

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 394/2010

Thursday, this the 19th day of January, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

N.Veeranan, S/o Nondi,
Mechanical Supervisor,
Central Institute of Fisheries,
Nautical and Engineering Training,
Royapuram, Cehnai-13.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the
Secretary to Government of India,
Ministry of Agriculture,
Department of Animal Husbandry,
Dairying & Fisheries,
New Delhi.
2. The Director, Central Institute of Fisheries
Nautical and Engineering Training,
Kochi-16.
3. The Deputy Director (I/C),
Central Institute of Fisheries
Nautical and Engineering Training,
Royapuram, Chennai-13.Respondents

(By Advocate Mr M.K.Aboobacker)

This application having been finally heard on 16.01.2012, the Tribunal on 19.01.2012
delivered the following:

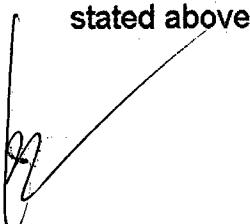
ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant joined the service as Diesel Mechanic on 2.4.1980. This post
was later on designated as Fitter. The post of Fitters, Welders, Tool Room,

Turners, Carpenters, Electricians, Tool Room Assistants, Carpenters and Black Smith belong to Artisan category with uniform scale of pay of Rs. 260-35/- (IIIrd Central Pay Commission pay scale). The next promotional post was Mechanical Supervisor in the scale of pay of Rs. 1400-2300/- (IVth Central Pay Commission pay scale) equivalent to 4500-7000/- (Vth Central Pay Commission pay scale) with next promotion as Foreman in the scale of Rs. 5500-9000/- (Vth Central Pay Commission pay scales).

2. When work study was conducted, an intermediate post of Senior Fitter between the posts of Fitter and Mechanical Supervisor was sought to be created in the pay scale of Rs. 3200-4900/- (Vth Pay Commission report). Thus there were Senior Fitter, Senior Welder, Senior Electrician and Senior Carpenter in the above pay scales. No such post was created in respect of the other artisan trade. When the respondents introduced financial up-gradation under the ACP scheme, in respect of fitters, welders, electricians and carpenters, taking into account the intermediate posts of Senior Fitter, Senior Welder etc., the first financial up-gradation was in the pay scale of Rs. 3200-4900/. However, in the case of Tool Room Assistants, Turners and Black Smiths as there was no such intermediate post analogous to Senior Fitter, financial up-gradation was in the pay scale of Rs. 4500-7000/- after 12 years of their service or on 9.8.1999 which ever is later. Such individuals in these trades (Tool Room Assistants, Turners and Black Smith) were thereafter eligible for 2nd financial up-gradation to Rs. 5500-9000/. In contra distinction to the above Fitters, Welders, Electricians and Carpenters were made entitled to the 1st financial up-gradation at Rs. 3200-4900/- as already stated above and Rs. 4500-7500/- as 2nd financial up-gradation.



3. As the above two decisions created an anomalous situation in that persons identically placed at the time of initial appointment were subjected to differential treatment in matters of financial up-gradation, the applicant moved representation dated 15.4.2005 vide Annexure A-1. As there was no joy, he moved OA No. 591/2005 which was disposed of at the admission stage itself on 9.8.2005 (Annexure A-2) giving a direction to the respondents to consider and dispose of the representation. This resulted in the respondents' passing an order dated 31.10.2005 (Annexure A-3) rejecting the claim of the applicant referring to a clarification No. 42 of the DOP&T instructions dated 18.7.2001 which provides that when recruitment rules provide for multiple channel for promotion, the 1st financial up-gradation shall be allowed with reference to the lowest promotion grade. The 2nd financial up-gradation shall be as per hierarchy of the grade to which the applicant has been promoted. Annexure A-4 refers.

4. The applicant found that in the sister organization financial up-gradation to the post of Fitter category have already been in the scale of Rs. 4500-7000/- and Rs. 5500-9000/- as issued by FSI/Bombay dated 30.7.2004 and 19.8.2004 vide Annexures A-5(a) & (b).

