACP for promotional post is concerned, there are certain restrictions, such as in the even of grant of promotion, the individual who had availed of ACP cannot refuse the promotion. Such impediments are not available in the case of ACP for isolated posts. Thus, when the ACP for isolated posts have wide difference, such a difference could be maintained in respect of bench mark. In other words, where bench Mark is a must for grant of ACP in respect of promotional posts, for isolated post, such bench mark is not of any utility value as the individual would be performing the same duties and there is no scope of his future promotion, unlike the case of ACP in promotional posts".

10. Further, during the pleadings, para 17 of Annexure-1 of MACP scheme and subsequent OM dt. 4.10.12 has been referred to. This bench mark for MACP Scheme referred to in para 17 of the MACP Scheme was further clarified by DoPT in its order No. 35034/3/2008-Estt(D) Vol.II) dated 4.10.2012 and reads as follows:

"Para 17 of Annexure-I of the MACP Scheme provide that the financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-I. Thereafter for upgradation under the MACPS, the bench mark of 'good' would be applicable till the grade



pay of rs.6600/- in PB-3. The bench mark will be 'very good' for financial upgradation to the grade pay of Rs.7600/- and above. This Department's OM No. 35034/3/2008-EsttD) Vol.II) dated 01.11.2010 provides that where the financial upgradation under MACPs also happens to be in the promotional grade and bench mark for promotion is lower than the bench mark for granting the benefit under MACPs as mentioned in para 17 ibid, the bench mark for promotion shall apply to MACP also. It is now further clarified that wherever promotions are given on non-selection basis (i.e. On seniority-cum-fitness basis), the prescribed bench mark as mentioned in para 17 of Annexure-I of MACP Scheme dated 19.05.2009 shall not apply for the purpose of grant of financial upgradation under MACP Scheme".

11. If the observations of this Tribunal in O.A. No. 610/2006 as well as the clarification issued by DoPT on bench mark vide O.M. Dated 4.10.2012 is taken into consideration, it would be fair to presume that since the post of Skipper has no promotional avenue, any promotion in terms of financial upgradation has to be on non-selection basis. Therefore, in this case, the prescribed bench mark should not apply. It would also be relevant to mention at this point that respondent authority upgraded the bench mark for 3 years but singled out one year ACR for retaining the same grade which does not make any sense, since the respondents were well aware that by retaining 'good' grading in one ACR i.e. for 2009-10 would result in denying promotion to the applicant on their interpretation/ appreciation of the rule position. Since the applicant was entitled for financial upgradation in November 2009 itself, performance for 2009-10 should not be considered relevant in this case even if the respondent's view on the subject is taken into consideration. Of course, in the context of the earlier observations by this Tribunal in O.A. No. 610/2006 and the clarification given in DoPT O.M. dt. 4.10.12, this no longer becomes relevant.

12. Therefore, considering the entire facts enumerated in the preceding paras, we are of the view that the applicant is entitled to receive the 3rd financial upgradation of MACP w.e.f. 12.11.2009 when it became due to him. Therefore, we direct the respondent to issue order granting him benefits under MACP scheme w.e.f.12.11.2009, within a period of 3 months from date of receipt of a copy of this order and grant all consequential benefits thereon.

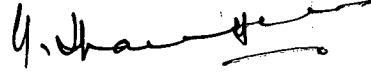


13. Original Application is allowed in terms of the above direction. No order as to cost.

(Dated, this the 7th day of July, 2014)



P.K. PRADHAN
ADMINISTRATIVE MEMBER



U. SARATCHANDRAN
JUDICIAL MEMBER

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