



**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.378/08 & O.A.No.394/08

Friday..... this the 31st day of October 2008

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

O.A.No.378/08

P. Haridas,
S/o. Sumathy,
Mate Gr.II,
Fishery Survey of India, Ernakulam.
Residing at Sree Vinayaka, Major Road,
Vyttila, Kochi – 682 009.

...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 & Fisheries),
New Delhi.

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

3. The Zonal Director,
Fishery Survey of India,
Kochi.

...Respondents

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

O.A.No.394/08

C.A. Gopi,
S/o. Achuthan,
Mate Gr.II,
Fishery Survey of India, Kochi.
Residing at Deepodai, Chettikara House,
Nayarambalam P.O., Ernakulam District.

...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 & Fisheries), New Delhi.
2. The Director General, Fishery Survey of India, Botawala Chambers, Sir.P.M.Road, Mumbai – 400 001.
3. The Zonal Director, Fishery Survey of India, Kochi.

...Respondents

(By Advocate Mr.Sunil Jose,ACGSC)

These applications having been heard on 24th September 2008 the Tribunal on 31st October 2008 delivered the following :-

ORDERHON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

These two Original Applications are identical in nature and, therefore, they are disposed of by this common order. The applicants, in these O.As were already drawing the scale of pay of Rs.10000-325-15200 attached to the post of Skipper, under the ACP Scheme but were designated only as Mate and working in Fishery Survey of India (FSI for short) at Kochi Base. They are aggrieved by the Office Order dated 22.8.2007 issued by the FSI promoting them as Mate Gr.I in the lower scale of pay of Rs.7450-225-11500 on regular basis and the consequent postings to Mormugao Base and to Port Blair Base respectively against vacant posts.

2. The brief facts of the cases are that the applicant in O.A.378/08 – Shri.P.Haridas was initially appointed as a Bosun (certified) on 11.7.1994 in the Integrated Fisheries Project (IFP for short). He was later promoted

on regular basis as Mate Gr.II in the then scale of pay of Rs.2000-3200 (Rs.6500-10500) during the year 1994. The next promotion post for Mate Gr.II in IFP was Skipper in the scale of pay of Rs.10000-15200. Similarly, the applicant in O.A.394/08 – Shri.C.A.Gopi was also appointed as Bosun (certified) on 22.6.1977 and promoted as Mate Gr.II in 1997. The applicant in O.A.394/08 was promoted to the post of Skipper on regular basis with effect from 10.6.1996. The said promotion was challenged by some of the unsuccessful candidates alleging irregularities in the constitution of the Departmental Promotion Committee. The Hon'ble High Court allowed the said challenge and vide its judgment dated 26.7.2000 directed the respondents to hold a fresh DPC. In pursuance of the directions of the High Court, the DPC met on 17.10.2000 and 7.11.2000 and on the basis of its recommendations, the promotion of the applicant was cancelled and he was reverted as Mate Gr.II vide order dated 9.11.2000. The said order was challenged before this Tribunal in O.A.No.1292/00 but the same was dismissed. However, the Hon'ble High Court reversed the order of this Tribunal vide its judgment dated 29.11.2003 in W.P.(C) No.34378/03. The respondents challenged the aforesaid judgment of the Hon'ble High Court before the Hon'ble Apex Court by way of a SLP and the same is still pending. The respondents, however, did not restore the promotion of the applicant as Skipper and he is still continuing as Mate Gr.II. Meanwhile, both the applicants became eligible for the 2nd financial upgradation under the ACP Scheme with effect from 1.4.2003 and 1.4.2002 respectively and accordingly they were granted the scale of pay of Rs.10000-15200. While they were working in IFP in the aforesaid capacities, the Ministry of Agriculture transferred some of the posts from IFP including the section in which they were working

