

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 410 of 2009

Wednesday, this the 21st day of December, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

P.K. Kumaran, aged 56 years, S/o. Kunjan, Store Keeper,
 Naval Air Craft Yard, Naval Base, Kochi-4, Residing at Punneparambil
 House, Kandanad P.O., Ernakulam District. **Applicant**

(By Advocate – Mr. T.A. Rajan)

V e r s u s

1. Union of India, represented by Secretary,
 Government of India, Ministry of Defence, New Delhi.
2. The Flag Officer Commanding-in-Chief, Headquarters,
 Southern Naval Command, Naval Base, Kochi-4.
3. The Chief Staff Officer (P&A), Headquarters, Southern Naval
 Command, Naval Base, Kochi-4. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 21.12.2011, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant was initially appointed as Assistant Store Keeper on casual basis with effect from 23.11.1981. He had continued service, however, with artificial breaks. He was regularized with effect from his initial appointment namely 23.11.1981 vide Annexure A-2 order dated 25th March, 1994. Annexure A-2 order was passed based on the decision of this Tribunal rendered in OA No. 152 of 1994 in which applicant was also a



party. The decision of the Tribunal in OA No. 152 of 1994 is Annexure A-1 dated 21st January, 1994. The applicant is second applicant therein. Applicant and other similarly situated claimed similar benefits as was conferred on the applicants in OA No. 434 of 1989 and OA 609 of 1989. This Tribunal held that if the applicants are similarly situated then the relief granted to the applicants in OA 434 of 1989 and OA 609 of 1989 will be granted to the applicant herein and a determination will be made by the competent authority within the prescribed time limit prescribed therein. It was further referring to the factual situation, that all the authorities took a consensus decision to extend the benefit to the applicant herein as was extended in the earlier OA No. 434 of 1989 and OA 609 of 1989. If so the applicant contends that his 2nd ACP ought to have been given with effect from 23.11.2005 whereas the 2nd ACP benefits were given to him only with effect from 1.9.2008. Challenging the said action the OA is filed. During the pendency of the OA the Annexure A-2 order was modified through Annexure A-7 order by which the applicant was found entitled to regularization with effect from 5.8.1983 treating the initial appointment of the applicant as 5.8.1983. Hence, he amended the OA and the following relief are sought for:-

"I) Declare that the non granting of the second financial up-gradation benefits under the ACP scheme to the applicant with effect from 23.11.2005 as illegal.

II) Declare that the applicant is entitled to get second financial up-gradation benefits under the ACP scheme with effect from 23.11.2005.

III) Direct the respondents to grant the second financial up-gradation benefits under the ACP scheme to the applicant with effect from 23.11.2005 and also direct to grant the consequential arrears of pay with 9% interest.



IV) Direct the second respondent to consider and dispose of Annexure A4 representation without further delay.

V) call for the records leading to Annexure A7 and A9 quash them.

VI) Declare that the applicant is entitled to be regularized from service from the date of his initial appointment as Assistant Store Keeper on casual basis viz 23.11.1981 and also direct the respondents to grant all the consequential benefits.

VII) Award costs of and incidental to this application.

VIII) Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case."

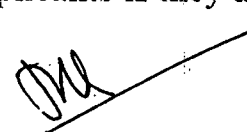
2. In the reply statement to the amended OA the respondents had taken the stand that the applicant had been regularized from the date of initial engagement with effect from 23.11.1981. This is not fully correct. According to the respondents the applicant's service had initially been regularized with effect from 23.11.1981 by Annexure A-2. But subsequently as it was decided to restrict the break period by 30 days at a stretch to consider for regularization, services rendered from the next date from such long break is regularized. This is based on the policy decision of the Headquarters, Southern Naval Command Memorandum CS 2695/43/101 (Policy), dated 17th May, 1994 and CS 2695/43/101 (Policy), dated 8th July, 1994. Since in the case of the applicant he had the long break of 176 days from 10.2.1983 to 4.3.1983, regularization was done after the long break with effect from 5.8.1983.

3. The correctness of the stand taken by the respondents in taking the date of initial appointment as 5.8.1983 based on the policy decision referred

to in the reply is therefore to be examined. In this connection learned counsel appearing for the applicant placed heavy reliance on the decision of OA No. 732 of 2006 dated 18th June, 2008 Annexure A-5 produced in the case. As per Annexure A-5 order of the Tribunal wherein the legality or otherwise of the policy decision taken in 1994 was discussed, it was found that such policy decision can have only prospective effect and will not apply to cases of such practice taken earlier to the policy decision. In this connection we need only refer to paragraph 13 of the order of the Tribunal in Annexure A-5:-

"13. The second issue for consideration related to the applicability of the restriction on the number of days of break which could be condoned. If the case of these applicants were taken up for regularisation along with the petitioners in OA Nos. 434/89 and 609/89 they would not have been hit by the restriction imposed by the respondents through the impugned orders. It would be unreasonable and arbitrary to penalise the applicants because of the delay on the part of the respondents in considering the applicants on par with the applicants in the earlier O.A. In this regard we are guided by the decision of the Full Bench in OA 434/89 supra where similar issue was examined. On the issue of applicability of extension of the benefit of seniority to such employees (sought to be restricted by a circular dated 27.5.80), the Full Bench has come to the conclusion that the memorandum issue don 27.5.80 will not apply to the regularisation from the dates prior to the date of its issue. Following the same analogy we are also of the considered opinion that the guidelines issued by the respondents on 17.5.94/8.7.94 will not apply to regularisation from dates prior to the issue of these guidelines. The adoption of this principle would mean that all the applicants in the present OA except one Sl. No. 19 (Smt. P.K. Sudha) will be entitled to the benefit of the judgment of this Tribunal in OA 434/89 because they had become entitled to be regularised prior to the date of the issue of the guidelines on 17.5.94/8.7.94 without the benefit of seniority. In the case of the applicant Smt. P.K. Sudha, as she was regularised w.e.f. 8.9.1994 consideration of her case will be hit by the restriction imposed by the respondents in terms of the number of days for which break can be condoned.

4. Admittedly as per Annexure A-1 order the benefit of the judgment in OA No. 434 of 1989 was sought to be extended to the applicants if they are



similarly situated. On the factual situation we find that applicant is similarly situated with that of the applicants in OA No 434 of 1989 and OA 609 of 1989 in favour of whom Annexure A-5 orders were passed as referred to above. If the policy decision has to be ignored then the applicant's casual service started undisputedly with effect from 23.11.1981 in which event the applicant will be entitled to the benefit contained in Annexure A-5 order i.e. to say that the policy decision passed on which the applicant's long break in service was considered for the purpose of regularizing his services with effect from future date has to be held as illegal since the decision taken in 1994 cannot be retrospectively applied as held by this Tribunal in Annexure A-5 judgment. Annexure A-6 is the order rendered in OA No. 715 of 2008 wherein this Tribunal held that the casual period of service stands regularized for the purpose of reckoning 24 years of service and accordingly they are entitled for financial up-gradation admissible to them. If so the applicant will be entitled to count his services effective from 23.11.1981 for the purpose of 2nd ACP benefit. Therefore, we declare that the applicant's initial regularization should be taken as 23.11.1981. This has rightly been done vide Annexure A-2 and 24 years will be completed on 23.11.2005. Accordingly, the order giving him ACP benefits with effect from 1.9.2008 is set aside and in its place the date of ACP benefits has to be given w.e.f. 23.11.2005. We grant two months time for complying with this order.

5. Original Application is allowed as above. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER
"SA"


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER