

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 413 of 2009

FRIDAY, this the 30th day of July, 2010

CORAM:

**HON'BLE Mr. JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K. Prasannakumar,
S/o. Kunjupillai,
Store Keeper, Naval Air Craft Yard,
Naval Base, Kochi – 4,
Residing at Aareepurath House,
Kochupalli Road, Thoppumpady,
Kochi – 5

Applicant.

(By Advocate Mr. T.A. Rajan)

versus

1. Union of India represented by the 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

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Original Application having been heard on 26.07.2010, this Tribunal on 30.07.2010 delivered the following :

ORDER

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

This O.A. has been filed by the applicant for the following main reliefs :

(i) Declare that the applicant is entitled to be regularized in service from 15.05.1982, the date of his initial appointment as Assistant Store keeper on casual basis and also entitled to get second financial upgradation benefits from 15.05.06 with all consequential benefits.

(ii) Direct the respondents to regularize the service of the applicant from the date of his initial appointment as Assistant Store keeper on casual basis duly condoning the artificial breaks and also direct to grant the second financial upgradation benefits from 15.05.06 and further direct the respondents to grant the consequential arrears with 9% interest.

(iii) In the alternative, direct the respondents to grant the second financial upgradation benefits under the ACP Scheme to the applicant with effect from 09.02.2007 and also to grant the consequential arrears of pay with 9% interest.

(iv) Direct the second respondent to consider and dispose of Annexure 3 representation without further delay.

2. By seeking an alternative relief, the applicant does not press the other reliefs. Therefore, only the alternative relief is considered in this O.A.

3. The applicant was initially appointed as Assistant Store Keeper with effect from 15.05.1982 on casual basis and subsequently absorbed to the said post on 01.12.1983. Later on, the casual service rendered by the applicant from 09.02.1983 had been regularised and all consequential benefits flowing from regularization except seniority, were extended. The alternative remedy of 2nd financial upgradation benefit under the ACP Scheme of August, 1999, with effect from 09.02.2007 is sought on the basis of his completion of 24 years from the date of regularization on 09.02.1983.

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4. The respondents contended that as per the Government orders on ACP Scheme, the applicant has to complete 24 years of regular service from the date of absorption against a regular post to earn 2nd financial upgradation. As per the recommendation of the VI Central Pay Commission, the Government of India modified the ACP Scheme and introduced Modified Assured Career Progression (MACP) Scheme vide Ministry of Personnel, Public Grievances and pension, O.M. No. 35034/3/2008-Estt(D) dated 19.05.2009. The MACP Scheme would be operational with effect from 01.09.2008. The financial upgradation as per the provisions of earlier ACP Scheme of August, 1999, would be granted till 31.08.2008 only. The applicant will be eligible for the benefit of 2nd financial upgradation under the ACP Scheme with effect from 01.12.2010 (the date on which he completes 24 years of service from the date of absorption). Since the ACP Scheme ceased to be in operation from 31.08.2008 and the MACP Scheme became effective from 01.09.2008, the applicant will be eligible for the 2nd financial upgradation as per the MACP Scheme. As the extant Government Orders on MACP Scheme do not permit the respondents to extend the benefit of ACP/MACP to the applicant considering his total service from the date of initial appointment.

5. Arguments were heard and documents perused.

6. The applicant's case is that he should be granted 2nd financial upgradation at least on completion of 24 years from the date of regularization on 09.02.1983. The stand of the respondents that the 2nd financial

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upgradation under the ACP Scheme has to be granted on completion of 24 years of regular service from the date of absorption against a regular post, has been disregarded by this Tribunal in a number of cases. In O.A. Nos. 434/89, 609/89 and 732/06, the services rendered by the applicants therein on casual basis have been regularised. In the order dated 19.08.2009 in O.A. No. 715 of 2008, this Tribunal held as under :

"7. Arguments were heard and documents perused. The fact that the applicants casual service has also been regularised is not denied. It is also an admitted fact that in other cases the Tribunal has held that the Casual Labourer services on regularisation became regular service and the same shall be reckoned to work out 24 years of service. A few orders of this nature are stated to have been upheld by the Hon'ble High Court as well. And in these cases the respondents have promptly implemented the order.

8. *In Inder Pal Yadav v. Union of India, (1985) 2 SCC 648*, the Apex Court has held as under:-

"... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.

9. The Apex Court as early as in 1975 in the case of *Amrit Lal Berry v. CCE, (1975) 4 SCC 714*, held as under:-

We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

10. The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under:-

"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates

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a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

11. In view of the above, OA is allowed. Respondents are directed to take into account the period of casual period service of the applicants which already stand regularised for the purpose of reckoning 24 years of service and accordingly grant the financial upgradation admissible to them. Four months' time is calendered for the implementation of the order of this Tribunal.

12. No costs."

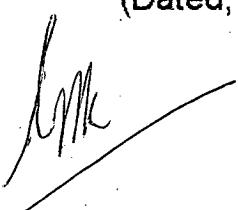
7. In the light of the decision rendered by this Tribunal in OA No. 715/2008 which covers this O.A. squarely, the applicant is entitled to get the regularized casual service rendered by the applicant from 09.02.1983 to 01.12.1983 reckoned for calculating 24 years of service for the purpose of granting 2nd financial upgradation under the ACP Scheme.

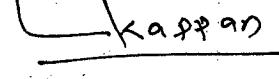
8. The financial upgradation as per the provisions of ACP Scheme of August, 1999, can be granted upto 31.08.2008. The applicant is eligible to be granted 2nd financial upgradation as on 09.02.2007. The MACP Scheme came into force only from 01.09.2008. Therefore, the applicant can be

granted 2nd financial upgradation under the ACP Scheme with effect from 09.02.2007. The introduction of MACP Scheme will not come in the way of granting 2nd financial upgradation under the earlier ACP Scheme to the applicant. Therefore, the contention of the respondents that the extant Government orders for granting the benefit of ACP do not permit them to grant the 2nd financial upgradation to the applicant is not sustainable. However, in the facts and circumstances of this O.A, we do not find any deliberate delay on the part of the respondents to justify granting any interest on the amount payable to the applicant. Accordingly, the O.A. stands allowed as under:

9. The respondents are directed to grant the applicant admissible financial upgradation under the ACP Scheme with effect from 09.02.2007 within a period of 60 days from the date of receipt of a copy of this order. They are further directed to pay interest also at the rate of 9% per annum on the amount so payable to the applicant in case of delay, if any, beyond the aforesaid period. No order as to costs.

(Dated, the 30th July, 2010)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE K THANKAPPAN
JUDICIAL MEMBER

CVR..