

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 408 of 2009

Thursday, this the 31st day of March, 2011

CORAM:

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

P.C. Sayed Mohammed,
S/o. Sayed Bukari Matharapura,
presently working as Engine Driver,
O/o. The Assistant Engineer,
Electrical Sub Division,
Union Territory of Lakshadweep, Andrott,
Residing at Pathechetta House,
Androth Island.

.... Applicant.

(By Advocate Mr. N. Unnikrishnan)

v e r s u s

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Personnel and 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 Engineer (Electrical),
Electrical Sub Division,
Union Territory of Lakshadweep,
Androth Island.

.... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R-1 and
Mr. S. Radhakrishnan, for respondents No. 2-4)

This application having been heard on 28.02.2011, this Tribunal
on 31.03.11 delivered the following :-



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

This Original Application is filed for a declaration that the applicant is entitled to get the second financial upgradation under the ACP Scheme with effect from 14.06.2007 counting his service rendered as Work Charged Helper to Line Man (HLM) from 14.06.1983 onwards and consequential directions.

2. The applicant is now working as Engine Driver. He was appointed as HLM on work charged establishment on 14.06.1983. He was appointed as Oilman under regular establishment with effect from 02.12.1985. He was promoted as Engine Driver vide order dated 09.02.1990.

3. The applicant contends that he should be given the second financial upgradation under the ACP Scheme with effect from 14.06.2007 taking his service from 14.06.1983 as qualifying service. His appointment as work charged Helper was not ad hoc but as per rules. The service rendered on work charged establishment is also to be counted as in the case of Shri C.K Syed Abdulla Koya. The service conditions of work charged staff is comparable with that of the workers of regular establishment. He even earned the second periodical increment during his work charged service as HLM.

4. The respondents contend that the applicant was appointed afresh as a direct recruit to the cadre of Oilman. As his work charged service is



not followed by absorption, the service rendered as HLM (WC) cannot taken into account for the purpose of granting ACP. The applicant joined on regular basis as Oilman on 02.12.1985 and has been promoted as HLM subsequently. He will get second ACP after completion of 24 years of regular service on 02.12.2009 subject to other conditions. But ACP Scheme ended on 30.08.2008 with the introduction of MACPS on 01.09.2008 under which three financial upgradations are available. It was further submitted that Shri C.K. Sayed Abdullakoya was initially appointed as work charged Wireman in the scale of Rs. 950-1400 before his absorption to the grade of Oilman and his pay in the post of Oilman on his regularisation was fixed at the maximum of the regular post of Oilman, i.e. Rs. 940/- in terms of clarification given by the Government of India, Ministry of Home Affairs, letter No. 14015/1/93-ANL dated 17.08.1993. Thus, Sayed Abdulla Koya is entitled for more salary than the applicant even if the former is junior to the later. This fixation done, as per letter dated 17.08.1993, on 19.12.1993 was not for the purpose of 2nd ACP. The ACP Scheme was introduced much later on 09.08.1999.

5. We have heard Mr. N. Unnikrishnan, counsel for the applicant, Mr. Sunil Jacob Jose, SCGSC, for respondent No.1 and Mr. S. Radhakrishan, for respondents No. 2 to 4 and perused the material on record.

6. The short question to be decided is whether the applicant is entitled to the 2nd ACP counting his work charged service from 14.06.1983. The applicant relies on the decision that "if in the matters of service conditions, work charged staff is comparable with workers of regular establishment,



there is no objection in extending the ACP Scheme to the work charged staff". He further cites the case of C.K. Sayed Abdullakoya whose service as work charged wireman was counted for granting the benefit of ACP. The respondents contended that he was appointed as a fresh recruit to the cadre of Oilman on 02.12.1985. The period of work charged service as Helper for Line man cannot be counted because his work charged service is not followed by regular promotion. Condition No. 4 from Annexure-I to the ACP Scheme introduced on 09.08.1999 is extracted as under:

"4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment of prescribed conditions....."

The clarification to point of doubt at Sl. No. 11 is reproduced as under :

<u>S.No.</u>	<u>Point of doubt</u>	<u>Clarification</u>
11.	In the case of an employee appointed on ad hoc basis and who is subsequently regularised, the ad hoc service is counted towards increment. Whether the ad hoc service may be counted for the ACPs also?	No. In terms of para 3.2 of the Office Memorandum dt. August 9, 1999 (ACPS) 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 ACPs.

7. As per the ACP Scheme, only regular service is to be counted for the purpose of financial upgradation. Therefore, the applicant is not legally entitled to count his work charged service for the purpose of the ACP. It has been categorically stated by the respondents that Shri Sayed Abdullakoya has not been granted 2nd financial upgradation. But they are silent on the issue whether he had been granted 1st financial upgradation



under the ACP Scheme counting his work charged service also. Even if it is so, the applicant is not entitled to count the work charged service for the purpose ACP as per rules. If an illegality is committed in the case of Shri Sayed Abdullakoya, there is no justification to repeat it in the case of the applicant to grant him the 2nd financial upgradation. What is illegal should not be perpetuated. So far the said Sayed Abdullakoya has not been granted the 2nd financial upgradation under the ACP Scheme. And the ACP Scheme has been substituted with MACPS with effect from 01.09.2008 under which the applicant may get 2nd and 3rd financial upgradations.

8. The applicant compares himself with those employees who were granted the 2nd ACP vide order dated 21.02.2009 at Annexure A-12. It is seen that they have completed 24 years of regular service before 01.09.2008 whereas the applicant has not completed 24 years of regular service before 01.09.2008.

9. The applicant submits that he was not appointed on ad hoc basis as Helper to Lineman (Work Charged). He was appointed on the basis of Lakshadweep Electricity Department (Group 'C' and 'D' Technical Posts) Recruitment Rules, 1983. He even earned 2nd increment while working as Helper to Lineman (Work Charged). A work charged employee may be given appointment as per rules governing appointment of a work charged employee. But the fact that there are rules governing appointment of a work charged employee does not make the work charged employee a regular employee. Similarly, the service conditions



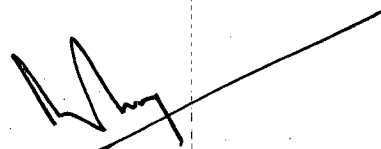
of a work charged employee may be comparable with that of a regular employee and the benefit of ACP Scheme may be granted to such work charged employee, but that will not make him a regular employee. The applicant is no longer a work charged employee. The benefit of ACP would be granted to a work charged employee only if he continues to be a work charged employee on the basis of his work charged service. In the case of the applicant, he left the status of work charged employee as early as 02.12.1985 when he became a regular employee. As far as a regular employee is concerned, only his regular service would be considered for financial upgradation under the ACP Scheme. The fact that he had two and a half years service as work charged employee, will not make any difference. Thus, as per the rules, the applicant is not entitled for 2nd financial upgradation under ACP Scheme on 14.06.2007 as he has not completed 24 years of regular service from 02.12.1985.

10. In the light of the above, we do not find any merit in the contentions of the applicant. The O.A. is dismissed with no order as to costs.

(Dated, the 31st March 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr

