

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM**

Original Application No. 33 of 2013

TUESDAY, this the 29th day of October, 2013

CORAM:

**HON'BLE Mr. JUSTICE A.K. BASHEER, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K. Abdulla, aged 55 years,
S/o. Syed U.C., Head Draftsman,
Lakshadweep Public Works Department,
Willingdon Island, Kochi – 682 003,
Residing at : Government Quarters No. C-2,
Panampilly Nagar, KOCHI – 682 036

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Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Lakshadweep Administration,
KAVARATTI – 682 555
2. The Secretary, (Works),
Public Works Department,
Union Territory of Lakshadweep,
KAVARATTI – 682 555
3. The Executive Engineer,
Lakshadweep Public Works Department Division,
Indira Gandhi Road, Willingdon Island,
Kochi – 682 003
4. The Superintending Engineer,
Public Works Department, Administration of the
Union Territory of Lakshadweep,
KAVARATTI – 682 555

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Respondents.

[By Advocate Mr. S. Radhakrishnan (R1-4)]

This application having been heard on 22.10.13, this Tribunal on
29-10-2013 delivered the following :



ORDER**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicant, a Head Draftsman in the office of the respondent No. 3 was placed under suspension vide order dated 01.10.2012 upon filing of a charge sheet against him by the CBI under various Sections of IPC and Prevention of Corruption Act, 1988, and he is still under suspension. The respondent No.3 had submitted a proposal for considering him for grant of financial upgradation from due date under the ACP/MACP Scheme. However, the same was returned by the respondent No.4 vide Annexure A-1 order dated 24.10.2012 on the ground of pending disciplinary action. Aggrieved, he has filed this O.A for quashing Annexure A-1 and for a direction to the respondents to grant him the second financial upgradation in PB-2 with Grade Pay of Rs. 4600/- with effect from 04.04.2007 under the ACP Scheme with all consequential benefits or in the alternative, the benefit under the MACP Scheme with effect from 01.09.2008.

2. The applicant contended that there is no disciplinary action pending against him. It is not even contemplated. The order of suspension dated 01.10.2012 is only because the trial is pending and not on account of any disciplinary action. He was not under a cloud either on 04.04.2007 when he became due for the second financial upgradation under the ACP Scheme or as on 01.09.2008, when he became due for the second financial upgradation under the MACP Scheme. Therefore, denial of consideration for grant of financial upgradation under the ACP/MACP



Scheme and the consequent denial of the benefits arising therefrom, is arbitrary, discriminatory and unconstitutional. The charge sheet against the applicant was filed by the CBI well after the above due date of 30.09.2009. In para 18 of the MACP Scheme, it is stated that in the matter of disciplinary/penalty proceedings, grant of benefit under the MACPS shall be subject to the provisions of the CCS (CCA) Rules, 1965 and the instructions issued thereunder. The same shall be read in conjunction with para 7 therein, wherein it is provided that the cadre controlling authority shall constitute the first Screening Committee within a month from the date of issue of these instructions to consider the cases maturing upto 30.06.2009 for grant of benefits under the MACP Scheme.

3. The respondents in the reply statement submitted that the applicant may be entitled for the financial upgradation under the MACPS with effect from 01.09.2008 since his first and second promoted posts were merged as per the recommendation of the VI Central Pay Commission. As the applicant has been under suspension with effect from 01.10.2012, the DPC proceedings would be kept in a sealed cover as per Para 18 of Annexure-I of MACPS, read with Government of India O.M. No. 22011/8/87-Estt(D) dated 09.04.1996 - Para 11.1 & 11.2 (Annexure A-3) appended thereto. It was further submitted that the Vigilance Department has issued a letter dated 12.03.2013 and the proposal for grant of MACPS shall be put up before the DPC as per rules and relevant instructions in the matter.

4. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Ms. Rushda for Mr. S. Radhakrishnan, learned counsel for



the respondents and perused the records.

5. The proposal for considering the applicant for grant of financial upgradation under the ACP/MACP Scheme was returned vide Anneuxre A-1 order dated 24.10.2012, which is reproduced as under :

**"ADMINISTRATION OF THE
UNION TERRITORY OF LAKSHADWEEP
(PUBLIC WORKS DEPARTMENT)
KAVARATTI**

F.No. 6/4/2009-C1/1825

Dated : 24.10.2012

OFFICE MEMORANDUM

Sub: Estt-LPWD-Awarding ACP/MACP- Service Register-
Returned - Regarding.

The Service Register (Vol.I & II) of Shri K. Abdulla, Draftsman (Civil) (now under suspension) working in your Division is sent herewith since disciplinary action is pending against him, and applying for VCC is not possible now for awarding MACP. Please acknowledge the receipt of the Service Book.

Sd/-
Superintending Engineer"

6. On the ground that the disciplinary action is pending against him and that applying for vigilance certificate is not possible for awarding MACP, the proposal for consideration of the applicant for granting benefits under the ACP/MACP Scheme was returned. From the pleadings of the respondents before us, it is clear that they have abandoned their position as stated in the impugned order and have gone forward in the matter. They have already referred the case of the applicant vide their letter dated 22.02.2013 to the Chief Vigilance Officer who has responded vide his letter dated 12.03.2013 at Annexure R1(a). The respondents have further stated that the proposal to award financial upgradation under the MACP



Scheme with effect from 01.09.2008 to the applicant would be placed before the DPC. Hence, Annexure A-1 has become practically irrelevant and is not an impediment to consider the applicant for granting financial upgradation under the MACP Scheme. Hence we do not consider it necessary to quash Annexure A-1 letter.

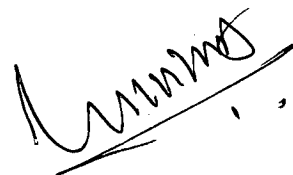
7. In the reply statement, the respondents have indicated that sealed cover procedure will be followed in the case of the applicant as he is under suspension. Adoption of the sealed cover procedure in the case of the applicant is not an issue before this Tribunal at present. If at all a cause of action arises on account of adoption of sealed cover procedure, the applicant can take recourse to law if he is aggrieved. Hence we are of the considered view that this O.A can be disposed of with a direction to the respondents to consider the applicant for grant of second financial upgradation under the MACP Scheme in PB-2 with Grade Pay of Rs. 4600/- with effect from 01.09.2008 on merit and in accordance with law. Ordered accordingly.

8. The above direction should be complied with within a period of 60 days from the date of receipt of a copy of this order. No order as to costs.

(Dated, the 29th October, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE A.K. BASHEER)
JUDICIAL MEMBER

cvt.