5. Aggrieved, the applicant again approached the Tribunal by filing OA No. 601 of 2006 and by the time the said OA came up for consideration, certain developments had happened in that, the respondents passed an order dated 1.12.2008 stating that the post of Senior Fitter, Senior Welder, Senior Carpenter and Senior Electrician in the pre-revised pay scale of Rs. 3200-4900/- were down graded respectively as Fitter, Welder, Carpenter and Electrician but the incumbents were allowed to continue in the pay scale of Rs. 3200-4900/- as personal to them and in the event of the post being vacated, the same was

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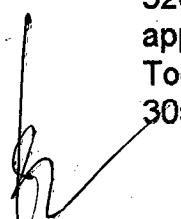
directed to be merged with the post of Fitter etc. Annexure A-6 refers. In the wake of Annexure A-6 order, OA No. 601 of 2006 was disposed of by order dated 29.4.2009 vide Annexure A-7, whereby direction was given to the applicant to make a detailed representation to the respondents and the respondents were in turn directed to consider the same. Accordingly, Annexure A-8 representation was made on 3.6.2009. But the same was rejected on 24.8.2009 vide Annexure A-9 order impugned in this OA.

6. Applicants through this OA has sought the following relief:-

- "(i) Call for the records leading to the issue of A9 and quash the same;
- (ii) Declare that the applicant is entitled to be granted the first financial up-gradation in the scale of pay of Rs. 4500-7000 and the second financial up-gradation in scale Rs. 5500-9000 under the Assured Career Progression Scheme and direct the respondents to grant the said benefits to the applicant with effect from the dates from which the same fell due to the applicant; or
- (iii) Declare that Annexure A9 is discriminatory, illegal and violative of Article 14 and 16 of the constitution and, therefore, set aside the same."

7. Respondents have contested the OA. They have given the entire history of the case in paragraph 3 & 8 of the reply which reads as under:-

"3. With regard to para 4(a) to (f), it is submitted that the applicant was working as Diesel Mechanic (re-designated as Fitter) w.e.f. 1.5.1980 in the pre revised pay scale of Rs. 260-6-326-EB-8-350, which was revised to the scale of pay of Rs. 3050-4590 by the Vth Central Pay Commission. The next promotion in the hierarchy of the posts of Fitter, Welder, Carpenter, Tool Room Assistant, Blacksmith and Turner was to the post of Mechanical Supervisor. However, later based on the recommendation of Internal Works Study Unit (1981), the posts of Senior Fitter, Senior Welder and Senior Electrician have been created in the higher scale of Rs. 290-400 (pre-revised) which was revised to the scale of pay of Rs. 3200-4900 by the Vth CPC based on the work measurement study of the respondent department. The allegation of the applicant that there is no such scale of pay of Rs. 3200-4900 recognized in the hierarchy of Artisan category in any other Central Government department is not correct as the scale of pay of Rs. 3200-4900 is an approved scale of pay of Government of India which is applicable to the said posts/category. It is submitted that, the posts like Tool Room Assistant, Turner and Blacksmith in the scale of pay of Rs. 3050-4590 (pre-revised) have no immediate Senior post and their next



promotional avenue in the hierarchy is to the post of Mechanical Supervisor which is in the scale of pay of Rs. 4500-7000 (pre-revised). The post of Fitter, Welder, Electrician and Carpenter have senior post in the scale of pay of Rs. 3200-4900 and hence they can be considered for first level financial up-gradation only to this scale of pay. In the case of other posts, like Tool Room Assistant, Turner, and Blacksmith they have no immediate promotional post in the scale of pay of Rs. 3200-4900. Hence, they have to be considered for first level financial up-gradation in the next hierarchical scale of pay of Rs. 4500-7000 of the post of Mechanical Supervisor. The applicant was granted 1st level Financial Up-gradation in the pay scale of Rs. 3200-4900 (pre-revised) w.e.f. 1.4.2000 i.e. the scale of pay of Senior Fitter which is the promotional post for Fitter. Therefore, he is not eligible for the first financial up-gradation in the pay scale of Rs. 4500-7000 as sought by him. Further he is not eligible for second financial up gradation in the pay scale of Rs. 5500-9000 as his eligibility for second level up-gradation will be only Rs. 4500-7000 as per the guidelines of ACP scheme.

8. As per the ACP scheme two financial upgradation, on completion of 12 years and 24 years of regular service, respectively are granted subject to the conditions stipulated. The benefits of the ACP scheme upgradation are to be allowed in the hierarchy existing as on 9.8.1999. The posts of Fitter, Welder, Electrician, Carpenter, Tool Room Assistant, Blacksmith and Turner were functioning in the pre revised pay scale of Rs. 260-350 and the posts of Senior Fitter, Senior Welder, Senior Electrician and Senior Carpenter were created in the higher scale of Rs. 290-400 (pre revised). The posts of Fitter, Welder, Electrician and Carpenter had next immediate promotional posts of Senior Fitter, Senior Welder, Senior Electrician and Senior Carpenter much before the introduction of the ACP scheme. The posts like Turner and Blacksmith in the pay scale of Rs. 3050-4590 (pre revised) have no immediate senior posts and their next promotional avenue in the hierarchy is to the post of Mechanical Supervisor in the scale of pay of Rs. 4500-7000 (pre-revised). The posts of Fitter, Welder, Electrician and Carpenter all have senior posts in the scale of pay of Rs. 3200-4900 (pre-revised) and as such they can be considered for first level financial upgradation only to this hierarchical scale of pay. The ACP scheme stipulates that financial upgradation under the scheme shall be given in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts. The next higher grade in the existing hierarchy in the category of Fitter in the pay scale of Rs. 3050-4590 is Senior Fitter in the pay scale of Rs. 3200-4900 and the applicant was accordingly granted 1st ACP to the scale of Rs. 3200-4900. As per the then existing recruitment rules of the post of Senior Fitter, Fitter with three years regular service are eligible for promotion. Further Senior Fitter with then years service or Fitter with thirteen years of service are eligible for consideration for promotion to the post of Mechanical Supervisor in the pay scale of Rs. 4500-7000. As per the ACP guidelines where recruitment rules provides for multiple channels for promotion the first financial upgradation shall be allowed with reference to the lowest promotional grade. The financial upgradation shall be as per hierarchy of the grade to which he has been promoted. ”



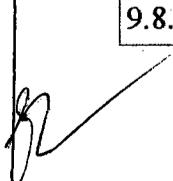
8. Counsel for the applicant argued that with the merger of Senior Fitter post the posts that are available are only Fitter followed by Mechanical Supervisor. When such merger takes place, the post which has been merged is not to be treated as promotional post. Again in respect of promotion, what is to be considered is the service rendered in the post of Fitter (13 years) and promotion ought to have been given as Mechanical Supervisor and in lieu of promotion benefit under ACP should have been given.

9. Counsel for the respondents submitted that the rules are very clear when read with corresponding clarifications and as such the applicant is not entitled to the financial up-gradation at Rs. 4500-7000/- followed by Rs. 5000-8000/- respectively.

10. Arguments were heard and documents perused.

11. The scheme of Assured Career Progression is meant to give a respite to the employees disgruntled on account of non promotion, despite they being eligible and suitable for promotion but could not be so promoted due to non availability of vacancies. For implementation of the scheme, certain clarifications have been issued by the Nodal Ministry (DOPT) and related to the issue in question in this OA are as under:-

<i>Point of Doubt</i>	<i>Clarification</i>
41. A cadre consists of 4 Grades – 'A', 'B', 'C' and 'D' (in ascending order). Upon restructuring of a cadre, Grade 'B' is abolished from a date subsequent to 9.8.1999. Employees recruited in Grade 'A', who are eligible for financial upgradation on or after 9.8.1999 but before the date of	The benefit of ACP scheme is to be allowed as per the hierarchy existing, as on the date the employees become eligible for financial upgradation under ACPS. Cadres/hierarchical structures are never static and are always subject to review based on recommendation of Pay Commissions/Expert Committees or otherwise and it is not possible to review the entitlements under ACPS already earned every time a cadre is reviewed. ACPS is only a



<i>Point of Doubt</i>	<i>Clarification</i>
<p>effect of restructuring, get first/second financial upgradation in Grade 'B' and Grade 'C' respectively but those who become eligible for financial upgradation after the restructuring has been effected are entitled to first financial upgradation in Grade 'C' and second financial upgradation in Grade 'D'. This is anomalous. The cases of earlier set of employees should be reviewed and they may be allowed financial upgradations as applicable to the latter category of employees.</p>	<p>temporary solution to provide relief to stagnating employees and the lasting solution for station lies in review of cadre structures, as regular promotions will be earned in such restructured grades. All the employees will benefit from such cadre restructuring.</p>
<p>42. An employee in Grade 'A' is eligible for promotion simultaneously to Grades 'B', 'C' and 'D' (in ascending order) with varying requirements of length of service in the present grade. In other words, he has multiple channels of promotion. What shall be his eligibility under ACP?</p>	<p>Provisions in the existing Recruitment Rules in various organizations providing for multiple channels for promotion are not consistent with the guidelines on framing of the Recruitment Rules. All such Rules should be reviewed immediately so as to provide only a single channel of promotion. However, till such a review is undertaken, the. First financial upgradation in such cases shall be allowed with reference to the lowest promotional Grade which is Grade 'B'. If he does not earn any promotion in 24 years, his second financial upgradation will be as pr the hierarchy of Grade 'B'. However, if he has already earned one regular promotion, then his second financial upgradation shall be as per the hierarchy of the Grade to which he has been promoted.</p>