along with the posts and incumbents to the FSI in May, 2005 (Annexure A-2 dated 19.5.2005 in O.A.378/08). Accordingly, three Mates, including the applicants in these O.As, in the scale of pay of Rs.6500-10500 have been transferred from IFP to FSI. The other person was Shri.T.P.Mohanakrishnan. The dates from which the applicants were working as Mate were shown as 24.3.1994 and 10.6.1996 respectively. Some of those who were transferred along with the posts to the FSI approached this Tribunal by filing O.A.710/05 and connected cases challenging the orders of their transfer. Applicant in O.A.378/08 was one of the applicants in the said O.A.710/05 and connected cases. However, those O.As were disposed of by a common order dated 31.8.2006 rejecting the case of the applicants therein but holding that the transferred employees should be informed about their service conditions in the FSI or in the CIFNET as the case may be. Whereas in the IFP, the promotion from the post of Bosun (certified) was to the post of Mate Gr.II in the scale of pay of Rs.6500-10500 and then directly to the post of Skipper in the scale of pay of Rs.10000-15200, in the FSI, the promotion from the post of Bosun (certified) is first to the post of Mate Gr.II in the scale of Rs.6500-10500, then to Mate Gr.I in the scale of Rs.7450-11500 and then to Skipper in the scale of Rs.10000-15200. While so, the applicants were promoted as Mate Gr.I in the scale of Rs.7450-11500 on ad hoc basis vide Office Order No.F8-6/2002-E-I dated 10.5.2007 and posted to Mormugao Base and to Port Blair Base respectively. Both of them declined the said ad hoc promotion as Mate Gr.I and challenged their transfer order by filing O.A.367/07 and O.A.366/07. The contention of the applicants in those O.As was that the transfer order was arbitrary, discriminatory and contrary to law. They have also stated that they belonged to IFP and there they

were entitled to be considered for promotion as Skipper against the two posts which have not been transferred to FSI and still remaining vacant. According to them their channel of promotion in the IFP was also to the post of Skipper i.e the scale of pay of the post to which they have been granted the 2nd financial upgradation under the ACP Scheme. During the pendency of the aforesaid two O.As the respondents issued the impugned common order dated 22.8.2007 promoting both the applicants as Mate Gr.I in the scale of pay of Rs.7450-225-11500 on regular basis. While the applicant in O.A.378/08 was posted at Mormugao Base, the applicant in O.A.394/08 was posted at Port Blair Base. Thereafter, the applicants have amended these O.As and challenged the said order dated 22.8.2007. Their contention was that they are entitled to be promoted as Skipper and therefore, their promotion to the post of Mate Gr.I, which is a lower post, was arbitrary and unconstitutional. Those two O.As were disposed of vide order dated 22.4.2008 with a direction to the applicants to make a detailed representation against the promotion and transfer order dated 22.8.2007. Accordingly, the applicants made the Annexure A-4 representation dated 24.5.2008 and Annexure A-5 representation dated 20.5.2008 respectively and informed the respondents that he had declined the promotion as Mate Gr.I and requested them to allow him to continue at the present place of posting itself particularly in view of the fact that they have hardly two years time to superannuate from service on 31.1.2010 and 31.5.2010 respectively. They have also stated that they are already in receipt of the scale of Rs.10000-15200 the scale attended to the post of Skipper and they cannot be promoted as Mate Gr.I in a lower scale of Rs.7450-11500/-. Vide the identical impugned memo dated 9.7.2008 the respondents considered the aforesaid representations of the applicants and observed

that they were holding the post of Mate Gr.II in the pay scale of Rs.6500-10500 and as per the hierarchy, their promotional post is Mate Gr.I in the pay scale of Rs.7450-225-11500 and accordingly they have been promoted to the post of Mate Gr.I and posted to Mormugao Base and Port Blair Base respectively against vacant posts occurred due to promotion of the then incumbents. They also submitted that the availability of the post of Mate Gr.I on board is a statutory requirement. Accordingly the applicants have been relieved of his duties on 10.7.2008 and 19.7.2008 respectively from the present places of their posting at Kochi with a direction to report for duty to the Zonal Directors of Mormugao Base and Port Blair Base of FSI respectively.

3. The grounds taken by the applicants in these O.As are that the impugned orders are arbitrary, discriminatory and contrary to law. They have also submitted that once they have declined the promotion, there is no justification in compelling them to go on transfer on promotion. Further, there are no cadre of Mate Gr.II hitherto in the FSI and there are no incumbents other than the applicants. Moreover, a number of qualified persons are available in FSI for promotion as Mate Gr.I to fulfill the statutory requirements, if any. They have also stated that the respondents have not published or informed any of them who were transferred from IFP regarding their service conditions upon their transfer to FSI and applicants have not been made part of any pre-existing cadres.

4. When the matter came before this Tribunal for admission, considering the fact that the applicants have made out a *prima facie* case against their promotion as Mate Gr.I and consequent transfers

to Mormugao Base and Port Blair Base, this Tribunal ordered that the impugned Office Memo dated 9.7.2008 and Office Order dated 9.7.2008 shall be kept in abeyance and the applicants shall be permitted to continue in the present places of their posting. On the basis of the aforesaid order, the applicants are still continuing in the present place of posting at Kochi Base.

5. The respondents in their reply statement submitted that the applicant in O.A.378/08 was initially appointed to the post of Bosun (certified) with effect from 7.8.1974 at IFP, Kochi and during January 2006 he was transferred from the IFP, Kochi to the FSI, Kochi. Similarly, the applicant in O.A.394/08 was initially appointed on 22.6.1977 and transferred to FSI in October 2006. They have also submitted that they have been in Kochi for the last 34/31 years though they holds the post which carries the All India Transfer Liability. Further, they have submitted that their transfer from the Kochi Base of FSI to the Mormugao Base and Port Blair Base of FSI with promotion to the higher post of Mate Gr.I was necessitated because vacancies of Mate Gr.I have arisen at those Bases due to transfer of the incumbents with promotion to the higher posts of Skipper and the applicants were the senior most Mate Gr.II to be promoted as Mate Gr.I. They have further submitted that the applicants were transferred from the IFP, Kochi to the FSI, Kochi while they were holding the post of Mate Gr.II in the pay scale of Rs.6500-10500 and though they were granted the pay scale of Rs.10000-15200 under the ACP Scheme the hierarchy of the cadre in FSI is from the feeder post of Mate Gr.II to the higher post of Mate Gr.I and the applicants being the employees of the FSI ever since their transfer from the IFP to the FSI, their promotional avenue shall be as per

the said hierarchy. They have also submitted that the FSI has a fleet of 13 Fishery Survey Vessels and each vessel has one post of Skipper and accordingly 13 posts of Skipper are adequate for the 13 vessels. The two vacant posts of Skipper transferred from the IFP to the FSI are not to be utilised because even prior to this transfer, the FSI had 13 posts as required. Therefore, the claim of the applicants that they should be promoted to the post of Skipper against one of the vacant posts transferred from the IFP has no basis whatsoever and the applicants are fully aware of the fact that number of posts of Skipper that can be utilised can not exceed the number of the vessels. Again, they have submitted that out of the 13 posts of Skipper, 2 posts are vacant and a DPC proposal for promotion against the two posts is under examination by the 1st respondent. But the applicants are not among the first two candidates eligible for promotion and, therefore, they have no valid claim for the promotion to the post of Skipper. As regards their submission that they are to retire on superannuation shortly, the respondents have admitted the same and stated that it is not possible for every Central Government employee to retire at their native places as the appointment carries with it the All India Transfer Liability. Further, the applicants were duly considered by the DPC for promotion to the post of Mate Gr.I in accordance with the hierarchy applicable to them in the FSI and their promotions are notwithstanding the financial upgradations granted to them under the ACP Scheme allowing the higher pay scale of Rs.10000-15200. They have also stated that the refusal of a regular promotion offered to an employer is dealt with as prescribed in para 17.12 of the O.M. No.22011/8/87-Estt (D) dated 9.4.1996 from the DoPT which is extracted as under :-

"When a Government employee does not want to accept a promotion which is offered to him, he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion will be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad hoc promotions against short term vacancies are refused.

In case where the reasons adduced by the officer for his refusal for promotion are not acceptable to the appointing authority, then he should enforce the promotion of the officer and in case the officer still refuses to be promoted, then even disciplinary action can be taken against him for refusing to obey his order."

6. We have heard Shri.T.C.Govindaswamy for the applicants and Shri.T.P.M.Ibrahim Khan,SCGSC and Shri.Sunil Jose,ACGSC for the respondents. The important points that emerge from the above facts are that the applicants were initially appointed as Bosun (certified) in IFP, their relevant hierarchy of promotion was to the post of Mate Gr.II in the scale of pay of Rs.6500-10500 and then to the post of Skipper in the scale of pay of Rs.10000-15200. In fact the applicant in O.A.394/08 was promoted as Skipper on regular basis on 10.6.1996 and the same was upheld by the Hon'ble High Court of Kerala vide its judgment dated 29.11.2003 in W.P.(C) No.34378/03. However, the respondents did not withdraw the order of revocation already made on 9.11.2000 to the post of Mate Gr.II on the ground that the said judgment was under challenge before the Apex Court in an SLP. Meanwhile, both the applicants became eligible for the

