

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.347/04

Monday this the 14th day of March 2005

C O R A M :

**HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER**

N.Veerannan,
S/o.Nondi,
Fitter, Central Institution of Fisheries,
Nautical & Engineering Training (CFNET), Kochi.
Residing at 5/26, IFP Quarters, Kochi – 18.

..Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the Secretary to the Government of India, Ministry of Agriculture, Department of Animal Husbandry & Dairying, New Delhi.
2. The Director, Central Institution of Fisheries, Nautical & Engineering Training (CFNET), Kochi.
3. The Senior Administrative Officer, Central Institution of Fisheries, Nautical & Engineering Training (CFNET), Kochi. ..Respondents

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

This application having been heard on 14th March 2005 the Tribunal on the same day delivered the following :-

ORDER

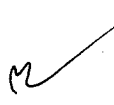
HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant who commenced service as a Diesel Mechanic on 1.5.1980 under the 2nd respondent continued in the same grade but the designation was later changed as Fitter. He was offered promotion as Senior Fitter in the scale Rs.975-1540 in the year 1993 but since the promotion was coupled with transfer he declined to accept it. Therefore since he has not availed of any promotion at all in terms of Annexure A-2

scheme for Assured Career Progression the applicant was given his first financial upgradation with effect from 1.4.2000 by Annexure A-3 order. The grievance of the applicant is that by the impugned order Annexure A-1 dated 12.2.2004 purportedly on the basis of an audit query financial upgradation given to the applicant was cancelled and recovery of payment made on that basis was ordered. The applicant submitted a detailed representation which was rejected by Annexure A-5 order dated 22.3.2004. A further representation was made by the applicant which was also rejected by Annexure A-7 order dated 7.4.2004 purportedly on the basis of a clarification. Aggrieved the applicant has filed this application seeking to set aside the impugned orders.

2. The respondents resist the claim of the applicant. They contend that as the applicant was offered promotion as Senior Fitter in the year 1993 and he repeatedly refused to accept the promotion, in terms of the clarification contained in Annexure R-2(A) dated 15.12.2003, letter of Ministry of Agriculture, financial upgradation given to the applicant being irregular the respondents were justified in cancelling the order and making recovery of overpayment.

3. We have heard the learned counsel on either side and perused the materials on record. Identical question came up for consideration before the Madras Bench of the Tribunal in O.A.122/03 (Mrs.P.S.Balamani Vs. Union of India represented by others). The Madras Bench of the Tribunal considering the various instructions on the subject held that declining promotion after a period of 12 or 24 years would not disentitle an incumbent from receiving the benefits of ACP Scheme which was intended for the benefit of persons who have not been offered any promotion for 12 or 24 years. The same view was taken by this Bench of the Tribunal in



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O.A.172/04 (K.G.Vimala Vs. Union of India represented by others). We are in respectful agreement with both these decisions. Further the Annexure R-2(A) order in this case on the basis of an audit query has been set aside by the Tribunal in its order in O.A.172/04. We, therefore, do not find any justifiable reason to cancel the ACP Scheme already granted to the applicant who has neither availed of or offered any promotion for 12 years.

4. In the result the application is allowed. The impugned orders are set aside. No order as to costs.

(Dated the 14th day of March 2005)



H.P.DAS
ADMINISTRATIVE MEMBER

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A.V.HARIDASAN
VICE CHAIRMAN