

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 375 of 2009

TUESDAY, this the 13th day of September, 2011

CORAM:

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

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

Smt. T. Sulekha,
W/o. Late T.P. Koyamma,
Residing at Theliyikkepura,
Kavaratti, Lakshadweep : 682555

... Applicant.

(By Advocate Mr. N. Unnikrishnan)

v e r s u s

1. Union of India represented by
The Secretary to the Govt. of India,
Ministry of Personnel & Public Grievances,
Department of personnel & Training,
New Delhi : 110 001

2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.

3. The Executive Engineer,
Electrical Department,
Union Territory of Lakshadweep,
Kavaratti.

4. The Assistant Executive Engineer (Electrical),
Union Territory of Lakshadweep,
Kavaratti.

5. The Assistant Engineer (Electrical),
Electrical Sub Division,
Union Territory of Lakshadweep,
Kavaratti.

... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R-1 and
Mr. S. Radhakrishnan for R2-5)



This application having been heard on 26.08.2011, the Tribunal on 13.09.2011... delivered the following:

ORDER

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

This O.A was filed on 04.06.2009. The applicant died on 14.08.2010. His wife was substituted as legal representative of the deceased applicant vide order dated 11.09.2010 in M.A. No. 780/2010.

2. The applicant joined the service of the Electricity Department, Lakshadweep Administration, as Helper for Lineman on work-charged establishment on 17.12.1982. He joined on regular basis as Oilman on 18.12.1985. He was promoted as Helper for Lineman from the feeder post of Oilman with effect from 09.06.1989.

3. According to the applicant, he had completed 24 years of service on 14.12.2006 and is entitled for the 2nd financial upgradation under the ACP Scheme counting his work-charged establishment service as qualifying service. In the case of one Shri Syed Abdulla Koya, his pay as work charged wireman was protected after he was given ACP counting work charged wireman service also. MACP Scheme is applicable to work-charged appointees if their service conditions are comparable with the staff of regular establishment. Therefore, the applicant is entitled to get the benefit by taking the service rendered as Helper for Lineman. His representation dated 07.03.2009 for the 2nd financial upgradation did not yield any positive result. Hence the O.A.



4. The respondents in their reply submitted that the applicant joined the service on regular basis on 18.12.1985 and that he had been promoted as Helper for Lineman. He would be eligible for the 2nd financial upgradation under the ACP Scheme on 18.12.2009. But he is now ineligible for the 2nd financial upgradation under the MACP Scheme owing to the discontinuation of the ACP Scheme with effect from 31.08.2008 and the introduction of MACP Scheme from 01.09.2008. He is being considered for the 2nd financial upgradation under the terms and conditions prescribed in the MACP Scheme. The service rendered by the applicant during the period from 17.12.1982 to 18.12.1985 cannot be claimed as regular service. In the case of C.K. Syed Abdulla Koya regarding counting of his service as HLM in the work-charged establishment for the purpose of the ACP Scheme, he was informed that counting of his previous service as HLM for the purpose of financial upgradation under the ACP Scheme cannot be acceded to. The applicant was appointed as Oilman against work charged post as per Recruitment Rules. The period of work charged service as HLM under the work-charged establishment cannot be counted as regular service because work charged service is not followed by absorption in regular establishment.

5. We have heard Mr. N. Unnikrishnan, learned counsel for the applicant, Mr. Sunil Jacob Jose, learned SCGSC for respondent No.1 and Mr. S. Radhakrishnan, learned counsel appearing for respondents 2 to 5 and perused the records.

6. The ACP Scheme came into force on 09.08.1999. As per para 3.2 of the Office Memorandum dated 09.08.1999 "Regular service' for the purpose

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of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/ Service rules." It would mean that the regular service is counted from the date of regular appointment. In the case of the applicant, regular appointment was as Oilman on 18.12.1985. Service prior to that in respect of the applicant was under the work-charged establishment. As per clarification No.11 in the Office Memorandum No. 35034/1/97-Estt.(D) (Vol.IV), dated 10.02.2000 [Annexure R2(d)], only regular service which counts for the purpose of regular promotion in terms of relevant Recruitment / Service Rules shall count for the purpose of upgradation under the ACP Scheme. In respect of Shri C.K. Syed Abdulla Koya, vide Office Memorandum dated 07.07.2004 at Annexure A-8, he was informed that counting of his previous work-charged service as HLM for the purpose of financial upgradation under the ACP Scheme cannot be acceded to. Therefore, it is absolutely clear that the applicant is not entitled to count his work-charged service for the purpose of 2nd financial upgradation under the ACP Scheme.

7. The applicant would be eligible for the 2nd financial upgradation on completion of 24 years of regular service on 18.12.2009. But the ACP Scheme was in force only upto 31.08.2008. It was replaced with effect from 01.09.2008 by the MACP Scheme under which 3 financial upgradations are available on completion of 10/20/30 years of regular service respectively. Although the applicant had completed 20 years of service on 18.12.2005, in the absence of retrospective effect of MACP Scheme, he cannot be granted the 2nd financial upgradation under the MACP Scheme on 18.12.2005. However, the applicant is eligible for the 2nd financial upgradation on



01.09.2008 when the MACP Scheme came into force as he had completed more than the required 20 years of regular service on that date. He is entitled to be granted the 2nd financial upgradation with effect from 01.09.2008 under the MACP Scheme if found fit. The respondents have stated that they are considering his case for the 2nd financial upgradation under the MACP Scheme.

8. In the light of the above, the respondents are directed to consider the case of the applicant for the 2nd financial upgradation under the MACP Scheme with effect from 01.09.2008 and if he is found fit, grant consequential arrears of pay and allowances and pensionary benefits to the legal representative of the deceased applicant within a period of three months from the date of receipt of a copy of this order.

9. The O.A is allowed to the extent indicated above. No order as to costs.

(Dated, 13th September, 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

CVR.