2nd financial upgradation under the ACP Scheme and they were granted the scale of pay of Rs.10000-15200, which is the scale attached to the post of Skipper, with effect from 1.4.2002. The fact is that since the applicant in O.A.394/08 got the scale of pay of Skipper under the ACP Scheme, he did not agitate his case for restoring his promotion as Skipper after the aforesaid judgment of the Hon'ble High Court dated 29.11.2003 and he remained in the Kochi Base. Similarly, the applicant in O.A.378/08 also got the scale of pay of Rs.10000-15200 attached to the post of Skipper under the ACP Scheme. However, as far as the respondents were concerned, when the applicants were transferred to FSI on 19.5.2005 they were accepted there only as a Mate Gr.II having the scale of pay of Rs.6500-10500/- with the next promotional post only as Mate Gr.I in the scale of pay of Rs.7450-225-11500. Accordingly, they initially promoted the applicants as Mate Gr.I on ad hoc basis in the scale of pay of Rs.7450-225-11500 but at the same time permitting them to draw their pay and allowances in the scale of pay of Rs.10000-15200 granted to them under the ACP Scheme. Applicants refused that promotion. Thereafter, they immediately promoted them on regular basis. Now the situation is that the applicants are promoted on regular basis to a lower scale than the scale under the ACP already granted to them. In other words, the applicants' regular promotion is in a lower scale but the scale under the ACP Scheme is in a higher scale. This anomalous situation is due to the fact that when the applicants were transferred from IFP to FSI in the year 2003, they were working as Mate Gr.II in the scale of pay of Rs.6500-10500 in IFP and since there are no posts of Mate Gr.I in the IFP, their next promotional post was Skipper in the scale of Rs.10000-15200. But in FSI, the promotional post of Mate Gr.II is Mate Gr.I in the scale of

pay of Rs.7450-11500. Therefore, the applicants were at a disadvantageous position as their promotional avenues were adversely affected. The affected employees including the applicant in O.A.378/08, Shri.P.Haridas challenged their transfer vide O.A.710/05 and connected cases and it was disposed of with the directions to the respondents to inform the applicants about their service conditions. The respondents did not do so, so far. As a result, the anomalous situation continued and the applicants remained as Mate Gr.II but in the higher scale of pay of Rs.10000-15200 granted to them under the ACP Scheme. Since their service conditions are still not clear, the respondents initially promoted them first as Mate Gr.I on ad hoc basis vide their order dated 10.5.2007. When they refused to accept that promotion, they immediately promoted them on regular basis in the scale of pay of Rs.7450-11500 with the protection of ACP scale of Rs.10000-15200 already granted to them vide the impugned Annexure A-2 order dated 22.8.2007. Now the applicants have again refused the said promotion as Mate Gr.I on regular basis and requested the respondents to allow them to continue at Kochi Base in their existing status. One of the reasons for refusal of regular promotion as stated by them in their representation is that when they were already drawing the pay scale of Rs.10000-15200 granted to them under the ACP Scheme, they cannot be promoted to a lower post with the lower scale of Rs.7450-11500. I find merit in their contention. Undisputedly, the applicants were working in the scale of Rs.6500-10500 from the year 1994/1997. The next promotional post to them was in the scale of Rs.10000-15200. Accordingly, they were already granted the said scale of Rs.10000-15200 by way of financial upgradation under the ACP Scheme and they have been enjoying that scale from 1.4.2002/1.4.2003. In such a

circumstances any promotion to them on ad hoc or regular basis in the scale of Rs.7450-11500 is meaningless. The applicants have, therefore, refused to accept the order of their promotion as Mate Gr.I made vide Annexure A-2 dated 22.8.2007 knowing fully the consequences involved in such refusal. In the above facts and circumstances of the case, I have no other option but to allow these Original Applications. The respondents are, therefore, directed not to compel the applicants to accept the promotion granted to them vide Annexure A-2 Office Order dated 22.8.2007 except in accordance with the rules. Resultantly, the Memo dated 9.7.2008 and the Office Order dated 9.7.2008 are quashed and set aside. There shall be no order as to costs.

(Dated this the 31st day of October 2008)

GEORG PARACKEN
JUDICIAL MEMBER

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