12. The applicant's first ACP took place on the basis of item No. 42, i.e. there were two promotion prospects to fitters – (a) Sr. Fitter and (b) Mechanical Supervisor and among the two, the lower one is (a) above and the applicant was so afforded the said financial upgradation, which the applicant fully accepted. Later on he had been promoted to the said post of Sr. Fitter. It was much later that the said post of Sr. Fitter got abolished and the incumbent to the post was allowed to draw the higher pay scale as his personal pay till he got out of the said post by



further promotion or otherwise. In the case of the applicant, he became mechanical supervisor later on in 2009. However, he had completed 24 years as on 02-04-2004. The question is whether he should be granted second ACP ignoring the earlier first ACP on the ground that the said post of Sr. Fitter got abolished and the post next higher to fitter is only mechanical supervisor and thus, he should be granted the first ACP in the scale of Rs 4,500 – 7,000/-.

Counsel for the applicant submitted that there is a glaring anomaly in that the senior and (otherwise suitable for promotion) but could not be promoted due to non availability vacancy got the upgradation as senior Fitter and financial upgradation of his junior (or senior for that matter) who could not be found suitable for financial upgradation had to wait for some more time till the next DCP meets. And it is by that time that the post of Sr. Fitter gets abolished and the next post happens to be only the post of Mechanical Supervisor and on the next DCP, when he was otherwise found suitable, he is afforded the financial upgradation as of Mechanical Supervisor. The question whether this anomaly is allowed to be perpetuated. Answer to this question is as given in item No. 41 extracted above. The clarification given gives complete answer that "*It is not possible to review the entitlements under ACPS already earned every time a cadre is reviewed.*"

13. The clarification given is not something which has been newly introduced or which is deviating from the very scheme. What is provided in the Scheme, impliedly has been made explicit through the clarification.

14. The above clarification given has not been challenged. That is a conscious one and the same has been followed in the case of the applicant. The penultimate and last paragraph of the impugned Annexure A-9 order confirms the same. When an action has been taken on the basis of a rule position and the

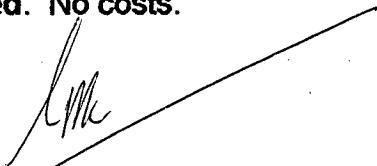
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same is applied uniformly to all those similarly situated, the question of discrimination does not arise. All those who have been situated in the same position as the applicant, if dealt with uniformly, no interference is called for unless the entire rule position (including the clarification, in this case), is challenged. That is not the case here. The clarification has not been challenged by the applicant.

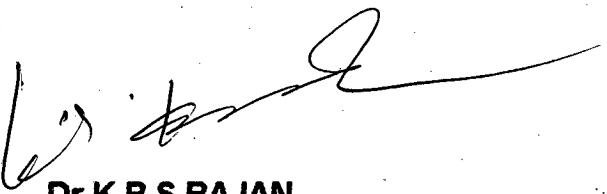
15. The counsel for the applicant argued that in other institutions the financial upgradation is Rs 4,500 – 7000, when in the case of the applicant the same is Rs 3200 – 4900. Respondents have dismissed the said contention as totally baseless. Annexure 5A-(a) and (b) no doubt give higher pay scale as financial upgradation but whether they too have such a hierarchy as in the case of the applicant has not been supported with any documentary evidence. Hence, comparison is not appropriate.

16. In so far as other trades within the same organization are concerned, when the other trades did not have a grade in between the basic grade and mechanical supervisor in the hierarchy, and in the case of Turners etc., alone such an intermediate hierarchy has been available, the higher pay scale for financial upgradation to the other trades is according to the hierarchy in that grade.

17. In view of the above, we find no merit in the O.A. The same is, therefore, dismissed. No costs.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

trs


Dr K.B.S.RAJAN
JUDICIAL MEMBER