

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 364 OF 2009

Thursday, this the 16th day of June, 2011

CORAM:

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

T.Satheesh Babu
Assistant Engineer (Workshop)
F.S.I(Fisheries Survey of India)
Marine Engineering Division
Kochi – 682 016

... Applicant

(By Advocate Mr. P.Santhosh Kumar)

versus

1. Union of India represented by the Secretary
Ministry of Agricultural
Department of Animal Husbandry, Dairying and Fisheries
Krishi Bhavan, New Delhi

2. The Director, Integrated Fisheries Project
Fore Shore Road, Kochi – 16 (Formerly)
The Director, National Institute of Fisheries
Post Harvest Technology and Training
Kochi – 16 (presently)

3. The Director General Fishery Survey of India
Botawala Chambers, SIR P.M.Road
Mumbai

4. The Zonal Directorate Kochi Base F.S.I.
Fisheries Survey of India
Cochin - 682 016

... Respondent

(By Advocate Mr. Varghese P Thomas, ACGSC)

The application having been heard on 16.06.2011, the Tribunal
on the same day delivered the following:

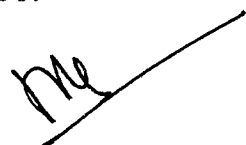
ORDER

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

The applicant entered service as a Superintendent in the
Integrated Fisheries Project on 18.01.1979 in the scale of ₹ 1640-2900



which was subsequently revised to ₹ 2000-3200 with effect from 01.01.1986. Later he was promoted as Assistant Engineer (Workshop) in the scale of ₹ 2000-3200 with effect from 18.09.1992. Subsequently upon the acceptance of the recommendations of 5th Central Pay Commission, the two pay scales viz., ₹ 2000-3200 and ₹ 2000-3500 were merged and upgraded to ₹ 6500-10500. Thus a Superintendent would have an advantage to get the pay scale attached to Assistant Engineer as a result of the merger. But in the case of the applicant he had already become Assistant Engineer (Workshop). He possessed Diploma in Mechanical Engineering and his next promotion is that of Mechanical Marine Engineer. The qualification as prescribed by the Fisheries Survey of India (Mechanical Marine Engineer) Recruitment Rules, 2001 one should possess a degree in Mechanical Engineering for the promotion to the post of Mechanical Marine Engineer. But this rule was amended in 2007. A copy of which is produced as Annexure A-7 as per which for promotion to the post of Mechanical Marine Engineer, the qualification prescribed as degree in Mechanical Engineering was done away with. As a result, the applicant also became entitled for promotion to the post of Mechanical Marine Engineer though he has the qualification of Diploma in Mechanical Engineering only. This rule came into force with effect from 30.07.2007 by virtue of Rule 1 (2) thereof. Since he, as early as, on 18.09.1992 was promoted as Assistant Engineer (Workshop) from that of Superintendent, he was given only 2nd ACP on completion of 24 years of service with effect from 31.01.2007 vide Annexure A-8 order dated 17.11.2008.



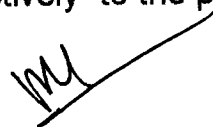
2. According to the applicant, as per Annexure A-1 clarification issued the promotion to the post of Assistant Engineer (Workshop) with effect from 18.09.1992 has to be ignored in which case Annexure A-8 could only be 1st ACP thereby he becoming entitled for 2nd ACP. He has also the contention that the amendment of the Recruitment Rules should be deemed as retrospective in operation so that the effect as to whether he has stagnated in the post of Assistant Engineer has to be reckoned from 18.09.1992 itself. It is also his contention that one Mr.Ninan, Mechanical Marine Engineer was granted the 2nd financial upgradation with effect from 09.08.1999 in the scale of ₹ 12000-16500. According to him the 2nd ACP in the scale of ₹ 12000-16500 was granted to him. We may at once say that there is no material produced nor is there any averment that he is similarly situated. As a matter of fact Annexure A-9 is produced along with an MA 627/10 for amending the OA and even the averment made in the MA, no mention has been made as to how and when Mr.Ninan was promoted and whether he is similarly situated person. On the other hand, Annexure A-9 is stated to have been produced as according to him, it is essential for proving the claim of the applicant.

3. According to the respondents, Annexure A-1 clarification was issued in respect of merger of both feeder category of promotional posts, in which case the promotional pay scale was to be ignored. But in the case of the applicant, the feeder post was Superintendent (O&R) in the then pay scale of ₹ 1640-2900 and the promotional post was Assistant Engineer (Workshop) in the then pay scale of ₹ 2000-3500 which were never merged. However, in pursuant to the order of the Tribunal in OA 712/1990, the pay scale of ₹ 2000-3200 was allowed to the applicant in the



post of Superintendent (O&R) with effect from 30.04.1984. Notwithstanding the change in the pay scale in compliance the promotional hierarchy from the post of Superintendent (O&R), remained as such.

4. We have heard both sides. Admittedly, the applicant was appointed as Superintendent in January, 1979. He was actually promoted to the next higher post of Assistant Engineer (Workshop) on 22.09.1992. Hence the question of granting ACP will arise only if he continued in the promoted post of Assistant Engineer without any promotion for a prescribed period. Though there was a merger of the scales of pay of ₹ 6500-10500, even though the said merger has no relevance in the matter of grant of ACP, the applicant would be completing the prescribed period reckoned from the date on which he got actual promotion as Assistant Engineer on 22.09.1992. The merger of the scales of pay was effected in 1996. The applicant was given 2nd ACP with effect from 31.01.2007. The applicant's next promotional post is to the post of Mechanical Marine Engineer, but the qualification prescribed for the post until 2007 was a Degree in Mechanical Engineering which admittedly, the applicant do not possess. However, by virtue of the amendment of the Recruitment Rules brought out with effect from 31.01.2007, he also became eligible to be promoted as the qualification prescribed for direct recruits is done away with for promotion. It was accordingly, that the applicant was given 2nd ACP with effect from 30.01.2007. In so far as the Recruitment Rules were not amended with retrospective effect and on the other hand it is specifically provided in Rule 1 (2) that amendment will come into force with effect from 31.01.2007, the applicant cannot contend that by virtue of the amendment he should be deemed to have become qualified for promotion retrospectively to the post



of Assistant Engineer. By accepting the contentions we will be ignoring the amendment of the Rule itself which is not permissible. The question whether a candidate should be possessed of the requisite qualification for promotion to the higher post so as to entitle him for the ACP will depend upon the conditions, if any, prescribed in the Scheme providing for such ACP. In this case the respondents in their reply affidavit have categorically stated in paragraph 4 that the Government of India have introduced an Assured Career Progression Scheme for the Central Government civilian employees with effect from 09.08.1999 vide the Government of India O.M.No.35034/1/97-Estt.(D) dated 09.08.1999. As per this 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 benefits under the ACP scheme and also that the candidate should possess all the qualifications required for promotion to the next higher post (emphasis supplied). In so far as the applicant did not possess the requisite qualification until the amendment of the qualification with prospective effect, the benefit under the ACP Scheme will be available only when he becomes qualified for promotion. In so far as the applicant has not placed on record any material to show that Mr.Ninan was similarly situated person, we cannot accept his contention and as such we cannot give any direction to extend the same benefit.

5. In the circumstances, we do not find any merit in the OA and it is dismissed.

Dated, the 16th June, 2011.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER